



Legal and Technical Commission

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Considerations relating to the recommendations for the guidance of contractors and sponsoring States relating to training programmes under plans of work for exploration

Prepared by the secretariat

1. At its meeting during the eighteenth session of the Authority, the Legal and Technical Commission was provided with a briefing document on the status of applications from candidates for training programmes to be provided by exploration contractors pursuant to their contracts with the Authority.¹ The Commission did not have sufficient time to review the applications received and decided to postpone the consideration of this matter until its next meeting in 2013. In its general comments regarding training programmes, the Commission recommended that “it would assist the Authority if training programmes were elaborated and specifically described in applications for approval of plans of work”, noted that it would be helpful “to draw up recommendations for the guidance of contractors in devising and implementing training programmes” and stated that training “should extend throughout the duration of the contract”.²

2. The present document responds to the request of the Commission for more information regarding the status of training programmes proposed as part of an exploration contract. The document provides necessary background on the training requirements set out in the United Nations Convention on the Law of the Sea, annex III thereto, and the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, as well as in each of the Authority’s regulations for exploration and on the status of training proposals by current contractors. The document concludes that there are a number of issues that need to be considered with regard to training programmes and proposes the establishment of a set of guidelines to address these.

¹ ISBA/18/LTC/9 and Add.1.

² See ISBA/18/C/20.



I. Background

3. The notion that entities conducting activities in the Area should have an obligation to provide training for personnel of the Authority (the Enterprise) and developing States in skills relevant to exploration for and exploitation of marine minerals was recognized during the Third United Nations Conference on the Law of the Sea. The legal basis for the requirement that training be provided as an element of a programme of work for exploration is set out in article 144 of the Convention, as read with section 5 of the annex to the 1994 Agreement. The former provision is elaborated in article 15 of annex III to the Convention, as follows:

“The contractor shall draw up practical programmes for the training of personnel of the Authority and developing States, including the participation of such personnel in all activities in the Area which are covered by the contract, in accordance with article 144, paragraph 2.”

4. This requirement was also reflected in the interim regime established under resolution II of the Conference for the benefit of pioneer investors in deep seabed mining. Thus, paragraph 12 of resolution II provided as follows:

“In order to ensure that the Enterprise is able to carry out activities in the Area in such a manner as to keep pace with States and other entities:

“(a) every registered pioneer investor shall;

...

“(ii) provide training at all levels for personnel designated by the Commission”.

5. To give effect to the above, in 1989 Special Commission 2 of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea issued draft principles, policies, guidelines and procedures for a Preparatory Commission training programme.³ The principles adopted by Special Commission 2 included the following:

(a) Training must be planned and carried out in close cooperation between the registered pioneer investors and, as appropriate, the certifying States on the one hand and the Preparatory Commission on the other;

(b) Training must ensure the ability of the Enterprise not only to carry out activities in a timely manner, but also to keep pace with States and other entities operating in the Area;

(c) Training must cover all levels and aspects of seabed mining activities;

(d) Training must aim at helping the Enterprise to recruit a sufficient number of personnel of high qualifications and technical competence.

The guidelines and procedures also contained an extensive list of policies regarding training programmes. Training was to be provided in all the disciplines and skills required by the future Enterprise to the same extent and level that these disciplines and skills were practised by the registered pioneer investor(s). Training programmes should incorporate, as and when appropriate, both general and specialized training

³ LOS/PCN/SCN.2/L.6/Rev.1.

and both theoretical and practical training. The training methods and facilities used, including those with a technical component, should be the best available to the pioneer investor; and, where training or a component of the training provided is to be undertaken in universities or research institutions, these must be widely recognized in the country concerned.

6. With regard to costs and timing, the policies adopted by Special Commission 2 stipulated that training programmes should aim for maximum cost-effectiveness and be scheduled in such a way as to maximize the value and timeliness of the knowledge and experience gained by the trainees. With regard to the selection of candidates, it was suggested that applicants should hold a postgraduate degree in science from a university or a graduate degree in engineering, should have at least two years of work experience in the relevant field and should be between 25 and 35 years of age, or in exceptional cases no older than 40.

