Towards an ISA Environmental Management Strategy for the Area

UBA/BGR/ISA International Workshop
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Introductory remarks by H.E. Michael W. Lodge,
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[Pleasantries, etc.]

Ladies and gentlemen, good morning.

On behalf of the International Seabed Authority I am delighted to be in Berlin and to welcome you all to our first international workshop for 2017 and the first of my tenure as Secretary-General.

A considerable amount of time, energy and expertise has gone into the planning and preparation of this workshop and I would like to extend my appreciation to all those involved, in particular the team from the German Environment Agency. As you probably know, the Secretariat of the Authority was going through a transition in the lead-up to this workshop and was also very short-staffed, so I am very grateful to our German colleagues for the extra assistance they have given us.

In broad terms, the objective of this workshop is to help the Authority to design a strategy for environmental management of deep seabed mining. More specifically, the workshop is timed so as to present an opportunity to provide input to the design of the environmental provisions of the Mining Code.

For this reason, I am pleased to see that the agenda allows time for consideration of the discussion paper issued by the Secretariat in January 2017, and I hope that the workshop will be able to shed light on some of the questions and issues raised in that document.

If we can do that, it will be an important contribution to the development of the Mining Code.

The Legal and Technical Commission met recently in Jamaica. I recognize the presence here of a number of members of the Commission, in their personal capacities, and I hope you will have the opportunity to interact with them. The Commission devoted most of its meeting to work on the Mining Code. In particular, it reviewed the stakeholder comments that had been received in response to the 'Zero Draft' regulations issued in July 2016. It also reviewed the Secretariat discussion paper on environmental regulations, noting that the paper was deliberately issued to the broader stakeholder base in advance of the Commission's meeting in order to facilitate the widest possible discussion.

The Commission has requested the Secretariat to revisit the Zero Draft between now and August, taking into account also the outcomes of this and other workshops. As it did in 2016, the Commission then proposes to deliver a further progress report to the Council, as well as all members of the Authority and stakeholders, including a proposed road map and timeline for completing the work on the Mining Code.

Let me turn to the topic of this workshop.

Environmental regulation is one of the most important tasks of the Authority. It is a task that is explicitly allocated to the Authority under Part XI of the 1982 United Nations Convention on the Law of the Sea. This aspect of the Authority's work was given even more emphasis under the 1994 Agreement for the implementation of Part XI, which states that the adoption of rules, regulations and procedures for the protection and preservation of the marine environment should be one of the priority issues for the Authority between entry into force of the Convention and the approval of the first plan of work for exploitation.

I want to make three points.

Point 1: We should be mindful of the provisions of the Convention and the precise legal mandate given to the Authority

The legal mandate for the Authority's work is found in Article 145 of the Convention, which requires the Authority to take necessary measures 'to ensure effective protection for the marine environment from harmful effects which may arise' from activities in the Area.

This is a very precisely worded provision, which complements the general provisions of the Convention in relation to the protection of the marine environment contained in Part XII of the Convention. Those provisions in turn constitute the basic framework for the legal regime that establishes the obligations, powers and responsibilities of States with respect to the marine environment.

Article 192 establishes the overarching obligation of all States to protect and preserve the marine environment. Articles 194, 204 and 206 go on to describe the specific measures to be taken by States to prevent, reduce and control marine pollution as well as to ensure that activities under their jurisdiction or control do not cause pollution damage to other States and their environment, and that pollution does not spread beyond the areas where they exercise sovereign rights under the Convention.

In relation to the Area, Article 209 states that '[I]nternational rules, regulations and procedures shall be established in accordance with Part XI to prevent, reduce and control pollution of the marine environment from activities in the Area.' This provision therefore forms a direct link back to Article 145.

I mention these legal provisions in order to emphasize that, as an institution created by the Convention, the Authority is an international organization with precisely defined and limited powers and functions. Any implied powers the Authority may have are expressly limited to those that are implicit and necessary for the exercise of its powers and functions with respect to activities in the Area.

In particular, definitions are important. The Authority's mandate is limited to 'activities in the Area', which are defined as exploration for and exploitation of deep seabed mineral resources.

The Authority's main responsibility with regard to the marine environment is to 'prevent, reduce and control pollution and other hazards' to the marine environment, where 'pollution' is a defined term in Article 1 of the Convention.

