

**Council**

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Report of the Chairman of the Legal and Technical Commission on the work of the Commission during the eleventh session

1. The Legal and Technical Commission met from 8 to 19 August 2005. Mr. Shahid Amjad, Ms. Frida Maria Armas Pfirter, Mr. Jean-Marie Auzende, Mr. Arne Bjørlykke, Mr. Galo Carrera Hurtado, Mr. Walter De Sá Leitão, Mr. Baïdy Diène, Mr. Miguel Dos Santos Alberto Chissano, Mr. Albert Hoffmann, Mr. Ivan F. Glumov, Mr. Yoshiaki Igarashi, Mr. Jung-Keuk Kang, Mr. Lindsay Murray Parson, Mr. Alfred Thomas Simpson, Mr. Mahmoud Samir Samy, Mr. Syamal Kanti Das, Mr. Adam M. Tugio, Mr. Michael Wiedicke-Hombach and Ms. Inge K. Zaamwani attended the meeting.
2. At its 1st meeting, the Commission observed a minute of silence in memory of Mr. Helmut Beiersdorf, a former member of the Commission. Members of the Commission paid tribute to Mr. Beiersdorf and acknowledged his valuable contribution to the work of the International Seabed Authority.
3. The Commission elected Mr. Baïdy Diène as Chairman. Mr. Lindsay Murray Parson was elected as Vice-Chairman, on the understanding that Mr. Parson would serve as Chairman at the twelfth session.
4. The Commission congratulated Mr. Albert Hoffmann on his recent election as a judge of the International Tribunal for the Law of the Sea.
5. At the eleventh session, the Commission considered the following items:
 - (a) The annual reports of contractors submitted pursuant to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area;¹
 - (b) Explanatory notes relating to the draft regulations for prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts in the Area;

¹ ISBA/6/A/18, annex.

(c) Review of an application for the approval of a plan of work, submitted by Germany represented by the German Federal Institute for Geosciences and Natural Resources;

(d) Information and recommendations of the workshop on polymetallic sulphides and cobalt-rich crusts: their environment and considerations for the establishment of environmental baselines and an associated monitoring programme for exploration;

(e) Update on progress with the geological model of the Clarion-Clipperton Fracture Zone and on the Kaplan project on the study of the biodiversity in the Clarion-Clipperton Zone;

(f) Other matters.

I. Annual report of contractors

6. The Commission considered and evaluated the annual reports of contractors submitted pursuant to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area (“the Regulations”). The Commission noted that annual reports had been received from all the seven contractors: Deep Ocean Resources Development Ltd. (DORD), the Government of the Republic of Korea, China Ocean Mineral Resources Research and Development Association (COMRA), State Enterprise Yuzhmorgeologiya (Russian Federation), Interoceanmetal Joint Organization (IOM), l’Institut français de recherche pour l’exploitation de la mer (IFREMER) and the Government of India.

7. A subcommittee, composed of Ms. Frida Maria Armas Pfirter, Mr. Galo Carrera Hurtado, Mr. Walter De Sá Leitão, Mr. Baïdy Diène, Mr. Miguel Dos Santos Alberto Chissano, Mr. Alfred Thomas Simpson and Mr. Michael Weidicke-Hombach, carried out a preliminary examination of the annual reports in the light of the original five-year programme of work of the contractors and prepared a draft evaluation report for consideration by the Commission.

8. The Commission noted that all contractors had submitted reports and that the reports showed improvements in both form and content from previous years. The Commission recommended that the contractors’ reports should also contain information and references to relevant documents and scientific publications that have arisen as a result of activities under the contract.

9. The Commission considered that the Secretariat should receive all of the information referred to in the reports, including maps, charts, and graphs, as well as the results of tests, observations, measurements, evaluations and analyses of environmental parameters, as provided in section 10, annex 4, to the standard clauses for exploration contracts. Information about the storage and condition of samples of polymetallic nodules retained by the contractor, as outlined in paragraph 10.4 of annex 4, should also be included.

10. The Commission noted that in accordance with paragraph 10.2 (c) of annex 4 of the standard clauses for exploration contracts contained in the Regulations, contractors could claim as a part of the development costs any actual and direct exploration expenditures incurred by the contractor. The Commission therefore recommended that certified and audited statements provided by contractors should

give a clear indication of such actual and direct exploration expenditure for specified activities within the original plan of work or any adjustments thereto.

11. The Commission recalled that regulation 28 of the Regulations provides for periodic review of the implementation of the plan of work for exploration at intervals of five years. It also provides that the Secretary-General may request the contractor to submit additional data and information as may be necessary for the purposes of the review. As part of the review, the contractor shall indicate its programme of activities for the following five years, making such adjustments to its previous programme of activities as are necessary. The Secretary-General is required to report on the review to the Commission and the Council.

