



Council

Advance Unedited Version
14 December 2021

English only

Twenty-sixth session

Council session, part II

Kingston, 6-10 December 2021*

Statement by the President of the Council on the work of the Council during its resumed twenty-sixth session

I. Resuming of the session

1. Since the last in-person meetings of the Council in February 2020, the Council proceeded with the adoption of decisions under silence procedure owing to exceptional circumstances due to the COVID pandemic situation, including the approval of a plan of work for exploration for polymetallic nodules submitted by Blue Minerals Jamaica Ltd., sponsored by the Government of Jamaica, and decided to take note of these decisions at its first resumed meeting. The resumed twenty-sixth session of the Council was held in hybrid format from 6 to 10 December 2021.

2. At its 265th meeting on 6 December 2021, the Council adopted the Decision of the Council of the International Seabed concerning the decisions adopted under silence procedure in 2020 and 2021 (see ISBA/26/C/48).

II. Report of the Secretary-General on the credentials of members of the Council

3. At the 269th meeting, on 8 December 2021, the Secretary-General indicated that, as at that date, credentials had been received from 36 members of the Council. It was noted that, in accordance with the system agreed upon for the allocation of seats among the regional groups at the first of the Council, the Asia-Pacific Group had designated Tonga to participate in the meetings of the Council without the right to vote during the twenty-sixth session. It would be the turn of the Latin American and Caribbean Group to relinquish a seat on the Council in 2022.

* New dates of the in-person meetings originally scheduled for July 2020 and then July 2021

III. Election to fill a vacancy on the Legal and Technical Commission

4. At its 265th meeting, on 6 December 2021, the Council elected Mr Sethuraman Ramesh (India) to fill the vacancy on the Legal and Technical Commission left by the demise of Dr. Milind P. Wakdikar (India), for the remainder of his term until 31 December 2022 (see ISBA/26/C/45). The Council expressed its deepest condolences to Dr. Wakdikar's family and to the Government of India and paid tribute to his contributions to the work of the Authority.

IV. Status of contracts for exploration and related matters

5. At its 265th meeting, on 6 December 2021, the Council took note of the reports on the status of contracts for exploration and periodic reviews (ISBA/26/C/4/Add.1). Several delegations made comments on the templates for the periodic review and annual reports on Contractors' activities which facilitate the review process. Views were also expressed on the increasing transparency of contracts with the release of public templates by most Contractors. The Council also took note of relinquishments of exploration areas by the Ministry of Natural Resources and Environment of the Russian Federation under the contract for exploration for polymetallic sulphides between the Ministry and the International Seabed Authority (ISBA/26/C/41), by Global Sea Mineral Resources NV (ISBA/26/C/42) and by China Ocean Mineral Resources Research and Development Association under its contract for exploration for polymetallic sulphides (ISBA/26/C/24).

V. Report of the Secretary-General on the status of national legislation relating to deep seabed mining and related matters

6. At the same meeting, the Council was provided with a report on the status of national legislation relating to deep seabed mining and related matters (ISBA/26/C/19) which was updated orally and took note of the report. The Council requested that the Secretary-General prepare a report on this topic for its next session.

VI. Report of the Secretary-General on the implementation of the decision of the Council in 2019 relating to the reports of the Chair of the Legal and Technical Commission

7. The Council was presented with two addenda to the Report of the Secretary-General on the implementation of the decision of the Council in 2019 relating to the reports of the Chair of the Legal and Technical Commission (ISBA/26/C/23/Add.1 and Add.2) and took note of them. The Council noted the increased transparency of explorations contracts and the availability of information in this matter on the Authority's website and encouraged efforts to be pursued through dialogue with contractors (see also ISBA/26/C/57). Some delegations expressed the view that Standards and Guidelines should be treated as part of the regulatory package and that they should be translated to all languages of the Authority. A delegation commended that there were no instances of non-compliance by contractors. A delegation noted the importance of taking note of the commitments made at the 26th UN Climate Change Conference of the Parties (COP26) for Pacific States. A delegation commended the Authority for its collaboration with the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization (IOC-UNESCO) to integrate non-confidential environmental information with the Ocean Biogeographic Information System of the IOC-UNESCO.

VII. Issues relating to the election in 2022 of members of the Legal and Technical Commission

8. At its meeting on 6 December, the Facilitator Mr Vladislav Kurbatskiy presented his revised draft mechanism for elections of the Legal and Technical Commission as contained in the annex to the document ISBA/26/C/20. The Facilitator also reported on further informal consultations he held with regional groups.

