



## Legal and Technical Commission

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### **Information from relevant national legislation relating to issues associated with the draft regulations on prospecting and exploration for polymetallic sulphides and cobalt-rich crusts in the Area**

#### **Prepared by the Secretariat**

1. At its meeting during the eighth session of the Authority in 2002, in connection with its work on the draft regulations on prospecting and exploration for polymetallic sulphides and cobalt-rich crusts in the Area (“the draft regulations”), the Legal and Technical Commission requested the Secretariat to, inter alia, review the model clauses contained in document ISBA/7/C/2, annex, with a view to preparing a revised draft set of the regulations. Among the issues associated with the draft regulations that will be taken up by the Commission at its next two-week meeting during the ninth session of the Authority in 2003 are the issues of a progressive fee system rather than a relinquishment system, further consideration of the grid system for licensing and continued development and elaboration of the parallel system as it applies to these resources. It was also requested that the Secretariat should take into consideration the provisions of relevant national legislation both on land and offshore that might be of assistance to the Commission in its deliberations.

2. In the light of the requests, the Secretariat, with the assistance of two specialized consultants, conducted comprehensive research and has prepared three reports and a set of reference materials for model clauses 1, 3, 5, 6 and 8. The three reports and the reference materials have been compiled into a single volume entitled “Information from relevant national legislation relating to issues associated with the draft regulations on prospecting and exploration for polymetallic sulphides and cobalt-rich crusts in the Area”, which will be made available to all members of the Commission.

3. The research work was conducted according to the following principles:

(a) The studies cover the relevant national legislation and contractual practices of both common law and civil law countries, as well as countries of other legal systems;

(b) The core component of the studies is related to the model clauses contained in document ISBA/7/C/2, annex, specifically contract areas, lease duration and relinquishment programmes, particularly the use of a grid or block system for licensing and a progressive fee system rather than a relinquishment system. In addition, with a view to enabling developing States members of the Authority to participate in activities for relevant resources in the Area, research on types of arrangements and contracts between companies (national, foreign and transnational) and Governments should be focused on equity-sharing versus production-sharing as one of the possible alternatives to the parallel system as established in the Convention and Agreement;

(c) The studies are focused primarily on the exploration phase. However, where appropriate, the implication of a specific choice (e.g., joint venture) for exploitation is also considered.

4. The first report entitled “A comparative study of national mining legislation and contracts”, consists of three parts and seven appendices. It covers national mining legislation and contracts in general and jurisdictions in Asia, Europe and Australia in particular. The comparative study focuses on those provisions of the upstream exploration period of the selected national regimes, including the stipulations on the contract area, duration, relinquishment and progressive payment schemes. The selective case studies in the report represent 30 legislative and/or contract systems under seven major types of contracts from 27 mineral and petroleum countries across the world. The report also offers in its last part some policy and practical recommendations for the further elaboration of each relevant model clause of the regulations.

5. The second report on key issues associated with the regulations is devoted to a review and analysis of mining legislation and contracts of some 15 African countries, 9 Latin American countries and Canada. The study focuses on size, duration and relinquishments of exploration licences, the use of a grid or block system for licensing, a progressive fee system rather than a relinquishment system and equity-sharing versus production-sharing. The findings were related to model clauses 1, 3, 4, 6 and 8 of the draft regulations.

6. The third report provides the Commission with an analytical study of relevant federal legislation and contractual practices of the United States of America.

7. Also provided for the Commission are reference materials for model clauses 1, 3, 5, 6 and 8 of the draft regulations. This is a compilation of extracts of relevant provisions of national legislation and model contracts of about 20 major mining countries and those of works by some leading experts in the oil and gas industry. In addition, the reference materials include two appendices, namely, charts showing a comparison of government participation and fiscal terms and the range of cost-recovery limits, and a list of the International Seabed Authority’s collection of national and international mining legislation and contracts.