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Report of the Secretary-General on the implementation of the decision of the Council in 2018 relating to the reports of the Chair of the Legal and Technical Commission

Implementation of the decision of the Council relating to the reports of the Chair of the Legal and Technical Commission in 2018

Report of the Secretary-General

I. Background

1. At its 244th meeting, on 20 July 2018, the Council of the International Seabed Authority adopted a decision relating to the reports of the Chair of the Legal and Technical Commission on its work during the twenty-fourth session (ISBA/24/C/22). In paragraph 20 of the decision, the Council requested the Secretary-General to report to it on the implementation of the decision at the present session and that such annual reporting remain on the agenda of the Council as a standing item. The present report has been prepared in response to that request. It provides an update on the implementation of the decision of the Council as at 21 January 2019.

2. Section II of the present report provides an update on the progress made in connection with the draft regulations on exploitation of mineral resources in the Area, in response to the points raised in paragraphs 2, 3 and 4 of the decision of the Council.

3. Section III addresses issues relevant to contractors, relating to paragraphs 6 to 11 of the decision of the Council.

4. In response to paragraphs 12 and 13 of the decision of the Council, matters relating to workshops organized by the Authority are briefly reviewed in section IV.

5. Section V addresses issues concerning the development of regional environmental management plans, in particular where there are currently exploration contracts, referred to in paragraphs 13 and 14 of the decision of the Council.

* ISBA/25/C/L.1.



6. Section VI reviews the progress made towards the implementation of the data management strategy of the Authority, including public access to non-confidential data, in response to paragraph 15 of the decision of the Council.

7. Section VII addresses miscellaneous matters, such as the concern noted by the Council in paragraph 17 of its decision in relation to the status of the voluntary trust fund for the purpose of defraying the cost of participation of members of the Commission and of the Finance Committee from developing countries in meetings of the Commission and of the Committee.

8. Members of the Council are invited to note that some matters raised in its decision are not covered in the present report as work is still ongoing. The Secretary-General will prepare supplementary reports for the consideration of the Council at subsequent meetings in respect of those matters.

II. Draft regulations on exploitation of mineral resources in the Area

9. In paragraph 2 of its decision, the Council welcomed the continued work of the secretariat and the Commission on the regulations on exploitation and requested that work on the regulations continue as a matter of priority. Consequently, the indicative programme of work for part I of the present session has been prepared in such a way as to enable the Council to continue its review as a matter of priority, and bearing in mind the agreed timeline for the adoption and approval of the regulations ([ISBA/23/C/13](#), annex).

10. In paragraph 3 of its decision, the Council requested that the Commission's recommendations regarding the draft regulations and their next iteration be circulated sufficiently in advance of the meeting of the Council at which they will be considered (July 2019), to allow for its substantive consideration and emphasized the ongoing need for openness and transparency. In accordance with the revised schedule of meetings for 2018 and 2019, endorsed by the Assembly of the International Seabed Authority as a result of its review of the international regime of the Area pursuant to article 154 of the United Nations Convention on the Law of the Sea ([ISBA/23/A/13](#), sect. D, para. 1), the Commission will meet from 4 to 25 March 2019 to continue its consideration of the revised draft regulations on the basis of the written submissions received from stakeholders in 2018, as well as the direction and guidance provided by the Council during part I of its session.

11. In paragraph 4 of its decision, the Council requested the Commission to consider, as appropriate, the submissions made by Algeria, on behalf of the African Group, regarding the operationalization of the Enterprise, the economic model/payment regime and other financial matters; the submission by Belgium on strengthening the environmental scientific capacity of the Authority; and the submission by Germany of proposals to facilitate the work of the Authority, as well as the report of the Secretary-General on considerations relating to a proposal by the Government of Poland for a possible joint-venture operation with the Enterprise ([ISBA/24/C/12](#)).

12. Members of the Council will recall that, in July 2018, in an informal setting, the Council reviewed the draft regulations on exploitation on the basis of the revised draft regulations on exploitation of mineral resources in the Area prepared by the Commission, contained in [ISBA/24/LTC/WP.1/Rev.1](#), along with a note in which the Commission highlighted matters requiring the Council's attention ([ISBA/24/C/20](#)). In addition to its general comments on the revised draft regulations ([ISBA/24/C/8/](#)

Add.1, annex I), the Council agreed to provide specific comments thereon to the secretariat by 30 September 2018.

