NEW REGULATIONS ADOPTED BY SEABED AUTHORITY AS PRODUCTIVE 2012 SESSION CONCLUDES

There is a new set of international regulations to govern exploration of resources of the deep seabed and ocean floor beyond the limits of national jurisdiction, thanks to the work completed in Kingston at the Eighteenth Session of the International Seabed Authority, 16-27 July.

The new rules, the result of three years of work, are entitled Regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area, and represent the third set of regulations produced by the Authority, established by the 1982 United Nations Convention on the Law of the Sea, to protect and develop deep ocean riches as the “common heritage of mankind”.

Cobalt crusts are rich in iron/manganese (ferromanganese), and hydroxide/oxide deposits containing significant concentrations of cobalt, titanium, nickel, platinum, molybdenum, tellurium, cerium, other metallic and rare earth elements. The Regulations take effect immediately.

The Authority’s Council adopted the 44 articles and 4 annexes that comprise the Regulations after a compromise was reached on outstanding issues related to the size and configuration of areas allocated for exploration, and the linked issues of the schedule of relinquishment and fees.

Also at this session, the Assembly of the 162-member Authority adopted a 14.3 million budget for 2013-14, elected 20 members to the 36-member Council for a four-year term beginning in 2013, and re-elected Nii Allotey Odunton (Ghana) Secretary-General for his second four-year term.

A special session was held on 24 July to commemorate the thirtieth anniversary of the opening for signature of the United Nations Convention on the law of the Sea (1982-2012). On the week following the first week of the session, a plaque was unveiled in Montego Bay at the site where the Convention was opened for signature in 1982.

The Assembly heard the Secretary-General’s report on the main work carried out by the Authority since the seventeenth session in 2011, and the work programme for 2012 to 2014.

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The Assembly set 15 – 26 July, 2013 as the date for the nineteenth session of the Authority in Kingston.

The Authority, an autonomous international body, was established in 1994 with the entry into force that year of the 1982 United Nations Convention on the Law of the Sea as refined by the 1994 Agreement relating to the Implementation of the Convention’s Part XI (seabed provisions). The Convention defines the deep seabed beyond the limits of national jurisdiction as “the common heritage of mankind”, with the Authority assigned the task of organizing and controlling all mineral-related activities in that area (“the Area”). The 162-member Authority has a relationship agreement with the United Nations.

**Crusts Exploration Regulations**

The Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese crusts in the Area (ISBA/18/C/L.3) were adopted by the Council on 26 July and approved by the Assembly the next day. The regulations, which take effect immediately, are the third set emerging from the Authority in its quest to develop a Mining Code to control all mining of the seabed and subsoil beyond the limits of national jurisdiction.

Deliberations on the regulation took place over three sessions since 2010. By the end of the seventeenth session in 2011, there were only a few outstanding issues dealing with certificate of sponsorship, total area covered by application, the fee for processing an application, and size of area and relinquishment.

After much discussion at this session, a compromise was reached on the remaining issues related to the size of a cluster of cobalt crust blocks in regulation 12, and regulation 21 dealing with contractor’s application fees. It also agreed on the size of allotted area to be relinquished by a contractor during the course of an exploration contract.

The text is in 10 parts, with 44 articles and four annexes setting out the legal rules that seabed contractors must follow in any future work to locate and evaluate crusts deposits. Part I introduces the use of terms and scope of the regulations, while part II explains how prospecting shall be conducted in accordance with the Convention, as well as the notification and reporting process between prospectors and the Authority, and protection and preservation of the marine environment during prospecting.

The general provisions and content of applications for approval of plans of work for exploration in the form of contracts are contained in part III. Total area covered by the application shall not exceed 200 cobalt crust blocks arranged in two groups of equal estimated commercial value, measuring not more than 550 kilometres by 550 kilometres. The fee for processing a plan of work for exploration shall be fixed at 500,000 United States dollars or its equivalent in a freely convertible currency.

The provisions of part IV of the text stipulates that after a plan of work for exploration has been approved by the Council, it shall be prepared in the form of a contract between the Authority and the applicant. Part V contains provisions for the protection and preservation of the marine environment, environmental baselines and monitoring, the process for reporting marine accidents to the Secretary-General, the rights of coastal states, as well as the treatment of human remains and objects and sites of an archaeological or historical nature.

Part VI has a confidentiality provision to protect proprietary data and information submitted by contractors, as well as procedures for ensuring confidentiality. The remaining parts of the text includes general procedures concerning notices, the settlement of disputes, the treatment of resources other than cobalt crusts, and the contract review process.

