



## **Work progress of the International Seabed Authority**

### ***Presentation to the Sixth International Symposium on Scientific and Legal Aspects of the Regimes of the Continental Shelf and the Area***

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It is customary to begin these presentations with a formal greeting. But when I look around the room I see a gathering of old friends. So, let me begin with a personal and very warm greeting to two old friends of the Authority, Dr Li Jiabiao, from the Second Institute of Oceanography, and Dr Haiwen Zhang, from CIMA. It is good to see you in Wuzhen and I thank you for hosting this sixth international symposium.

The fact that so many old friends from China and around the world are gathered here shows the great achievement that has been made in building this into a real community for discussion of issues arising under the Convention in relation to the continental shelf and the Area. Particularly credit must go to CIMA, under both its current and previous leadership, for this. It is an important achievement and I am sure I speak for all of us when I say that it is appreciated.

### **Context**

As one of the institutions created by the Law of the Sea Convention, the Authority has a critical role to play in international ocean governance. The concept that the deep seabed and its resources are the common heritage of mankind underpins the legal regime for the management of all marine space. What is not under the

exclusive jurisdiction of States is managed by all States through the Authority, based on principles of equality and equity in access to and allocation of resources and with a view to promoting the economic and social advancement of all peoples of the world.

The core business of the Authority is to regulate for the exploration and exploitation of marine minerals: to set the conditions for access to those minerals, the financial terms for exploitation, equitable sharing criteria for distributing the financial benefits, and measures to ensure the protection of the marine environment from harmful effects.

Related, but equally important, mandates of the Authority are to promote and encourage marine scientific research in the deep seabed and build capacity among developing States to help realize the benefits of the Convention.

Today I want to provide a brief update on the progress of work in the Authority.

As my time is short, I will focus on just three major developments.

### **Article 154 Periodic Review and Strategic Plan**

Between 2015 and 2017, for the first time in its 25-year history, the Authority undertook a periodic review of the way in which the regime for the Area has operated, as required by article 154 of the Convention. The review was carried out under the supervision of a committee of member States chaired by the 2015 President of the Assembly and former Judge of ITLOS, Helmut Tuerk of Austria.

The final report of the review committee, which contained some 23 recommendations, was presented to the Assembly at its last session in 2017 and resulted in the adoption of a resolution containing

One of the most significant elements of that decision was a request to the Secretary-General to prepare a draft strategic plan for the Authority for consideration by the Assembly at the twenty-fourth session in 2018. This would be the first such strategic plan since the Authority was established in 1994.

In line with this request, a first draft of a strategic plan was presented in February 2018 in English and French, the two working languages of the Authority. Preparatory work for the draft strategic plan included consultation with the permanent representatives to the Authority in Kingston, Jamaica, and an open briefing to members of the Authority at the United Nations headquarters in New York. As part of my consultation efforts since February, an open informal briefing took place on 7 March 2018 in Jamaica on the margins of the first part of the session of the Council. A further open briefing will take place on the margins of the forthcoming meeting of States Parties in New York next month. The draft strategic plan was also opened for consultation to members of the Authority and stakeholders between March and April 2018, and a total of twenty-three submissions were received from members of the Authority (15), observers (4) and contractors (3) with one submission from an individual.

Following this consultation process, the draft strategic plan has been revised and is now available online in all official languages for consideration by the Assembly

at its next meeting. It covers a five-year period, from 2019 to 2023, and sets out 9 proposed strategic directions. These are intended to be consistent with the mandate of the Authority under the Convention and 1994 Agreement, but also take into account developments since 1994, in particular the goals and targets of the 2030 Agenda and especially those of SDG14 to conserve and sustainably use the oceans, seas and marine resources for sustainable development. The plan therefore places particular emphasis on regulatory development, environmental protection and the importance of participation by developing countries.

## **Regional Environmental Management Plans**

Speaking of environmental protection, this brings me to the second major development in the Authority's work programme.

This is the decision by the Council at its meeting in March this year to endorse an ambitious strategy proposed by me for the development of regional environmental management plans – or REMPs – under the auspices of the Authority for key provinces where exploration activities are taking place.

As you may know, the first REMP for the Area was adopted for the Clarion-Clipperton Zone in 2012. This included the designation for conservation purposes of a network of nine areas of particular environmental interest. At 1.6 million square kilometres in size, these areas actually represent one of the largest applications of an area-based management tool on earth.

Since 2012, the Council has repeatedly called upon the Secretariat of the Authority and the Legal and Technical Commission to progress the development of similar REMPs in other parts of the Area, in particular where contracts for exploration currently exist. These calls have also been reflected in the resolutions of the General Assembly.

