



## Council

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### Fifteenth session

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## Summary report of the Chairman of the Legal and Technical Commission on the work of the Commission during the fifteenth session

1. During the fifteenth session of the International Seabed Authority, the Legal and Technical Commission met from 18 to 27 May 2009 and held 15 meetings. As agreed at the fourteenth session, the Commission commenced its work one week in advance of the meetings of the Council and Assembly. The following members of the Commission attended the meetings: Frida Armas Pfirter, David Billett, Laleta Davis-Mattis, Walter de Sá Leitão, Baïdy Diène, Miguel Dos Santos Alberto Chissano, Elva Escobar, Kennedy Hamutenya, Said Hussein, Asif Inam, Emmanuel Kalngui, Woong-Seo Kim, Eusebio Lopera Caballero, Sudhakar Maruthadu, Sandor Mulsow Flores, Andrzej Przybycin, Christian Reichert and Mahmoud Samy. Following past practice, Nobuyuki Okamoto and Haiqi Zhang also participated in the meetings of the Commission prior to their formal election by the Council for the remainder of the terms of office of Yoshiaki Igarashi and Hongtao Zhang, respectively, who had resigned from the Commission. The following members had informed the Secretary-General that they would be unable to attend the session: Jean-Marie Auzende, Elena Sciso and Isikeli Uluinairai Mataitoga.

2. At its first meeting, the Commission elected Sandor Mulsow Flores as Chairman and Andrzej Przybycin as Vice-Chairman.

3. The Commission adopted its agenda (ISBA/15/LTC/1) and considered the following matters:

(a) Annual reports of contractors submitted pursuant to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area;

(b) Applications for approval of plans of work for exploration by Nauru Ocean Resources Inc. and Tonga Offshore Minerals Ltd.;

(c) Proposal for a network of areas of particular environmental interest in the Clarion-Clipperton Fracture Zone;



(d) Recommendations for the guidance of contractors under regulation 38 of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area;

(e) Draft regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area;

(f) Update on progress on the geological model for the Clarion-Clipperton Fracture Zone;

(g) Other matters.

## **I. Consideration of the annual reports of contractors submitted pursuant to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area**

4. In accordance with its usual practice, the Commission reviewed and evaluated, in closed meetings, the annual reports submitted by contractors pursuant to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area. To conduct the analysis, and following its usual practice, the Commission divided itself into working groups. Three working groups on legal, environmental and technological aspects carried out a preliminary study of the annual reports and prepared a draft evaluation for consideration by the full Commission. To assist its work, the Commission was provided with a preliminary analysis of the annual reports prepared by the secretariat (ISBA/15/LTC/CRP.3). In preparing its report and recommendations to the Secretary-General with respect to the contractors' reports, the Commission followed the suggested template set out in the annex to document ISBA/15/LTC/2. The report and recommendations of the Commission are contained in document ISBA/15/LTC/8.

5. In reviewing the annual reports, the Commission took note of and welcomed the collaborative programmes being conducted or planned between some of the contractors, and noted that such cooperative efforts could facilitate the maintenance of time series stations and optimize the results of research cruises. With regard to classification of nodule types based on size, surface, etc., the Commission noted that there was no uniformity in the classifications used by different contractors and encouraged the contractors to integrate their data into the International Seabed Authority database. The Commission suggested that contractors collect samples for genetic characterization of fauna and micro-organisms and standardize sampling protocols and design.

## **II. Review of two applications for approval of plans of work for exploration by Nauru Ocean Resources Inc. and Tonga Offshore Minerals Ltd.**

6. The Commission recalled that, in 2008, it had received two applications for approval of a plan of work for exploration in reserved areas from Nauru Ocean Resources Inc. (sponsored by Nauru) and Tonga Offshore Mining Ltd. (sponsored by Tonga). As the Commission had been unable to complete consideration of the applications during the fourteenth session, the matter had been placed on the agenda

for the fifteenth session. The Commission was informed, however, that, by a letter dated 5 May 2009 addressed to the Legal Counsel of the Authority, the applicants had requested that consideration of their applications be postponed. The Commission took due note of the request and decided to defer further consideration of the item until further notice.