To put it in more straightforward terms, the Authority's task is to set the conditions under which deep sea mining can proceed without causing serious harm to the marine environment. That means

preventing, reducing and controlling known significant harmful effects as far as possible through regulatory mechanisms that require appropriate risk assessment, provide for long-term monitoring and management of environmental impacts and incentivize engineering and mining planning solutions that minimize environmental damage.

It does not, and cannot, mean eliminating all harm to the environment.

Similarly, it does not mean that the Authority should be expected to solve all the unknown and unknowable problems for marine science.

Point 2: We should not reinvent the wheel

There are important differences between deep seabed mining and land-based mining projects, and between deep seabed mining and offshore oil and gas development projects. There are no direct comparisons. But clearly, since we will be working in the offshore, some of the activities involved may be similar.

Neither land-based mining or offshore oil and gas development are new activities. There is plenty of good industry and environmental practice to draw from in these and other industrial sectors. A number of projects, workshops and papers have considered in detail relevant standards and protocols and their applicability to activities in the Area.

We should study best practice flowing from these regimes and, where there are gaps, the Authority should bridge those gaps by developing deep seabed mining-specific technical standards based on sound scientific evidence, but taking account of appropriate technical and economic constraints.

We should also bear in mind that we are not starting from zero. The current exploration regulations, together with their associated recommendations, do a pretty good job in terms of requiring contractors to gather sufficient data to determine the range of potential environmental impacts.

We should be mindful of the fact that the primary objectives of the exploration phase are to identify mineable areas, carry out tests of equipment and conduct environmental baseline studies, and that there is likely to be considerable overlap between the exploration and exploitation phases. Exploration, and the collection of new data, will not end when exploitation begins. Testing of equipment will take place during both the exploration and exploitation phases and will inevitably lead to the development of new and improved technologies.

This brings me on to my third point.

Point 3: We should be mindful of the scale of activities to be regulated.

This is important. It is true that we are regulating a new activity. There may be many questions and doubts about the long-term consequences. But we need to take a rational and incremental approach. This industry is not going to happen overnight. Contractors will advance their activities according to different timescales.

In this regard, some of the lurid and attention-seeking headlines that I have seen recently – phrases such as an 'invisible land grab', 'machines the size of buildings literally destroying the systems that keep us

alive', 'clear-cutting the ocean floor' and so on, are not helpful. In fact, they are blatant misstatements. Similarly, comparisons to disasters such as the Deepwater Horizon incident, which involved a volatile compound totally different in character to deep sea minerals, are misleading.

I would ask, therefore, that you ground your discussions in reality. I believe a useful starting point would be to make a realistic assessment of the likely scale of impacts from deep seabed mining during, say, the first 15 years of industrial operations. How many operations are realistically likely? What will be the actual spatial and temporal impact of mining at project level and at regional level? What disasters may happen at sea? Is the anticipated impact of the loss of a mining ship or a nodule collector any different to the loss of a container ship? What would be the impact of the loss of a transfer barge full of nodules (which by the way is not regulated by the Authority)?

It would be a very useful exercise to model these scenarios. By doing so, I believe we could then start to focus on a discussion of what is an acceptable level of impact, rather than pre-occupy ourselves with finding definitions to abstract terms that are likely to elude us. Key amongst these is the concept of 'serious harm'. It is clear that when looked at in isolation, this means different things to different people. It also has different meanings in different contexts. I doubt that we will be able to find a single definition that satisfies everybody.

I suggest that a more valuable exercise would be to look for a threshold based on combining the probability of occurrence of an incident with the magnitude of its injurious impact. The risk that flows from an activity is primarily a function of the particular application, the specific context and the manner of operation.

The International Law Commission considered this in its draft articles on the prevention of transboundary harm, concluding that legal thresholds, such as 'significant' or 'serious' are necessarily ambiguous, with a determination to be made on a case-by-case basis involving more issues of fact than law. And in many cases, this may only be done in an *ex post facto* manner.

Concluding remarks

In conclusion, expert workshops provide an invaluable contribution to the Authority's work programme as it prepares itself as a fit-for-purpose regulator of mining activities in the Area. We have an impressive range of expertise in the room and a diverse range of views and opinions. Nevertheless, I am confident that collectively, and through focused conversations at expert level, we can identify the necessary solutions to build a Mining Code that allows for the sustainable development of mineral resources in the Area in a way that balances commercial and environmental considerations.

I thank you for your participation and I wish everyone a stimulating and constructive week ahead.