Third Annual Consultative Meeting between Contractors

Changsha, Hunan Province, China

Thursday, 10 October 2019

OPENING REMARKS
by
Mr. Michael W. Lodge,
Secretary-General of the International Seabed Authority

……………………..

In July this year, the International Seabed Authority celebrated its twenty-fifth birthday by holding a special commemorative session of the Assembly at which member States took the opportunity to celebrate the many achievements of this unique organization over the past quarter of a century.

Today I want to take the opportunity to reflect on what makes this twenty-fifth anniversary so special as well as on some of the challenges and opportunities that lie ahead if we are to ensure that deep-sea mining proceeds in a sustainable manner.

In order to do, it is important to go back in time and remember where we were in 1992, two years before the Law of the Sea Convention entered into force and the Authority was established.

The Convention, adopted in 1982 as the constitution for the oceans, had already taken the unprecedented step of setting aside the deep seabed beyond national jurisdiction and its mineral resources as the 'common heritage of mankind'. It gave the ISA the exclusive mandate to manage deep sea mineral resources for the benefit of mankind, thereby creating, in my view, the most innovative legal regime ever designed for the equitable and sustainable use of natural resources.

Unfortunately, as we all know, at the eleventh hour, the United States and the majority of the industrialized States decided not to support the deep seabed mining provisions of the Convention and thus not to ratify the Convention. This put in jeopardy all the gains that had been made over more than nine years of patient consensus building to codify several hundred years of international law of the sea.

In order to safeguard the initial investments that had been made by a number of States in deep seabed mining during the 1970s and 1980s, a transitional regime was adopted for the registration of pioneer investors pending the entry into force of the Convention. By 1992, seven pioneer investors – India, Japan, France, Russia, IOM, China and the Republic of Korea – had been registered under this regime.

By 1992 also, the number of countries ratifying the Convention started to approach the 60 that were required to bring it into force. Unless something could be done about Part XI, there was a real risk that the Convention would enter into force without the support of the major maritime powers and the industrialized countries. Not only would this mean that deep-sea mining would be unlikely to happen but, more importantly, it would fatally undermine the Convention as a whole.

Negotiations therefore began to find a way to meet the concerns of those that opposed the deep-sea mining provisions.

This was achieved in a remarkably short period of two years through inspired diplomacy and creative thinking in the form of the Part XI Implementing Agreement. The Agreement made radical changes to the original provisions of the Convention in a way that reflected the political and economic realities of the time. It found solutions to every single one of the problems identified with respect to the original text of Part XI and allowed the Convention to enter into force in 1994 with the support of the majority of the major maritime powers.

The entry into force of the Convention also marked the formal establishment of the Authority.

Even then, however, expectations were not high. Many, including some of the registered pioneer investors, were sceptical as to the ability of the Authority to survive as an autonomous international organization, let alone effectively regulate deep-sea mining.

To make matters worse, there appeared to be very little commercial interest in deep sea minerals, and consequently little interest by States in the work of the Authority, beyond keeping the administrative costs down. Most of the pioneer investors substantially reduced their exploration programmes in light of general uncertainty surrounding the future of deep- sea mining. No new technologies were on the horizon and there was very little interest on the part of investors.

Both I and others have written elsewhere in detail about how the Authority dealt with this situation and the detailed work that was required to build confidence in the regime.

Fast forward 25 years, however, and I really believe there is a great deal to celebrate.

First, the Convention has received almost universal acceptance with 168 ratifications, including all the major maritime powers except for the United States, as well as the EU and all its member States.

Second, there have been no unilateral claims to seabed resources since entry into force.

Third, all the so-called pioneer claims made before the entry into force of the Convention were brought under the single regime of the Convention and the 1994 Agreement.

Fourth, the Authority has demonstrated that it is an effective regulator, having adopted by consensus comprehensive exploration codes for the three main deep-sea mineral resources, including stringent provisions to prevent and minimize damage to the marine environmental.

Fifth, on the strength of such regulation, the Authority has attracted significant investment in deep sea exploration in the form of 29 – soon to be 30 – contracts involving 22 different States Parties. Significantly, this includes several developing countries which would not have the capacity to access the deep sea were it not for the preferential rights given to them under the Convention.

Sixth, the intensive exploration work that has taken place so far under these contracts and is still taking place today has added enormously to the total sum of human knowledge of the marine environment, thus contributing to one of the other objectives of the legal regime – which is to promote and encourage marine scientific research for the benefit of all humanity.

These are major achievements and should rightly be celebrated.

Without the Convention and the Authority, deep-sea mineral resources would be open to all, on a first-come, first-served basis, without international management and with no global environmental standards. As it is, deep-sea mineral exploration is one of the most tightly regulated activities in the ocean. Unlike any other industrial activity in the ocean, it may only be undertaken by a qualified entity sponsored by a State Party under a contract with ISA acting on behalf of all States Parties to the Convention.

