Ocean Mining Industry Promotion Round Table

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**Activities of the International Seabed Authority**

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CHECK AGAINST DELIVERY

I am delighted to be able to attend this Ocean Mining Industry Promotion Round Table and to speak about the activities of the International Seabed Authority.

In this short presentation, I hope to be able to tell you a bit about the background of the Authority and to describe its mandate for regulating and managing deep seabed mining. I will then describe the current status of exploration activities in the international seabed area before reviewing our current major work programme.

**Mandate**

The Authority is 23 years old this year, having been established in 1994. However, its history goes back almost 50 years to the beginning of the discussions that led to the negotiation of a comprehensive United Nations Convention on the Law of the Sea. It was the dream of many countries at that time that there should be an international agreement to ensure that the mineral wealth of the deep seabed would not be appropriated by a few technologically advanced countries, but would be shared between all countries, including the landlocked and disadvantaged countries, as the common heritage of mankind.

The end result of these negotiations was Part XI of the UN Convention on the Law of the Sea, which establishes the Authority as the international organization through which States Parties are to organize and control activities in the international seabed area. Part XI is actually the longest and most complex part of the Convention, with 58 articles and two annexes. It gives the Authority a very specific and limited mandate. The primary task of the Authority is to regulate the exploration and exploitation phases of deep seabed mining on the seabed beyond the limits of national jurisdiction. The Authority's mandate is limited to managing mineral resources, although it should also regulate to prevent damage to the marine environment as a whole. Geographically, the Authority's mandate covers the seabed beyond the outermost limits of the continental shelf.

**Membership and governance**

All States Parties to the Law of the Sea Convention are automatically members of the Authority, which means that as of 2017 the Authority has 168 member States, including the European Union. As an intergovernmental organization, established by treaty, the decision-making mechanisms within the

Authority are necessarily complex and can appear somewhat intimidating for industry to deal with. The key point to note is that the system is designed to operate as far as possible by consensus. This means that that it can sometimes take a long time to come to a decision. On the other hand, the system is designed to ensure that all interests are represented, including the interests of mineral producing countries, mineral exporters and consumers, developing countries, landlocked countries and those countries with deep sea mining industries. The system also emphasizes the role of scientific and technical advice in decision-making. Thus, most decisions on matters relating to the award of exploration and exploitation contracts require the prior consideration of a Legal and Technical Commission, which is an independent expert body free from political interference.

**Status of Exploration Activity**

Exploration for deep seabed minerals has been taking place for many years, much of it in the form of Marine Scientific Research carried out by governments and publicly-funded international research programmes. Even before the Convention was adopted, consortia from the United States and several other developed economies, including Japan, had been conducting extensive exploration campaigns for polymetallic nodules deposits.

In putting the deep seabed under international management, one of the most important achievements of the Convention was to provide a mechanism to protect the acquired rights of several pioneer investors, including DORD of Japan. After the establishment of the Authority in 1994, these rights were further guaranteed when the former pioneer investors were granted the automatic right to a 15-year contract with the Authority under the Convention regime. Recently, in 2016, these contracts were further extended for a period of 5 years, which will take them through to 2021.

Between 2002 and 2010, the pace of activity declined. Most of the pioneer investors substantially reduced their exploration programmes in light of general uncertainty surrounding the future of deep seabed mining. There were no new technologies in sight and very little commercial interest on the part of investors. During this period, the Authority made strenuous efforts to promote marine scientific research, especially on environmental matters, by way of workshops and technical reports. Importantly, the Authority also developed regulations governing prospecting and exploration for new resources, including polymetallic sulphides and cobalt-rich crusts.

In fact, the adoption of regulations for these two resources in 2010 was to be a milestone in the life of the Authority. It opened the door to a new round of claims for exploration sites for resources other than polymetallic nodules and a renewed interest in commercial prospects for deep seabed mining. It is worth highlighting that JOGMEC was the first entity to enter into a contract for exploration for cobalt rich crusts in 2014.

The period between 2011 and 2015 saw a dramatic increase in interest, particularly from the private sector. In total, 18 contracts were approved in a four-year period between 2011 and 2015. Up to 2011, most exploration activity had been in the form of state-funded research programmes, with contracts held by governments or government agencies. After 2011, most investment has come from the private sector. Initially, this was in the form of relatively small and speculative companies operating through

developing countries, but more recently large-scale multinational operators such as Keppel in Singapore, Lockheed Martin in the UK and DEME Group in Belgium have made significant investments.

The situation as of today is that the Authority has approved a total of 28 contracts for exploration covering more than 1.3 million square kilometres of the seabed. Another new application, by Poland, was received earlier this year. Contractors include States, state entities and private corporations sponsored both by developed and developing States.

Exploration work is taking place simultaneously in the Pacific, Indian and Atlantic oceans. This map shows the general distribution of the exploration claims that have been made. By far the area of most intense activity remains the Clarion-Clipperton Zone in the Central Pacific where 14 contractors are exploring for polymetallic nodules. Although no mining has yet taken place in the CCZ, the more than 30 years of research that has taken place represents a major contribution to marine science and a better understanding of deep sea ecosystems.

