Japan's Statement on Decision-Making on 26th

Thank you, Madame President
Our delegation would like to join other delegates in expressing the appreciation to the Secretariat for producing the comprehensive document.

Japan is of the view that the proposals to delegate certain authorities of the Council and the Commission to the Secretary-General, have merits in facilitating the performance and the functions of the Authority. This could prevent the limited numbers of Council meetings from being overloaded with items that require approvals. Having said that, we should note that in most cases, roles of the Council and other bodies are assigned by the Convention and the 1994 Agreement. The agreed balance of power needs to be maintained for check and balance. Also, it should be noted that although Article 166 para.3 requires the Secretary-General to perform functions those bodies and organs of the Authority entrusted to him/her, such functions are limited to "administrative functions."

According to para. 3 of DR 4, the Secretary-General must issue a compliance notice if there are clear grounds for believing that Serious Harm to the Marine Environment is likely to occur. We understand a "compliance notice" is a warning of non-compliance and an order of specific actions that a Contractor must implement. The issuance of the compliance notice requires fact-finding to establish non-compliance and identification of actions the Contractor must comply. A careful consideration is needed because in case the Contractor fails to implement those actions, the Authority may terminate the exploitation contract. Decision-making on issuance of such a compliance-notice is, in our opinion, beyond the "administrative functions" that can be entrusted to the Secretary-General. Our delegation considers that the Commission and the Council should be involved in that decision-making process.

In addition, Article 18 (1)(a) of Annex III to the Convention provides that a contractor's rights under the contract may be suspended or terminated only if, (1) in spite of warnings by the Authority, (2) the contractor has conducted his activities in such a way as to result in serious, persistent and willful violations of the fundamental terms of the contract, Part XI and the rules, regulations and procedures of the Authority. We notice these conditions are mentioned in the standard contract in Annex X to DR but not correctly reflected in the text of DR101. This discrepancy may cause a difficulty in actual operation of the Regulations.

Japan considers this provision of DR4 (Rights of Coastal States) needs more elaboration. This provision presumes serious harm to the environment is always caused by violation by Contractors. But in fact, it's not the case. Compliance-notice should be issued only if there are reasonable grounds to believe there is a situation attributable to non-compliance of a

Contractor. Regarding "compliance notice" and "emergency order," Japan had submitted proposals last September and has some additional comments. But due to time constraints I would like to send them to the Secretariat by e-mail. Meanwhile I will continue our comments on other issues of Decision-making.
(Those additional comments are as follows in the end of this paper in blue letters)

(Arm's length adjustment)
Paragraph 2 of DR 76 provides the Secretary-General with a responsibility to adjust the value of costs, prices, and revenues to reflect an arm's-length value in accordance with internationally accepted principles. Because such a duty requires substantial considerations and decision. Japan recommends the Commission and Finance Committee be involved in the decision-making process. According to para. 3 of the same regulation (DR 76), the Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice of adjustment. But what would happen afterwards is not provided in the DR. Dispute settlement procedures available in case the Secretary-General and the Contractor cannot reach agreement after submission of written representation, should be specified in the Regulations.

（Revision of approved Environmental Plans）
Regarding revision of Environmental Plans, Paragraph 2 of DR 26 requires if approved Environmental Plans are revised, those revised Plans must go through the public comments (Regulation 11) and considerations by the Commission (Regulation 14), then must be approved by the Council once again. This would significantly delay commencement of Commercial Production and may affect a project itself. Environmental Plans may need to be revised and improved sometimes in light of new scientific knowledge etc. To avoid such a procedural delay, Japan considers it would be better if modifications of Environmental Plans could be permitted by the Secretary-General only if those modifications do not constitute "Material Change," as is the case with modification of a Plan of Work under DR 55.

(Decision making on inspection)
Article 165 (2) (m) of the Convention provides that it is the Council who determines regarding the direction and supervision of inspections based on recommendations by the Commission. On the other hand, paragraph 2 of DR94 requires the Secretary-General to give notice to the Contractor of planned inspection. The decision-making process is not clear from DR94 who will make decision on whether to conduct inspection, but if it is the Secretary's-General duty, our delegation considers it as too much responsibility for the Secretary-General and it would not to be appropriate from the viewpoint of due process.

（Decisions having financial or budgetary implications）

Lastly, Paragraph 7 of Section 3 of Annex to the 1994 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." This provision should be reflected in DR60 (Equality of Treatment).

Additional comments

（"emergency order" instead of " compliance notice"）

In order to remove the threat of Serious Harm, the action to be taken may be "emergency order" instead of "compliance notice." By issuance of emergency order as provided in Articles 162(2)(w) and 165(2)(k) of the Convention, the Council is able to order a contractor a suspension of operation, while compliance notice is mere warning to the contractor of possible violation (non-compliance) of the contract. However, a threat of Serious Harm is not always caused by non-compliance. So, some cases of "Serious Harm" have nothing to do with compliance-notice.

（Changing the title of DR4 to "Emergency Order"）

Since the emergency order is an important tool to remove a threat of Serious Harm, the trigger of that process should not be limited to the coastal States' notification. It may be an idea to change the title of DR4 from "Rights of the coastal States" to "Emergency Order" and to make the process open to "relevant States Parties including coastal States".

（The procedure of Emergency Order）

The procedure for issuance of emergency order, compliance-notice and conducting inspections should be elaborated as well.

Regarding the procedure for issuance of emergency order, our delegation considers the following procedure may be appropriate. The Secretary-General, in case there are grounds for believing that any activity in the Area is likely to cause Serious Harm or a threat of Serious Harm to the Marine Environment, should notify the relevant Contractor as well as its sponsoring State and request the Commission to consider issuance of emergency order. Based on recommendation of the Commission, the Council should issue the emergency order in accordance with article 165 (2) (k) and article 162 (2) (w) of the Convention. Due to the urgency of the matter, the Commission and the Council should be allowed to make their decisions by e-mail or other means of electronic transmission.

（Issuance of compliance notice）

In parallel with the procedure of emergency order, if the Commission determines that the Serious Harm, which is likely to occur or has occurred, is attributable to the breach by the Contractor of the terms and conditions of its exploitation contract, the Commission may recommend the Council issue compliance-notice in pursuant to regulation 101. Or, if it is difficult to determine, Council may direct and supervise inspectors to inspect the

Contractor’s activities pursuant to article 165 (2) (m) and part XI of the regulations.