12. The Commission noted that the year 2006 will mark the end of the first five-year programme of work since the contracts were issued. This would be an opportunity for the contractors to provide a comprehensive account of the work carried out and results obtained during this period, as well as a review of the expenditure incurred during the five-year programme. In order to facilitate the review, a summary of the exploration expenditure incurred during the five-year period should be provided. Since such expenditure is to be set off against the development costs, it should be duly recorded by the Secretary-General. This summary of activities and expenditure for the five-year period would be in addition to the 2005 annual report of contractors.

13. The Commission noted that, in the case of some of the contractors, there have been significant variations in the projected expenditure, which might suggest changes in the original five-year programme of work. In such cases, the Commission recommends that the contractor submit a revised programme of work to the Secretary-General in accordance with section 4, paragraph 4.4 of annex 4, of the Regulations.

14. The Commission recommended that a similar review take place at each five-year period, as provided in the regulations, and that the expenditure incurred during the five-year period be duly recorded for future reference in order to avoid any possible misunderstanding regarding costs that may be claimed as development costs.

15. The Commission expressed its appreciation to the members of the evaluation subcommittee.

II. Explanatory notes relating to the draft regulations for prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts in the Area

16. The Commission prepared a set of explanatory notes relating to the draft regulations for prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts for the information of the Council. The objective of these notes was to provide information to the Council regarding the rationale followed by the Commission during its formulation of some of the key elements of the draft regulations contained in document ISBA/10/C/WP.1. The Council had requested these notes following preliminary discussion of the draft regulations at the tenth session. The explanatory notes are contained in document ISBA/11/C/5.

17. Five areas of uncertainty requiring clarification were raised during the Council discussion during the tenth session as follows:

(a) The reasons for the establishment of a single set of regulations for the two types of resources, rather than different ones for each type;

(b) The reasons why the exploration block size was chosen as a 10 by 10 kilometre cell;

(c) The reasons why the number of blocks to be allocated to an exploration programme was chosen to be 100;

(d) The reasoning behind the requirement that all blocks in a single application were contiguous before relinquishment;

(e) The reasoning behind the rate and apportionment of blocks during relinquishment.

18. Each of these points was addressed in the explanatory notes. Specifically, the members of the Commission noted the following:

- The rules and regulations of polymetallic sulphides and cobalt-rich ferromanganese crusts must provide a system of fair competition between exploration companies.
- From a technical point of view, the proposed set of regulations for cobalt-rich ferromanganese crusts and polymetallic sulphides is mainly based on similarities in the size of a mining site.
- The block size of 10 by 10 kilometres is suggested because it will cover a normal mining block and will put a limit on the size of an exploration area.
- The 10 by 10 kilometre block size is the most practical when making the application and, later, during the relinquishment of part of the exploration area.
- The exploration area will consist of up to 100 blocks or 10,000 square kilometres. By using several blocks, the exploration area can be constructed in many shapes.
- Polymetallic sulphide deposits are found along actively spreading mid-ocean or back-arc ridge systems. More than 230 such sites have been detected along the 60,000 kilometres of the world ridge system, of which 140 have been observed directly. Without contiguity in the exploration area, a single company can claim 100 of the 230 sites. A similar problem of cherry-picking exists for cobalt crusts related to seamounts.
- In the explanatory notes, paragraph 7, the statement about mineable water depth for cobalt crusts can be misunderstood. The richer part of the cobalt crust occurs between a depth of 500 and 2,500 metres. The shallower part, between 500 and 1,500 metres, will probably be mined first.

19. The Commission recalled the request by the Russian Federation to adopt rules, regulations and procedures for prospecting and exploring seafloor massive sulphide deposits and ferromanganese crusts in the Area in 1998. To prepare for the work in this regard, the Authority convened a workshop in Kingston in June 2000 on mineral resources other than polymetallic nodules. This workshop was attended by leading scientists. During the five-day workshop, intensive discussions were held and the

outcome is contained in a two-volume publication.² At the seventh session of the Authority, in 2001, document ISBA/7/C/2, which contains considerations relating to the regulations for prospecting and exploration for polymetallic sulphides and cobalt-rich crusts in the Area, was made available to the Council. The Council was also provided with an audio-visual briefing on the characteristics of polymetallic sulphides and cobalt-rich crusts and their known locations by leading experts in the field. A summary of the presentations is contained in document ISBA/8/A/1. During its deliberations of the draft regulations at the tenth session, the Commission also had the benefit of advice from three internationally renowned experts. Specifically, the Commission exchanged views and solicited advice on matters relating to the size of the exploration area, the system of exploration to be recommended in the light of the experience with the system for polymetallic nodules, and other options (ISBA/10/LTC/CRP.1).

20. In addition, in document ISBA/11/C/5, the Commission also addressed the environmental considerations in the draft regulations. It considered that it would be useful to provide additional information to the Council explaining why the Commission put greater emphasis in these draft regulations on the protection and preservation of the marine environment, as compared to the regulations for nodules.

