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Amendments to the Staff Regulations of the International Seabed Authority

Note by the Secretary-General of the ISBA

I. Introduction

1. The purpose of the present note is to introduce and explain a number of proposed amendments to the Staff Regulations of the International Seabed Authority. The proposed amendments are made necessary by changes to the Staff Regulations of the United Nations, on which those of the Authority are based, and in particular by the abolition, with effect from 31 December 2009, of the United Nations Administrative Tribunal and the reform of the system of administration of justice within the United Nations.

2. It will be recalled that the Staff Regulations of the Authority were approved by the Assembly on 10 July 2001 (ISBA/7/A/5), having been applied provisionally since 2000 following their adoption by the Council at the sixth session. Prior to 2000, the Authority had applied, *mutatis mutandis*, the Staff Regulations of the United Nations in accordance with the Assembly's decision of 29 August 1996 (ISBA/A/15).

3. It is proposed to make amendments to the Staff Regulations of the Authority in order to: (a) recognize the competence of the new United Nations Appeals Tribunal to hear and pass judgement on applications filed by staff members of the Authority; and (b) at the same time, reflect a number of changes that have been made to the Staff Regulations of the United Nations since the Staff Regulations of the Authority were adopted.

II. Proposed amendments to the Staff Regulations of the International Seabed Authority

A. Extension of competence of the United Nations Appeals Tribunal

4. It should be recalled that on account of the privileges and immunities enjoyed by the United Nations and other international organizations, staff members do not in principle have access to national courts at the duty station in relation to employment-related grievances and disciplinary matters. As a legal corollary, those organizations are institutionally required to offer their personnel a recourse machinery for employment-related disputes. Therefore, in implementing the Staff Regulations, the Authority, like the International Tribunal for the Law of the Sea and a number of the specialized agencies of the United Nations, decided to accept the jurisdiction of the United Nations Administrative Tribunal as the appropriate body to hear and pass judgement at the appellate level upon applications from staff members alleging non-observance of their terms and conditions of employment pursuant to article 2 of the statute of the Administrative Tribunal. In the case of the Authority and the International Tribunal for the Law of the Sea, the decision to use the United Nations Administrative Tribunal as the final appellate body for this purpose was made possible as a result of General Assembly resolution 52/166, which extended the competence of the Administrative Tribunal to the staff of any international organization or entity established by treaty and participating in the United Nations common system of conditions of service, upon the terms to be set out in a special agreement concluded for that purpose. Such an agreement was concluded in 2003 by means of an exchange of letters between the Secretary-General of the Authority and the Secretary-General of the United Nations. Thus, one of the features of the Staff Regulations of the Authority is that, by virtue of regulation 11.2, the United Nations Administrative Tribunal is established as the final appellate body for the resolution of disputes between staff members and the Authority.

5. On 24 December 2008, the General Assembly adopted resolution 63/253 on the administration of justice at the United Nations. This brought to a conclusion a process of reform of the internal system of administration of justice at the United Nations, which itself was borne largely out of recommendations made by a Redesign Panel on the United Nations system of administration of justice, a consultative body comprised of international experts in international administrative law. In essence, the Panel had recommended a revamping of the justice system, primarily in order to address perceived deficiencies of the existing system, in particular the lack of independence of the members of the different appeals bodies, transparency and professionalism, as well as excessively slow proceedings.

6. One of the cornerstones of the new system of administration of justice at the United Nations is the abolition, with effect from 31 December 2009, of the joint appeals boards and the United Nations Administrative Tribunal and the establishment of two newly-constituted tribunals, the United Nations Dispute Tribunal and the United Nations Appeals Tribunal. The latter replaces the United Nations Administrative Tribunal, the second-level appeals body currently available for staff of the Authority. It is thus necessary to address the implications for the Authority of the changes that have been implemented in the United Nations.

7. The new system of justice in the United Nations concerns only the United Nations and its separately administered programmes and funds. It does not automatically apply to the so-called Article 14 entities, including the Authority. For this reason, the United Nations contacted the Authority and other Article 14 entities with a view to ascertaining in what manner those entities would wish to participate in the new system of justice. It provided them with two options: (1) to retain one level of judicial review by the United Nations Appeals Tribunal, acting essentially similarly to the former Administrative Tribunal; or (2) to accept the jurisdiction of both the United Nations Dispute Tribunal and the United Nations Appeals Tribunal and to participate fully in the new system.

