

Part III of the Draft Regulations on the Applications For Approval of Plans of Work for Exploration to Obtain a Contract (Regulations 6-19) comprises of three sections. Section 1 of this part of the Draft Regulations sets out the General Provisions and comprises the texts of Regulations 6 and 7. While the first of these is a provision of a general nature, Regulation 7 addresses the question of Application for Approval of Plans of Work With Respect to a Reserved Area.

Section 2 of the Part III of the Draft Regulations consisting of the texts of Regulations 8 to 15 is entitled "Content of Applications". This Section of the Regulations stipulates provisions relating to (i) Form of Applications (Regulation 8); (ii) Certificate of Sponsorship (Regulation 9); (iii) Financial and Technical Capabilities; (Regulation 10); (iv) Previous Contracts with the Authority (Regulation 11); (v) Undertakings (Regulation 12); (vi) Total Area covered by the Applications (Regulation 13); (vii) Data and Information to be submitted before the designation of a reserved area (Regulation 14); and (viii) Data and information to be submitted for approval of plans of work (Regulation 15).

Section 3 of Part III of the Draft Regulations deals with "Fees" and draft regulation 16 makes provision for Fee for Application. Finally, Section 4 of Part II provides for "Processing Of Applications" (Regulation 17-19).

Part IV of the Draft Regulations entitled "Contracts for Exploration" incorporates the text of Regulations 20-27 covering such issues as (i) The Contract; (ii) Size of Area and Relinquishment; (iii) Duration of Contracts; (iv) Training; (v) Periodic Review of the Programme of Work; (vi) Termination of Sponsorship; (vii) Sponsorship by Provisional Members; and (viii) Responsibility and Liability. It may be mentioned that paragraph 1 of Regulation 27 on Responsibility and Liability is largely based on Article 22 of Annex III of the United Nations Convention on the Law of the Sea, 1982 but seeks to enlarge the scope of the provisions by referring to Liability in the title of the Regulation.

Part V of the Draft Regulations is addressed to the "Protection and Preservation of the Marine Environment" and consists of the text of Regulations 28-30. Whilst the first of these (Regulation 28) reflects the general principle of the "Protection and Preservation of the Marine Environment" the second provides for the Rights and Legitimate Interests of Coastal States. Finally, draft Regulation provides for Emergency Orders in respect of incidents causing serious harm to the marine environment.

Part VI of the draft Regulations is addressed to "Confidentiality of Data and Information" (Regulation 31). Finally part VII of the draft Regulations set out the provision relating to the Settlement of Disputes (Regulation 32).²⁰

Appended to the draft Regulations on Prospecting and Exploration of Polymetallic Nodules in the Area are four annexes relating to (i) Notification of Intention to Engage in Prospecting; (ii) Application for Approval of a Plan of work for Exploration To Obtain a Contract; (iii) Contract for Exploration; and (iv) Standard Clauses for Exploration Contract. Annex I on the Notification of Intention to engage in Prospecting must be read together with Regulation 3 on the Notification of Prospecting, paragraph 2 of which requires every notification to be in the form prescribed in Annex I and to conform to the Regulations.

Annex II addressed to the "Application for Approval of a Plan of work for Exploration To Obtain a Contract" should be read together with Regulation 8 on "Form of Applications" and Regulation 14 addressed to "Data and Information to be Submitted before the Designation of a Reserved Area" set out in Part III of the Regulations.

It would have been observed that Part III (Applications For Approval Of Plans of Work for Exploration to Obtain a

²⁰ See *The Provisional Text of the Draft Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area* prepared by the Legal and Technical Commission Doc. ISBA/3LTC/WP.1/Rev.3.

Contract, Regulations 6-19) and Part (Contracts for Exploration, Regulations 20-27) of the draft regulations read together with Annexes 2,3 and 4 thereof are the very core of the proposed contract regime for the exploration of Polymetallic nodules in the Area. The work of the Commission reflects the "extensive consideration it gives to 3 key areas that it had identified" viz. (i) the protection and preservation of the marine environment; (ii) annual reporting and the transfer of data by contractors to the Authority; and (iii) Confidentiality of the information submitted.²¹

The Legal and Technical Commission submitted the text of the draft mining code to the Council for adoption on 23rd March 1998. Thereafter, the Council at its fourth Session reviewed the draft mining code and will continue its work on the review of the draft code, on a priority basis, at the fifth Session of the Authority scheduled to be held in August 1999.

