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Agenda item 20

Use of the silence procedure in the adoption of decisions by the Commission and improvement of procedures for greater transparency

Decision-making by consensus and the use of the silence procedure by the Legal and Technical Commission

Note by the secretariat

1. In its decision [ISBA/27/C/44](#), adopted at the twenty-seventh session in 2022, the Council of the International Seabed Authority requested the Legal and Technical Commission to clarify the criteria for the use of the silence procedure in the adoption of decisions. The purpose of the present note is to summarize the procedure and methodology adopted by the Commission in this respect during the twenty-sixth and twenty-seventh sessions.

2. The silence procedure, for the purpose of formally adopting draft decisions when plenary meetings of the organ concerned were impracticable, was used during the coronavirus disease (COVID-19) pandemic. In its decision 74/544 of 27 March 2020,¹ the General Assembly of the United Nations authorized the President of the General Assembly, where, in his view, a plenary meeting of the Assembly was not practicable owing to the COVID-19 pandemic, to circulate, after consultation with the General Committee, draft decisions of the Assembly to all Member States under a silence procedure of at least 72 hours. The Assembly also decided that, if the silence was not broken, the decision should be considered adopted, and the Assembly should take note of the decision at its first plenary meeting held when that became practicable. A similar process was adopted by the thirtieth Meeting of States Parties to the United Nations Convention on the Law of the Sea.²

3. In the case of the Authority, both the Assembly and the Council agreed to adopt decisions on time-sensitive matters using the silence procedure. Under that procedure, decisions were deemed adopted if no objections were raised within 72 hours of the tabling of the proposal for adoption. The President of the relevant organ was required

¹ See www.un.org/pga/74/2020/06/10/decision-number-74-544-procedure-for-taking-decisions-of-the-general-assembly-during-the-coronavirus-disease-2019-covid-19-pandemic.

² See www.un.org/depts/los/meeting_states_parties/documents/20200706PresLetSp.pdf.



to announce the adoption of each decision dealt with under the silence procedure in a letter communicated by note verbale to members and posted on the website of the Authority. It was understood that the use of the silence procedure would not amount to an amendment of the relevant rules of procedure of the Council and the Assembly, and at their first plenary meeting the respective organs would take note of all the decisions adopted under the silence procedure.

4. The Commission was also unable to meet in person in 2020 and 2021. All meetings were held virtually. To make progress in the work of the Commission and ensure continuity in its work, in June 2020 the Chair of the Commission circulated guidance setting out a step-by-step process for the Commission to confirm consensus on any draft recommendation or draft report. The process adopted is described in annex I.

5. The procedure was used effectively throughout 2020 and 2021 and once in 2022. A total of 22 draft reports and recommendations of the Commission to the Council were adopted using the silence procedure, as listed in annex II. The silence procedure operates in tandem with rule 44 of the rules of procedure of the Commission, in which it is stated that, as a rule, decision-making in the Commission should be by consensus (defined as the absence of any formal objection). All decisions, as well as the mode of their adoption, were also noted in the reports of the Chair of the Commission during those years.³

6. Overall, the use of the procedure by the Commission was very well received by members, who were able to continue to work intersessionally to form a consensus and formalize collective decisions. Only one objection to the adoption of a document using the silence procedure was received. During the drafting of the standard and guidelines for the preparation of environmental impact statements, the Commission discussed the document during three online meetings, on 6, 27 and 28 July 2020. Thereafter, a first draft was placed by the Chair for adoption through the silence procedure on 28 July. The silence was broken on 30 July, before the deadline of 72 hours had lapsed, by one member who asked for the text to be further developed. Accordingly, the document was further discussed and revised by the Commission and eventually adopted under the silence procedure on 1 April 2021.

