



Council

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

1. The Legal and Technical Commission met from 21 July to 1 August 2003. Mr. Ferry Adamhar, Mr. Sami Ahmad Addam, Mr. Shahid Amjad, Mr. Miguel Dos Santos Alberto Chissano, Mr. Mohammed M. Gomaa and Mr. Jean-Pierre Lenoble were unable to attend the session. The Commission elected Mr. Albert Hoffmann (South Africa) as Chairman and Ms. Frida Maria Armas Pfirter (Argentina) as Vice-Chairman. During the ninth session, the Commission considered the following items:

(a) The annual reports of contractors submitted pursuant to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area;¹

(b) The rules, regulations and procedures for prospecting and exploration for polymetallic sulphides and cobalt-rich crusts in the Area;

(c) A report on the status of the central data repository;

(d) The role of the International Seabed Authority in relation to the management of biodiversity in the Area;

(e) The outcomes of the Authority's workshop on the establishment of a geologic model for the Clarion-Clipperton Fracture Zone.

I. Annual report of contractors

2. The Commission considered and evaluated the annual reports of contractors submitted pursuant to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area ("the Regulations"). The Commission was provided with a report prepared by the secretariat on the status of annual reports received from contractors.² It was noted that the second set of annual reports by contractors were due to be received at the end of March 2003. As of 31 March 2003, annual reports had been received from Deep Ocean Resources Development, Ltd., Yuzhmoregeologiya and the Republic of Korea. Subsequently, annual reports were

submitted by the Government of India, the Interoceanmetal Joint Organization, the China Ocean Mineral Resources Research Development Association (COMRA) and the French Institute of Research for the Exploitation of the Sea/French Association of Studies and Research of Nodules (IFREMER/AFERNOD).

3. In accordance with the methodology agreed upon during the eighth session, the Commission appointed a subcommittee to carry out a preliminary study of the annual reports and prepare a draft evaluation for consideration by the full Commission. The members of the subcommittee appointed for this purpose were Mr. Lindsay Parson, Ms. Frida Maria Armas Pfirter and Mr. Arne Bjørlykke.

4. In its evaluation of the reports for 2002,³ the Commission noted with appreciation that, in general, the contractors had taken note of the recommended format and structure for the annual reports suggested by the Commission at the eighth session.⁴ The Commission also noted that the process of appointing a subcommittee had facilitated a more expeditious consideration of the reports by the Commission as a whole. It was considered, however, that, in future, it would assist the subcommittee if the secretariat was able to conduct a preliminary analysis of some of the more technical data and information contained in the annual reports. It was also suggested that it might be useful, in some cases, to allow the contractors an opportunity to meet with the subcommittee. A suggestion was also made that it would be beneficial to the Authority to have an overall summary of the status of environmental monitoring and assessment being undertaken by contractors. Such a summary would be useful for a full understanding of the activities being undertaken by contractors. It was felt that the suggestion warranted further study by the secretariat and the Commission, but that the consent and involvement of contractors would also be essential.

II. Regulations for prospecting and exploration for polymetallic sulphides and cobalt-rich crusts

5. In accordance with its programme of work agreed upon during the eighth session, the members of the Legal and Technical Commission convened informal working groups for detailed consideration of certain aspects of the rules, regulations and procedures for prospecting and exploration for polymetallic sulphides and cobalt-rich crusts in the Area. The coordinators of the informal working groups and the topics for discussions were as follows:

(a) Considerations relating to the development of environmental rules, regulations and procedures relating to prospecting and exploration for polymetallic sulphides and cobalt-rich crusts (Mr. Helmut Beiersdorf, Mr. Samuel Sona Betah, Mr. Galo Carrera Hurtado, Mr. Walter De Sá Leitão, Mr. Albert Hoffmann, Mr. Giovanni Rosa, Mr. Alfred Simpson);

(b) Size of exploration areas and a system whereby contractors might relinquish some of these areas to the Authority (Mr. Jung-Keuk Kang, Mr. Yoshiaki Igarashi, Mr. Lindsay Parson, Mr. M. Ravindran, Ms. Inge Zaamwani);

(c) Form of the work plans that applicants would be required to submit, detailing their intentions (Ms. Frida Maria Armas Pfirter, Mr. Albert Hoffmann);

(d) Type of arrangements between contractors and the Authority: whether a parallel system in which areas would be split between the two joint ventures or some other formula (Ms. Frida Maria Armas Pfirter, Mr. Arne Bjørlykke, Mr. Baïdy Diène, Mr. Yuwei Li, Ms. Inge Zaamwani).

