

Draft decision of the Council of the International Seabed Authority relating to the reports of the Chair of the Legal and Technical Commission

The Council of the International Seabed Authority,

Recalling its decision ISBA/27/C/44,

1. *Takes note with appreciation* of the reports of the Chair of the Legal and Technical Commission on the work of the Commission at the first and second parts of its twenty-eighth session,¹ the hard work and considerable achievements of the Commission over the past seven years (2017–2023) and the report of the Secretary-General on implementation of the decision of the Council in 2022 relating to the reports of the Chair of the Legal and Technical Commission, noting that it represented the sixth such report of the Secretary-General;²

2. *Notes with appreciation* the Commission's consideration of annual reports on activities carried out by contractors in 2022, and takes note of the fact that contractors have complied with the template issued by the Commission, have generally responded to questions raised by the Commission in the previous year, and have largely met the deadlines for submitting annual reports and expresses concern that some contractors are not meeting the deadlines;

3alt *Reminds* contractors that failed to carry out their exploration activities in accordance with their agreed plans of work, to provide details [in due time] [in the annual report] to the Commission explaining their lack of progress and how it will be addressed, in order to enable the Authority to take appropriate further action as necessary

4. *Welcomes* 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 requests 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 insufficiently 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 [and provide the same information to the Council] [and to provide relevant information to the Council as necessary];

[4.bis Requests the LTC to present to the Council a compliance strategy, including the Authority's means of monitoring and enforcing contract compliance and the criteria and processes for cases of non-compliance;]

[4.bis alt Notes that the council will give further consideration to the development of a compliance strategy for the Authority]

5. *Reaffirming with renewed urgency* its request to the Commission to annually name those contractors that have responded insufficiently or incompletely, 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,³ notes that such information is important to assist the Council with respect to compliance, and notes that the Commission has considered this request and will consider the matter during the first part of the twenty-ninth session, with the aim of naming contractors that either do not respond or respond insufficiently or incompletely during the next reporting cycle;

¹ ISBA/28/C/5 and ISBA/28/C/5/Add.1.

² ISBA/28/C/15.

³ ISBA/~~7227~~/C/44.

6. *Requests* the Secretary-General to continue to report to the Council on an annual basis the instances of alleged non-compliance and regulatory action in accordance with the United Nations Convention on the Law of the Sea,⁴ the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982⁵ and the regulations on prospecting and exploration, identified by the Commission, inter alia taking into account the results of the Secretary-General's consultation with contractors, and urges the relevant sponsoring States to provide any information relating to such non-compliance and measures taken to ensure compliance under contracts for exploration, in accordance with article 139 of the Convention;

7. *Commends* the progress made towards increasing the transparency of exploration contracts, and requests the Secretary-General to continue to pursue dialogue with contractors who have not yet submitted public templates on their plans of work;

8. *Welcomes* the training programmes and opportunities offered by contractors, pursuant to their contracts for exploration with the Authority, since the twenty-seventh session in spite of disruptions caused by the COVID-19 pandemic;

9. [deleted]

10. *Takes note of* the Commission's development of a draft procedure and criteria for consideration of a request for the transfer of rights and obligations under a contract for exploration,⁶ and requests 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 for exploitation in the draft regulations for exploitation, as well as relevant issues related to effective control;

11. ~~*Expresses its appreciation for*~~ ~~*Takes note of*~~ the Commission's work on revising the draft standardized procedure for the development, review and approval of regional environmental management plans (REMPs) and the template with the minimum requirements including the Commission's preliminary consideration of the written submissions received from delegations and the Commission's decision to continue this work, *[to be followed by one of the following alternatives]*

Alt 1 (original text): ~~*[and requests the Commission continue to report back to the Council in this regard];*~~

Alt 2: ~~*[requests the commission to prioritise this work as a matter of urgency and report back to the Council on the status at the next session];*~~

New Alt 3 following further discussion:

~~*[while underlining the importance of a standardized framework including a standardized procedure and template for the development of REMPs, requests the Commission to prioritise this work as a matter of urgency and report back to the Council with a revised standardized framework at the first meeting of the next session, to ensure future REMPs, including those currently under examination, are developed in accordance with the template];*~~

