



Council

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Summary Report of the Chairman of the Legal and Technical Commission on the work of the Commission during the sixteenth session

1. The Legal and Technical Commission commenced its work on 19 April, one week in advance of the meetings of the Council and Assembly. Unfortunately, owing to the volcanic eruption in Iceland, the Commission was unable to achieve a quorum until 21 April 2010. The Commission therefore held unofficial meetings on 19 and 20 April 2010, chaired by Mr Sandor Mulsow Flores, during which the members present in Kingston were able to undertake a detailed preliminary review of the annual reports of contractors with the Authority.

2. The following 20 members of the Commission participated in the meetings during the sixteenth session: Frida M. Armas-Pfirter, David Billett, Eusebio Lopera Caballero, Miguel dos Santos Alberto Chissano, Laleta Davis-Mattis, Baïdy Diène, Elva Escobar, Kennedy Hamutenya, Asif Inam, Emmanuel Kalngui, Woong-Seo Kim, Denis Gennadyevich Khramov, Walter de Sá Leitão, Sudhakar Maruthadu, Sandor Mulsow Flores, Nobuyuki Okamoto, Christian Reichert, Mahmoud Samy, Adam Tugio and Haiqi Zhang. The following five members informed the Secretary-General that they would be unable to attend the session: Jean-Marie Auzende, Said Hussein, Isikeli Uluinairai Mataitoga, Andrzej Przybycin and Elena Sciso.

3. The Commission considered the following matters during the sixteenth session:

(a) Evaluation of the annual reports of contractors submitted pursuant to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area ('the Regulations');

(b) Completion of the training programme by the Federal Institute for Geosciences and Natural Resources of Germany;

(c) Review of the Recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for polymetallic nodules in the Area issued under regulation 31 of the Regulations;

(d) Outcomes and recommendations of the project to establish a geological model for the Clarion-Clipperton Zone;

(e) Presentation of the Code for Environmental Management of Marine Mining of the International Marine Minerals Society; and

(f) Other matters.

4. At its meeting on 21 April 2010, the Commission elected Miguel dos Santos Alberto Chissano (Mozambique) as Chairman and Nobuyuki Okamoto (Japan) as Vice-Chairman.

I. Evaluation of the annual reports of contractors submitted pursuant to the Regulations on prospecting and exploration for polymetallic nodules in the Area

5. On 19, 20, 21, 22 and 23 April, the Commission reviewed and evaluated, in closed meetings, the annual reports submitted by contractors pursuant to the Regulations. For this purpose and following its usual practice, the Commission divided itself into three working groups on legal, environmental and technological aspects. The working groups carried out a preliminary review of the annual reports and prepared a draft evaluation for consideration by the Commission. To facilitate its work, the Commission was provided with a preliminary analysis of the annual reports prepared by the secretariat (ISBA/16/LTC/CRP.5). The report and recommendations of the Commission concerning the annual reports of the contractors are contained in document ISBA/16/LTC/6.

6. In reviewing the annual reports, the Commission made several comments of a general nature. In particular, the Commission noted that contractors had only partially followed the Recommendations for guidance on the reporting of actual and direct exploration expenditure issued by the Commission in 2009 (ISBA/15/LTC/7). The Commission also noted that there were significant variations in reported financial expenditure among contractors in respect of a similar item, e.g. the cost per day of at-sea exploration. Moreover, the Commission expressed its concern that some reported expenditures could not be classified as 'actual and direct exploration expenditure' as defined in the Regulations. The Commission recommended that the contractors be requested to provide with their next annual report a revised historical breakdown of reported expenditure in accordance with the 2009 Recommendations. The Commission also requested the secretariat to prepare for the next session a detailed analysis of the reported expenditure by contractors against the recommended headings of expenditure set out in the 2009 Recommendations, in order to enable the Commission to provide further guidance to the incoming Legal and Technical Commission on the treatment of such expenditure.

7. The Commission observed that the environmental and exploration work of the contractors continues to progress at a slow pace. The Commission also expressed its concern that there was still a lack of raw data being provided by the contractors in spite of numerous requests from both the Commission and the Secretary-General. In view of the completion next year, for most of the contractors, of the second 5-year period of the 15-year contract for exploration, the Commission requested the secretariat to prepare for its next session a detailed analysis of the exploration and environmental work carried out by the contractors to date.