6. To facilitate discussions, the working groups were provided by the secretariat with relevant background documentation. The working groups also took into account the model clauses prepared by the secretariat and contained in document ISBA/7/C/2, annex.

7. The working group on environmental issues produced a preliminary draft of regulations relating to the protection and preservation of the marine environment during prospecting and exploration. The working group pointed out that, in developing environmental regulations relating to nodule exploration, the Commission had been dealing with a “post facto” situation. This was not the case with respect to the crusts and sulphides and, given the lack of scientific information on these deposits, the Commission had some scope for reviewing the obligations to be placed on contractors in relation to the protection and preservation of the marine environment. The group also considered that it was appropriate in this context to reflect in the draft regulations the developments in international environmental law achieved since the adoption of the Convention in 1982.

8. The working group on the size of areas for exploration considered the factors that would need to be taken into account during the process of determining size of exploration areas for mining ferro-manganese crusts and polymetallic sulphides. It was recognized that, while very different in nature from nodule deposits, each of these deposits was of a different character from the others, and would require special and separate consideration. The group considered that the elements to be taken into account included the size and maximum number of blocks to be available per contractor, the spatial definition of blocks (on a grid system or not, by geographical coordinates or distance), the spatial organization (contiguous or not), the geometry/dimensions of blocks (length-to-width aspect ratio), the selection process (from predefined grid, or self-selected), relinquishment procedures, timescale, encouragement factors for the contractors and economics of the number of mining sites necessary to sustain contractor operations. The working group was of the view that the size of exploration areas and the relinquishment period must be flexible enough to motivate contractors to carry out their activities in an effective manner. Although the group made some preliminary suggestions as to the methodology for defining exploration areas and the duration of exploration contracts, it was considered that the matter would require further detailed consideration.

9. The working group on the form of work plans considered that the regulatory regime for exploration for polymetallic sulphides and cobalt-rich crusts should be as close as possible to that for polymetallic nodules. In this regard, the working group proposed that the basic procedures for the submission, and approval of applications, and most of the standard clauses of the exploration contracts would remain the same as in the Regulations.

10. Nevertheless, it was noted that a number of adjustments would be required in order to reflect the different nature and distribution of the resources in question and the different political and economic considerations that applied. The most significant differences in the new regime would relate to prospecting, the size of the area to be allocated to the contractor for exploration, the application of the site-

banking system and the procedure for dealing with overlapping claims. The group further considered that it would be practical and more manageable to have one form of contract for both resources and that only one set of regulations need be elaborated to cover both polymetallic sulphides and cobalt-rich crusts. However, the group was mindful that the final form of the work plans would be informed by what will be finally decided with regard to the outcome of the discussions in the other working groups and the proposals that they may suggest.

11. The working group on the arrangements needed to give effect to the parallel system noted that its mandate was to consider the type of arrangements between contractors and the Authority, specifically whether the parallel system as applied for polymetallic nodules through site-banking should be applied for polymetallic sulphides and cobalt-rich crusts. The group was of the view that site-banking would be difficult to apply to polymetallic sulphides and cobalt-rich crusts. Therefore, other alternatives suitable for reflecting the spirit of the parallel system as referred to in the Convention were looked at, in recognition of the fact that both these resources were the common heritage of mankind. The Commission considered, however, that the option of contributing a reserved area should remain, in the event that it could be useful in the future.

12. The group suggested that the applicant could propose one of three options to the Authority, including the option to contribute a reserved area, a joint venture system involving a contract between the Enterprise and the contractor whereby the Enterprise would be offered up to 50 per cent of the equity participation, such participation being a carried interest, a free carried interest or a combination of both, or a production-sharing contract whereby the contractor would recover its cost of production each year and profit-sharing would be carried out on a 50-50 basis. The working group offered for the consideration of the Commission a revision of the model clauses reflecting the tentative proposals of the group, recognizing that these proposals would need to be further developed.