Twenty-five years of experience has shown us that against all expectations, this unique regime works. It has provided a solid basis to attract public and private investment into marine mineral resources in the Area and has enabled us to get a better understanding of the enormous potential of these resources to support a rapid transition to a sustainable, low carbon economy based on renewable energy. The main challenge that lies ahead of the Authority now is to put the necessary regulations in place to facilitate the transition from exploration to exploitation.

This is not an easy task.

Nevertheless, after five years work, including several rounds of global stakeholder consultation, we do now have a draft Mining Code that would permit exploitation of deep-sea minerals to proceed in a way that balances the need for minerals with rigorous environmental protection. There is still more work to be done and in order to finalize the code and members of ISA will have to reach a consensus, but the work is advancing well.

So, what can you do, as contractors and sponsoring States, to move the ball forwards.

First, we need to adopt a sense of urgency towards the adoption of the Mining Code similar to the sense of urgency that existed in 1992. It is a fact that unless constrained by self-imposed or externally influenced deadlines, multilateral negotiations have a habit of continuing indefinitely. This is natural, as clearly not everyone engaged in the negotiation has the same interest in completing the Code and in opening the door to further investment in the industry. At this time, when we are so close to the finish line, it is vitally important to step up the momentum and adopt a Code that is pragmatic, effective, but at the same time flexible enough to adapt to new knowledge and changing circumstances. We should not miss this generational opportunity.

In fact, the architects of the 1994 Agreement envisaged this situation by stipulating provisions to prevent deadlock in the Council in the form of the two-year trigger clause, under which regulations must be adopted by consensus within two years of a request being made by a member State, failing which an exploitation contract must be granted based on the provisions of the Convention, the 1994 Agreement and the existing rules and regulations of the Authority.

I would encourage all contractors, as well as their sponsoring States, to make more efforts to engage with others to reach agreement on key elements of the Mining Code.

Second, a real effort needs to be done to dispel some of the myths and disinformation surrounding deep sea mining and the comprehensive governance regime that is already in place and under development for this emerging activity.

For example, emphasis should be placed to respond to the criticism according to which a moratorium should be placed on deep-seabed mining. This is incoherent. In fact, no mining is the default position since no mining has yet started and will not be permitted to start without the authorization of the 168 members of the Authority. Even after the Mining Code is adopted there will be many more years of exploration, research, review and refinement of technologies and processes before any commercial activity begins.

More dramatically, sometimes we hear that such moratorium could be used in support of the implementation of the UN Decade for Ocean Science with a view to advancing our common understanding and knowledge of the deep-seabed – this is the ‘wait for the science’ argument. But here again, those who advocate for this forget to mention that for the last forty years or so, most of the discoveries made on the ecosystems and functions of the deep seabed were made possible because of exploration work carried out by States and entities working in the Area. This was recently recalled few days ago only in an article of The Scientist, and I am sure that many of you would have seen it. The reality is that it is this continuous process of exploration, research and development that is providing and funding the science on an ongoing basis. The research undertaken by contractors is the main source of data and knowledge helping us to better understand the deep seabed ecosystems and functions. It is through this research that we will be able to identify the best measures required to minimize environmental impacts wherever in the ocean they occur.

In other words, cutting off the work carried out by the contractors will be significantly detrimental to the need to advance marine scientific research of the deep-seabed and its ecosystems and functions.

The reality is that never before has such a comprehensive regulatory regime been established before any commercial activity begins and never before has an extractive industry been subject to so much scrutiny or has such a precautionary approach to development been taken. Unlike comparable activities within national jurisdiction, which are subject to national regulation which may vary from country to country, the standards adopted by the Authority are applicable globally.

I believe it is increasingly incumbent upon all of us to provide the facts and data to dispel these myths. This does not necessarily mean taking an advocacy position, and certainly that is not something the secretariat should do in any case, but simply to provide objective and verifiable facts and information, whether about future mineral supply and demand, or about potential environmental impacts.

Third and somewhat related to the former, we need to be more transparent.

It is in this spirit that in July the secretariat launched its DeepDATA database, aimed at making publicly available through one portal all the environmental data collected by contractors, as well as data from other sources. By doing this, we can help the general public to understand that it is thanks to ISA-mandated requirements to collect environmental baseline data that hundreds of new species have been discovered and categorized and we have learnt a great deal about the geophysical and geochemical characteristics of the seafloor.

Contractors have a critical role to play in populating the database and maximizing its value and I hope they will take the opportunity during this meeting to work closely with the secretariat to see how they can best assist.

I would also urge contractors to respond positively to some of the concerns expressed by the Council in recent years in relation to the content of their plans of work and the activities undertaken. Whilst it is undoubtedly true that some elements of the contracts are commercially sensitive, and need to be protected, we also need to accept that the general membership of the Authority, and indeed the general public, has an interest in knowing what activities are being undertaken. In many cases, being more transparent can only help secure broader acceptance of the work being carried out by contractors and by the Authority and avoid misunderstandings.

***