7. A training panel was appointed to review training programmes and applications for training opportunities.⁴ The panel consisted of 21 members, with 16 elected on the principle of equitable geographical distribution and five experts representing the registered pioneer investors. The training panel held a total of six meetings between 1991 and 1994. In the performance of its functions, the panel made recommendations with regard to the desired content and form of training programmes, established eligibility requirements for applicants and made recommendations on other elements for inclusion in the note verbale; established criteria for the selection of candidates for the training programmes; established criteria for the issuance of training certificates and made recommendations on their content and form; and made recommendations with regard to the form of the progress reports on the implementation of training programmes by the registered pioneer investors.⁵

8. By the time of the entry into force of the Convention, all the registered pioneer investors, with the exception of the Government of the Republic of Korea, had fulfilled their obligations with regard to training in accordance with the terms of their registration as pioneer investors.⁶ A detailed description of the implementation of the training programme during the Preparatory Commission is contained in the final report of the Training Panel to the General Committee of the Preparatory Commission.⁷ It may also be noted that, because all the registered pioneer investors had completed their training obligations prior to the adoption of the regulations on prospecting and exploration for polymetallic nodules in 2000, they were considered to be exempt from further training requirements.⁸

⁴ See LOS/PCN/L.92.

⁵ LOS/PCN/BUR/R.48, paras. 29-44.

⁶ The implementation of the training programme of the last of the registered pioneer investors, the Government of the Republic of Korea, was not considered by Special Commission 2, which had ceased to exist by 1994, but by the Legal and Technical Commission of the Authority, under the guidelines established by the Preparatory Commission (see ISBA/4/C/12).

⁷ See LOS/PCN/BUR/R.48.

⁸ Paragraph 2 of regulation 27 of the nodules regulations recognizes that registered pioneer investors have already fulfilled their obligation, under paragraph 12 (a) (ii) of resolution II, to train personnel. "In the case of a registered pioneer investor, the contract shall take into account the training provided in accordance with the terms of its registration as a registered pioneer investor."

9. At its meeting in July 2000, the Commission requested the secretariat to prepare a report on the whereabouts of the trainees who benefited from the pioneer investors' training programmes. The secretariat sent letters and questionnaires to trainees' countries of origin through their permanent missions to the United Nations in New York and to the trainees. Not all the trainees responded, either for personal reasons or because they did not wish to communicate information pertaining to their then occupation or vocation. The secretariat employed an independent consultant to assess, from the responses received, the benefits of the training programmes carried out by the registered pioneer investors in fulfilment of their obligations under resolution II. In 2001, the Commission was provided with a report on the status of training carried out by registered pioneer investors since 1990.⁹ In summary, one trainee was working in the secretariat of the Authority, and some had joined the delegations of their respective countries. Furthermore, some of the trainees were employed as senior/principal geologists or geophysicists or in related fields of marine science, and some had been promoted following their successful completion of the training programmes. The pioneer investors provided training to 22 persons from 17 countries¹⁰ covering five major disciplines (geology, geophysics, metallurgical engineering, ecology and electronic engineering). The Commission took note of the report, which it considered to be a useful basis for the consideration of future training programmes.¹¹

II. Training requirements under the regulations

10. The legal obligations of contractors with regard to training are now elaborated in the regulations adopted by the Authority relating to prospecting and exploration. Regulation 27 of the nodules regulations (which has its counterpart in regulation 29 of the sulphides and crusts regulations) reads as follows:

“Pursuant to article 15 of annex III to the Convention, each contract shall include as a schedule a practical programme for the training of personnel of the Authority and developing States and drawn up by the contractor in cooperation with the Authority and the sponsoring State or States. Training programmes shall focus on training in the conduct of exploration, and shall provide for full participation by such personnel in all activities covered by the contract. Such training programmes may be revised and developed from time to time as necessary by mutual agreement.”

