



## Legal and Technical Commission

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### **Considerations relating to the review by the Legal and Technical Commission of the annual reports of contractors**

#### **Note by the secretariat**

1. At its most recent meeting, the Legal and Technical Commission agreed on the need to review its reporting to the Council, in particular with respect to the annual reports submitted by contractors. The purpose of the present note is to set out some of the main considerations with respect to the working practices and procedures of the Commission and to suggest ways in which the procedure may be streamlined in the light of the anticipated increase in the number of annual reports and their complexity.

#### **A. Annual reports of contractors**

2. The obligation to submit an annual report on exploration activity is one of the consequences of the existence of a contractual relationship between the Authority and the contractor. The standard clauses for exploration contracts contain detailed provisions relating to the format and content of annual reports. These provisions have been supplemented by recommendations for guidance issued by the Commission on financial and environmental matters. Annual reports must be submitted to the Authority no later than 31 March each year. In the case of contracts for exploration for polymetallic nodules, the Commission has also issued a standard template for the format of annual reports (see ISBA/8/LTC/2).

3. The objective of the reporting requirements is to establish a mechanism whereby the Authority, and particularly the Commission, can be provided with the information necessary to carry out its responsibilities, particularly those relating to the protection of the marine environment from the harmful effects of activities in the Area. The annual report also provides a mechanism whereby the Authority can verify that contractors have complied with their obligations and in particular have submitted, on time and in an agreed format, all appropriate data and information relating to resource assessment, the establishment of environmental baselines and the monitoring of environmental programmes.



4. Since 2002, a practice has developed whereby, following receipt of the contractors' annual reports, the Secretary-General invites the Commission to review the annual reports and provide him with any necessary advice. The Secretary-General then writes to each of the contractors, pointing out any deficiencies in the annual report or conveying any general observations made by the Commission, and giving the contractor the opportunity to provide additional data and information as necessary.

5. The purpose of this review by the Commission is thus threefold: (a) to advise the Secretary-General and, if necessary, the Council, on each contractor's compliance with its contractual obligations; (b) to enable the Commission to understand and analyse the main trends emerging from exploration work in general, in particular those relating to the marine environment; and (c) to enable the Commission to draw the attention of the Secretary-General and the Council to any issues relating to the regulatory regime that may need to be taken up in future. The Commission may also at any time review the data submitted by contractors in order to carry out its functions under article 165 of the Convention. The purpose of the review by the Commission is not to micromanage the activities of each of the contractors or to make comparisons of their activities.

## **B. Working methods of the Commission**

6. Starting in 2002, the practice of the Commission has been to break into technical working groups to consider the annual reports in detail. Each working group reads and analyses specific aspects of the reports (legal and financial, biological and technical). The coordinator of each technical working group then reports back to the full Commission, which then compiles a report to the Secretary-General. To assist the Commission, the Secretariat prepares a preliminary analysis of the annual reports, which also serves as the basis for the Commission's report.

7. While this approach worked reasonably efficiently when there were only seven contractors, and thus seven annual reports, to be considered, it still required the Commission to spend at least two days working on the annual reports. Further time is used in drafting the Commission's report to the Secretary-General. In 2013, it is expected that 11 annual reports will be submitted. This number will continue to grow as more contracts are awarded. It is anticipated that 17 annual reports will be submitted in 2014. The Commission will therefore need to review its working methods to ensure that it is functioning in the most efficient manner possible in order to fulfil its mandate.

## **C. Suggested approaches**

8. It is suggested that there are three ways in which the Commission's work can be made more efficient:

(a) Since the review of annual reports can take place only in the July session (because annual reports are not due until 31 March each year), the Commission may wish to consider designating the members of the technical working groups entrusted with reviewing the annual reports at its first meeting each year;

(b) Several members of the Commission have expressed frustration that they cannot gain access to the annual reports of contractors prior to the meeting of the Commission. The problem is that annual reports are, for the most part, designated as confidential material by the contractors. For this reason, it has not so far been practicable for the Secretariat to make the reports available to members of the Commission electronically prior to the annual meeting of the Commission. Nevertheless, in view of recent advances in digital security, the Secretariat will examine the possibility of making the annual reports accessible, through a secure website, to designated members of the Commission in advance of the July meeting of the Commission;

(c) The Commission may also wish to consider revising the format and content of its report to the Secretary-General and to the Council. In the past, the Secretariat has prepared a preliminary evaluation of the annual reports, including a detailed analysis of the contractors' activities, which the Commission then revises and adopts as its own evaluation. This document extends to some 20 to 30 pages in length and requires at least one or two days to be adopted by the Commission. It is suggested that in future, the preliminary evaluation by the Secretariat be treated as an internal document for the information of the Commission. It does not need to be adopted by the Commission. Instead, the Commission should prepare two shorter reports, as follows:

(i) A confidential report addressed to the Secretary-General drawing his attention to any general matters relating to the annual reports and to any specific instances of non-compliance identified by the Commission, including missing data and information. On the basis of this report, the Secretary-General would convey the concerns of the Commission to any relevant contractor;

(ii) A report to the Council (either as a separate document or as an annex to the report by the Chair of the Commission on its work during the session) drawing the attention of the Council to any general or specific issues needing the attention of the Council with respect to the conduct of exploration activities or as to the reporting of contractors' activities in the Area or as to the regulatory regime for the Area;

(d) The Secretariat should also review its internal operating procedures to ensure that annual reports, and the data that they contain, are processed efficiently when they are received by the Secretariat and that a full and complete evaluation is placed before the Commission for its consideration. This should also include a report by the Secretariat on the data submitted by contractors, which should be entered into the relevant databases and made available for the members of the Commission to review.

9. The Commission is invited to take note of the suggestions made in the present note and to provide direction to the Secretariat accordingly.