



Legal and Technical Commission

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Issues relating to the operation of the Enterprise, in particular the legal, technical and financial implications for the Authority and for States parties

Note by the secretariat

I. Introduction

1. The present document has been prepared to update the Commission on the status of its consideration of issues relating to the operation of the Enterprise. It recalls the sequence of events that led to the placement of this item on the agenda of the Commission and makes recommendations on ways to further advance the Commission's consideration and deliberation of the issues.

II. Background

2. In October 2012, the Secretary-General of the Authority received and referred to the Council¹ a proposal by Nautilus Minerals Inc. (Nautilus), a company incorporated in Canada, offering to work with the Enterprise to develop, by 2015, a proposal for a joint venture operation for the purpose of developing eight of the reserved area blocks in the Clarion-Clipperton Zone. The terms of the proposal were set out in the form of a draft heads of agreement, which was transmitted to the Council in the form of a report by the Interim Director-General of the Enterprise.²

3. After considering the proposal at the nineteenth session, the Council, inter alia, requested the Secretary-General, referring where appropriate to the Legal and Technical Commission and the Finance Committee, to carry out a study of the issues relating to the operation of the Enterprise, in particular the legal, technical and financial implications for the Authority and for States parties, taking into account the provisions of the United Nations Convention on the Law of the Sea, the 1994 Agreement relating to the Implementation of Part XI of the United Nations

¹ ISBA/19/C/6.

² See ISBA/19/C/4, annex.



Convention on the Law of the Sea of 10 December 1982 and the Regulations on Prospecting and Exploration for Polymetallic Sulphides and for Cobalt-Rich Ferromanganese Crusts in the Area.

III. Consideration by the Commission

4. In 2014, the Commission considered a note by the secretariat³ in which the secretariat, inter alia, explained that in the light of its increased workload, time constraints and the availability of resources, it had not been possible to complete the study as requested by the Council, but that draft terms of reference⁴ that would enable the secretariat to start work on some of the elements of the study had been prepared.

5. In its discussion on the issue, the Commission recalled that the Council had decided in 2013 that it was premature for the Enterprise to function independently of the secretariat. It also recalled that the evolutionary approach set out in the 1994 Agreement applied to the functioning of all organs of the Authority, including the Enterprise. In addition, the point was made that the Regulations allowed exploration contractors to elect to offer the Enterprise an equity interest in a joint venture arrangement in lieu of a reserved area, such election to take effect at the time the contractor entered into a contract for exploitation. The Commission noted, however, that the terms and conditions upon which such equity participation may be obtained needed to be further elaborated upon. For that reason, as well as the fact that the Enterprise was required to conduct its initial deep seabed mining operations through joint ventures, the question of joint venture arrangements was crucial and should also be addressed in the study.

6. The Commission took note of the information provided by the secretariat and made preliminary observations on the draft terms of reference for the study requested by the Council. In recognition of the complexity of the issues, as well as the relative priority to be given to those matters, the Commission suggested that the secretariat follow an incremental approach in carrying out the various components of the study. In the first instance, priority should be given to identifying gaps, if any, in the current regulatory and procedural regime and suggesting ways, including the formulation of appropriate regulatory and procedural measures, to ensure proper and independent operation of the Enterprise, and to identifying the gaps, if any, in existing general policies of the Assembly that are relevant to the operation of the Enterprise. The Commission also decided to keep the matter on its agenda.

IV. Recommendations

7. In line with the incremental approach to carrying out the various components of the study requested by the Council, it is proposed that the secretariat continue to work, from within existing resources, on the studies identified in 2014, with an initial focus on:

(a) The identification of gaps, if any, in the current regulatory and procedural regime and suggested ways, including the formulation of appropriate

³ ISBA/20/LTC/12.

⁴ ISBA/20/LTC/12, annex.

regulatory and procedural measures, to ensure proper and independent operation of the Enterprise;

(b) The identification of gaps, if any, in existing general policies of the Assembly that are relevant to the operation of the Enterprise;

(c) The identification and clarification of the terms and conditions upon which a future joint venture arrangement between a contractor and the Enterprise could be implemented.

8. The Commission is invited to:

(a) Note the content of the present document;

(b) Request the Secretary-General to place the consideration of issues relating to the operation of the Enterprise on its agenda for the twenty-third session of the Authority, in 2017;

(c) Request the secretariat to start work on the studies identified in paragraph 7 and report back to the Commission on progress made at its next meeting.