11. Section 8 of the standard clauses for exploration contracts provides:

“8.1 In accordance with the Regulations, the Contractor shall, prior to the commencement of exploration under this contract, submit to the Authority for approval proposed training programmes for the training of personnel of the Authority and developing States, including the participation of such personnel in all of the Contractor's activities under this contract.

⁹ ISBA/7/LTC/2.

¹⁰ Algeria, Belarus, Brazil, Cameroon, Chile, Ghana, Kenya, Iran (Islamic Republic of), Malaysia, Pakistan, Philippines, Republic of Korea, Saudi Arabia, Senegal, Sudan, Thailand and Tunisia.

¹¹ ISBA/7/C/5, para. 9.

“8.2 The scope and financing of the training programme shall be subject to negotiation between the Contractor, the Authority and the sponsoring State or States.

“8.3 The Contractor shall conduct training programmes in accordance with the specific programme for the training of personnel referred to in section 8.1 hereof approved by the Authority in accordance with the Regulations, which programme, as revised and developed from time to time, shall become a part of this contract as schedule 3.”

This provision seems to imply that the training programme would be drawn up in pre-contract negotiations and inserted as a schedule 3 to the contract prior to signature. Furthermore, under section 8.2 of the corresponding standard clause, the scope and financing of the training programme are subject to negotiation between the contractor, the Authority and the sponsoring State or States. This has been the practice followed by the Secretary-General and each contractor.

12. In accordance with section 10 of the standard clauses, contractors are required to include in their annual reports information on the implementation of training programmes, including any proposed revisions to or developments of such programmes. The evaluation of the annual reports by the Commission provides an opportunity to monitor contractors' compliance with their training obligations.

13. It is noteworthy that the regulations specifically refer to a role of the sponsoring State or States in drawing up programmes for training. The nature and content of this role is not, however, elaborated in the regulations or in the standard clauses of contracts. The Commission may wish to provide guidance in that respect.

14. The first contractor to submit a training programme that was not previously a registered pioneer investor, and therefore exempt from the new training requirements, was the Federal Institute for Geosciences and Natural Resources of the Federal Republic of Germany (BGR), in 2008. BGR was, nevertheless, a prospective investor in accordance with the 1994 Agreement and therefore entitled to the same treatment as the registered pioneer investors. For this reason, the same procedures as had been applicable to the Government of the Republic of Korea were applied. The Commission appointed a small group from among its membership to carry out an initial review and appraisal of the applications for training, which reported back to the full Commission. Four applicants were selected for training, with an additional four as alternates, ranked in order of preference should the first ranked candidates not accept the training or be unable to take part at short notice.¹² The training programmes submitted by both the Government of the Republic of Korea and BGR have now been completed.

15. Four new contracts were approved in 2011 and five in 2012. These have resulted in more training opportunities becoming available. In 2012, the secretariat announced these general opportunities and was coordinating the applications from potential candidates.¹³

16. As of January 2013, the number of training applications received was 35. The selection of candidates for specific opportunities will not be possible until more details about each training opportunity have been provided by contractors. This

¹² See ISBA/14/LTC/7.

¹³ See ISBA/18/LTC/9 and Add.1.

highlights the need for contractors to specify more details about training programmes as soon as possible.

17. A review of the training applications received indicated that the distribution of potential candidates was not uniform among countries or geographic regions. As a result, while the secretariat will continue to investigate ways in which to encourage greater participation, member States and current and former members of the Commission are encouraged to fully disseminate information regarding training and encourage applications. However, it should be noted that applications do not require the official support of Governments, so this should not be an impediment to the application of individuals.

