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Report of the Secretary-General on the implementation of the decision of the Council in 2022 relating to the reports of the Chair of the Legal and Technical Commission

Implementation of the decision of the Council in 2022 relating to the reports of the Chair of the Legal and Technical Commission

Report of the Secretary-General

I. Background

1. At its 296th meeting, on 11 November 2022, the Council of the International Seabed Authority adopted a decision relating to the reports of the Chair of the Legal and Technical Commission (ISBA/27/C/44). In paragraph 26 of the decision, the Council requested that the Secretary-General report to it on the implementation of the decision at its twenty-eighth session and that such annual reporting remain on the agenda of the Council as a standing item. Part II of the present report provides information on the steps taken by the Secretary-General to respond to the specific requests made by the Council in the decision. Part III reports on the work undertaken by the Legal and Technical Commission to respond to various requests made by the Council, and Part IV reports on the status of the voluntary trust fund to support the participation of members of the Council of the Authority from developing States in the meetings of the Council.

II. Actions to be taken by the Secretary-General

2. In operative paragraph 6 of its decision, the Council welcomed the Secretary-General's engagement, through the Compliance Assurance and Regulatory Management Unit of the secretariat, with individual contractors on matters raised by the Commission and the secretariat's review of the responses of individual contractors, and requested the Secretary-General to continue the practice of communicating the various issues identified during the Commission's review of contractors' annual reports to the relevant contractors and sponsoring States, to follow up in writing with those contractors that repeatedly perform inadequately or incompletely against an approved plan of work or that have indicated that the implementation of the plan of activities will be made conditional on external factors regardless of the applicable contractual requirements, to request meetings with them

and to write to the respective sponsoring States to bring that issue to their attention and request a meeting with the sponsoring States to address it.

3. The Secretary-General had by the end of August 2022, communicated to individual contractors the comments and recommendations of the Commission following the Commission's evaluation of the annual reports. Where relevant, contractors have provided responses to these comments in their 2023 annual reports, which will be reviewed by the Commission. During the annual consultation between the secretariat and contractors held in Delft, Netherlands, (5-7 December 2022), contractors were briefed on annual and periodic reporting process and possible ways to further streamline and improve the responses to feedback from the Commission were discussed. This topic will be further developed with the Commission in July 2023.

4. In operative paragraph 8 of its decision, the Council requested the Secretary-General to continue to report to the Council on an annual basis, identifying instances of alleged non-compliance and regulatory action in accordance with the United Nations Convention on the Law of the Sea, the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 and the regulations on prospecting and exploration, including any monetary penalties to be imposed by the Council.

5. As at 31 May 2022, the Secretary-General had not identified any instances of alleged non-compliance by contractors in relation to their operations at sea or in the conduct of their plans of work for exploration.

6. It is noted, however, that two periodic review reports were submitted very late. According to the regulations and standard clauses,¹ not later than 90 days prior to the expiration of each five-year period of the contract, the contractor and the Secretary-General shall jointly undertake a periodic review of the implementation of a plan of work for exploration at intervals of five years. The Secretary-General may request the contractor to submit such additional data and information as may be necessary for the purposes of the review. In the light of the review, the contractor is required to make such adjustments to its plan of work as are necessary and to indicate its programme of activities for the following five-year period, including a revised schedule of expected yearly expenditure. While this provides for the beginning of the undertaking of the joint review and not for its completion, it remains that the longer the submission of the periodic review takes, the more time it takes to complete the review process with the necessary adjustments to the next five-year programme of activities.

7. As reported and detailed in the report on the status of contracts and periodic reviews which the Secretary-General presented with updates to the Council at Its March 2023 meeting, (see ISBA/28/C/3), two contractors submitted their five-year periodic reports with excessive delays: one was 9 months late and the other was 15 months late, despite repeated requests.

