



Legal and Technical Commission

Distr.: General
28 February 2012

Original: English

Eighteenth session
Kingston, Jamaica
16-27 July 2012

Functions, working practices and anticipated programme of work of the Legal and Technical Commission for the period from 2012 to 2016

Note by the Secretariat

1. The present note has been prepared by the Secretariat for the benefit of the incoming members of the Legal and Technical Commission. Its purpose is to describe the status and responsibilities of the Commission along with the working practices that have been developed since the establishment of the Commission in 1997. The paper is also designed to provide the context and framework in which the Commission will exercise its mandate over the next five years. For that purpose, it briefly outlines the anticipated scope of work of the Commission for the period from 2012 to 2016.

I. Status and responsibilities of the Commission

A. Status of the Commission

2. The Commission is established as an organ of the Council of the International Seabed Authority, in accordance with article 163 (1) (b) of the United Nations Convention on the Law of the Sea.¹

3. In accordance with the Convention and the rules of procedure of the Council, the Council elects the members of the Commission. Elections take place in accordance with a streamlined procedure decided on by the Council at the thirteenth session;² the next election of the full membership will occur in 2016. Members hold office for a five-year term and are eligible for re-election for a further term. Members serve in their personal capacity. As experts on mission, they are covered

¹ United Nations, *Treaty Series*, vol. 1833, No. 31363.

² See ISBA/13/C/6.

by article 9 of the Protocol on the Privileges and Immunities of the International Seabed Authority.³

4. Article 165 (1) of the Convention requires that members of the Commission have appropriate qualifications such as those relevant to exploration for and exploitation and processing of mineral resources, oceanology, protection of the marine environment, or economic or legal matters related to ocean mining and related fields of expertise. This requirement is designed to enable the Commission to fulfil its various technical and legal responsibilities.

5. Before assumption of duties, members of the Commission are required to sign an undertaking that they shall have no financial interest in any activity relating to exploration and exploitation in the Area and that they shall not disclose, even after the termination of their functions, any industrial secret or proprietary data which are transferred to the Authority in accordance with the Convention and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Part XI Agreement”),⁴ or any other confidential information coming to their knowledge by reason of their duties for the Authority.⁵

B. Functions of the Commission

6. The functions of the Commission are complementary to the functions of the Council. These functions are mainly of an advisory or recommendatory nature. However, some of the functions listed in article 165 (2) of the Convention require the Commission to make independent expert assessments, for example, on the environmental implications of activities in the Area or on the selection of candidates for the training programmes of contractors. The functions of the Commission must also be exercised in accordance with such policy guidelines and directives that the Council may adopt (article 163 (9) of the Convention).

7. The functions of the Commission are set out in article 165 (2) of the Convention as read in conjunction with the Part XI Agreement. These functions are to:

(a) Make recommendations with regard to the exercise of the Authority’s functions upon the request of the Council;

(b) Review formal written plans of work for activities in the Area and submit appropriate recommendations to the Council;

(c) Supervise, upon the request of the Council, activities in the Area, where appropriate, in consultation and collaboration with any entity carrying out such activities or State or States concerned, and to report thereon to the Council;

³ United Nations, *Treaty Series*, vol. 2214, No. 39357. As of 28 February 2012, the following 34 members of the Authority were parties to the Protocol: Argentina, Austria, Brazil, Bulgaria, Cameroon, Chile, Croatia, Cuba, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Guyana, India, Ireland, Italy, Jamaica, Mauritius, Mozambique, Netherlands, Nigeria, Norway, Oman, Poland, Portugal, Slovakia, Slovenia, Spain, Trinidad and Tobago, the United Kingdom of Great Britain and Northern Ireland and Uruguay.

⁴ United Nations, *Treaty Series*, vol. 1836, No. 31364.

⁵ Article 163, paragraph 8, of the Convention; rule 11 of the rules of procedure of the Legal and Technical Commission.

(d) Prepare assessments of the environmental implications of activities in the Area;

(e) Make recommendations to the Council on the protection of the marine environment, taking into account the views of recognized experts in that field;

(f) Formulate and submit to the Council the rules, regulations and procedures referred to in article 162 (2) (o) of the Convention, taking into account all relevant factors, including assessments of the environmental implications of activities in the Area;

(g) Keep such rules, regulations and procedures under review and recommend to the Council from time to time such amendments thereto as it may deem necessary or desirable;

(h) Make recommendations to the Council regarding the establishment of a monitoring programme to observe, measure, evaluate and analyse, by recognized scientific methods, on a regular basis, the risks or effects of pollution of the marine environment resulting from activities in the Area, to ensure that existing regulations are adequate and are complied with and coordinate the implementation of the monitoring programme approved by the Council;

(i) Recommend to the Council that proceedings be instituted on behalf of the Authority before the Seabed Disputes Chamber, in accordance with Part XI of the Convention and the relevant annexes, taking into account particularly article 187;

(j) Make recommendations to the Council with respect to measures to be taken, upon a decision by the Seabed Disputes Chamber in proceedings instituted in accordance with subparagraph (i) above;

(k) Make recommendations to the Council to issue emergency orders, which may include orders for the suspension or adjustment of operations, to prevent serious harm to the marine environment arising out of activities in the Area. Such recommendations shall be taken up by the Council on a priority basis;

(l) Make recommendations to the Council to disapprove areas for exploitation by contractors or the Enterprise in cases where substantial evidence indicates the risk of serious harm to the marine environment;

(m) Make recommendations to the Council regarding the direction and supervision of a staff of inspectors who shall inspect activities in the Area to determine whether the provisions of Part XI, the rules, regulations and procedures of the Authority and the terms and conditions of any contract with the Authority are being complied with.