18. The training programmes that have been proposed by new contractors fall into three general categories:

(a) At-sea training, where successful candidates would learn sampling techniques and analysis. Trainees may be exposed to different substantive areas, e.g., oceanographic, environmental, geological or geophysical activities, depending on the research cruise to which they may be assigned. They may also receive training in report writing;

(b) Bursaries and fellowships, to allow successful candidates to participate in scheduled or specific training programmes in order to advance their knowledge of topics relevant to marine mining and environmental protection. The exact selection and content of the courses would be determined on the basis of the qualifications and requirements of selected candidates;

(c) Engineering training, to be carried out by the contractors in order to enable the successful candidate to advance engineering technology in his or her home country.

19. These categories, while used by more than one applicant, are not prescriptive, and it was considered by the Commission that in order to both ensure consistency among contractors and the establishment of the most useful training opportunities, it would be beneficial to have a guidance document for planning training opportunities.

III. Considerations for the Commission

20. Several issues need to be considered with regard to the design and implementation of training programmes. These may be summarized as follows:

(a) The process of approving the training programmes submitted by exploration applicants;

(b) The form and content of the training programmes, including participation by sponsoring States;

(c) The process of allocating training applicants to training opportunities;

(d) Procedures for reporting training activities.

Approval of training programmes

21. In their current form, a brief description of the training programme is a component of the application for a plan of work for exploration, but in practice the details of the proposed programme are not considered by the Commission. The reason for this is that training programmes are approved bilaterally between the Secretary-General and the contractor once the exploration contract has been signed. This removes any opportunity for the Commission to engage in the advising of suitable training programmes. The Commission may wish to consider recommending a process that enables the Commission to engage with contractors on their proposed training programmes at the application stage, which would also allow the Commission to provide advice to the Secretary-General on the format and structure of the proposed training programmes.

Content of training programmes

22. There is currently no formal structure for training programmes. Therefore, it is not clear to contractors exactly what is expected of them with regard to training programmes, such as how many candidates should be trained, when the training should take place and what sort of training it should be. This means that there is little consistency between contractors and training programmes and that training may not be structured with a complete understanding of the needs of developing countries. Finally, without a formalized structure, the Secretary-General is not in a position to objectively review training programmes.

23. There is also no clarity as to the role expected of sponsoring States.

Allocating training opportunities

24. The Commission tends to meet once per year, and this may not correspond to the timing of training opportunities or the submission of applications for training. A more efficient process may be for the secretariat to coordinate and manage training opportunities on the basis of the guidance provided during the meetings of the Commission, or by a specific subgroup of members. When training opportunities arise, often at short notice, the secretariat could then match the best candidates from a roster that has been preapproved by the Commission with the relevant opportunities, in liaison with the contractor. At the next meeting of the Commission, the secretariat would then report back to the Commission on the trainees' participation in the training programmes. A rigid process of the Commission, or a subgroup, selecting candidates for each training opportunity will not be practical or time-efficient and may cause delays in the training process.

25. The mobilization of research cruises is a lengthy process that often involves the need for selected participants to undergo a medical examination, acquire visas for travel and arrange for the transportation of personnel and equipment to remote locations to join the research vessel. There is often a relatively short time period available between the confirmation of opportunities and the deadline for the selection of participants. Any delay in order to coincide with the Committee's meeting schedule may result in the loss of opportunities. Pre-selection by the Commission would allow the secretariat to respond to opportunities at much shorter notice and fully utilize any additional opportunities that might arise unexpectedly.

Reporting procedures

26. At the end of the training programme, trainees should submit a report on the outcome of their training to the contractor and to the Authority. The Commission may wish to provide some guidance to contractors and the Secretary-General on reporting procedures.

IV. Recommendations

27. One of the components of an exploration contract is the obligation that the contractors provide and fund training opportunities for trainees from developing States and the Authority. The purpose of the obligation is to ensure that personnel from developing States are provided with appropriate operational expertise to enable them to participate in deep-seabed mining.

28. In the light of the information set out above and the identified issues, the Commission is invited to consider issuing recommendations for the guidance of contractors, sponsoring States and the Secretary-General on the content and structure of training programmes. The Commission may also wish to provide some guidance for the secretariat in implementing training programmes and on the most efficient way to involve the Commission in supervising the process and reviewing reported outcomes.