8. Staff members of the Authority currently have the right to appeal an adverse administrative decision or disciplinary measure to a Joint Appeals Board in accordance with staff rule 111.1. The filing of an appeal with the Board is predicated upon the timely submission of a request for review (administrative review) by the staff member. As constituted under chapter XI of the Staff Rules, the Joint Appeals Board is composed of a Chairman appointed by the Secretary-General after consultation with the Staff Committee, members (currently three) appointed by the Secretary-General and an equal number of members elected by the staff. Members of the Board are selected on the basis of their present or previous experience in the United Nations system or with the Authority. The Joint Appeals Board does not render binding decisions but issues opinions and recommendations which are submitted to the Secretary-General for decision. The Secretary-General may accept or reject the recommendation of the Board, and in case of an unfavourable decision, a staff member may lodge an appeal against the decision of the Secretary-General to the United Nations Administrative Tribunal.

9. In considering the available options, the single-tier option was deemed preferable on the grounds that it is easy to implement, relatively cost-efficient and fundamentally akin to the current system used by the Authority. To date, no actual experience as to the functioning of the new system can be drawn, and it appears inappropriate to commit the Authority in any way to a process whose validity and efficiency remain yet to be demonstrated. In addition, the administrative structures and organizational changes which would likely be necessary in order to accommodate a transposition of the new United Nations model to the Authority appear to be disproportionate given the Authority's size and internal needs. For comparative purposes, in the year 2007, the Joint Appeals Boards in New York, Geneva, Vienna and Nairobi had a total combined number of 177 appeals filed with them. In contrast, in the entire period since its establishment, only two appeals have been lodged with the Authority's Joint Appeals Board, and only one case has reached the Administrative Tribunal.

10. Furthermore, it appears to the secretariat that the anticipated costs for the Authority to participate in a two-tier system of formal justice would be inordinately high, since it would be required to contribute to the costs of the first-tier Disputes Tribunal on an ongoing basis. Those costs could be substantial. On the other hand, for access to the Appeals Tribunal, the Authority would be charged a flat fee per case of \$9,600, which would be absorbed within the current budgetary resources and would have no financial implications for the future budget of the Authority.

11. For those reasons, having considered the available options, the secretariat of the Authority had confirmed its intention to the United Nations to retain, subject to

confirmation by the Council and Assembly, a single-tier judicial review under the new system and to maintain, to the greatest extent possible, the current administrative structure of the Authority's internal system of justice; namely the continuation of the Joint Appeals Board, complemented by access to a formal judicial appeal body in the form of the new United Nations Appeals Tribunal. It is understood that other article 14 entities, including the International Maritime Organization, the International Civil Aviation Organization and the International Tribunal for the Law of the Sea, have adopted a similar approach.

12. To give effect to the new system, it is necessary for the Authority to enter into an administrative agreement with the United Nations recognizing the competence of the new Appeals Tribunal and to make appropriate amendments to the Staff Regulations and Rules of the Authority. Following discussions between the secretariat of the Authority and the United Nations Office of Administration of Justice, an administrative agreement, based on a model developed by the United Nations for application to all article 14 entities, was concluded in February 2010. The text of the agreement is set out in annex I to the present note. Proposed changes to article XI of the Staff Regulations of the Authority are set out in annex II. These proposed amendments are consistent with similar amendments made to the Staff Regulations of the United Nations (see ST/SGB/2009/7).

13. It should be noted that once the amendments to the Staff Regulations are approved, it will also be necessary to make consequential amendments to the Staff Rules of the Authority.¹ This will be done and reported to the Assembly and Council in due course.

B. Other proposed amendments

14. In the past two years, the United Nations has implemented a number of significant management changes, which have resulted in amendments to its Staff Regulations (see General Assembly resolution 63/253). Of particular relevance to the Authority are the following:

(a) The abolition of the 100, 200 and 300 series of the Staff Rules (a system which the Authority never applied, but was reflected in its Staff Regulations and Rules for the sake of consistency with the United Nations) and their merger into a unique set of staff rules applicable to all appointments;

(b) Formal recognition of a right to paternity leave;

(c) Formal recognition that sexual exploitation and sexual abuse constitute serious misconduct and thus justify summary dismissal.

15. It appears convenient to introduce appropriate amendments, as set out in annex II, to bring the Staff Regulations of the Authority into line with those of the United Nations in this regard.

¹ Pursuant to the Staff Regulations, the Secretary-General of the Authority promulgated the Staff Rules in November 2001. These were subsequently revised and new Staff Rules promulgated in 2006 following changes made to the Staff Rules of the United Nations.

III. Recommendations

16. The Council is invited to:

(a) Take note of the agreement between the United Nations and the International Seabed Authority extending the competence of the United Nations Appeals Tribunal to the Authority with respect to applications alleging non-compliance with the terms of appointment or contracts of employment of staff members of the Authority as set out in annex I;

(b) Adopt and apply provisionally, pending approval by the Assembly, the amendments to the Staff Regulations of the Authority as set out in annex II.