9. The Council expressed its appreciation for the efforts made by the Facilitator in the challenging context of the COVID pandemic situation. Following an exchange of views indicating that further consultation was needed, the Facilitator held fourth round of consultations. Despite positive involvement by all delegations through several round of informal consultations, no compromise could be reached, and the Council requested the Facilitator to hold further consultations to facilitate the emergence of a consensus on this matter prior to the next election of members of the Commission in 2022.

VIII. Applications for extensions of contracts in accordance with the procedures and criteria for the extension of an approved plan of work for exploration

10. At its 266th meeting, on 6 December 2021, the Council considered seven reports and recommendations of the Legal and Technical Commission relating to seven applications for a five-year extension of approved plans of work for polymetallic nodules. The applications had been submitted by Interoceanmetal Joint Organization (ISBA/26/C/31), JSC Yuzhmorgeologiya (ISBA/26/C/32), the Government of the Republic of Korea (ISBA/26/C/33), Deep Ocean Resources Development Co. Ltd. (ISBA/26/C/34), China Ocean Mineral Resources Research and Development Association (ISBA/26/C/35), the Institut français de recherche pour l'exploitation de la mer (ISBA/26/C/36) and Federal Institute for Geosciences and Natural Resources and the International Seabed Authority (ISBA/26/C/37).

11. At the same meeting, acting on the recommendations of the Commission, the Council approved all seven applications for extensions of contracts for exploration. The decisions of the Council with respect to each application are contained in documents ISBA/26/C/49 to ISBA/26/C/55.

IX. Report of the Chair of the Legal and Technical Commission on the work of the Commission at its twenty-sixth session

12. At its 271st and 272nd meetings on 9 December 2021, the Council was presented with the reports of the Chair of the Legal and Technical Commission on the work of the Commission at its three virtual meetings since the last meeting of the Council in February 2020. These reports are in ISBA/26/C/12, ISBA/26/C/12/Add. 1 and Add.2.

13. The Council commended the Commission for its hard work under these challenging circumstances.

14. The Council also commended the efforts of the Contractors to carry out their activities and training programmes in the context of the COVID pandemic situation.

15. Several comments were made in relation to development of standards and guidelines for activities in the Area, activities of contractors, including training programmes, the study of potential impact of polymetallic nodules production from the Area on the economies of developing land-based producers of those metals which are likely to be the most seriously affected, the process for environmental impact assessment for designated activities during exploration. The Chair of the Legal and Technical Commission responded to queries and provided some clarification. These aspects are addressed in the decision of the Council on the reports of the Chairs of the Legal and Technical Commission (ISBA/26/C/57).

16. The Council also took note of the updated templates for the reporting of geological and environmental data and metadata for the purpose of annual reports by the contractors (see annex IV to ISBA/21/LTC/15 and Corr.1).

17. The Council further took note of the recommendation of the Legal and Technical Commission regarding the establishment of the Economic Planning Commission. Divergent views were expressed with respect to the timing of the establishment of that Commission. The Council requested the Secretary-General to prepare a report on this matter for consideration of the Council in 2022 (see ISBA/26/C/57).

18. In addition, at its 272nd meeting on 9 December 2021, the Council considered the report and recommendations of the Legal and Technical Commission on the review of the implementation of the Environmental Management Plan for the Clarion-Clipperton Zone (ISBA/26/C/43). Delegations expressed their support for the recommendation on the establishment of four additional areas of particular environmental interest, in order to enhance the effectiveness of the network of areas of particular environmental interest. Delegations also noted the progress made in the implementation of the environmental management plan for the Clarion-Clipperton Zone, and further actions to advance the implementation of this plan. Several delegations underscored further measures to be implemented, in addition to area-based management tools, which include the continued collection and synthesis of environmental baseline data, cumulative impact assessments at a regional scale, further guidance on the establishment of impact reference zones and preservation reference zones, as well as measures in anticipation of future test mining activities in the Clarion-Clipperton Zone. Delegations also supported regular reviews of the implementation of environmental management plan for the Clarion-Clipperton Zone. Furthermore, several delegations expressed the view that no exploitation activities should take place without the relevant regional environmental management plan in place.

19. Following this discussion, at its 274th meeting, on 10 December 2021, the Council adopted a decision relating to the review of the implementation of environmental management plan for the Clarion-Clipperton Zone, including the approval of the designation of four additional areas of particular environmental interest (APEIs) (see ISBA/26/C/58).