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Amendments to Nodules Regulations

The Legal and Technical Commission has been requested by the Council to address as a priority at the next session, the consideration of amendments to the Regulations on Prospecting and Exploration and of polymetallic nodules in the Area.

Workplan for exploitation

The Council approved a workplan elaborating regulations for exploitation for polymetallic nodules in the Area by 2016 though some delegates questioned whether the Authority had sufficient human and financial resources to complete regulations in that time.

In accordance with its mandate, derived primarily from the provisions of section 1 of the annex to the 1994 Agreement relating to the implementation of Part XI of the Convention, the Authority has so far elaborated three sets of regulations governing prospecting and exploration for polymetallic nodules (adopted in 2000) and polymetallic sulphides (adopted in 2010), and regulations for the exploration for cobalt-rich ferromanganese crusts, adopted at this session.

With regard to the timing for elaborating the exploitation code, the Secretary-General pointed out that the first contracts for exploration for nodules would expire in 2016 and it was expected that contractors would proceed to exploitation. It was important, therefore, to establish a regulatory framework for exploitation to be established prior to 2016.

Work of Legal and Technical Commission

The summary report of the Legal and Technical Commission on its work during the eighteenth session (ISBA/18/C/20) was presented to the Council by its Chairman Russell Howorth (Fiji). The Commission met from 9 to 19 July 2012 and held 17 meetings.

The report covered applications for approval of plans of work for exploration; the annual reports of contractors; the periodic review of implementation of plans of work for exploration for polymetallic nodules; training programme for the Authority and developing States; environmental implication of activities in the Area, and proposed amendments to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area.

The Commission reported that it was unable to complete its agenda citing increased workload and pattern of meetings, and said consideration should be given to the LTC holding two meeting sessions in 2013.

Five applications for approval of plans of work for exploration for polymetallic sulphides, and polymetallic nodules were considered and approved. During consideration of the applications the Commission took note of possible future activities in the Area relating to the protection of the marine environment, in particular those measures necessary to protect and preserve rare and fragile ecosystems.

Regarding the annual reports of contractors, the Commission said six of the nine contractors failed to submit their annual activity reports in a timely manner, which compromise the ability of the organs of the Authority to effectively carry out their functions. On mining tests, proposed mining technology, and environmental monitoring the report suggested that contractors who are actively engaged in mining technology research and development should now concentrate on developing a combined mining system and should test their technology at greater depths. The Commission said some contractors
have still not provided detailed financial statements for 2009 and 2010, despite the Commission’s repeated calls to do so.

The Commission was concerned that there was currently no provision for funding from within the current budget of the Authority to review data provided by contractors, redesign the environmental database to accommodate the new data format and transposition of archive data into the new database, or integration metadata sheets with an online Geographic Information System.

The Commission reviewed recommendations for guidance of contractors in the assessment of possible environmental impacts arising from exploration for minerals in the Area including polymetallic sulphides. It noted that this item had now become extremely urgent since contracts for exploration for polymetallic sulphides had already been issued and contractors were ready to launch their exploration programmes and related environmental baseline studies. It was agreed to take this matter up as a priority at the next meeting of the Commission.

Environmental Management Plan

The Council adopted a decision to establish an environmental management plan for the Clarion-Clipperton Zone. This issue had not been placed on the agenda of the Council at this session, but was included at the request of several delegations which called for immediate adoption of the environmental management plan.

The plan was formulated by the Legal and Technical Commission over a three-year period and was built around data and assumptions from workshops held in 2007 and 2010. The plan called for the establishment of nine areas of environmental interest to protect the biodiversity and ecosystem structure, and functioning of the zone, from the impact of seabed mining.

The Commission Chairman stated that although critical data such as a standardized taxonomy report was absent, there was enough information for the plan to be approved. He added that as additional data was gathered, there could be modifications to the document.

The decision to adopt the plan (ISBA/18/C/22) takes into account Article 165 paragraph 2(e) of the Convention which mandates the Legal and Technical Commission to make recommendations to the Council on the protection of the marine environment. It also refers to Article 145 which deals with the protection of the marine environment from the harmful effects of mining activities and Article 162 relating to the powers and the function of the Council. It also refers to Resolution 63/111 which reaffirms the need for states and relevant international organizations to improve the management of risks to marine biodiversity, as well as the work of the ad hoc group of the General Assembly to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.

The decision recommends the implementation of the plan for an initial three-year period, and states that it should be applied in a flexible manner to allow improvement as more scientific technical and environmental baseline data are available. In addition, the text stipulates that for a period of five years from the date of the present decision, or until further review by the Legal and Technical Commission or the Council, no application for approval of a plan of work for exploration or exploitation should be granted in the areas of particular environmental interest.
Election of Secretary-General

The Assembly elected Mr. Nii Odunton as Secretary-General for a second four-year term until 2016. Regional group Chairmen expressed support for Mr Odunton and expressed confidence that the work of the Authority would continue to progress under Mr. Odunton’s guidance.

