



## Council

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### Twenty-fifth session

Council session, part I

Kingston, 25 February–1 March 2019

Agenda item 11

### Draft regulations for exploitation of mineral resources in the Area

## **Report of the Chair on the outcome of the first meeting of an open-ended working group of the Council in respect of the development and negotiation of the financial terms of a contract under article 13, paragraph 1, of annex III to the United Nations Convention on the Law of the Sea and section 8 of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982**

### **I. Introduction and background**

1. During the second part of the twenty-fourth session of the International Seabed Authority, the Council agreed to a proposal by Germany to establish an open-ended working group to discuss the financial model and, in particular, to review the comparative study of alternative models to be prepared by the Massachusetts Institute of Technology.<sup>1</sup> The Council also mandated the working group to meet before its twenty-fifth session.

2. The first meeting of the working group was convened on 21 and 22 February 2019 and was open to all stakeholders.<sup>2</sup> On 21 February, the agenda for the meeting was adopted with no amendment.

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<sup>1</sup> ISBA/24/C/8/Add.1, para. 12.

<sup>2</sup> Background documents for the meeting, including the report of the Massachusetts Institute of Technology entitled “Financial regimes for polymetallic nodule mining: a comparison of four economic models”, are available at <http://bit.ly/Council-wg>.



## **II. Purpose and objectives**

3. The financial aspects of a payment mechanism can be grouped into two categories: (a) what a contractor will pay to the Authority; and (b) how the money thus received will be distributed by the Authority.

4. The mandate of the working group was to focus on the first aspect only, namely, how to develop the best possible payment mechanism and payment terms in order to determine how much a contractor would pay for the minerals recovered from the Area under an exploitation contract.

5. The purpose of the meeting was not to make decisions but to help to advance discussions. While no detailed discussion was held on the assumptions behind the models, the incorporation into the model of a ramp-up period of two years was generally accepted.

6. There was also some discussion on the environmental aspects of the model. The current model includes a 1 per cent levy for environmental funds. The destination of this levy is yet to be determined; however, it is expected that it would include an environmental liability trust fund.

## **III. Presentation of the comparison of the four economic models on the exploitation of polymetallic nodules in the Area and presentation of the Massachusetts Institute of Technology model**

7. On 21 February, Mr. Randolph Kirchain and Mr. Richard Roth of the Massachusetts Institute of Technology gave a presentation on a comparison of four economic models for the exploitation of polymetallic nodules in the Area.<sup>3</sup> This was followed by a detailed presentation on the model developed by the Institute,<sup>4</sup> which included recommendations for the Authority.

## **IV. Choice of an economic model and discussion on the presentations**

8. The working group expressed its appreciation for the work of the Massachusetts Institute of Technology. It noted that the methodology used in each model was largely identical, with differences lying in the underlying assumptions.

## **V. Financial terms: system of payments; rates of payment; dealing with material uncertainties and sensitivities in the economic model; and interaction with other fiscal regimes**

9. In the discussions on the system of payments, the majority of participants favoured an ad valorem royalty-based system, but some indicated that it would be good to keep open the option of a combination of a royalty-based and profit-sharing mechanism. It was also recognized that a profit-sharing mechanism would entail

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<sup>3</sup> Available at <https://www.isa.org.jm/document/mit-presentation-comparison-four-economic-models-0>.

<sup>4</sup> Available at <https://www.isa.org.jm/document/mit-presentation-decision-analysis-framework-review-cash-flow-approach>.

major administrative costs for the Authority, as well as practical challenges in implementation.

10. The question arose as to whether it was better to set a flat rate throughout the contract period (e.g. 4 per cent) or a two-tiered rate with a different rate applying after a defined period of investment recovery (e.g. 2 per cent for the first five years and 6 per cent thereafter). The majority of participants favoured the two-tiered approach.

11. There were also discussions concerning the reviews of the payment mechanism and of the rates of payment, the need for a trigger point and the content of the reviews. Draft regulations 79 and 80 of the draft regulations on exploitation of mineral resources in the Area ([ISBA/24/LTC/WP.1/Rev.1](#)) currently provide for a review five years from the first date of commencement of commercial production in the Area, and at intervals thereafter as determined by the Council.

12. The working group agreed that there was no need for a detailed discussion of the interaction between the payment mechanism of the Authority and the fiscal regimes of States. While it was recognized that corporate taxes were a matter for the States concerned, it was also stated that those taxes would need to be reflected in the model as a cost for contractors.

## **VI. Interaction with sponsoring States**

13. The working group felt that there was no need for a detailed discussion on the interaction with sponsoring States in the context of its mandate. It was noted that sponsoring States would have a general obligation to assist the Authority in its task of controlling activities in the Area for the purpose of ensuring compliance with the relevant provisions of part XI of the United Nations Convention on the Law of the Sea.

## **VII. Process moving forward**

14. The working group felt that it had made significant progress in a very cooperative manner during its first meeting, and it recognized the benefit of continuing to work under that format. Particular appreciation was expressed for its being open to all stakeholders.

## **VIII. Other mineral resources: economic modelling and timing**

15. The recommendations of the working group concerning the payment mechanism and rates of payment were related to polymetallic nodules only. It would be necessary to consider the payment mechanism and rates of payment for polymetallic sulphides and cobalt-rich ferromanganese crusts in due course.

## **IX. Report of the Chair for the twenty-fifth session of the Council**

16. The open-ended working group recommends that the Council:

(a) Convene a second meeting of the working group to advance further the work on the payment mechanism;

(b) If so decided, request the secretariat to prepare two or three options regarding the payment mechanism on the basis of the discussions of the working group, including proposed regulatory text, for consideration at its next meeting, to be convened preferably before the second part of the twenty-fifth session of the Council.