7. It is worth noting that the silence procedure followed by the Commission presents important differences compared with the silence procedure used by the Assembly and the Council during the COVID-19 pandemic. The use of the procedure in the Commission was agreed as a tool to support the consultative decision-making process that it followed. It was not limited to procedural issues of a time-sensitive nature. In that regard, the procedure was used to consolidate the working practice of the Commission at a time when in-person meetings were not possible, by ensuring the flexibility necessary for members of the Commission to consult and make progress in discussions until they reached the point at which a decision could be made. As a result, the use of the silence procedure became a tool at the disposal of the Commission to work beyond the schedule of in-person meetings and ensure efficiency as well as continuity in its work. Furthermore, the use of the silence procedure is a confirmatory process as objections can be raised, but if none are raised, it supports consensus-building.

8. The silence procedure is not intended to be a substitute, supplement or exception to decision-making in plenary as set out in the rules of procedure. Instead, it serves as a tool to assist the Commission in discharging its functions effectively when it has to make decisions intersessionally. It is not incompatible with the rules of procedure.

³ [ISBA/26/C/12](#), [ISBA/26/C/12/Add.1](#), [ISBA/26/C/12/Add.2](#), [ISBA/27/C/16](#), [ISBA/27/C/16/Add.1](#) and [ISBA/27/C/16/Add.2](#).

This is particularly important considering that not all the members of the Commission are able to attend every meeting of the Commission in its entirety and considering the need for several aspects of the Commission's work to be continuous in nature.

Recommendation

9. The Commission is invited to take note of the practice used previously by the Commission as contained in the present note. The Commission is also invited to reach a common understanding on future practice for use of the silence procedure.

Annex I

Step-by-step process for the Legal and Technical Commission to reach consensus on any draft recommendation or draft report

In order to ensure consistency and clarity in the decision-making process, it is suggested that any draft recommendation or report of the Legal and Technical Commission will be adopted, unless otherwise decided by the Commission, under a silence procedure, as follows:

1. The text of any draft recommendation or report (in the format of a conference room paper, with a conference room paper number allocated during the meeting), prepared by any working group or by the Chair, will be circulated by the Secretary by email to all members of the Commission at least two days in advance of the plenary of the Commission.
2. The text of any draft recommendation or report will be fully discussed at the plenary of the Commission and, if needed, the Commission may decide that the relevant working group or the Chair should prepare a revised draft text based on the discussions for further consideration. If a revised draft text is not needed, the Chair may proceed to paragraph 4 below.
3. The revised text of any draft recommendation or report prepared by the relevant working group or by the Chair will be circulated by the Secretary to all members of the Commission at least two days in advance of the next plenary of the Commission for its discussion. The process may be repeated where necessary.
4. In the event that there are no further comments from any member of the Commission, the Chair may announce that the final draft recommendation or report is ready to be circulated under the silence procedure.
5. The Secretary will then circulate by email the final draft recommendation or report and indicate in the email that, “if no objection is received from any member of the Commission in the next three days/by close of business on [date], the final recommendation or report will be deemed adopted by the Commission by consensus”.
6. Should any objection to the adoption of the final draft recommendation or report be raised within the three-day period in accordance with paragraph 5 above, the Chair will circulate an email informing members that the silence has been broken. Any such objection will be considered by the Commission in the same manner as set out in paragraphs 2 to 5 above. Any such objection should clearly indicate the reasons for objection.

Annex II

Documents adopted by the Legal and Technical Commission and the Council using the silence procedure, 2020–2022