Previous Alt 3: ~~*[while noting with concern the continuation of the development of new REMPs in the absence of such a standardized framework (including procedure and template), [to be followed by one of the following alternatives]*~~

Alt 3 alt 1: ~~*and therefore requests the Commission to report back to Council on the status of the standardized framework and template at the next session as a matter of urgent priority, and requests the Commission to pause the development of REMPs until the Council has discussed and adopted the framework to ensure future REMPs are developed in accordance with the framework];*~~

Alt 3 alt 2: ~~*and therefore requests the Commission to report back to Council on the status of the standardized framework and template at the next session as a matter of urgent priority, and requests the Commission to ensure future REMPS are developed in accordance with the template after the Council has discussed and adopted the template];*~~

⁴ United Nations, Treaty Series, vol. 1833, No. 31363.

⁵ Ibid., vol. 1836, No. 31364.

⁶ See ISBA/27/C/35.

Alt 3 alt 3: and therefore requests the commission to prioritise this work as a matter of urgency and report back to the Council on the status at the next session];

11bis. Welcomes the work done by the Commission to implement Council decision ISBA/27/C/42 relating to the development of binding environmental threshold values, requests the Commission to report to the Council on the next steps foreseen for the Intersessional Expert Group and its subgroups and highlights the need to conduct an inclusive and transparent process in the development through these groups;

12. *Also expresses its appreciation for the Commission's work on the development of the draft regional environmental management plan for the Area of the northern Mid-Atlantic Ridge, and requests the Commission to ~~review the draft~~continue this work 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;*

13. *~~Welcomes~~Appreciates the clarification of the criteria for the use of the silence procedure in the adoption of decisions by the Commission, but expresses concern that such silence procedure is not provided for in the Rules of Procedure and therefore requests the Commission to recommend to the Council appropriate amendments of the Rules of Procedure; including its confirmation that thorough discussions within the Commission will always take place before placing any document under silence procedure, as the procedure is a means for decision-making at the end of, and not a substitute for, the consultation process in the Commission,⁷ as well as the publication of the step-by-step process for the Commission to reach Consensus on any draft recommendation or draft report⁸; including issues for which the silence procedure will not be applied, such as recommendations for the approval of a Plan of Work;*

14. *Also welcomes the Commission's updates to the process for reviewing environmental impact statements in relation to the testing of mining components or other activities requiring an environmental impact assessment during exploration and invites the Commission to consider holding open consultations on the revised guidance document;*⁹

~~15. —~~ *Reiterates*¹⁵. *Noting that transparency in decision-making is a key component in growing public trust and confidence in the ISA, reiterates its request to the Commission to hold open meetings, where appropriate, and to allow for greater transparency in its work;*

16. *Welcomes the Commission's initiative in holding an informal dialogue in the margins of Part II of the Council's twenty-eighth session, and encourages the Commission to continue this practice;*

17. *Requests 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;*

18. *Welcomes the significant progress made in relation to data management at the Authority and the ongoing work of the secretariat and the Commission to this end and request the holding of stakeholder consultations on the proposed data management strategy;*

19. *~~Calls upon contributions to the voluntary trust fund Voluntary Trust Funds to support the participation of members of the Council in the meetings of the Authority from by developing States, including in the meetings of the Council to secure, the Legal and Technical Commission and the continued participation of developing States at this critical juncture in the development of the regulatory framework of the Authority Finance Committee;~~*

20. *Requests the Secretary-General to report to the Council on the implementation of the present decision at its twenty-ninth session, in 2024, and that such annual reporting remain on the agenda of the Council as a standing item.*

⁷ ISBA/28/C/5/Add.1.

⁸ Annex I of ISBA/28/LTC/5.

⁹ See ISBA/25/LTC/6/Rev.6, which replaces ISBA/25/LTC/6/Rev.2, ISBA/25/LTC/6/Rev.1 and ISBA/25/LTC/6/Rev.1.Corr.1.