Secretary General’s Report

The Secretary-General presented his report to the Assembly on 25 July, 2013. The 36-page report (ISBA/18/A/2) provided an account of the Authority’s work over the past twelve months, including the status of regulatory regime for activities in the deep oceans. It also provided an overview of scientific research related to the marine environmental, and current world metal market trends, conditions, prices, and trends with regard to seabed mining activities.

The Secretary-General’s report, submitted to the Assembly under article 166, paragraph 4 of the United Nations Convention on the Law of the Sea, reviews the Authority’s activities since the last session and outlines its plans and projects under the current work programme (2012-2014). The report also covers administrative matters, the Authority’s budget as well as special funds held by it such as the Voluntary Trust Fund, and the Endowment Fund for Marine Scientific Research.

As at 12 May 2012, there were 162 members of the Authority (161 States and the European Union). Since the last sessions of the Authority, no States have become parties to the Convention or the 1994 Agreement. Twenty States and the European Union maintained permanent missions to the Authority in Kingston, Jamaica as at 30 April 2011.

Financial matters

As at 24 July 2012, 82.6 per cent of the value of contributions to the 2012 budget due from member States and the European Community had been received from 46.3 per cent of the Authority’s membership. Thirty-nine members were in arrears for a period of two years or more. Contributions outstanding from member States for prior periods (1998-2011) amounted to US$240,545. Also as at 24 July 2012, the balance of the Working Capital Fund stood at US$499,573.

The Voluntary Trust Fund, made up of voluntary contributions from members of the Authority and other donors, was established to support the participation of members of the Legal and Technical Commission and Finance Committee from developing countries. The Secretary-General noted that, to date, contributions totalling US$228,939 had been received. The last three contributions were made in July 2012 by the United Kingdom (US$20,000), China (US$20,000) and Mr. Duncan Muhumuza Laki (Uganda) who made a personal contribution of US$622. In addition, the sum of US$195,000 had been advanced to the Voluntary Trust Fund from the interest accrued from Endowment Fund for Marine Scientific Research as allowed under the financial rules of the latter Fund.

In spite of these contributions, the Secretary-General stressed that the Voluntary Trust Fund was in a “tight situation”, as after disbursements to members of the Legal and Technical Commission and Finance Committee, the fund stood at US$14,671. The average annual expenditure of the fund was US$46,156 which pointed to an anticipated shortfall of over US$30,000. The Secretary-General further stated that only US$2,357 of the interest from the Endowment Fund remained available for disbursement after disbursements of US$368,644.
The proposed budget for the financial period from 2013 to 2014 (ISBA/18/A/4 and ISBA/18/C/7), which was presented to the Finance Committee for consideration at this session takes into account the evolution in the work of the Authority and the need for increased resources to carry out this work including the increased costs associated with processing applications for plans of work for exploration and reviewing the annual reports of contractors. The Secretary-General pointed out that there were no concomitant resources allocated in the current budget of the Authority to cover the increased workload.

Programme of work

In an overview of its substantive programme of work for 2011-2013, the report states that the Authority continues to focus primarily on the scientific, technical, legal, and policy work necessary for it to carry out its functions under the Convention and the 1994 Agreement. Its functions include ongoing supervision of exploratory contracts; progressive development of the regulatory regime for activities in the Area; promotion and encouragement of marine scientific research in the Area; and database development; as well as monitoring of trends and developments relating to deep seabed mining activities.

As of 2014, the Secretariat will be responsible for reviewing 17 contracts held by entities which now have licences for exploration in the Area. The contractors are Yuzhmorgeologiya (Russian Federation); the Interoceanmetal Joint Organization (IOM; Federation and Slovakia); the Government of the Republic of Korea; the ChinaOcean Mineral Resources Research and Development Association (COMRA) (China); Deep Ocean Resources Development Ltd. (DORD) (Japan); the French Research Institute for Exploration of the Sea (IFREMER) (France); the Government of India; and the Federal Institute for Geosciences and Natural Resources of Germany (BGR) (Germany); Nauru Ocean Resources Inc. (NORI) (Nauru); Tonga Offshore Mining Ltd. (TOML) (Tonga) and the Russian Federation.

The Mining Code so far comprises the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area (the Nodules Regulations), dated 13 July 2000 (ISBA/6/A/18, annex) and the Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area (the Sulphides Regulations), dated 15 November 2010 (ISBA/16/A/12/Rev.1, annex).