13. Since the twenty-fourth session, the following developments have taken place. The secretariat received 42 submissions to the text of the revised draft regulations from members of the Authority and other stakeholders, which have been posted on a website of the Authority.¹ In addition, the secretariat has prepared an overview of the main thematic issues raised in the written submissions (ISBA/25/C/2) to supplement the comments made by the Council in July 2018 and individual stakeholders, including Algeria, on behalf of the African Group, on the economic model/payment regime and other financial matters, and by Belgium on strengthening the environmental scientific capacity of the Authority. The overview identified a set of critical areas, including consideration of alternative economic models (see para. 14 below), for discussion by the Council, with a view to providing further direction and guidance to the Commission. In this connection, and in order to assist the deliberations of the Council, the secretariat has prepared seven discussion notes.²

14. In respect of the development of a payment mechanism, in 2018, the Council agreed on a proposal made by the delegation of Germany to set up an open-ended working group to discuss the financial model and, in particular, to review the comparative study of alternative models, to be prepared by the Massachusetts Institute of Technology (see ISBA/24/C/8/Add.1, annex II). The first meeting of an open-ended informal working group of the Council, in respect of the development and negotiation of the financial terms of a contract, has been scheduled to be held in Kingston on 21 and 22 February 2019, under the chairmanship of the President of the Council for the twenty-fourth session of the Council, Olav Myklebust. A briefing note by the President, as well as the provisional agenda and the indicative programme of work, have been placed on the website of the Authority, along with the comparative study prepared by the experts from the Institute.³

III. Activities of contractors

15. Several of the requests made by the Council in its decision are addressed in sections A to D below, which include a summary of the outcomes of the second annual consultation between the secretariat and contractors that was held in Warsaw on 15 and 16 October 2018. The meeting was hosted by the Ministry of Environment of the Government of Poland and served to discuss with contractors matters raised by the Council for their attention.

16. Further matters regarding contractors are addressed in sections E and F below.

¹ <https://ran-s3.s3.amazonaws.com/isa.org.jm/s3fs-public/documents/EN/Regs/2018/Comments/Comments.pdf>.

² ISBA/25/C/3 (Content and development of standards and guidelines for activities in the Area under the Authority's regulatory framework); ISBA/25/C/4 (Relationship between the draft regulations on exploitation of mineral resources in the Area and regional environmental management plans); ISBA/25/C/5 (Implementing an inspection mechanism for activities in the Area); ISBA/25/C/6 (Delegation of functions by the Council and regulatory efficiency); ISBA/25/C/8 (Implementing the precautionary approach to activities in the Area); ISBA/25/C/10 (Consideration of a mechanism and process for the independent review of environmental plans and performance assessments under the regulations on exploitation of mineral resources in the Area); and ISBA/25/C/11 (Key terms: distinguishing between good industry practice and best practices under the draft regulations on exploitation of mineral resources in the Area).

³ See https://ran-s3.s3.amazonaws.com/isa.org.jm/s3fs-public/files/documents/adhoc_0.pdf.

A. Issues relating to the 2017 annual reports

17. In paragraph 6 of its decision, the Council noted with appreciation the Commission's consideration of 27 annual reports on activities carried out by contractors in 2017, welcomed in particular the presentation of well-structured reports complying with the template issued by the Commission by the overwhelming majority of contractors, but regretted the cases of contractors not following the reporting requirements, and also regretted that, at the current rate of progress, some contractors risked being unable to deliver on their commitments for the initial five-year period of the plans of work established in their contracts for exploration.

18. In paragraph 7 of its decision, the Council emphasized the importance for contractors to take into account and respond to the Commission's advice on annual reports in a timely manner. In paragraph 8, the Council requested the Secretary-General to communicate the various issues identified during the Commission's review of the annual reports of contractors to the relevant contractors and sponsoring States.

19. With reference to the aforementioned paragraphs of the decision of the Council, at the meeting in Warsaw, general comments from the Commission were introduced and discussed with the contractors. Each contractor was then invited to a bilateral meeting with technical staff of the secretariat to address matters particular to it.

20. As of 5 November 2018, individual feedback from the Commission on the 2017 annual reports had been sent to each contractor. Final responses to the Commission's feedback will be included in the contractors' annual reports for 2018, which are due by 31 March 2019.

21. The Secretary-General will continue to work with the contractors to address reporting issues.

B. Issues relating to the transparency of contracts

22. In paragraph 16 of the statement by the President of the Council on the work of the Council ([ISBA/24/C/8](#)), the Council also requested the Secretary-General to explore with contractors the possibility of making contracts for exploration and associated programmes of activities publicly available, taking into account the confidentiality obligations under such contracts, and to report to the Council at the present session.

23. On 27 August 2018, the Secretary-General wrote to all contractors, inviting them to make their contracts for exploration and associated programmes of activities publicly available through the Authority. The matter was also placed on the agenda of the meeting in Warsaw.

