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Report on matters relating to the Enterprise

Report of the Special Representative of the Secretary-General of the International Seabed Authority for the Enterprise

I. Introduction

1. The present report is submitted in keeping with the mandate of the Special Representative of the Secretary-General of the International Seabed Authority for the Enterprise in view of the decision of the Council of 10 December 2021 relating to the reports of the Chair of the Legal and Technical Commission, in which it is indicated that the mandate of the Special Representative should be extended until the end of the twenty-seventh session.¹

2. At the outset, the Special Representative wishes to reiterate comments made in his previous report in December 2021 on the need for timely action to ensure that the step-by-step approach provided for in the Agreement relating to the Implementation of part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, on the operationalization of the Enterprise, is realized. To achieve this objective, it is expected that there would be adoption of the recommendation of the Legal and Technical Commission on the appointment of an interim director general for the Enterprise.

3. In view of further consultations to be held in the Council on this matter,² the present report has been prepared to provide background information for such consultations.

4. The report provides a brief description of managerial policy and administrative options for the administration of the Enterprise, as well as of administrative functions of the interim director general during the period July 2022–December 2023.

* ISBA/27/C/L.1.

¹ ISBA/26/C/57, para. 19.

² Ibid.



II. Managerial policy options for the administration of the Enterprise during the period July 2022–December 2023

5. The discussion of managerial policy options for the administration of the Enterprise presented will be limited to reference to the current stage and envisages the appointment, on a full-time basis, of an interim director general in anticipation of what would be required if the recommendations of the Legal and Technical Commission³ on the study related to issues on the operationalization of the Enterprise⁴ were adopted. This will take into consideration the provisions of the Agreement, which contemplates an evolutionary approach to the operationalization of the Enterprise through a step-by-step progression based on the functional needs of the Enterprise at each of the steps.

6. The adoption of the above-mentioned recommendation of the Commission would result in the appointment of an interim director general for the Enterprise, who would oversee the specified functions listed in section 2 (1) of the annex to the Agreement, and would be in keeping with what is provided for in the Agreement.

7. The appointment of an interim director general would necessitate the adoption of managerial policy options for the effective administration of the Enterprise until it begins to operate independently of the secretariat. This would be based on the functional needs of the Enterprise, as recognized in the Agreement and enumerated in section 2 (1) of its annex. They fall under the following broad categories: (a) performing desk work related to the pre-prospecting phase; (b) performing desk work utilizing the data and information on the reserved areas, related to the resource and the environment; and (c) being prepared to be an effective partner in joint ventures, both managerially and technically. It is also recognized that whatever structure is put in place must be cost-effective to members of the Authority.

8. To ensure the necessary operational independence, it is proposed to establish the interim Enterprise within the secretariat, as an autonomous unit. It may be noted that the Secretary-General had provided indicative costings for such a unit, comprising the interim director general and one administrative support officer, in the context of the proposed budget for the Authority for the financial period 2021–2022.⁵ The Finance Committee had reviewed those costings during its meetings in 2020,⁶ although financial provision for the Enterprise had not been included in the budget for the financial period 2021–2022 pending a decision by the Council on the operationalization of the Enterprise.⁷

III. Administrative functions of the interim director general during the period July 2022–December 2023

9. The following functions are to be performed by the interim director general:

- (a) Assessment of approaches to joint ventures;

³ ISBA/26/C/12, para. 41.

⁴ Edwin Egede, Mati Pal and Eden Charles, “A study related to issues on the operationalization of the Enterprise: legal, technical and financial implications for the International Seabed Authority and for States parties to the United Nations Convention on the Law of the Sea”, International Seabed Authority, technical report 1/2019, 13 June 2019.

⁵ ISBA/26/A/5-ISBA/26/C/18.

⁶ ISBA/26/A/10-ISBA/26/C/21, para. 30.

⁷ The necessary financial provision was estimated at \$637,320 for the financial period. A revised indicative estimate will be prepared for consideration in the context of the budget proposal for the financial period 2023–2024.

(b) Preparation of rules, regulations and procedures on sound commercial principles. It is maintained that the concept of sound commercial principles would have to be interpreted and understood in the light of the following parameters, on the basis of the provisions of part XI of the Convention and the Agreement: the common heritage principle; autonomy of the Enterprise to make effective commercial decisions without political influence; cost-effectiveness in relation to the operations of the Enterprise; evolutionary approach in its operationalization; and commercial viability;

(c) Initiation of consultations with the Council for the utilization of the reserved areas so that the Enterprise can be operationalized; such consultations may deal with exploration contracts for the reserved areas and joint ventures for exploration of the reserved areas;

(d) Arrangement for independent information, advice and assistance to the Council in its consideration of the joint venture proposals and examination of whether such proposals are in accordance with sound commercial principles, as applicable;

(e) Initiation of consultations immediately with States parties so that voluntary contributions from them are explored most vigorously;

(f) Performance, to the fullest extent possible, of the functions assigned to the secretariat, which is currently acting on behalf of the Enterprise, paying special attention to assessment of approaches to joint ventures and study of managerial policy options for the administration of the Enterprise;

(g) Arrangement for preparing and providing inputs on behalf of the Enterprise to the Council in its deliberations on the development of the Mining Code, including in particular the provisions on financial payment and equity participation;

(h) Attendance of meetings, workshops, seminars and other events organized by the Authority.

IV. Future action required

10. As mentioned above, there is a need for timely action to ensure that the step-by-step approach provided for in the Agreement on the operationalization of the Enterprise is realized by appointing an interim director general. This would enable the Enterprise to:

(a) Perform the functions of the Enterprise as listed under section 2 of the annex to the Agreement;

(b) Continue to provide much-needed input on the development of the regulations on exploitation on an ongoing and not exceptional basis, as is currently the case;

(c) Represent the interests of the Enterprise in annual sessions of the Authority, as well as in other undertakings related to the implementation of part XI of the Convention and the Agreement.

11. The Council is invited to take note of the present report and to request the Secretary-General to include an indicative budget and work programme for the Enterprise in his proposed budget for the financial period 2023–2024.