II. Completion of the training programme by the Federal Institute for Geosciences and Natural Resources of Germany

8. The Commission received a report from the Federal Institute for Geosciences and Natural Resources (BGR) of Germany with respect to the completion of its training programme under Schedule 3 of its contract for exploration (ISBA/16/LTC/5). The Commission took note of the report and expressed its satisfaction with the training programme, which completes the training obligations of BGR under the contract.

III. Review of the Recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for polymetallic nodules in the Area issued under regulation 31 of the Regulations

9. In 2008, the Commission had decided that it was necessary, in light of scientific progress, to review the Recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for polymetallic nodules in the Area issued in 2001 (ISBA/7/LTC/Rev.1**). In 2009, the Commission had reviewed a tabular comparison of the 2001 recommendations and the 2001 and 2004 environmental workshops. The Commission agreed to include a standard sampling protocol and a storage protocol for archiving data in the recommendations in order to enable a comparison of the environmental data collected by the contractors. However, the Commission did not have enough time to complete the revision in 2009 and therefore tasked a subgroup, with the assistance of the secretariat, to continue the work intersessionally.

10. In 2010, the Commission resumed its revision of the environmental recommendations on the basis of a draft prepared by the secretariat that included the comments and proposals of the subgroup (ISBA/16/LTC/CRP.1). To assist its work, the Commission was also provided with a preliminary summary and analysis of the environmental work carried out by contractors to date (ISBA/16/LTC/4), which compared the environmental work by the contractors as reported in 2009 with the environmental recommendations that the Commission had issued in 2001.

11. After discussion of the draft document, the Commission adopted, on 27 April 2010, the Recommendations as contained in document ISBA/16/LTC/7, on the understanding that the annexes to that document, which the Commission did not have sufficient time to consider fully, would remain provisional until the Commission was able to examine them in further detail at the next meeting in 2011.

IV. Outcomes and recommendations of the project to establish a geological model for polymetallic nodule deposits in the Clarion-Clipperton Zone

12. Under this item, the Commission was informed that the project to establish a geological model for polymetallic nodule deposits in the Clarion-Clipperton Zone had been concluded with a workshop held from 14 to 17 December 2009 in

Kingston. Experts, some members of the Commission, representatives of some contractors and some member States attended that workshop. The Commission received a presentation of the outcomes of the project, consisting of the Geological Model and the Prospector's Guide, and of the recommendations adopted during the workshop in December 2009. The Commission was also provided with a summary report and recommendations of the workshop in document ISBA/16/LTC/3, and a more detailed analysis of the Prospector's Guide and Geological Model in document ISBA/16/LTC/CRP.3.

13. The Commission took note of the reports and welcomed this major achievement, which would not have been possible without a great degree of cooperation from contractors. The Commission also noted that the Geological Model for the Clarion-Clipperton Zone would be updated as more data come to hand. The Commission welcomed the development of a similar project for the Central Indian Ocean Basin, which is expected to improve the resource assessment of polymetallic nodule deposits in the Area and guide future prospectors.

14. The Commission also received a presentation on the status on the Authority's Central Data Repository on marine mineral resources. The Commission took note of the presentation and expressed its satisfaction with the development of the database, which facilitates access in a standardized format to data and information on mineral resources. However, some members of the Commission also expressed their concerns in relation to the erroneous and unnecessary indication of political boundaries in one of the datasets used as a source map for the Authority's database, and requested the secretariat to make the necessary corrections. The secretariat later informed the Commission that the necessary corrections had been made.

V. Presentation of the Code for Environmental Management of Marine Mining of the International Marine Minerals Society

15. On 26 April 2010, the Commission received a presentation by Dr. P. A. Verlaan on the revised draft update of the International Marine Mineral Society's (IMMS) Code for Environmental Management of Marine Mining, a brief overview of its concept and structure, and the background of the IMMS. The presentation is summarized in document ISBA/16/LTC/2.

16. The presentation pointed out that the Authority and the IMMS benefit from an unusual opportunity to put in place a framework for the environmentally and commercially responsible development of an emerging industry, which requires regulatory predictability and minimization of risk in environmental matters. This framework can be built into the full cycle of an industrial activity: from prospecting and exploitation to decommissioning and rehabilitation.