24. Contractors agreed that not every part of the contracts for exploration could be considered confidential, especially in the light of the use of standard clauses, and supported the need for transparency in the work of the Authority throughout all exploration contracts. Nevertheless, in view of the different wording and formats of the schedules attached to the contracts, the contractors proposed that a summary template covering the key elements of the non-standard provisions of each contract be made public. The template would be similar to an executive summary and would cover the contents of schedules 2 and 3 and appendix 1 of the contract. There would be an option for contractors to update or omit information depending on the need to maintain its confidentiality. A benefit of this format is that contractors would

provide the Council and the Commission with context for each element summarized, thereby increasing transparency and aiding in understanding the information provided.

25. The secretariat agreed to draw up in due course a draft template with input to be provided by the contractors. This work is currently in progress. The Council will be apprised of progress made during part II of the current session.

C. Revised annual overhead charge and voluntary contribution

26. Contractors were notified of the Assembly's decision (ISBA/24/A/11) to increase the annual overhead charge to \$60,000, and to introduce an additional annual voluntary contribution of \$6,000, effective 1 January 2019. Several contractors explained that combining the mandatory payment with a voluntary payment would complicate the accounting for funds, while others stated that their accounting system did not permit that. In the light of the above, it was decided that the secretariat would send the contractors two separate invoices: one for the mandatory \$60,000 and the other for the voluntary \$6,000.

D. Warsaw Statement

27. At the conclusion of the meeting, the contractors issued a joint declaration, entitled the "Warsaw statement", in which the importance of the annual contractors' meeting with the secretariat was acknowledged, among other things. The full text of the statement is contained in the annex to the present report.

E. Contractor training programmes

28. In paragraph 11 of its decision, the Council acknowledged that most of the contractors had fully implemented training programmes and offered further training opportunities. From July to December 2018, 30 training placements were awarded, as follows: 2 offshore internships offered by Global Sea Mineral Resources NV; 6 theoretical and at-sea placements by Yuzhmorgeologiya; 5 at-sea placements by Deep Ocean Resources Development Co. Ltd.; 4 at-sea placements by China Minmetals Corporation; 5 on-land placements by the Ministry of Earth Sciences (MoES) of the Government of India; 6 at-sea placements by the China Ocean Mineral Resources Research and Development Association (COMRA), under contracts for polymetallic sulfides; and 2 placements by Marawa Research and Exploration Ltd., to enable nationals of Kiribati to attend the 2018 Sustainable Ocean Summit.

F. Issues of alleged non-compliance by contractors

29. In paragraph 9 of its decision, the Council requested the Secretary-General to report to it annually, identifying instances of alleged non-compliance and the regulatory action recommended or to be taken in accordance with the Convention, 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.

30. With reference to this request from the Council, as of January 2019, the Secretary-General had not identified any issues of alleged non-compliance.

IV. Matters relating to workshops organized by the International Seabed Authority in 2017 and 2018

31. In respect of the international workshops that were convened in Qingdao, China, in May 2018, and in Szczecin, Poland, in June 2018, noted in paragraph 12 of the decision, the proceedings will be released as ISA Technical Studies Nos. 23 and 22, respectively, prior to the second part of the present session of the Council.

32. Concerning the technical workshops mentioned in paragraph 13 of the Council's decision, the proceedings of the workshop on the criteria for the selection of impact reference zones and preservation reference zones, held in Berlin from 27 to 29 September 2017, will be released as ISA Technical Study No. 21. With respect to the workshop on the review of the environmental management plan for the Clarion-Clipperton Fracture Zone, it is scheduled to be held in 2019. The proceedings of the workshop held in Bangkok, jointly hosted by the International Cable Protection Committee and the secretariat on 29 and 30 October 2018, on the development of practical options for the implementation of the "due regard and reasonable regard" obligations under the Convention, will be published as ISA Technical Study No. 24.

V. Development of regional environmental management plans for the Area, in particular where there are currently exploration contracts

33. In paragraph 14 of its decision, the Council encouraged the secretariat and the Commission to make progress on the development of environmental management plans where there are currently exploration contracts.

34. Pursuant to that decision, relevant stakeholders were engaged in designing a workplan for the development of regional environmental management plans in the priority areas identified by the Council ([ISBA/24/C/3](#), para. 12). In particular, significant progress has been made towards cooperating with the European Union and COMRA regarding the development, under the auspices of the Authority, of regional environmental management plans in the Atlantic Ocean and the Pacific Ocean. All activities and actions will be undertaken in line with the workplan and the road map developed by the secretariat and with the budgetary programme (2.7) adopted by the Assembly at its twenty-fourth session (see [ISBA/24/A/11](#)).