<i>No.</i>	<i>Document symbol</i>	<i>Title</i>	<i>Circulation period and deadline for objection (Eastern Standard Time)</i>	
1	–	Report on the implementation of the strategic plan by the Legal and Technical Commission	72 hours	Close of business 15 July 2020
2	ISBA/26/C/22	Report and recommendations of the Legal and Technical Commission to the Council of the International Seabed Authority relating to an application for approval of a plan of work for exploration for polymetallic nodules by Blue Minerals Jamaica Ltd.	72 hours	11.30 p.m. 29 July 2020
3	ISBA/26/LTC/5	Review of the environmental impact statement submitted by the Ministry of Earth Sciences of the Government of India	72 hours	1.45 a.m. 30 July 2020
4	ISBA/27/C/3	Draft guidelines on the preparation and assessment of an application for the approval of a Plan of Work for exploitation	72 hours	10.30 p.m. 30 July 2020 5 p.m. 15 October 2021
5	–	Revised recommendations on the impact study for land-based developing countries (www.isa.org.jm/wp-content/uploads/2022/06/Study_of_the_Potential_Impact_of_Poly_metallic_Nodules_0.pdf)	72 hours	11.35 p.m. 29 July 2020
6	ISBA/26/C/31	Application for extension of the contract for exploration for polymetallic nodules between Interoceanmetal Joint Organization and the International Seabed Authority	72 hours	9 a.m. 3 May 2021
7	ISBA/26/C/32	Application for extension of the contract for exploration for polymetallic nodules between JSC Yuzhmorgeologiya and the International Seabed Authority	72 hours	9 a.m. 3 May 2021
8	ISBA/26/C/33	Application for extension of the contract for exploration for polymetallic nodules between the Government of the Republic of Korea and the International Seabed Authority	72 hours	9 a.m. 3 May 2021
9	ISBA/26/C/34	Application for extension of the contract for exploration for polymetallic nodules between Deep Ocean Resources Development Co. Ltd. And the International Seabed Authority	72 hours	9 a.m. 3 May 2021
10	ISBA/26/C/35	Application for extension of the contract for exploration for polymetallic nodules between the China Ocean Mineral Resources Research and Development Association and the International Seabed Authority	72 hours	9 a.m. 3 May 2021
11	ISBA/26/C/36	Application for extension of the contract for exploration for polymetallic nodules between the Institut français de recherche pour l'exploitation de la mer and the International Seabed Authority	72 hours	9 a.m. 3 May 2021

<i>No.</i>	<i>Document symbol</i>	<i>Title</i>	<i>Circulation period and deadline for objection (Eastern Standard Time)</i>	
12	ISBA/26/C/37	Application for extension of the contract for exploration for polymetallic nodules between the Federal Institute for Geosciences and Natural Resources and the International Seabed Authority	72 hours	9 a.m. 3 May 2021
13	ISBA/27/C/11	Draft guidelines for the establishment of baseline environmental data	72 hours	1 p.m. 1 April 2021 5 p.m. 15 October 2021
14	ISBA/27/C/4	Draft standard and guidelines for the environmental impact assessment process	72 hours	1 p.m. 1 April 2021 5 p.m. 15 October 2021
15	ISBA/27/C/5	Draft guidelines for the preparation of environmental impact statements	72 hours	1 p.m. 1 April 2021 5 p.m. 15 October 2021
16	ISBA/27/C/6 and ISBA/27/C/6/ Corr.1	Draft guidelines for the preparation of Environmental Management and Monitoring Plans	72 hours	1 p.m. 1 April 2021 5 p.m. 15 October 2021
17	ISBA/27/C/10	Draft standard and guidelines on the form and calculation of an Environmental Performance Guarantee		5 p.m. 15 October 2021
18	ISBA/27/C/8	Draft guidelines on tools and techniques for hazard identification and risk assessments	72 hours	1 p.m. 1 April 2021 5 p.m. 15 October 2021
19	ISBA/27/C/12	Draft standard and guidelines for the preparation and implementation of emergency response and contingency plans	72 hours	1 p.m. 1 April 2021 5 p.m. 15 October 2021
20	ISBA/27/C/9	Draft standard and guidelines for the safe management and operation of mining vessels and installations	72 hours	1 p.m. 1 April 2021 5 p.m. 15 October 2021
21	ISBA/26/C/43	Review of the implementation of the Environmental Management Plan for the Clarion-Clipperton Zone	72 hours	1 p.m. 1 April 2021
22	ISBA/27/C/16/ Add.2	Review of the environmental impact statement submitted by Nauru Ocean Resources Inc.	72 hours	2 p.m. 2 September 2022