17. The Commission thanked Dr. Verlaan for her presentation. An extensive and rich discussion followed. The topics addressed includes: liability; proprietary versus non-proprietary environmental data; feasibility of rehabilitation, especially where hard substrate has been removed; the costing of rehabilitation specifically, and of environmental compliance generally; the potential inhibitory effect of these costs on investment in marine mining; compensation mechanisms; joint funding of environmental compliance activities, decommissioning and environmental disaster costs, such as various funds related to ship-source and oil pollution set up under the

auspices of the International Maritime Organization; the existence and source of external auditing standards (including performance reviews), standards per se, and specialized accredited auditors, as well as the relevance of external auditing of contractors; mechanisms and funding for stakeholder consultations; definition of risk; the utility of non-binding instrument such as the Code to raise consciousness and set baselines and criteria until States are ready to adopt regulations; research on rehabilitation and its cost during test mining; and collaboration on environmental research between industry and academia.

VI. Other matters

A. Work programme of the Authority

18. With respect to the proposed work programme, the Commission took note of the future projects of the Authority and supported them. The Commission also recalled the importance of the ongoing elaboration by the Authority, pursuant to Article 145 of the Convention, of the rules, regulations and procedures to ensure the effective protection of the marine environment for, inter alia, the protection and conservation of the natural resources of the Area, and the prevention of damage to the flora and fauna of the marine environment from harmful effects that may arise from activities in the Area. The Commission took note that the workshop to review further the proposal for the establishment of a network of areas of particular environmental interest in the Clarion-Clipperton Fracture Zone would be held later in 2010.

19. The Commission also took note of the importance of involving its members in the expert meeting on the implementation of article 82, paragraph 4 of the Convention, as proposed in the Report of the Secretary-General.

B. Proposal to seek an advisory opinion from the Seabed Disputes Chamber

20. The Commission also took note of the proposal before the Council to seek an advisory opinion from the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea on matters regarding sponsoring State responsibility and liability (ISBA/16/C/6).

21. The Commission noted that in paragraph 4 of this document, submitted by the delegation of Nauru, it is stated that while the application process was being finalized, “differing opinions arose from members of the Legal and Technical Commission regarding the interpretation of the provisions in the Convention and the 1994 Agreement relating to the implementation of Part XI of the Convention (General Assembly resolution 48/263) that pertain to the responsibility and liability of sponsoring States, and that it became apparent that clarification would need to be sought regarding those provisions before moving forward”.

22. The Commission wishes to state that these “differing opinions” that are referred to as being of the Commission’s members are not stated in the Commission’s reports or in any other official document. In addition, it is well stated

that the applicants were the ones requesting the consideration of their applications to be postponed due to the current global economic circumstances and other concerns.

23. Effectively, the Commission had received in 2008 two applications for approval of a plan of work for exploration in reserved areas; one from Nauru Ocean Resources Inc. (sponsored by Nauru) and another from Tonga Offshore Mining Limited (sponsored by Tonga). As the Commission had been unable to complete consideration of the applications during the fourteenth session, the matter had been placed on the agenda for the fifteenth session. At that time, the representatives of Nauru and Tonga, the sponsoring States of the applicants, expressed their gratitude to the Commission for its work in relation to the consideration of the applications and emphasized the importance of the applications to their Governments (ISBA/14/C/8).

24. On 5 May 2009, the Secretariat was informed by Nauru Ocean Resources Inc. and Tonga Offshore Mining Ltd. (the applicant companies) that, in the light of current global economic circumstances and other concerns, they had decided to request that consideration of their applications for approval of plans of work for exploration for polymetallic nodules be postponed (ISBA/15/LTC/6). Consequently, the Commission took due note of the request and decided to defer further consideration of the item until further notice (ISBA/15/LTC/C/5).

C. Size and functioning of the Legal and Technical Commission

25. With respect to the size and functioning of the Legal and Technical Commission, the Commission wished to express that, in the light of the current number of candidates standing for election at the twelfth session, it had been asked by Council to comment on the efficiency of its functioning with its present membership of 25 experts. The Commission agreed that it was able to function efficiently and effectively with 25 experts. The Commission also agreed that there was a need to preserve as wide a range of disciplinary expertise as possible. The Commission specifically noted the need for specialists in certain key disciplines, including marine biology, marine geology, mining engineering, mining economics, and in legal matters.

26. The Commission recalled that the Convention does not limit the size of the Commission, but on the contrary enables its expansion.

27. On 28 April 2010, the Commission adjourned its meeting.