20. With respect to the development of regional environmental management plans in other priority regions identified by the Council, the Council noted the progress made in the development of such plans for the Area of northern Mid-Atlantic Ridge and Northwest Pacific, as well as the need to initiate the development of a regional environmental management plan for the Indian Ocean triple junction ridge and nodule-bearing province. Several delegations recalled the decision of the Council concerning a standardized approach for the development, approval and review of regional environmental management plans in the Area (ISBA/26/C/10) and requested that the Commission make further progress in implementing this decision.

21. At its 274th meeting, on 10 December 2021, the Council adopted its Decision relating to the reports of the Chairs of the Legal and Technical Commission on the work of the Commission, based on the various reports presented by its Chairs (see ISBA/26/C/57).

X. Report of the Finance Committee

22. At its 269th meeting, on 8 December 2021, the Council was presented with the report of the Finance Committee and took note of it (ISBA/26/A/10-ISBA/26/C/21 and ISBA/26/A/10/Add.1-ISBA/26/C/21/Add.1).

23. The Council expressed its appreciation to the Committee which was able to progress its work through virtual meetings thanks to the dedication of its members. The Council also expressed its condolences to the family of Ambassador Reinaldo Storani (Brazil) and paid tribute to his contribution to the work of the Committee.

24. At the same meeting, the Council adopted its Decision on financial and budgetary matters (see ISBA/26/C/56).

25. In addition, the Council reviewed the report by the Finance Committee on the main elements involved in the formulation of rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area, including questions in annex II to the report about which the Committee requested some guidance on key policy aspects (ISBA/26/A/24- ISBA/26/C/39). The Council expressed its appreciation for the comprehensive report and interesting proposals. It was emphasized that this pioneering topic was at the core of the goals of the Authority and that what is at stake, is not a discussion on mere financial aspects, but the design of an appropriate mechanism on a non-discriminatory basis (article 140, paragraph 2).

26. Several delegations made comments of a preliminary nature on proposed options for distribution of benefits derived from activities in the Area. Considering that the conduct of activities is to benefit current and future generations and that this calls for intergenerational solidarity, some delegations questioned whether the direct distribution of funds would be the best option. As an alternative, several delegations expressed general support for considering the establishment of a seabed sustainability fund as a proper tool to avoid the complexities that equitable sharing formulas could entail. Delegations also commented on the suggested purposes for the fund, i.e. to advance marine scientific research with a view to promote the increased knowledge, sustainable use of the resources of the ocean and protection and preservation of biodiversity, for the enhancement of the available technology for the effective protection of the marine environment and for capacity building and transfer of technology.

27. Some delegations stressed that this seabed sustainability fund should be kept distinct from the environmental compensation fund which the 2011 Advisory Opinion by the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea suggested to create, and which has completely different purposes.

28. With respect to the other questions posed in annex II to the Committee's report, several delegations expressed views as to whether future revenues from exploitation activities would be able to compensate increases in the administrative budget of the Authority, while at the same time fulfilling their goal of contributing to a proper sharing of benefits from the exploitation activities in the Area. The view was expressed that a more

detailed study by the Committee would be welcome. Finally, as for the criteria for access to future economic assistance fund provided for under article 151 of the United Nations Convention on the Law of the Sea, several delegations reiterated that only funds received from contractors and voluntary contributions should be used to such end.

XI. Report on matters relating to the Enterprise

29. At its 270th meeting, on 8 December 2021, the Council expressed its appreciation for the two reports presented by the Special Representative of the Secretary-General for the Enterprise (ISBA/26/C/15 and 46) and took note of them with the update concerning the impossibility for the Government of Poland to proceed further with the proposal for joint venture arrangements.

30. At its 274th meeting, on 10 December 2021, the Council took into account the Commission's recommendation on the appointment of an interim director general for the Enterprise to give effect to the step-by-step approach on the operationalization of the Enterprise, as provided for in the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea ('the 1994 Agreement'), as well as the financial assessment of the creation of the post by the Finance Committee. The Council extended the mandate of the Special Representative of the Secretary-General for the Enterprise until the end of the twenty-seventh session (see ISBA/26/C/57).