### **III. Consideration of a proposal for a network of areas of particular environmental interest in the Clarion-Clipperton Fracture Zone**

7. The Commission continued its consideration of a proposal for the establishment of a network of areas of particular environmental interest in the Clarion-Clipperton Fracture Zone. The Commission was assisted in this task by a document prepared by the secretariat (ISBA/15/LTC/4), in which the status of the available knowledge on the marine environment of the Clarion-Clipperton Fracture Zone and the work previously carried out by the Authority in this regard was reviewed, as well as the various legal mechanisms available to the Authority under the Convention and the Regulations. The Commission noted that the proposal contained in the document identified a network of nine areas of particular environmental interest that were placed in nine different regions of the Clarion-Clipperton Fracture Zone and configured in such a way as to protect the natural ecosystem structure and function and allow for recolonization of impacted areas, while at the same time, avoiding any conflict with existing uses of the Clarion-Clipperton Fracture Zone.

8. The Commission recalled that the General Assembly of the United Nations had called upon States and relevant international organizations at all levels urgently to consider ways of integrating and improving, on a scientific basis, the management of risks to vulnerable marine biodiversity within the framework of the Convention, consistent with international law and the principles of integrated ecosystem-based management. Within this global context, the establishment of a network of areas of particular environmental interest in the Clarion-Clipperton Fracture Zone could contribute in a number of important ways to the general objectives of the environmental regime established by the Authority. Furthermore, the scientific information that could be generated by such areas would be useful for the adoption of rules, regulations and procedures incorporating applicable standards for the protection and preservation of the marine environment and would also greatly facilitate the periodic review of environmental regulations and recommendations.

9. While noting that the design of the proposed network was based on existing scientific work, the Commission considered it premature to propose to the Council that it use its powers under the Convention to institute a permanent closure of the areas concerned. Nevertheless, to prevent future irreversible damage, and taking into account its mandate under article 165, paragraphs (d), (e) and (h), of the Convention, as well as regulation 31(2) of the Regulations, the Commission considered that the development of polymetallic nodule resources in the Clarion-Clipperton Fracture Zone demanded a rational and comprehensive environmental management plan for the Zone as a whole, based on the best available scientific knowledge. Such a plan should include a clear definition of the conservation objectives for the Clarion-Clipperton Fracture Zone, as well as a comprehensive

environmental monitoring programme and the definition of a network of representative areas for environmental purposes.

10. Such a plan should be fully consistent with the precautionary principle, but should be flexible in order to allow changes as and when new scientific information was gathered. The plan should have regard for the best available scientific knowledge of the Clarion-Clipperton Fracture Zone and, in general, the major environmental factors that are known to regulate the distribution of species at a regional scale, including the depth of the seabed, the size and variety of topographic features and the bio-geochemistry of the overlying water column. Using this knowledge and scientific criteria, it would be possible to design a network of areas of particular environmental interest without having complete knowledge of the distributions of all species.

11. In any event, the Commission noted that information on the distribution of species in the Clarion-Clipperton Fracture Zone was limited. The only study of species change across the breadth of the Clarion-Clipperton Fracture Zone was the Kaplan project (sponsored by the Authority and the J.M. Kaplan Fund, with additional contributions from the Governments of France, Japan and the United Kingdom of Great Britain and Northern Ireland). That study indicated that species changed radically between regions of the Clarion-Clipperton Fracture Zone. Those data were supported by photographic transects and other ad hoc seabed samplings undertaken previously. From the scientific work completed to date, it was known that species distributions could change radically from east to west and north to south across the Clarion-Clipperton Fracture Zone. Sampling by individual contractors would eventually be used to supplement those data, but there were considerable difficulties to overcome in the standardization of sampling methods and in achieving a consistent taxonomy.

12. To better inform the work of the Council and the Commission, the Commission recommended that the Authority convene, as a priority activity, an international workshop, including members of the Commission with relevant expertise, as well as representatives of contractors and other experts, to review further the current proposal for the establishment of a network of areas of particular environmental interest and to advise on the formulation of an environmental management plan at the regional scale for the Clarion-Clipperton Fracture Zone. The Commission also wished to encourage further scientific research in the proposed areas of particular environmental interest and recommended that any data collected from such research should be compared with information collected by the existing contractors with the Authority in order to better assess how representative the proposed areas of particular environmental interest were, whether all of them were necessary, or whether the size and location of the areas should be adjusted.