At its 53rd Session the General Assembly noted with satisfaction the progress in the work of the International Seabed Authority and emphasized the importance of continued progress towards the adoption of the regulations on prospecting and exploration for Polymetallic nodules.

(iii) The Finance Committee

The 1994 Agreement *inter alia* stipulates that the Assembly shall elect 15 Members of the Finance Committee from candidates nominated by States Parties, taking into account equitable geographical representation and special interests. The 5 categories of Council members are to be represented on the Finance Committee by at least one member and until the Authority remains dependent on assessed contributions, the 5 largest contributors to the budget of the United Nations will also be represented on the Committee. The remaining 5 members are to be elected from among the other

²¹ *Oceans and the Law of the Sea, General Assembly Resolution 53/32.*

States Parties. The ISBA had in August 1996, *inter alia*, elected its Finance Committee.²²

The Finance Committee has been considering the draft financial regulations and they are expected to be adopted during the fourth resumed Session of the Authority in August 1999.

(iv) Status of the Registered Pioneer Investors

A registered pioneer investor was entitled, in accordance with paragraph 6(1) (ii) of section 1 of the annex to the 1994 Agreement, to request approval of the plan of work for exploration within 36 months of the entry into force of the Convention. On August 1997 all 7 registered pioneer investors²³ submitted requests for approval of their plans of work for exploration to the Secretary-General of the Authority. Thereafter the requests for approval of plans of work were considered by the Legal and Technical Commission which body ascertained that the requirements of the Agreement had been met.

²² A Members of the Finance Committee are *China*; France; Germany; India; Italy; Jamaica; *Japan*; Mexico; Russian Federation; South Africa; Tunisia; *Uganda*; United Kingdom; United States of America; and Uruguay. The final agreement on the composition of the Committee was reached after the various regional and interest groups arrived at an understanding on the allocation of seats and the duration of terms. 7 Members of the Finance Committee are nominees of developed countries and 8 those of the developing countries.

²³ The 7 registered Pioneer investors are the China (the China Ocean Mineral Resources Research and Development Company), France (Institut Francias de recherché pour l'exploitation de la mer/l'Association francais pour l'etude et la recherché des nodules - IFREMAR/AFERNOD), India, Japan (the Deep Ocean resources Development Company), the Republic of Korea, the Russian Federation (Yuzhmorgeologiya), and Bulgaria, Cuba the Czech and Slovak Federal Republic (Interoceanmetal Joint Organization).

Thereafter, the Council acting on the recommendation of the Legal and Technical Commission noted that the plans of work for exploration submitted by the 7 registered pioneer investors were considered to be approved and requested the Secretary General of the Authority to take the necessary steps to issue the plans of work in the form of contracts incorporating the applicable obligations under the provisions of the Convention, the agreement and in accordance with the regulations for prospecting and exploration for Polymetallic nodules in the Area and a standard form of contract to be approved by the Council. Once the seabed mining code is approved by the Council and the Authority, the 7 pioneer investors would be granted exploration contracts.

Commission on the Limits of the Continental Shelf

Article 76 of the Convention envisages the establishment of the Commission on the Limits of the Continental Shelf (hereinafter referred to as the Continental Shelf Commission). The Continental Shelf Commission established in 1997 consists of 21 members, serving in their personal capacity as experts in the field of geology, geophysics or hydrography, elected by States Parties to the Convention from among their nationals, having due regard to the need of ensuring equitable geographical representation. The members of the Continental Shelf Commission are to be "considered to be experts on mission covered by article VI of the General Convention".²⁴

The members of the Continental Shelf Commission were elected at the sixth meeting of the State Parties held in March 1997. The 21 States, including 8 member

²⁴ See the *Legal opinion on the applicability of the Convention on the Privileges and Immunities of the United Nations to the members of the Commission on the Continental Shelf* Commission on the Continental Shelf Doc. No. CLCS/5 of 11 March 1998.

States of the AALCC, represented on the Continental shelf Commission are Argentina; Brazil; Cameroon; *China*; Croatia; *Egypt*; Germany;²⁵ *India*; Ireland; Jamaica; *Japan*;²⁶ *Republic of Korea*; *Malaysia*; *Mauritius*; *New Zealand*; *Nigeria*; Norway; Russian Federation; and Zambia.