13. The Commission decided to continue its work on the draft regulations at its next session. In this regard, the secretariat was asked to prepare a consolidated and comprehensive draft of the regulations, taking into account the discussions and proposals of the working groups, for consideration by the Commission. It was agreed that this draft should be made available well in advance of the session in order to allow for comment and for further technical input from members of the Commission. In addition, the secretariat was requested to provide the Commission with a paper highlighting the key outstanding issues with respect to the regulations in order to help focus the discussions during the tenth session. The Commission decided that it should start its work one week in advance of the main session of the Authority, since this working method had proved to be efficient and conducive to thorough discussion of the issues at a technical level.

III. Report on the status of the central data repository

14. The Commission received a report on the status of the central data repository on marine mineral resources established by the secretariat (ISBA/9/LTC/3) and was given a technical briefing on the secretariat's proposals for expanding the database. It was acknowledged that, as users of the resource, the members of the Commission

could usefully contribute to the future elaboration of the database by making suggestions for improvements to the structure and usability of the database.

IV. Role of the International Seabed Authority in relation to the management of biodiversity in the Area

15. The Commission held a preliminary discussion, in open session, on issues relating to the biodiversity of the Area. It was noted that, in order to carry out its responsibilities in relation to the protection and preservation of the marine environment, it was essential for the Authority to improve its understanding of seabed and deep ocean environmental processes, including biodiversity. The Commission emphasized the need to work within its mandate under the 1982 Convention and the 1994 Agreement, but recognized the need to know and understand more about the biodiversity of the seabed and the deep ocean in order to enable it to draw up regulations to ensure the protection and preservation of the marine environment during prospecting and exploration for mineral resources. It was noted that biological processes are a known factor in mineralization, especially in hydrothermal vent ecosystems, but also in other seabed and deep ocean ecosystems. The role of the Authority in relation to the promotion and encouragement of marine scientific research in the Area was also noted.

16. It was recommended that the Authority should seek to broaden its cooperation with scientific institutions working in this area. Specifically, the importance of work being carried out by the Integrated Ocean Drilling Programme and InterRidge was mentioned. The Commission agreed to request Mr. Helmut Beiersdorf to draw up a proposal for a seminar on the subject of seabed and deep ocean biodiversity relevant to prospecting and exploration for mineral resources, involving the participation of the members of the Commission and leading experts in the field. Such a proposal, endorsed by the Commission, could be submitted to the Authority for consideration.

17. It was also agreed that, at its next session, Ms. Frida Maria Armas Pfirter would coordinate the preparation of a paper on the legal issues associated with biodiversity in the Area. This would ensure that the Commission remained within its mandate under the Convention and the Agreement. The Commission agreed to keep under review at its next session the idea of establishing a working group of the Commission to study the issue further.

V. Outcomes of the workshop on the establishment of a geologic model for the Clarion-Clipperton Fracture Zone

18. The Commission received a report on the Authority's workshop on the establishment of a geologic model of the polymetallic nodules in the Clarion-Clipperton Fracture Zone. It was noted that the workshop had addressed a number of objectives, which were largely derived from the deliberations of a preparatory meeting of invited scientists at the Authority in January 2003. These objectives included the completion of a review of the theoretical aspects of nodule formation, an assessment of the geologic structure and evolution of the Clarion-Clipperton Fracture Zone with respect to nodule abundance and grade, a discussion of means to encourage marine scientific research in the initiative, an examination of the use of

geostatistical methods in resource estimation, and an appraisal of the programme of work developed by the meeting of scientists.

19. The Commission held a discussion with the Secretary-General on the outcomes of the workshop. The Commission agreed that, in principle, it supported the proposal to establish a geologic model but would welcome the opportunity to comment on the detailed proposal in due course. The importance of close cooperation with contractors in the establishment of the model was emphasized and, in this regard, the Commission recommended that, at its next meeting, one day be set aside for a meeting with the contractors to discuss the proposed model. The Secretary-General agreed to take up this suggestion with the contractors.

20. The Commission concluded its work for the session on 1 August 2003. The members of the Commission expressed their appreciation to the secretariat for the facilities provided to them during the session and for the work that had gone into the compilation of background documentation for the session. The Commission also acknowledged the contribution by the members of the secretariat who had contributed fully to the informal discussions on the draft regulations.

Notes

¹ ISBA/6/A/18, annex.

² ISBA/9/LTC/4 and Add.1.

³ ISBA/9/LTC/2.

⁴ ISBA/8/LTC/2, annex.