8. Whilst, in both cases, the contractors concerned cited extenuating circumstances for the delay, including challenges in developing the proposed programme of activities for the next five-year period, such excessive delay is also problematic from the perspective of effective administration of the contract. In addition, late submission of annual reports and periodic reports is a technical breach

¹ See regulation 28 of the regulations on prospecting and exploration for polymetallic nodules in the Area (ISBA/19/C/17, annex, and ISBA/20/A/9), regulation 30 of the regulations on prospecting and exploration for polymetallic sulphides in the Area (ISBA/16/A/12/Rev.1, annex), regulation 30 of the regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area (ISBA/18/A/11, annex) and standard clause 4.4 of the contracts for exploration.

of the regulatory provisions and of the standard clauses of contract, which prescribe for specific timelines. This matter is raised to the Council which is invited to provide some guidance to the Secretary-General, including on whether the review process should be further refined, including by issuance of recommendations for guidance of Contractors by the Legal and Technical Commission and by imposing penalty. This is also to avoid that such precedents constitute a trend in the future.

9. It is the responsibility of the Council to exercise control over activities in the Area in accordance with article 153, paragraph 4, and the rules, regulations and procedures of the Authority (article 162, para. 2(1)). The Legal and Technical Commission may also from time to time issue recommendations of a technical or administrative nature for the guidance of contractors in their implementation of the rules, regulations and procedures of the Authority. However, the Secretary-General, who acts on behalf of the Authority as party to the contract, has no independent authority either to issue a written warning to a contractor in breach of the regulations and of the standard clauses of the contract, or to impose a monetary penalty. The Secretary-General can only report an issue to the Council.

10. To address this situation in the future, it is recommended that the Council consider authorizing the Secretary-General, on behalf of the Council, in the case of the late submission by more than 30 days of an annual report or by more than 45 days in the case of a five-year periodic report, to issue an automatic written warning to the contractor and a monetary penalty equivalent to one-half of the annual overhead charge (currently \$80,000). The issuance of an automatic warning and the imposition of any such penalty would be reported to the Council at its next meeting. It is noted that the Council may not execute a decision involving a monetary penalty until the contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to it pursuant to Part XI, section 5, of the Convention and to section 21 of the standard clauses of the contract.

11. In operative paragraph 9 of its decision, the Council requested the Secretary-General to continue to pursue dialogue with contractors who have not yet submitted public templates on their plans of work. It is recalled in this regard that, starting in 2019, contractors have been voluntarily submitting information on their contracts in a previously agreed public information template. Presently, information on four contracts has not yet been provided. Since March 2023, several contractors have submitted updated information on eight contracts as a result of contract extensions or new five-year programmes of activities. Dialogue with contractors continues on a regular basis, including in the context of the annual consultation with contractors.

12. In operative paragraph 11 of its decision, the Council requested the Secretary-General to remind applicants for approval of a plan of work for exploration of the requirements of article 153 of the Convention. There have been no new applications during the reporting period.

13. In operative paragraph 22 of its decision, the Council welcomed the progress made by the secretariat towards the implementation of the data management strategy of the Authority including public access to non-confidential data, its continued collaboration with the International Hydrographic Organization in relation to the compilation of bathymetric data, including through the Area 2030 initiative, and continued scientific work and interpretation from its DeepData database with the assistance of experts from developing countries.

14. The Secretariat continued to progress towards strengthening the data management of the Authority. In particular, the Secretariat has prepared a draft data management strategy for the period 2023-2028 for consideration by the Commission. In March 2023, the Commission established a working group on data management

and provided recommendations on the elements of the strategy. Based on the recommendations, the secretariat revised the strategy highlighting short-term objectives as well as medium to long-term objectives. The working group will review the revised data management strategy for finalisation by the Commission in July 2023. The secretariat has also completed several updates to the DeepData database, creating additional functionalities to support further the work of the Commission related to relinquishments and improve user experience and data visualisation. Accordingly, the DeepData user manuals and guidance on the reporting templates were revised for consideration by the Commission in July 2023.