In response to a request from the Council at the seventeenth session, the Secretary-General presented a strategic workplan for preparing such regulations to govern the exploitation of polymetallic nodules (ISBA/18/C/4). The report recommends that the Legal and Technical Commission be asked to commence work on an exploitation code in 2013 as a matter of priority.

The Secretary-General reported that progress had been made on the production of a user’s guide to the regulatory regime for deep seabed mining. The guide will explain in non-technical language the fundamental principles and sources of law on which the system for prospecting, exploration and exploitation is based.

The Secretary-General reported an expert group would be convened in Beijing in November 2012 in collaboration with the China Institute for Marine Affairs of the State Oceanic Administration of China, with a view to preparing draft recommendations to the Council on the implementation of Article 82 of the Convention.

One of the specific responsibilities of the Authority under Article 82, paragraphs 1 and 4, of the Convention is that of distributing to States parties to the Convention the payments or contributions in kind derived from exploitation of the non-living resources of the continental shelf extending beyond 200 nautical miles from the baselines of the territorial sea (the “outer continental shelf”).
Under article 82 of the Convention, States or individual operators who exploit the non-living resources of the outer continental shelf are required to contribute a proportion of the revenues they generate from such exploitation for the benefit of the international community as a whole. The Authority has responsibility for distributing these revenues “on the basis of equitable sharing criteria, taking into account the interests and needs of developing States, particularly the least developed and the land-locked among them”.

The Secretary-General informed the Assembly that the Legal and Technical Commission had been unable to complete its work for this session in spite of the extra effort made by its members by working on weekends, and that it needed more time for its meetings. He was pleased to note that the Finance Committee had included in its recommendations that the Commission meet twice per year in 2013 and 2014. Under this arrangement, the Commission would hold an additional preparatory meeting several months prior to the main session of the Authority. Its work would then be divided so that the Council would have the necessary reports before it meets for the regular annual session.

30th Anniversary Special Session and Commemoration

On 24 July, the Authority commemorated, in a special Assembly session, the thirtieth anniversary of the opening for signature of the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

Portia Simpson Miller, Prime Minister of host country, Jamaica, was among fifteen speakers who addressed the event. She paid tribute to the pioneers who helped to fashion the historic instrument that laid the foundation for the Authority.

President of the Assembly Mr. Milan J. N. Meetarbhan (Mauritius) said the landmark Convention allowed the world to celebrate a treaty addressing the concept of the common heritage of mankind, and the establishment of its appurtenant legal regime and implementing agency. Secretary-General Nii Odunton (Ghana) recalled the skepticism deep sea mining attracted during its infancy in the 1960s and the years of negotiations it took before the Authority was established on 16 November 1994 with headquarters in Kingston, Jamaica.

The Director of the United Nations’ Division for Ocean Affairs and the Law of the Sea (DOALAS/OLA), Serguei Tarassenko, speaking on behalf of UN Secretary-General H.E. Ban Ki-Moon, noted the hosting of key meetings related to the Authority at the UN in 2012, as evidence of his office’s commitment to deep sea mining activities.

Former Secretary-General Satya Nandan (Fiji), himself a pioneer, described the 1994 Agreement to implement Part XI of the Convention as a significant development because it opened the door to universal participation in the Convention.

Some of the pioneer signatories to the historic documents attended the special session at the invitation of Secretary General. They included former Chairman and President Hasjim Djalal (Indonesia); and Chairman of the ISA preparatory commission Judge Jose Luis Jesus of Cape Verde.

A number of delegations also attended a function in Montego Bay on 21 July to witness the unveiling of a plaque in the convention lobby of the Hilton Rose Hall Hotel (formally the Rose Hall Inter-continental) where the Convention was opened for signature in 1982.

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Report on National Legislation

The report by the Secretariat on laws, regulations and administrative measures adopted by sponsoring States and other members of the International Seabed Authority with respect to the activities in the Area (ISBA/18/C/8, and ISBA/18/C/8/Add.1) was presented to the Council on 19 July. The report was prepared in response to a request by the Council to the Secretary-General, that the Authority prepare model legislation to assist sponsoring States in fulfilling their obligations with respect to ensuring compliance on the part of their contractors with the provisions of the Convention.

Article 153, paragraph 4, of the 1982 United Nations Convention on the Law of the Sea states that the obligation of the sponsoring States, in accordance with article 139 of the Convention, entails “taking all measures necessary to ensure” compliance by the sponsored contractor.