The functions of the Commission include (i) the consideration of the data submitted by coastal States concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles, and to make recommendations in accordance with Article 76 of the Convention and the Statement of Understanding adopted by UNCLOS III on 29 August 1980; and (ii) providing scientific and technical advice if requested by the coastal State concerned during the preparation of such data.

At its 53rd Session the General Assembly by its resolution 53/32 noted with satisfaction the progress in the work of the Commission on the Limits of the Continental Shelf during its third and fourth sessions, held in New York from 4

²⁵ Professor Dr. Hans Amann, who had been elected a member of the Legal and Technical Commission on 15th August, 1996 for a term of five years resigned from the Commission on 5th May 1998, due to his professional commitment in Germany. By a letter dated 18th June 1998 the Head of the German Delegation to the Authority the Government of Germany informed the Secretary General of the Authority of the nomination of Professor Dr. Helmut Beiersdorf, as a candidate for the election to fill the vacant seat on the Commission. The outcome of the election at the resumed fourth session of the Authority in August 1998 is not known.

²⁶ Mr. Toshio Sakasegawa, who had been elected a member of the Legal and Technical Commission on 15th August, 1996 for a term of five years resigned from the Commission on 21st July 1998, for family reasons. By a note verbale dated 23rd July 1998 the Embassy of Japan in Jamaica, the Government of Japan informed the Secretary General of the Authority of the nomination of Mr. Yuji Kajitani, Geologist, of the Metal Mining Agency of Japan as candidate for the election to fill the vacant seat on the Commission. The outcome of the election at the resumed fourth session of the Authority in August 1998 is not known.

to 15 May and from 31 August to 4 September 1998, respectively, in adopting provisionally its rules of procedure and in adopting provisionally its scientific and technical guidelines aimed at assisting States to prepare their submissions regarding the outer limits of their continental shelf. It also approved the convening by the Secretary-General of the fifth and sixth Sessions of the Commission in New York from 3 to 14 May and from 30 August to 3 September 1999, respectively.

International Tribunal for the Law of the Sea

The States Parties to the Convention at their fifth meeting held in New York from 24 July to 2 August 1996 elected 21 Judges of the International Tribunal for the Law of the Sea.²⁷ In accordance with the understanding that no regional group would have less than three seats the geographical representation of the elected members of the Tribunal is as follows: African Group 5,²⁸ Asian Group 5,²⁹ Latin American and Caribbean Group, 5³⁰ Eastern European Group, 4³¹ and Western European and other States Group, 4.³²

²⁷ The Judges elected are: - D.H. Anderson, Hugo Caminos, Gudmundur Eiriksson, Paul Bamela Engo, A Joseph, Anatoly Lazarevich Kolodkin, Edward A. Laing, Rangel Vicente Marotta, Mohammed Mouldi Marxist, Thomas A Mensah, Tafsir Malick Ndiaye, L. Dolliver Nelson, Choon-Ho Park, P.C. Rao, Tullio Treves, Budislav Vukas, Joseph Sinde Warioba, Rudiger Wolfrum, Soji Yamamoto, Alexander Yankov, and Lihai Zhao.

²⁸ Cameroon; Ghana; Senegal; Tanzania; and Tunisia.

²⁹ China; India; Japan Republic of Korea; and Lebanon.

³⁰ Argentina; Belize; Brazil; and Grenada.

³¹ Bulgaria; Croatia and Russian Federation.

³² Germany; Iceland; Italy; and United Kingdom of Great Britain and Northern Ireland.

It may be mentioned that one third or 7 members of the Tribunal had been elected for 3 year terms³³ and their term of office will expire in 1999. New elections are scheduled to be held, in accordance with General Assembly Resolution 53/32, on the 24th May 1999 during the ninth Meeting of States Parties to the Convention to be held in New York.

The Tribunal has established three standing chambers in addition to the Seabed Disputes Chamber. The three chambers established are the (i) Chamber of Summary Procedure; (ii) Chamber for Fisheries Disputes³⁴ and (iii) Chamber for Marine Environment Disputes.³⁵

The International Tribunal for the Law of the Sea delivered its first judgment in "*The M/V "Saiga" Case (Saint Vincent and the Grenadines vs. Guinea)*" on 4 December 1997. In its first case the Tribunal unanimously found that it had jurisdiction under Article 292 of the Convention on the Law of the Sea to entertain the Application filed by Saint Vincent and the Grenadines on 13 November 1997. It pronounced that the Application was admissible and ordered that Guinea release the *M/V Saiga* and its crew from detention and decided that the release shall be upon the posting of a reasonable bond or security. It further decided in this regard that the security shall consist of (i) gas oil discharged from the *M/V Saiga*; and (ii) the amount of US \$ 400,000, to be posted in the form of a letter of credit or bank guarantee or, if agreed by the parties, in any other form.