**Development of the exploitation code**

Against this background, the next major task for the Authority is to develop a legal framework for exploitation of seabed minerals. This process has already begun and in July 2015, the Council of the Authority approved an action plan to fast track the development of a Mining Code.

This was a very important and welcome decision for those of us who wish to see deep seabed mining become a reality.

Developing a Mining Code is a challenging, and complex, exercise. Nevertheless, we have been making good progress so far.

The process began in 2013 with the issue of a Technical Study on the policy issues associated with the development of a regulatory regime for mining. Subsequently, the Legal and Technical Commission conducted a wide-ranging public consultation in which it sought the views of stakeholders as to some of the key policy issues. The Secretariat also commissioned several discussion papers on various issues including financial aspects of exploitation, dispute settlement and responsibility and liability. The efforts of the Secretariat have been supported by efforts by external stakeholders, including industry and NGOs, to convene workshops to discuss specific aspects of the proposed code. I welcome these efforts, which all contribute to the enrichment of the debate.

In July 2016, the Legal and Technical Commission issued a ‘Zero Draft’ of the exploitation regulations. This was made available for public consultation until November 2016. The results of that consultation were considered by the Commission at its recent meetings in Kingston and it is expected that a further report will be issued to the Council in August 2017.

I was very pleased at the quantity and quality of feedback received to the Zero Draft. My own feeling is that the draft is quite mature. It takes into account the preliminary conceptual studies that were done, and also takes into account many of the points raised during the first round of stakeholder consultation that took place in 2015-2016. The draft covers in a rather comprehensive manner the process for

applying for exploitation rights, the content of the application, the contractual basis of the rights granted, and the rights and duties of the parties to a contract.

Discussion of the environmental aspects of the exploitation regulations have proceeded down a slightly different path. An initial reporting template for environmental impact assessment during exploitation was prepared during a workshop convened by the Authority in Fiji in 2012.

In May 2016, a further workshop was convened with the support of the Government of Australia to examine a range of issues associated with environmental regulation during exploitation.

In January 2017, drawing on some of the outcomes of that workshop, the Secretariat prepared a discussion paper for the Legal and Technical Commission on the development and drafting of environmental regulations. This was considered by the Commission, which will continue working on the issues. It was also released publicly through the Authority's website.

There will be a further workshop, to be convened in Berlin next week, with the support of the German Government, which will provide an opportunity for a broad range of stakeholder input into the process of developing the environmental regulations. At a certain point, it is anticipated that the Commission will issue a more formal request for stakeholder comments on a draft set of environmental regulations, possibly as part of a comprehensive first draft of the exploitation code.

At the same time, discussion is moving ahead on one of the other core issues, which concerns the financial terms of contracts. So far, two workshops have taken place, and a third workshop is planned for April in Singapore.

I am cautiously optimistic that a coherent first draft of the Mining Code could be prepared for the next meeting of the Authority in August 2017, although it is clear that much more work will need to be done to elaborate some of the more complex legal and financial issues and to bring the different strands of the code together into one document.

I welcome the participation of Japanese experts and Japanese industry in the development of the Mining Code.

**Importance of the Mining Code**

The Mining Code is critically important to the future of the Authority and to the credibility of the deep sea mining regime established by the law of the sea. Indeed, the Code will constitute a key step in contributing to fulfill the object and purpose of the Convention, that is to promote the economic and social advancement of all peoples of the world.

The industry is at a critical stage of development and it is important that we are able to produce a draft Mining Code that is commercially realistic, provides for effective environmental protection and contains transparent financial provisions. Any investor that may be considering funding a deep sea mining project needs to know the terms and conditions, including the financial terms on which access will be granted, before committing to the high levels of investment that will be required. Investors need to see a fair

return on their investment while there is also a reasonable flow of benefits for the common heritage of mankind.

Time is limited. If we do not act now, we risk squandering the opportunity to develop these valuable marine resources for the benefit of mankind as a whole. We should also recall that in granting five-year extensions of the pioneer investor contracts in 2016, the Council of the Authority made it clear that it expected the contractors to be ready to proceed to exploitation by the end of the extension period. This cannot happen without a Mining Code.

**Concluding remarks**

Some major challenges lie ahead for the Authority. We've been talking about seabed mining for several decades but the reality is that this is a new industry still in its formative stages. We do not know, yet, whether the industry will prove economically viable over the long term, neither do we know when commercial mining will begin, with the industry being, understandably, reluctant to make commitments that may be premature. What we do know for sure is that moving from initial exploration to sustained exploitation will require substantial capital investment in the billions of dollars as well as involving a high degree of operational and financial risk.

I think it is also fair to acknowledge that 2016 has been a very challenging year for the seabed mining community. We face some serious economic challenges, and the investment climate has been difficult, to say the least. There have been some painful reminders that this industry remains immature and quite vulnerable to external shocks. One of the many benefits of round table meetings like this one is that it provides a good opportunity for us to come together and provide reassurance to industry, investors, and the scientific community that, notwithstanding our different interests, we are very much all working together to try to ensure that seabed mining moves ahead.

On behalf of the Authority, I would like to say that we look forward to working closely with Japanese industry colleagues and offer you our full cooperation and assistance.