Statements by the Delegation of Japan on Agenda Item 11, Council

◆ Thank you, President,

Our delegation strongly believes that in order to develop practical and effective Regulations, we must be aware of the realities of the deep sea, and for this purpose we need to listen to various stakeholders. This time, Japanese scientists join us to showcase in their side events the progress of science research and technology in the deep sea.

As we mentioned in previous meetings of the Council, the Regulations on the Exploitation of Mineral Resources in the Area should strike a balance between "exploitation" and those of "environmental conservation."

As we all know, the deep sea is home to one of the most unique, yet vulnerable environments. Any damage suffered to the environment in the deep sea would take immeasurable time to recover. Therefore, exploitation of the deep seafloor requires us to be cautious in order to prevent any damage to the marine environment.

At the same time, considering that deep sea mining is far costlier and technically more challenging compared with traditional land-based mining, we should be careful not to make the Regulations overly burdensome for contractors because such regulations may ruin the potential of deep sea mining by discouraging contractors to engage in exploitation in the Area. It will not be a pleasant situation for the members of ISA.

The Regulations should be fully consistent with the UNCLOS and the Agreement relating to the implementation of the Part XI of the UNCLOS. Mr. President, our delegation considers that the Regulations should be simple and clear for contractors to follow. Also in some procedures, such as "inspection" and "compliance notice," we think that the LTC and Finance Committee should be involved in decision making process as those procedures bring the consequences of great concern for both contractors and ISA.

Keeping these in mind our delegation will make interventions in the coming discussions on developing the regulations. We look forward to working with you and other delegations.

◆ Thank you, President

Japanese delegation has an impression that in some material clauses which alter essential rights and obligations of contractors, an excessive authority is given to the Secretary General. (Regulation 101: Compliance notice and termination of exploitation contract, Regulation 94-99: Inspection). ISA's bodies with expertise such as LTC and Finance Committee should be more involved.

◆ Thank you, President

Japanese delegation considers that the provisions of "Compliance Notice" need further elaborations as those procedures could bring about a serious consequence of such as "termination of exploitation contract".

- In accordance with the Draft Regulations (DR) 4 , upon receipt of notification by coastal state of a threat of Serious Harm to the Marine environment, the Secretary General shall issue a "compliance notice" if the SG believes there is a clear ground for the claim of serious harm. DR101 provides the SG shall specify actions in the "compliance notice" and if the Contractor fails to implement those actions, ISA may terminate the exploitation contract. As the termination of exploitation contract is a decision of critical importance for both ISA and contractors as well as for conservation of marine environment, LTC and the Council should be involved in such a decision-making process.
- According to Article 165 2(k) of UNCLOS, it is the Council instead of the Secretary General that issues emergency orders to prevent serious harm to the marine

environment. And it is duty of the LTC to make recommendations to the Council to issue such orders.

- Japanese delegation also considers provision of the DR4.3 is not logical that the Secretary General is required to issue a “compliance notice” if the SG believes there is a clear ground for the claim of serious harm to the environment. This is because serious harm to the environment is not necessarily caused by non-compliance.

Part I

DR1 para.1

In order to secure consistency not only with the Convention but also with the Agreement relating Part XVI of the Convention, we would like to propose the following revision:

Terms used in these Regulations shall have the same meaning as those in the Convention, Agreement and regulations thereof.

DR 1 para.5

Stakeholders should be consulted in developing Standards and Guidelines referred in DR 1 para.5. So phrases that Standards and Guidelines shall be developed taking into account the views of relevant stakeholders, should be inserted in the text.

DR4

Japanese delegation considers that the provisions of “Compliance Notice” need further elaborations as those procedures could bring about a serious consequence such as “termination of exploitation contract”.

- In accordance with the Draft Regulations (DR) 4, upon receipt of notification by coastal state, of a threat of Serious Harm to the Marine environment, the Secretary General shall issue a “compliance notice” if the SG believes there is a clear ground for the claim of serious harm. Then DR101 provides the SG shall specify, in that “compliance notice,” actions that the Contractor must implement. And ii case the Contractor fails to implement those actions, ISA may terminate the exploitation contract. As the termination of exploitation contract is a decision of critical importance for both ISA and contractors, our delegation believes that LTC and the Council should be involved in such a decision making process rather than giving the whole responsibility to the Secretary General.
- According to Article 165 2(k) of UNCLOS, it is the Council instead of the Secretary General that issues emergency orders to prevent serious harm to the marine environment. And it is duty of the LTC to make recommendations to the Council to issue such orders.
- Japanese delegation also considers provision of the DR4.3 may not be logical that the Secretary General is required to issue a “compliance notice” if the SG believes there is a clear ground for the claim of serious harm to the environment. This is because serious harm to the environment is not necessarily caused by non-compliance.

Part II

DR5 para.6.

Article 10, Annex III of UNCLOS provides that an operator who has an approved plan

of work for exploration shall have a preference and a priority among applicants for a plan of work covering exploitation of the same area resources. In this respect the deleted para. 6 looks quite reasonable since the exploration under the contract with ISA has been considered as the process a contractor needs to go through before applying exploitation. Japanese delegation would like to ask the Secretariat to clarify what deletion means.