Annex I

Agreement between the United Nations and the International Seabed Authority

Extending the competence of the United Nations Appeals Tribunal to the International Seabed Authority with respect to applications alleging non-compliance with the terms of appointment or contracts of employment of staff members of the International Seabed Authority

Whereas, the International Seabed Authority is an international organization or entity established by a treaty and participating in the common system of conditions of service;

Whereas, the International Seabed Authority utilizes a neutral first instance process that includes a written record and a written decision providing reasons, fact and law;

Now, therefore, the International Seabed Authority and the United Nations, hereinafter referred to as the “Parties”, where appropriate, have agreed as follows:

Article 1

As soon as feasible following the conclusion of this Agreement, the International Seabed Authority (hereinafter referred to as the “Authority”) shall promulgate amendments to its Staff Regulations recognizing the competence of the United Nations Appeals Tribunal (hereinafter referred to as the “Appeals Tribunal”).

Article 2

1. The Appeals Tribunal shall be competent to hear and pass judgement on an application filed by staff members of the Authority:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance;

(b) To appeal an administrative decision imposing a disciplinary measure.

2. Such application may be filed by:

(a) Any staff member of the Authority;

(b) Any former staff member of the Authority;

(c) Any person making claims in the name of an incapacitated or deceased staff member of the Authority.

3. In the event of a dispute as to whether the Appeals Tribunal has competence, the matter shall be settled by the decision of the Appeals Tribunal.

4. The Appeals Tribunal shall be competent to deal with an application notwithstanding that the cause of complaint may have arisen prior to the operative date of this Agreement. For the purposes of determining the receivability of an application pursuant to article 7 of the Statute of the Appeals Tribunal, an

application shall be receivable if filed within 90 calendar days of receipt of the decision by the Secretary-General of the Authority.

5. An application shall not be receivable unless the person concerned has previously submitted the dispute to the neutral first instance process provided for in the Staff Regulations of the Authority and the latter has communicated its opinion to the Secretary-General, except where the Secretary-General and the applicant have agreed to submit the application directly to the Appeals Tribunal.

6. For the purposes of this Agreement, references to the Secretary-General contained in article 9 of the Statute of the Appeals Tribunal shall be deemed to refer to the Secretary-General of the Authority.

7. In the event that the Appeals Tribunal receives an application which the neutral first instance process considers devoid of merit or frivolous, the Appeals Tribunal may award costs against the applicant, in accordance with article 9, paragraph 2, of its Statute.

Article 3

1. In accordance with article 10 of the Statute of the Appeals Tribunal, the judgements of the Tribunal shall be final and without appeal, subject to the provisions of article 11 of the Statute.

2. The Authority shall be bound by the judgements of the Appeals Tribunal and be responsible for the payment of any compensation awarded by the Appeals Tribunal in respect of its own staff members.

3. The Authority shall be responsible for the payment of a flat fee of 9,600 United States dollars per case, which will be charged by invoice at the time of submission of the case to the Appeals Tribunal. Payment shall be made by the Authority in a single instalment within thirty (30) days from the receipt of the invoice to the following United Nations bank account:

Bank Name:	JP Morgan Chase Bank (formerly Chase Manhattan Bank) International Agencies Banking
Bank Address:	1166 Avenue of the Americas, 16th Floor, New York, NY 10036-2708
Account Number:	485-0019-69
Swift:	CHASUS33
ABA:	021-000-021
Account Title:	United Nations General Trust Fund
Beneficiary:	United Nations Office of Administration of Justice
Currency:	United States dollars

4. This flat fee of the cost per case shall be reviewed by the United Nations and may be adjusted by mutual agreement of the Parties at the end of 2011, and thereafter biennial, to ensure accurate reimbursement for the services rendered.

Article 4

1. The administrative arrangements necessary for the functioning of the Appeals Tribunal with respect to cases arising under this agreement shall be made by the Secretary-General of the United Nations, in consultation with the Secretary-General of the Authority. Should the President of the Appeals Tribunal designate the

headquarters of the Authority as the place for convening a session of the Appeals Tribunal for the purpose of considering a case or a group of cases arising pursuant to this agreement, the Authority shall provide the premises, arrangements and facilities for the session free of charge to the United Nations.

2. Expenses not already covered by the flat fee set out in article 3, paragraph 3, of this agreement, which may be incurred in connection with the proceedings of the Appeals Tribunal specially required for dealing with cases arising under this agreement, shall be borne by the Authority. Such expenses would include the travel and related costs for staff under article 5, paragraph 1, of the Statute, or for witnesses. Before incurring the additional expenses, the Registrar of the Appeals Tribunal shall inform the Secretary-General of the Authority of an estimate of the additional expenses and the reasons for incurring them, as well as the possibility of alternative arrangements.