#### **IV. Recommendations for the guidance of contractors under regulation 38 of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area**

13. Under this agenda item, the Commission considered two matters, namely: (a) whether it was necessary to review the environmental recommendations issued by the Commission in 2001 (ISBA/7/LTC/1/Rev.1); and (b) a set of draft

recommendations on the reporting of actual and direct exploration expenditures prepared for the Commission by the secretariat.

#### **A. Review of the environmental recommendations**

14. The Commission noted that some of the material contained in the 2001 recommendations was out of date. In particular, two environmental workshops had been convened by the Authority since 2001, the recommendations of which should be taken into account. A comparative analysis provided by the secretariat highlighted the differences between the 2001 recommendations and the recommendations of the environmental workshops. In addition, the Commission observed that rapid scientific progress had taken place in respect of molecular data and genetics, as well as sampling techniques. Consequently, it was agreed that there was a need to revise and update the 2001 recommendations in the light of those developments. In particular, the Commission suggested that the recommendations be revised to include a standard sampling protocol and a storage protocol for archiving data, in order to optimize the comparison, at a regional scale, of the environmental data collected by the contractors.

15. As there was insufficient time to complete the review of the environmental recommendations during the meeting, the Commission agreed to work on the matter intersessionally, with the assistance of the secretariat, and to consider the matter further at its next meeting.

#### **B. Recommendations on the reporting of actual and direct exploration expenditure**

16. In the light of persistent difficulties encountered by the Commission in the evaluation of the annual reports regarding the breakdown and certification by contractors of their actual and direct exploration expenditure, the Commission had requested the secretariat at the fourteenth session to prepare a detailed analysis of the actual and proposed expenditure reported by the contractors and to make a proposal to improve the present situation.

17. In response to that request, the secretariat provided the Commission with a note on the relevant provisions of the Regulations, as well as a set of tables analysing the proposed and reported expenditure of the contractors from the date of signature of the contracts until 2008. The Commission also had before it a draft text of recommendations for the guidance of contractors for the reporting of actual and direct exploration expenditure (ISBA/15/LTC/WP.1).

18. After a detailed discussion, including revision of the text prepared by the secretariat, the Commission adopted, on 22 May 2009, recommendations for the guidance of contractors for the reporting of actual and direct exploration expenditures as required by annex 4, section 10, of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area (ISBA/15/LTC/7). The purpose of the recommendations was to provide guidance to contractors in relation to the books, accounts and financial records to be maintained in accordance with the Regulations, the identification of internationally accepted accounting principles, the definition of the actual and direct costs of exploration, the format for the

presentation of financial information in the annual reports, and the form of certification of actual and direct exploration expenditure.

## **V. Consideration of the draft regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area**

19. The Commission resumed its consideration of the draft regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area, noting that it had agreed at the fourteenth session that it was appropriate to finalize a recommendation to the Council. As requested by the Commission at the fourteenth session, the secretariat provided the Commission with a revised text of the draft regulations (ISBA/15/LTC/CRP.1). The revised text incorporated all the revisions proposed by the Commission during the fourteenth session, as well as the revisions to the text of the draft regulations on prospecting and exploration for polymetallic sulphides in the Area agreed in the Council during the fourteenth session.

20. Following a discussion in which members of the Commission expressed their views on some technical issues, the Commission decided to adopt the revised text of the draft regulations on prospecting and exploration for cobalt-rich ferromanganese crust, as contained in document ISBA/15/LTC/CRP.1, as its recommendation to the Council and noted that the document would in due course be transmitted to the Council for its consideration at the sixteenth session.

## **VI. Update on progress on the geological model for the Clarion-Clipperton Zone**

21. The Commission received a presentation on the status of the project to establish a geological model for the Clarion-Clipperton Zone, noting that the project was near completion. The Authority would convene a workshop later in 2009 to present the results of the project. The Commission expressed its satisfaction with the impressive achievement and noted that the participation of the contractors had been critical to the success of the project. The Commission also took note of the intention to commence work on a similar geological model for the Indian Ocean.

## **VII. Other matters**

22. The Commission discussed a briefing note provided by the secretariat on the current status of submissions to the Commission on the Limits of the Continental Shelf and exchanged views and concerns.

23. The meeting was closed on 27 May 2009.

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