

(b) Letter dated 17 September 2010 from Mr Lodge to the Registrar in response to (a) above, transmitting copies of applications submitted to the Preparatory Commission for registration as pioneer investors/contractors with the Authority (attachments not reproduced)



17 September 2010

Dear Mr Gautier,

CASE NO. 17: RESPONSIBILITIES AND OBLIGATIONS OF STATES SPONSORING PERSONS AND ENTITIES WITH RESPECT TO ACTIVITIES IN THE INTERNATIONAL SEABED AREA

I have the honour to refer to your letter of 13 September 2010 in which you had transmitted to me a list of points for the Authority to address at the request of the Seabed Disputes Chamber pursuant to Article 76 of the Rules of the Tribunal.

I believe that points 1, 2 and 3 in that list were addressed during the oral statement delivered by the Authority on 14 September 2010. In point 4, the Chamber had asked whether it would be possible for the Authority to provide the certificates of sponsorship regarding the contracts it has concluded with contractors, as well as copies of sponsorship agreements, if available.

As I mentioned during my oral statement, seven out of the eight contractors with the Authority had previously been registered pioneer investors under resolution II of UNCLoS III. The 1994 Agreement (Annex, Section 1, paragraph 6(a)(ii)) contained special provisions relating to pioneer investors under which they were deemed to have satisfied the requirements of the Convention and the Agreement relating to the issue of plans of work for exploration provided they made a request for a plan of work within 36 months of the entry into force of the Convention. All these seven contractors made use of this procedure when they applied for plans of work for exploration in August 1997 (see document ISBA/4/A/1/Rev.2 at Dossier No. 28). Under the relevant provisions of the Agreement, the applications consisted of "documents, reports and other data submitted to the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea both before and after registration and shall be accompanied by a certificate of compliance, consisting of a factual report describing the status of fulfillment of obligations under the pioneer investor regime, issued by the Preparatory Commission in accordance with resolution II, paragraph 11(a)."

Although the Authority's Regulations, adopted in 2000, require each applicant for a plan of work for exploration to submit a certificate of sponsorship issued by the State of which it is a national or by which or by whose nationals it is effectively controlled, containing a declaration as set out in Regulation 11, the procedure for registration as a pioneer investor did not require any such certificate to be deposited. In the case of the pioneer investors referred to in paragraph 1(a)(i) of resolution II, all that was required was a statement certifying the level of expenditure made in accordance with paragraph 1(a) by the pioneer investor concerned. In accordance with paragraph 1(c), the "certifying State" meant "a State which signs the Convention, standing in the same relation to a pioneer investor as would a sponsoring State pursuant to Annex III, article 4, of the Convention ..."

Accordingly, none of the seven former registered pioneer investors have ever submitted a certificate of sponsorship in the form now required by the Regulations.

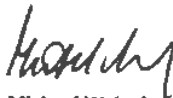
In order to assist the Chamber, I enclose herewith copies in English and French of the applications submitted to the Preparatory Commission for registration as pioneer investors by the following States and entities which are now contractors with the Authority:

- (a) Japan, LOS/PCN/50, 22 August 1984.
- (b) India, LOS/PCN/32, 14 February 1984.
- (c) Yuzhmorgeologiya, LOS/PCN/30, 24 October 1983.
- (d) France, LOS/PCN/51, 23 August 1984.
- (e) China, LOS/PCN/113, 24 August 1990.
- (f) Bulgaria, Cuba, Czech and Slovak Republics, Poland and USSR, LOS/PCN/109, 17 January 1990 and LOS/PCN/118, 13 March 1991.
- (g) Republic of Korea, LOS/PCN/134, 20 January 1994.

The situation was different in the case of the eighth contractor, which is the German contractor, BGR. Although Germany was also subject to special treatment under the terms of the 1994 Agreement as a prospective investor referred to in paragraph 1(a)(ii) of resolution II, its application to the Authority for approval of a plan of work for exploration was made after the adoption of the 2000 Regulations. Accordingly, a certificate of sponsorship was submitted in the form of an undertaking signed by the relevant ministry having effective control and supervision of the contractor entity. I attach a copy of the relevant document (available in English only).

I hope this is a satisfactory response to the point raised by the Chamber.

Yours sincerely,



Michael W. Lodge
Legal Counsel

M Philippe Gautier
The Registrar
International Tribunal for the Law of the Sea
22609 Hamburg
Germany