35. A comprehensive report on the implementation of programme 2.7, including a tentative road map, is contained in document [ISBA/25/C/13](#).

VI. Data management

36. In paragraph 15 of its decision, the Council welcomed the secretariat's progress towards the implementation of the data management strategy of the Authority, including public access to non-confidential data, and noted that the database was expected to be launched by the end of October 2018. Since the twenty-fourth session, the secretariat has completed all phases of the technical implementation of the data management strategy of the Authority ([ISBA/22/LTC/15](#)). In October 2018, a beta version of the database was launched for the contractors, which uploaded test data submissions and downloaded historical data from the database. This is to be followed by penetration testing and security enhancements to ensure the security and integrity of all data, due to be undertaken

in February 2019. A beta version of the database will be launched for members of the Commission in March 2019. A public launch will follow shortly thereafter.

VII. Miscellaneous matters

37. In paragraph 16 of its decision, the Council requested the Secretary-General to ensure that adequate time and resources continued to be provided to support the work of the Commission, especially on priority issues, including further progress on the draft regulations on exploitation. Those priority issues have been placed on the provisional agenda of the Commission for the present session. The progress made on those issues will be covered in supplementary reports to the Council and in the report of the Chair of the Commission, which will be considered by the Council during the second part of its session, in July 2019.

38. In paragraph 17 of its decision, the Council noted with concern the sharp deficit in the voluntary trust fund for the purpose of defraying the cost of participation of members of the Commission and of the Finance Committee from developing countries in meetings of the Commission and of the Committee.

39. Following appeals by the Secretary-General, as at the end of December 2018, and thanks to generous contributions by Germany (\$25,000), the Netherlands (\$49,928) and Norway (\$58,456), the voluntary trust fund showed a positive balance of \$75,960. The estimated drawdown from the fund for the March 2019 session of the Commission amounts to \$68,382. Thus, the balance of the fund will remain insufficient to secure full funding for the subsequent meetings of the Commission and of the Committee, and the need for a sustainable funding solution remains.

VIII. Recommendations

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

Annex

Conclusions of the contractors' meeting jointly organized by the International Seabed Authority and the Ministry of Environment of Poland

Warsaw statement

1. Taking into account the importance of the meeting for the deep-sea mining project under the umbrella of the International Seabed Authority, the following can be concluded:

A. Annual contractors meeting

2. Meetings of the secretariat of the International Seabed Authority and contractors constitute a constructive platform for improving the communication and give the opportunity to discuss and better understand the issues related to the implementation of deep-seabed mining regime, therefore meetings should be organized on a regular basis.

B. Database

3. The importance of the database proposed by the Authority and discussed during this meeting can be summarized in two key aspects: firstly, turning data into information is of great value in terms of developing the common heritage of humankind, secondly, it is designed in a way to facilitate and significantly improve data exchange between the Legal and Technical Commission, the secretariat and the contractors, as well as to facilitate access to public information to stakeholders. The question of protection of confidential data and sensitive information remains an important point of discussion.

C. Transparency commitment

4. The question of transparency of contracts was discussed during the course of the meeting and requires further consultations led by the International Seabed Authority secretariat. As of now, among contractors and sponsoring States, there are multiple approaches to this question. The common template proposed during the course of the meeting will allow for the harmonized approach for transparency of the details of the non-standard content of contracts.

D. Training programme

5. The training programme is a valuable and integral part of the exploration programmes contributing to the common heritage of mankind. Sharing knowledge and our enthusiasm towards deep-sea mining with recognition of the importance of protection for the marine environment is the way not only towards capacity-building but also towards disseminating information on deep-sea mining – on a small scale but possibly with great impact on the individual lives.

6. The proposed alumni programme shall be further investigated and focused on enhancing communications among alumni, contractors and the International Seabed Authority to support capacity-building efforts and developing States.

E. Importance of having exploitation regulation by 2020 in place

7. The International Seabed Authority is in the process of developing by 2020 the regulations on exploitation of mineral resources in the Area which is the ultimate regulatory phase in developing the common heritage of humankind and the sustainable exploitation of marine minerals. In the course of work, the contractors, the International Seabed Authority and deep-sea mining stakeholders have already undertaken multiple activities, and further activities are needed to ensure implementation of the efficient mining regime in the Area. The joint objective is to commence the exploitation ensuring the best available environmental protection measures and protection for the marine environment while respecting a balanced economic approach.

8. The urbanization and electrification of our planet requires society at large to consider responsible alternatives to land-based resources, recognizing the availability of marine mineral resources and recent progress made in the development of deep-sea mining technologies.
