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Outcomes of the International Workshop on Further Consideration of the Implementation of Article 82 of the United Nations Convention on the Law of the Sea

Report of the Secretary-General

1. Under article 82 of the United Nations Convention on the Law of the Sea, coastal States or individual operators that exploit the non-living resources of the continental shelf extending beyond 200 nautical miles from the baselines of the territorial sea (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. This proportion is defined as 1 per cent of the value or volume of production at the site, rising by 1 per cent annually until it reaches 7 per cent, at which level it remains. Article 82, paragraph 4, gives the International Seabed Authority 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 landlocked among them.

2. Since 2009, the Authority has begun to explore the legal and technical issues associated with the implementation of article 82. Two technical studies, one dealing with the legal and policy issues associated with such implementation (*Technical Study No. 4*) and one dealing with the technical and resource issues associated with the exploitation and management of the outer continental shelf (*Technical Study No. 5*), were published as a result of a seminar convened in February 2009 at the Royal Institute of International Affairs (Chatham House), United Kingdom of Great Britain and Northern Ireland. From 26 to 30 November 2012, the Authority, in collaboration with the China Institute for Marine Affairs of the State Oceanic Administration of China, convened in Beijing the International Workshop on Further Consideration of the Implementation of Article 82 of the United Nations Convention on the Law of the Sea.

3. About 40 legal and scientific experts, including members of the Legal and Technical Commission and the Commission on the Limits of the Continental Shelf, participated in the workshop. Senior experts from the offshore oil and gas industry and from geosciences and natural resources research institutes, academics,



Government legal advisers and diplomats, as well as former and current senior officials of the Division of Ocean Affairs and Law of the Sea of the Office of Legal Affairs of the United Nations and the Authority also participated. The workshop had a practical orientation and aimed at producing draft proposals for consideration by States with extended continental shelf areas and by the relevant organs of the Authority. A number of background papers and informal working papers prepared by experts were presented, as was a series of case studies of domestic licensing regimes and views on the implementation of article 82 in selected States with extended continental shelf areas. The papers and presentations are available on the website of the Authority. The report on the workshop has been published as *Technical Study No. 12* (also available as an e-book).

4. Participants noted that many topics could not be covered in full during the workshop and that further intensive study and deliberations would be required, including through additional workshops. They emphasized that it was important that efforts to achieve a system for the pragmatic and functional implementation of article 82 should continue to be discussed through the relevant organs of the Authority. Their main recommendations, which are included in the report on the workshop, may be summarized as follows:

(a) The Authority should encourage States with extended continental shelf areas, in particular those that are issuing or plan to issue offshore licenses for exploiting non-living resources of the extended continental shelf, to consider and anticipate the needs related to the implementation of article 82 within their respective jurisdictions. In that regard, the obligation to notify the Authority of the anticipated date of commercial production is particularly important;

(b) While enjoying the exclusive choice to make payments or contributions in kind, States with extended continental shelf areas should be recommended to opt to make payments in the interest of simplicity and efficiency of implementation. It is conceivable that a resolution of the States Parties to the Convention may be needed to move this recommendation forward;

(c) Further examination of the needs related to the implementation of article 82 would benefit from a study of the key terms discussed in the report on the workshop, as they are used in contemporary regulatory and industry practices across different jurisdictions. The study should consider various hydrocarbons and mineral resource scenarios. As an information document, the study would help identify possible paths for a practical approach and help build and deepen understanding of the terminological issues in realistic settings, but would not have prescriptive value;

(d) The Authority should explore further the concept of developing a memorandum of understanding between a State with extended continental shelf areas and the Authority or a guidance document, and take steps to prepare a draft for discussion, bearing in mind that either instrument would be essentially voluntary and aim to provide practical guidelines and advice to assist States with extended continental shelf areas in the implementation of article 82;

(e) In relation to article 82, paragraph 4, the workshop considered that the term “through the Authority” must not be interpreted to mean “to the Authority”. The Authority is a conduit for the transmission of payments and contributions in kind to States Parties in accordance with article 82, paragraph 1, and, in this regard, the role of the Authority is only instrumental;

(f) In seeking to interpret the term “through the Authority”, the participants in the workshop observed that the following should be taken into consideration:

- (i) The need for the Authority to establish a mechanism for collecting payments and contributions and then distributing them in a timely and efficient manner to States Parties;
- (ii) The establishment of such a mechanism may entail additional costs for the Authority. These costs could be recovered through the regular budget of the Authority or by the Authority retaining an agreed percentage of the amounts collected to cover the associated administration costs;
- (iii) It was considered that there was a possible role for the Finance Committee to recommend what would be a reasonable percentage for the Authority to retain to cover administrative costs. It was also argued that the Convention does not contemplate such a function for the Finance Committee and, as a result, the Assembly or the Council of the Authority would have to mandate the Finance Committee to assume that task;

(g) In seeking to determine what constitutes equitable sharing criteria under article 82, paragraph 4, it was suggested that the Authority would need to develop and maintain a set of criteria to be used to calculate amounts to be distributed to all States Parties. Under article 162, paragraph 2 (o) (i), of the Convention, the Council is charged with the responsibility to recommend to the Assembly rules, regulations and procedures on the equitable sharing of the payments and contributions made pursuant to article 82;

(h) In determining equitable sharing criteria, the Authority is bound to take into account the interests and needs of developing States, particularly the least developed and the landlocked among them. In order to discharge the responsibility to distribute and properly account for such payments, the Authority would need to develop and maintain a list with quantitative values to be used to calculate amounts to be distributed to States Parties. Any such list should be updated as new data become available. It was suggested that the secretariat prepare a study or a trial list. It was also suggested that, in keeping with the object and purpose of the Convention, it may be possible to distribute the payments and contributions in kind through established programmes and funds to help developing States meet agreed targets under commitments such as the Millennium Development Goals and other sustainable development goals.

5. Further discussions on the implementation of article 82 will be necessary, both at the policy level and through mechanisms such as workshops and expert group meetings. At the workshop held in Beijing, a number of areas were identified as needing research and clarification before substantive discussions could take place. These include the study of key technical terms and an analysis showing possible scenarios for the distribution of benefits to States Parties, as well as the preparation of a draft voluntary memorandum of understanding or guidance document. Subject to the availability of resources, the secretariat will focus during the forthcoming year on preparing these technical studies and research papers.

Recommendation

6. The Assembly is invited to note the outcomes of the workshop held in Beijing and provide such policy direction as may be necessary to the secretariat.