21. In particular, the Commission recalls the way in which polymetallic sulphides and cobalt-rich ferromanganese crusts occur in parts of the marine environment that are known to host complex and, in many ways, unique marine ecosystems that may be susceptible to anthropogenic impact. There is some potential for serious and permanent harm in these areas during prospecting and exploration. While this may also be the case to some extent with nodule mining, nodule deposits, by their very nature, cover so wide an area that the extent of such harm may be mitigated. For sulphides occurring at active sites, the deposits are very localized, hence the potential impact at a mine site is likely to be significant. For these reasons, there has been much more emphasis on the protection and preservation of the marine environment in the draft regulations on prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts in the Area.

III. Review of an application for the approval of a plan of work for exploration for polymetallic nodules

22. The Commission considered an application for approval of a plan of work for exploration for polymetallic nodules submitted by Germany represented by the German Federal Institute for Geosciences and Natural Resources. Mr. Michael Wiedicke-Hombach did not participate in the consideration of this application by the Commission. The report and recommendations of the Commission to the Council are contained in document ISBA/11/C/7.

² *Minerals Other than Polymetallic Nodules of the International Seabed Area*, proceedings of a workshop held in June 2000 at Kingston, Jamaica.

IV. Information and recommendations of the workshop on polymetallic sulphides and cobalt-rich crusts: their environment and considerations for the establishment of environmental baselines and an associated monitoring programme for exploration

23. The Commission took note of a report prepared by the secretariat for the Commission containing the recommendations of the workshop held in Kingston in September 2004 (ISBA/11/LTC/2). As with previous seminars, the Commission felt that it was a useful workshop. The Commission considered that although the recommendations would be useful when preparing environmental guidelines for crusts and sulphides, it would be premature to consider guidelines until the draft regulations had been finalized. The Commission therefore deferred detailed consideration of the recommendations.

V. Update on progress with the geological model of the Clarion-Clipperton Fracture Zone and on the Kaplan project on the study of the biodiversity in the Clarion-Clipperton Zone

24. The Commission took note of a report on the status of the development of the geological model for the Clarion-Clipperton Zone (ISBA/11/LTC/1). The document included a summary of a meeting held in Kingston from 25 to 27 May 2005, to discuss the specific contributions of the contractors and their participation in the development of the model. The document also included the key milestones of the project.

25. In addition, Dr. Charles Morgan, of Planning Solutions, Inc., Honolulu, Hawaii, was invited to make a presentation to the Commission, as the external coordinator of the project, regarding the progress of the geological model.

26. The Commission took note of the second annual report of the Kaplan project (ISBA/11/C/CRP.1), which outlined the work carried out in 2004 and the results that were obtained.

VI. Other matters

27. The Commission recalled that, at the tenth session, members had expressed the wish to have an opportunity to discuss the annual report of the Secretary-General since it covered several important matters that related to the work of the Commission. This would help the Commission to be more proactive in its work. Accordingly, the Commission had an opportunity to discuss the report of the Secretary-General to the eleventh session of the Assembly and to exchange views with the Secretary-General on the content of the report.

28. During the course of the discussions, some members emphasized the value of the technical workshops organized by the Authority. It was proposed that at least 5 to 10 members of the Commission participate in the workshops organized by the Authority.

29. The Commission noted that the technical work of the Commission was becoming more specialized in nature and pointed out that in certain disciplines, including marine geology and geophysics, biology, oceanology, protection of the marine environment, and economic and legal matters relating to ocean mining, the necessary expertise within the Commission needed strengthening. It recommended that the Council draw the attention of States parties to this issue, with a view to nominating such experts as candidates in the next election of members of the Commission in 2006. Members of the Commission also expressed their concern that not all the expertise available with the Commission was utilized since some members had not attended the session in the past two years.

30. The Commission noted the importance of the voluntary trust fund, which facilitated the participation of members from developing countries in the meetings of the Commission. The Commission was also concerned that the fund would soon be exhausted and supported the need for its replenishment. It also felt that the administration of such a fund should be further streamlined in line with the standard practice of the United Nations and that consideration also be given to members to apply directly for assistance from the fund in their capacity as individual experts, without the need to go through their respective Governments.

31. The Commission requested that its agenda for the next session include an item to consider environmental issues in a broader context within the scope of its mandate. This is an important part of the mandate of the Commission. To fulfil its obligation in that regard, the Commission established an open-ended environmental working group to be coordinated by Ms. Frida Maria Armas Pfirter. A core membership of the working group will exchange views and documents through e-mail. The Commission requested that the Secretary-General identify a staff member to be involved in this work.

32. The Commission suggested that due to recent changes in the metal market and technological advances, the Secretariat should consider convening in the near future a workshop on the possibility of commercial mining production in the Area.