DR 11

We would like to ask the Secretariat why the provisions of “Scoping” were deleted in the revised regulations. Our delegation understands the scoping is like “design drawing” for EIA to be implemented. If the scoping is problematic it would affect the result and reliability of EIA itself. So, Scoping should rather be checked in early stage of considerations of application. Otherwise EIA may need to be redone and enormous time and efforts and the cost required for the inappropriate EIA would be wasted.

DR 12：para.2.

DR 12 para.2 requires the Commission to determine if the applicant has preference and priority in accordance with Article 10 of Annex III to the Convention. But our delegation is of the view that if the applicant has preference and priority, can be and should be examined by the Secretariat in its preliminary review provided in DR 10. If that applicant doesn’t have preference and priority, the Commission’s considerations would become useless effort since most likely other contractor with priority would apply for exploitation. This can be avoided with a preliminary review. (Japanese delegation also believes for the same reason that the deleted para.6 of DR 5 should be revived.)

Part III

DR 19：

Japanese delegation considers DR19 significant provision as it provides on contractor’s exclusive right. On the other hand, for the safe conduct of exploitation activities, one needs to avoid the situation where other ships carelessly navigate in and out of the area under operation. In this regard, the International Maritime Organization (IMO) administers the “World-wide Navigational Warning Service” in accordance with guidance of the International Convention for the Safety of Life at Sea (SOLAS) (See below). The Delegation of Japan considers it to may be an good idea to make it obligatory for contractors to inform the “NAVAREA coordinator” appointed under the Service when they conduct exploitation activities, thereby widely sharing in advance the operational plan of exploitation activities.

DR 26 para.2.

Para.2 requires if approved environmental plans are to be revised, those revised plans must go through the public comments (Regulation 11) and considerations by Commission (Regulation 14) once again and then must be approved by the Council. This would significantly delay the commencement of the commercial production and may affect a project itself. Environmental plans need to be changed time to time in order to improve its effectiveness. To avoid such a procedural stalemate, Japanese delegation considers it would be better if modifications of environmental plans would be permitted by the Secretary General in case those modifications do not constitute “Material Change.”

According to Article 22 of Annex III to the Convention, the ISA has responsibility or liability for any damage arising out of wrongful acts in the exercise of its powers and functions. Our delegation would like to know the Secretariat's view in this respect. (Whether there is any issue in requiring contractors to insure the liability of the ISA's.)

Guidance for LTC based on para 20 of ISBA/24/C/20

"***Structure of the draft regulations".*** We consider the Regulations should be simple and clear because contractors need to fully understand to abide by. And text can be simpler and clearer. Contractors are imposed many types of fees and payments. As provisions of those obligations are scattered here and there in the regulations it is hard to tell what payments contractors are obliged to make and for what purpose. It would be appreciated if the Secretariat could make a list of all payments including insurance that a contractor will be imposed to pay. The list will be also useful to discuss and consider about the royalty in light of whole monetary burden a contractor would have to bear.

In respect of "***the roles of organs and the balance of Authority",*** one of provisions The delegation of Japan has concerns is provisions of "Compliance Notice." The provisions need further elaborations as those procedures could bring about serious consequences such as "termination of exploitation contract".

- DR101 provides that the SG (Secretary-General) may specify actions in the "compliance notice," which a contractor must implement. And if the contractor fails to implement those actions, the Council may suspend or terminate the exploitation contract. As suspension and termination of contract is a decision of critical importance for both ISA and contractors, it should not be left solely for the Secretary-General's decision. Especially the wording of "if it appears to the Secretary-General on reasonable grounds that a Contractor is in breach of the terms and conditions of its exploitations contract" does not seem objective enough as a critical threshold. Japanese delegation considers that LTC and the Council should be involved in such a decision-making process. According to Article 162 para. 2(a) of the UNCLOS, it is a Council's duty to invite the attention of Assembly to cases of non-compliance.
- A List of violations which are subjects to monetary penalties would be prepared as Appendix III. But DR 101 para.6 provides that the Council may impose Contractors monetary penalties for any violation other than those listed in the Appendix III. By the same provision, the Council is also given an authority to impose monetary penalty to a Contractor in lieu of suspension or termination of exploitation contract. Japanese delegation wonders whether the Council should be equipped with such an authority. According to Article 162 para.2(u) of UNCLOS, what the Council can do in case of non-compliance is to "institute proceedings on behalf of Authority before the Sea-bed Disputes Chamber" instead of the Council itself giving a ruling.

(Back to Part by Part)

Part IV

DR 48

Regarding in what cases mining discharge is permissible to be returned to Ocean, Japanese delegation expects ISA to develop Standards. When mineral resources are lifted to the water surface by suction, the water used for that purpose need to go back to the ocean somehow. In this sense, that standards to be developed are those of great significance. Therefore, they should be drafted taking account of views of stakeholders including contractors as well as environmental experts. Also such important Standards should be developed before the Regulations become operational.

DR 52-54

Regarding the Liability Trust Fund, we support what the Chinese delegation said.

Part VII

Section 3 para.7 of Annex to the Agreement provides that “decisions by the Assembly or the Council having financial or budgetary implications shall be based on the recommendations of the Finance Committee”, so this wording should be reflected somewhere in the Part VII.

(END)