The Secretariat reported that the following members of the Authority had provided the secretariat with information on, or texts of, their respective legislation: China, Cook Islands, the Czech Republic, Germany, Mexico, and the United Kingdom. Relevant information was also provided by the secretariat of the Pacific Community Applied Geoscience and Technology Division (SOPAC).

Nauru and Tonga had both commenced collaborative work with the Applied Geoscience and Technology Division (SOPAC) of the secretariat of the Pacific Community (SPC) on its deep-sea minerals project funded by the European Union and had been provided with drafting instructions for a Bill to regulate deep-sea mining activities under its control. Tonga expected that draft legislation will be formulated by June 2012. Guyana and Zambia have no national laws or regulations in relation to the Area.

In the discussion of the Council it was suggested that a database containing the text of national legislation on the deep seabed be developed on the Authority’s website so as to ensure access by all members. The Secretariat said it would continue efforts to build its database of information as quickly as resources would allow.

Elections of Council members

On 27 July the Assembly elected 20 members to the Council for a four-year term from 2013 to 2014. The election, based on lists drawn up by the various groups represented on the Council, was uncontested.

The Council membership is drawn from five groups of States members of the Authority. Four of these have special interests in aspects of seabed mining and the fifth is a group chosen to ensure equitable geographical balance in the Council as a whole.

The agreed allocation of seats on the Council is 10 seats to the African Group, 9 seats to the Asian Group, 8 seats to the Western European and Others Group, 7 seats to the Latin American and Caribbean Group and 3 seats to the Eastern European Group. Since the total number of seats allocated according to that formula is 37, it is understood that, in accordance with the understanding reached in 1996 (ISBA/A/L.8), each regional group other than the Eastern European Group will relinquish a seat in rotation. The regional group which relinquishes a seat will have the right to designate a member of that group to participate in the deliberations of the Council without the right to vote during the period the regional group relinquishes the seat.

Council members elected at this session begin for a four-year term as from 1 January 2013, subject to the understandings reached in the regional and interest groups.
Round-up of Session 9
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Group A (States from among the largest consumers or net importers of minerals to be derived from seabed mining): China, Japan

Group B (States from those with the largest investment in seabed mining): India

Group C (States that are major land-based net exporters of minerals found in the Seabed): Canada, South Africa

Group D (Developing States representing special interests, including those with large populations, the land-locked or geographically disadvantaged, islands, major mineral importers, or potential producers, and the least developed: Bangladesh, Brazil, Uganda

Group E18 (States reflecting the principle of geographical representation, as well as balance between developed and developing States): Argentina, Czech Republic, Guyana, Kenya, Mozambique, Namibia, Netherlands, Poland, Senegal, Spain, Trinidad and Tobago, and United Kingdom

Spain is elected for a four-year term with the understanding that it will relinquish its seat after one year to Norway for the year 2014; the United Kingdom will relinquish its seat after two years to Norway for the year 2015; and after serving for three years, The Netherlands will relinquish its seat to Norway for the last remaining year of its term.

Other Elections

Milan J.N. Meetarbhan (Mauritius) was elected as Assembly President for the eighteenth session. The four vice-Presidents elected were Czech Republic, representing the Eastern European Group; Brazil, representing Group of Latin American and Caribbean States; Japan (Asian Group) and New Zealand (Western European and Others Group).

The Council elected Alfredo Garcia Castelblanco (Chile) as President for the eighteenth session. Vice-Presidents for the Council were: Poland for the Eastern European Group; Egypt, representing the African Group; China for the Asian Group and The Netherlands representing the Western European and Others Group.

In another election, Han Thein Kyaw (Myanmar) replaced his compatriot Zaw Minn Aung who resigned from the Finance Committee. Mr. Kyaw will serve the remainder of the term of Mr Aung ending 31 December 2016.

Also elected was Georgy Alexandrovich Cherkashev (Russian Federation) who filled the seat in the Legal and Technical Commission left vacant by the resignation of his compatriot Denis R. Khramov. Mr. Cherkashev will serve the remainder of the term of Mr. Khramov ending December 31, 2016.

Observers

The Assembly approved two requests for observer status submitted by InterRidge, which promotes interdisciplinary, international studies of oceanic spreading centres, and Conservation International, a body that forms partnerships in the areas of knowledge, business and communication to support capacity-building and enhance understanding of marine ecosystems and resources.

Credentials Committee’s Report

A nine-member Credentials Committee was appointed on 25 July. The members were Argentina, Germany, Ghana, Guyana, Japan, Myanmar, Russian Federation, Senegal and the United Kingdom.

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Membership and Attendance

The ISA membership consists of all parties to the United Nations Convention on the Law of the Sea. The members are listed below, with an asterisk (*) marking those which participated in the session.


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