Article 5

1. The effective date of this Agreement shall be 1 July 2009.

2. The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of this Agreement.

3. This Agreement may be amended by written consent of the Parties.

4. Each Party may terminate this Agreement for cause by giving six months' written notice.

This Agreement has been duly signed in duplicate in two originals in the English and French languages on the date appearing under the signatures.

For the United Nations:

For the International Seabed Authority:

BAN Ki-moon
Secretary-General

Nii Allotey Odunton
Secretary-General

Annex II

Comparative table showing proposed amendments to the Staff Regulations of the International Seabed Authority

<i>Current International Seabed Authority Staff Regulation</i>	<i>2009 United Nations Staff Regulation</i>	<i>Suggested amendments to International Seabed Authority Staff Regulations (in boldface type)</i>
<p>Regulation 1.1 (e)</p> <p>The Staff Regulations apply to all staff at all levels, including staff holding appointments under the 100, 200 and 300 series of the Staff Rules.</p>	<p>Regulation 1.1 (e)</p> <p>The Staff Regulations apply to all staff at all levels, including staff of the separately funded organs, holding appointments under the Staff Rules.</p>	<p>Regulation 1.1 (e)</p> <p>The Staff Regulations apply to all staff at all levels holding appointments under the Staff Rules.</p>
<p>Regulation 6.2</p> <p>The Secretary-General shall establish a scheme of social security for the staff, including provisions for medical insurance, sick leave and maternity leave, and reasonable compensation in the event of illness, accident or death attributable to the performance of official duties on behalf of the Authority. The Secretary-General may make group life insurance available to staff members on a voluntary basis.</p>	<p>Regulation 6.2</p> <p>The Secretary-General shall establish a scheme of social security for the staff, including provisions for health protection, sick leave, maternity and paternity leave, and reasonable compensation in the event of illness, accident or death attributable to the performance of official duties on behalf of the United Nations.</p>	<p>Regulation 6.2</p> <p>The Secretary-General shall establish a scheme of social security for the staff, including provisions for health protection, sick leave, maternity and paternity leave, and reasonable compensation in the event of illness, accident or death attributable to the performance of official duties on behalf of the Authority. The Secretary-General may make group life insurance available to staff members on a voluntary basis.</p>
<p>Regulation 10.2</p> <p>The Secretary-General may impose disciplinary measures on staff members whose conduct is unsatisfactory. The Secretary-General may summarily dismiss a member of the staff for serious misconduct.</p>	<p>Regulation 10.2</p> <p>(a) The Secretary-General may impose disciplinary measures on staff members who engage in misconduct;</p> <p>(b) Sexual exploitation and sexual abuse constitute serious misconduct.</p>	<p>Regulation 10.2</p> <p>The Secretary-General may impose disciplinary measures on staff members whose conduct is unsatisfactory. The Secretary-General may summarily dismiss a member of the staff for serious misconduct. Sexual exploitation and sexual abuse constitute serious misconduct.</p>
<p>Article XI</p> <p>Appeals</p> <p>Regulation 11.1</p> <p>The Secretary-General shall establish administrative machinery with staff participation to advise him or her in case of any appeal by staff members against an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations and rules.</p> <p>Regulation 11.2</p> <p>The United Nations Administrative Tribunal shall, under conditions prescribed in its statute, hear and</p>	<p>Article XI</p> <p>Appeals</p> <p>Regulation 11.1</p> <p>There shall be a two-tier formal system of administration of justice:</p> <p>(a) The United Nations Dispute Tribunal shall, under conditions prescribed in its statute and rules, hear and render judgement on an application from a staff member alleging non-compliance with his or her terms of appointment or the contract of employment, including all pertinent regulations and rules;</p>	<p>Article XI</p> <p>Appeals</p> <p>Regulation 11.1</p> <p>There shall be a two-tier formal system of administration of justice.</p> <p>Regulation 11.2</p> <p>The Secretary-General shall establish a neutral first instance process with staff participation to take a decision upon any appeal by staff members against an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations and rules.</p>

pass judgement upon applications from staff members alleging non-observance of their terms of appointment, including all pertinent regulations and rules. □

(b) The United Nations Appeals Tribunal shall, under conditions prescribed in its statute and rules, exercise appellate jurisdiction over an appeal of a judgement rendered by the United Nations Dispute Tribunal submitted by either party.

Regulation 11.3

The United Nations **Appeals Tribunal** shall, under conditions prescribed in its statute, hear and pass judgement upon applications from staff members alleging non-observance of their terms of appointment, including all pertinent regulations and rules.