I am particularly pleased that this new programme has been launched this week in China with a scientific workshop hosted by our colleagues from COMRA to explore how to develop a REMP in the North-West Pacific, where contractors from China, South Korea, Russia and Japan are carrying out exploration for cobalt crusts. Next month, we will convene another workshop in Szczecin, Poland, to discuss how to develop REMPs for polymetallic sulphides deposits on mid-ocean ridges.

In the long-term, REMPs are envisaged as the primary vehicle for delivery at the regional level of the Authority's environmental objectives. The importance of this project is recognized in the draft strategic plan for the Authority and we will also be proposing a specific work programme on REMPs in the budget for the financial period 2019-2020.

### **Draft Mining Code**

Last time I attended this symposium, in Nanjing in 2016, I presented an update on the development of the ISA's draft regulations on mineral exploitation in the Area, the so-called 'mining code'. At that time, I elaborated on the extensive

preparatory work, in the form of technical studies, expert workshops and seminars, that had taken place between 2013 and 2016.

Since 2016, the intensity of work has increased, and the draft regulations are now firmly established as the number one priority of the Authority between now and 2020. In fact, in order to enable more rapid progress to be made on the draft regulations, the Assembly took a decision in 2017 to adopt a revised pattern of meetings for 2018 and 2019, increasing the frequency of Council meetings to twice a year, and increasing the meetings of the Legal and Technical Commission to four weeks a year, in addition to an ambitious programme of workshops and seminars.

There are two main features of the work that has been done so far to develop the mining code. These are collaboration and transparency. For example, instead of considering the regulations in sequence, the decision was taken from the beginning that the Council and the Legal and Technical Commission should work in parallel, keeping each other fully informed as to the status of discussions, and enabling the Council to provide political direction to the Commission on key issues. In this way, it will be possible to produce regulations that are broadly acceptable and technically sound.

As for transparency, in total, there have been 12 Technical Studies and workshop reports, 8 discussion papers, 2 global stakeholder consultations and 18 weeks of meetings of the Legal and Technical Commission dedicated to the preparation of

the draft mining code. I believe few international processes have received such a high degree of exposure.

So where are we up to now?

In July 2016 a first working draft of the mining code was issued by the Legal and Technical Commission. This was followed in August 2017 with a revised and consolidated draft that was circulated for global stakeholder consultation between August and December 2017. This consolidated draft built on, and incorporated provisions relating to the protection of the marine environment, inspection and regulations for the calculation and administration of a royalty liability. During the final quarter of 2017, the Secretariat engaged experts at the Massachusetts Institute of Technology to develop a working financial and economic model for the Authority in connection with the development of financial terms for future exploitation contracts.

In March 2018, the Council held its first substantive discussion on the draft mining code and made a number of proposals and requests for consideration by the Legal and Technical Commission. This discussion also benefited from a workshop hosted by the Foreign and Commonwealth Office of the United Kingdom and The Royal Society, held in London on 12 and 13 February 2018.

Immediately following the Council, the Commission met for two weeks to consider the requests made by the Council together with the submissions made by members of the Authority and other stakeholders. The result of this is a

revised text of the draft regulations that is to be issued for the first time in all official working languages.

I am pleased to announce that the English version of the revised text is available online as of today, with the other languages to follow in the next few days. There will also be a commentary document for the benefit of the Commission, members of the Authority and other stakeholders.

I will not go into details of the draft regulations, as time is short, and I know that some of the detail will be covered in later presentations.

What I will say, however, is that the draft is the product of a great deal of painstaking technical work and discussion. It contains 105 regulations, 10 annexes, 4 appendices and one schedule covering a total of more than 120 pages. It covers all aspects of mineral exploitation from application for a contract, environmental impact assessment, feasibility, environmental management and monitoring, safety of human life, inspection, financial terms of contracts, enforcement and penalties and closure and decommissioning of operations.

As a first negotiating text, clearly not everyone will agree with everything that is in the document. There is much more to be done, particularly in terms of understanding the economics of deep seabed mining and reaching agreement on the financial terms of contracts, not to mention the difficult issue of devising a system for equitable sharing of the financial benefits. But I believe the text provides a solid basis for discussion.



## **Conclusion**

In conclusion, let me say that these are the major issues occupying the Authority at present. There is, of course, much more work being done, particularly in terms of capacity-building and advancing the voluntary commitments made by the Authority at the 2017 United Nations Oceans Conference aimed at achieving the goals and targets of SDG14.