III. Actions to be taken by the Legal and Technical Commission

15. In its decision, the Council made several requests to the Commission.

16. In operative paragraph 7 of its decision, the Council requested the Commission, beginning at the twenty-eighth session of the Authority, to annually name those contractors that have responded inadequately, or failed to respond, to the calls from the Council to address issues of concern identified by the Commission in relation to their contractual obligations. The Secretary-General has conveyed this request to the Commission and the matter will be addressed during the Commission's consideration of the annual reports of contractors in 2023.

17. In operative paragraph 12 of its decision, concerning the development of a draft procedure and criteria for consideration of a request for the transfer of rights and obligations under a contract for exploration, the Council requested the Commission to continue to revise its draft once the Council has considered issues relating to the transfer of rights and obligations under a contract in the draft regulations for exploitation, as well as relevant issues related to effective control. The Commission has taken note of this request.

18. In operative paragraph 13 of its decision, the Council expressed appreciation for the Commission's development of the draft standardized procedure for the development, review and approval of regional environmental management plans and the template with the minimum requirements, and requested the Commission to revise the draft standardized procedure, taking into account the Council's comments as summarized by the President of the Council, the submissions in 2019 by Germany and the Netherlands, co-sponsored by Costa Rica, and written comments to be submitted by delegations by 15 January 2023, and provide the rationale for its decisions. Eight written comments were received by 15 January 2023, including five from member States. In March 2023, the Commission had a round of preliminary exchanges on the written submissions received from delegations and decided to continue its work on revising the draft guidance document in July 2023.

19. In operative paragraph 14 of its decision, the Council expressed its appreciation for the Commission's development of the draft regional environmental management plan for the Area of the northern Mid-Atlantic Ridge and requested the Commission to review the draft after the standardized procedure for the development, review and approval of regional environmental management plans and the template have been adopted by the Council, in the light of the Council's comments. The Commission has taken note of this request.

20. In operative paragraph 16 of its decision, the Council requested the Commission to clarify the criteria for the use of the silence procedure in the adoption of decisions. This matter has been placed on the agenda of the Commission in July 2023.

21. In operative paragraph 17 of its decision, the Council requested the Commission, in relation to its current process for reviewing environmental impact

statements in relation to the testing of mining components or other activities requiring an environmental impact assessment during exploration, contained in paragraph 41 of ISBA/25/LTC/6/Rev.2, to include in the steps of the process that any recommendation of the Commission to the Secretary-General on the basis of paragraph 41 (e), including its underlying rationale, also be sent to the Council for informational purposes and that the recommendation, along with the final environmental impact assessment, be published on the website of the Authority. This matter has been placed on the agenda of the Commission in July 2023.

22. In operative paragraph 18 of its decision, the Council urged the Commission to hold open meetings, where appropriate, and to allow for greater transparency in its work. The Council also requested the Commission to provide recommendations to the Council on how the procedures of the Commission could be further improved to provide for more transparency while maintaining its effective operation and recognizing the need to ensure the confidentiality of data and information. This request was drawn to the attention of the Commission in March 2023 and the matter remains under consideration by the Commission.

IV. Status of contributions to the voluntary trust fund to support the participation of members of the Council of the Authority from developing States in the meetings of the Council

23. In operative paragraph 25 of its decision, the Council called upon contributions to the voluntary trust fund to support the participation of members of the Council of the Authority from developing States in the meetings of the Council. For the Council meeting in March 2023, the Authority was able to provide assistance from the fund to five representatives of developing States. At the end of the March 2023 session, the fund was in deficit. The Secretary-General issued an urgent appeal to member of the Authority, observers to the Authority and contractors for contributions to the fund in March 2023 and again in May 2023. Contributions have been received from two contractors (Nauru Ocean Resources Inc. and Tonga Offshore Mining Ltd) of \$3,750 each. On 26 May 2023 the contractor, UK Seabed Resources Limited, made a contribution of \$6,000. As at 31 May 2023, the balance of the fund is \$548.

V. Recommendations

24. The Council is invited to take note of the present report and to provide such guidance as may be necessary.