XII. Draft Regulations for exploitation of mineral resources in the Area

31. On 7, 8, 9 and 10 December 2021, the Council considered the report (see ISBA/26/C/44) on the status of the draft regulations on exploitation of mineral resources in the Area and the roadmap for 2022 and 2023 towards the finalization of the Draft Regulations on exploitation of mineral resources in the Area by July 2023.

32. The Council took note of the report of the Secretary-General on the process of development of the draft regulations for exploitation in the Area and recognized the considerable amount of work ahead qualifying the task as daunting, but necessary in light of the mandate of the Authority to regulate exploitation of mineral resources and develop a robust and comprehensive regulatory framework. It was noted that it was necessary to accelerate the work on the Draft Regulations but without compromising the quality of the text and that "nothing is agreed, until everything is agreed". Several delegations commented on the importance of a robust science-based regulatory framework and to ensure the protection of the marine environment. . Comments were also made in relation to the following aspects: deliverables; format, duration and modalities of the meetings; and review of the roadmap. The Council stressed that the Informal Working Groups should start work as soon as possible and stressed the role of Facilitators in the negotiation of the Regulations as it is the time to enter negotiations of the text and no more exchange of statements. A delegation also indicated that the Council need to consider again issues to the nature, number and content of standards and guidelines, including further criteria for environmental impact assessments. Some delegations expressed the views that standards and guidelines should be treated as part of the regulatory framework

33. Some delegations indicated the importance of having a discussion on the consequences if the Council was unable to finalize the Regulations by July 2023, including the possibility of requesting an advisory opinion from the Seabed Disputes Chamber. While recognizing merits in having such discussion, several delegations emphasized that this

would distract the attention of the Council at a time it should negotiate the text as an urgent priority.

34. The proposed roadmap was revised to: (i) include precise dates; (ii) a tentative agenda; and (iii) detail the modalities of the informal working groups established by the Council's decision in ISBA/26/C/11 to accommodate intersessional work, including online, as appropriate. The roadmap will be reviewed at the end of the last Council meeting of 2022 to take stock of advances achieved in the elaboration of the regulatory framework for exploitation including the Standards and Guidelines and to consider possible scenarios, as foreseen in section 1, paragraph 15 of the Annex to the 1994 Agreement, in addition to any other pertinent legal considerations.

35. At its 273rd meeting, on 10 December 2021, the Council endorsed the roadmap, as further revised, which is in the annex to this statement.

XIII. Cooperation with other relevant international organizations

36. At its 270th meeting, on 8 December 2021, the Council took note and approved the memorandum of understanding between the Indian Ocean Rim Association and the International Seabed (see ISBA/26/C/16, annex).

XIV. Report on the implementation of the strategic plan and high-level action plan of the International Seabed Authority for the period 2019-2023

37. At its 274th meeting, on 10 December 2021, the Council took note of the update on the implementation of the strategic plan and high-level action plan of the Authority for the period 2019-2023 (ISBA/26/A/8-ISBA/26/C/23). The Council recommended that the Assembly take note of the report.

XV. Date of the next session

38. As indicated in the annexed roadmap, the meetings of the Council of the International Seabed Authority for the first part of its twenty-seventh session will be held from 21 March to 1 April 2022.

XVI. Close of session

39. The meeting of the resumed twenty-sixth session of the Council of the International Seabed Authority ended on 10 December 2021.

Annex

Roadmap for the twenty-seventh session, in 2022¹

Following discussion of the status of the draft regulations on exploitation of mineral resources in the Area (Draft Regulations) and proposed roadmap for work on the Draft Regulations in 2022, the roadmap has been revised to: (i) include precise dates; (ii) a tentative agenda; and (iii) detail the modalities of the informal working groups established by the Council's decision in ISBA/26/C/11 to accommodate intersessional work, including online, as appropriate.²

The roadmap anticipates that remaining appointments of facilitators of the informal working groups will be notified by 15 December 2021. The informal working groups, as agreed in ISBA/26/C/11 are:

- a) The open-ended working group in respect of the development and negotiation of the financial terms of a contract, chaired by Olav Myklebust (Norway)
- b) The informal working group on the protection and preservation of the marine environment, facilitated by Raijeli Taga (Fiji);
- c) The informal working group on inspection, compliance and enforcement, facilitated by Janet Omoleegho Olisa (Nigeria);
- d) The informal working group on institutional matters (including the role and responsibilities of the various organs of the Authority, timelines, recourse to independent expertise and stakeholder participation), to be facilitated by a nominee of the Latin American and Caribbean Group.