³³ The Judges elected for three year terms are: Paul B. Engo (Cameroon); A. Joseph (Lebanon); A.L. Kolodkin (Russian Federation); V.Marotta Rangel (Brazil); P.C. Rao (India); J.S. Warioba (Tanzania) and R. Wolfrum (Germany).

³⁴ The Members of the Tribunal selected to serve on the Chamber for Fisheries Disputes are D.H. Anderson; H. Caminos; G.Eiriksson; P.B. Engo; E.A. Laing; P.C. Rao; and S.Yamamoto.

³⁵ The Members of the Tribunal selected to serve on the Chamber for Marine Environment Disputes are Judge R. Wolfrum; A.L. Kolodkin; M.M. Marxist; Choon-Ho Park; J.S. Warioba; S. Yamamoto; and A. Yankov.

In January 1998 Saint Vincent and the Grenadines filed with the Tribunal a request for the prescription of provisional measures, pending the constitution of an arbitral tribunal. Thereafter, both Saint Vincent and the Grenadines agreed, by an exchange of letters, to submit to the Tribunal both the merits and the request for the prescription of the provisional measures with regard to the arrest and detention of the *M/V Saiga* by the Authorities of Guinea in October 1997.

The General Assembly at its 53rd Session *inter alia* noted that the Tribunal, established in accordance with annex VI to the Convention as a new means for the settlement of disputes concerning the interpretation or application of the Convention and the Agreement, had delivered its first judgment on 4 December 1997 and encouraged States parties to the Convention to consider making a written declaration choosing from the means set out in article 287 for the settlement of disputes concerning the interpretation and application of the Convention and the Agreement, and invites States to note the provisions of annexes VI, VII and VIII to the Convention concerning, respectively, conciliation, the Tribunal, arbitration and special arbitration.

Comments and Observations

The international community has, since the entry into force of the Law of the Sea Convention in November 1994 devoted its attention to the establishment of the institutions that instrument had envisaged. The establishment of the new treaty system of ocean institutions is now almost complete and, what is more, it has begun functioning. The conclusion of an Agreement concerning the Relationship between the United Nations and the International Seabed Authority, the Agreement on cooperation and Relationship between the United Nations and the Tribunal, the work of the Legal and Technical Commission on the draft regulations governing the exploration of Polymetallic nodules in the Area and the first judgment of

the Tribunal for the Law of the Sea in *The M/V "Saiga"* are all pointers to that end.

Both the General Assembly and the AALCC have at their successive Sessions called upon States, who have not already done so, to ratify or accede to the Convention and the 1994 Agreement thereto. A total of 67 States, including 11 member States of the AALCC, are yet to ratify or accede to the Law of the Sea regime. 49 Asian and African States and 28 States in the Latin American and Caribbean States and States of the European and North American region are yet to ratify or accede to the Convention.³⁶

The General Assembly has since the adoption of the Convention repeatedly called on States to harmonize their national legislation with its provisions and ensure their consistent application. Compliance of States with the provisions of the Convention regarding the establishment of the outer limits of maritime areas is now high. While 133 coastal States now claim a territorial sea of 12 nautical miles or less, inconsistent with the Convention, however, are the claims of 11 States for a territorial sea extending beyond 12 miles and the claim of one coastal State for a contiguous zone exceeding 24 nautical miles. Of these 8 States claims a single 200 nautical miles area referred to as the "maritime domain".

The practice of coastal States with regard to the Exclusive Economic Zones (EEZ) and the Fishery Zones reveals a compliance with the provisions of the Convention. Some States combine EEZ with FZ while others have one or more depending on the circumstances. Many states continue to maintain their old legislation on the continental shelf which includes the definition contained in the Geneva Convention on the Continental Shelf, 1958. The position of only two of the coastal States which do not define the outer limits of their

³⁶ 16 African States; 23 Asian States; 7 Latin American and Caribbean Group of States and 21 States in Europe and North America have not to date ratified or acceded to the Convention.