<i>First part (February/March 2022)</i>			
<i>Organ</i>	<i>Date</i>	<i>Working methods relating to draft regulations</i>	<i>Tentative Agenda</i>
Council (webinar format)	February 2022	Informal working group on the protection and preservation of the marine environment (1 session)	<ul style="list-style-type: none"> • By early February 2022, the Facilitator for the informal working group on the protection and preservation of the marine environment will circulate a paper containing revised text to Parts IV and VI and Annexes IV, VII and VIII of the Draft regulations on exploitation of mineral resources in the Area (ISBA/25/C/WP.1) reflecting the discussions from February 2020 and incorporating comments received from all members and observers.

¹ The roadmap will be reviewed at the end of the last Council meeting of 2022 to take stock of advances achieved in the elaboration of the regulatory framework for exploitation including the Standards and Guidelines and to consider possible scenarios, as foreseen in section 1, paragraph 15 of the Annex to the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea, in addition to any other pertinent legal considerations.

² During the discussion by the Council of the status of the draft regulations on exploitation of mineral resources in the Area and proposed roadmap for 2022 and 2023 (ISBA/26/C/44) it was noted that it was necessary to accelerate the work on the Draft Regulations and that “*nothing is agreed, until everything is agreed*”.

			<ul style="list-style-type: none"> • In late February 2022, the Facilitator will host a webinar to receive general views on the paper prepared by the Facilitator. • Prior to the Council’s meeting in March 2022, the Facilitator will prepare an information note summarizing the general views expressed at the webinar.
Legal and Technical Commission	14 – 18 March (1 week)		
Council	21 March – 1 April (2 weeks)	Plenary (2 days)	<ul style="list-style-type: none"> • Organization of work and introduction of remaining elements of the draft regulations on exploitation of mineral resources in the Area (ISBA/25/C/WP.1 and ISBA/26/C/17 -Draft Annex VI).³ • Consideration of the Legal and Technical Commission Chair’s Report annexing all draft phase one standards and guidelines in the official languages of the Authority, containing recommendations on the phase one Standards and Guidelines and the reasons for the Commission’s decision. Documents expected to be published end January 2022.
		Informal working group on the protection and preservation of the marine environment (3 days)	<ul style="list-style-type: none"> • The Facilitator for the informal working group on the protection and preservation of the marine environment will report on the revised text and the general views expressed by the informal working group. • Begin negotiations on the text presented by the facilitator and relevant phase one standards and guidelines.
		Informal working group on inspection, compliance and enforcement (1 days)	<ul style="list-style-type: none"> • Introduction to the work of the IWG by the facilitator, outlining scope of work and discussion of modalities for the work of the group.

³ Other relevant documents and information are found in the collation of specific drafting suggestions by members of the Council ISBA/26/C/CRP.1 “Comments on the draft regulations on the exploitation of mineral resources in the Area (ISBA/25/C/2)” together with the comments received from other member States of ISA, observers and stakeholders.

		Informal working group on institutional matters (1 days)	<ul style="list-style-type: none"> • Introduction to the work of the IWG by the facilitator, outlining scope of work and discussion of modalities for the work of the group.
		Fourth Meeting of the Open-ended informal working group in respect of the development and negotiation of the financial terms of a contract (2 days)	<ul style="list-style-type: none"> • The Chair of the OEWG will issue a briefing note for the meeting by third week of February 2022. • The Chair will present the briefing note at the Meeting. • WG to continue its discussions from previous meeting
		Plenary (1 day)	<ul style="list-style-type: none"> • Review of progress on roadmap • Reports of facilitators • Agreement on necessary intersessional work
<i>Second part (July)</i>			
Finance Committee	13-15 July (3 days)		
Legal and Technical Commission	4-15 July (2 weeks)		
Council	18-29 July - (2 weeks)	Informal working groups	<ul style="list-style-type: none"> • Precise agenda to be agreed based on progress made at the Council's meeting in March 2022
		Plenary (review of outputs and review of progress)	
Assembly	1-5 August (1 week)		
<i>Third part (subject to resources)</i>			
Council	31 October – 11 November (2 weeks) ⁴	Informal working groups	<ul style="list-style-type: none"> • Precise agenda to be agreed based on progress made at the Council's meeting in July 2022

⁴ Tentative.

		Plenary (review of outputs and review of progress.)	<ul style="list-style-type: none">• Discussion of 'what if' scenario.
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