8. These functions can be classified into four categories:

(a) Functions relating to the approval of plans of work;⁶

(b) Functions relating to the supervision of activities in the Area and the exercise of the functions of the Authority;⁷

⁶ Article 165 (2) (b) of the Convention; Part XI Agreement, annex, section 1, paragraph 6.

⁷ Article 165 (2) (a), (c), (i), (j) and (m) of the Convention.

(c) Regulatory functions;⁸

(d) Functions relating to the assessment of the environmental impact of activities in the Area.⁹

9. The Commission is also responsible for carrying out the functions of the Economic Planning Commission (established as an organ of the Council under article 163 (1) (a) of the Convention) until the Council decides otherwise or until the approval of the first plan of work for exploitation (Part XI Agreement, annex, section 1, paragraph 4). These functions are set out in article 164 of the Convention; they relate to the policy of the Authority for assisting developing land-based producer States being seriously affected by the production of minerals from the Area.

10. The responsibilities of the Commission are discharged at various stages of the development of activities in the Area. By way of illustration, since its inception in 1997, the Commission has, inter alia:

(a) Considered 10 applications for approval of a plan of work for exploration for polymetallic nodules and 2 applications for approval of a plan of work for exploration for polymetallic sulphides and made recommendations to the Council;

(b) Issued recommendations on environmental and financial matters for the guidance of the contractors;

(c) Evaluated contractors' activity reports every year since 2002;

(d) Prepared draft regulations on prospecting and exploration for polymetallic nodules, for polymetallic sulphides and for cobalt-crusts in the Area;

(e) Recommended an environmental management plan for purposes of assessing the environmental implications of activities in the Area.

II. Working practices of the Commission

A. Rules of procedure of the Commission

11. The meetings are conducted in accordance with the rules of procedure of the Legal and Technical Commission, which the Council approved at its sixty-eighth meeting on 13 July 2000.¹⁰

B. Chairmanship

12. In accordance with the rules of procedure of the Commission, the Chair and the Vice-Chair are elected from among the members of the Commission at the opening of the session. They hold office for a one-year term and are eligible for

⁸ Article 165 (f) and (g) of the Convention.

⁹ Article 165 (d), (e), (f), (h), (k) and (l) of the Convention.

¹⁰ The rules of procedure of the Commission are contained in the annex to document ISBA/6/C/9; they are also reproduced in *International Seabed Authority: Basic Texts* (Kingston, International Seabed Authority, 2003), pp.72-84. In accordance with rule 54, the rules entered into force on the day of their approval by the Council.

re-election.¹¹ At the seventeenth session, the Commission elected David Billett as Chair and Frida Armas-Pfirter as Vice-Chair.

13. The Chair of the Commission is not formally required to report to the Council on the work of the Commission, nor is it necessary for the Commission to formally adopt a consensus report on its work. However, a practice has developed since the first session of the Commission in 1997 whereby the Chair makes a statement to the Council summarizing the work of the Commission and identifying any issues that require attention by the Council. This is much appreciated by the Council as it facilitates the liaison between the Council and its subsidiary body.

C. Work patterns

14. The schedule of meetings of the Commission has been established on the basis of an evolutionary approach and in accordance with the principle of cost-effectiveness that applies to the work of all the organs of the Authority, together with the need for sequential consideration of some agenda items by the various organs of the Authority.

15. From the outset, the practice has been to convene meetings of the Commission in conjunction with the annual session of the Assembly and Council. However, the Commission generally meets for one full week in advance of the annual session, during which full conference services are provided. This enables the Secretariat to service the meeting of the Commission and facilitates the preparation of recommendations to the Council. The Commission then continues to meet in parallel with the meetings of the Assembly, the Council and the Finance Committee for up to one week, with full conference services, so far as available. The time available for the consideration of each agenda item does not generally exceed two to three meetings.

16. It should be noted that this practice has developed only after the Commission experimented with various other formats, including holding meetings without full services, as well as requesting members to arrive over the weekend in order to work on a voluntary basis to advance the agenda. Neither format was considered satisfactory by the outgoing Commission, which held a firm view that, in light of the importance of the work of the Commission, full conference services should be provided to enable all members to contribute on an equal basis.

17. In reviewing its work, the outgoing Commission also recommended that, in light of the substantial increase in the workload of the Commission, consideration should be given to holding two sessions each year. This would not be unprecedented, as in the past the Commission has held two sessions per year, for example at the time of preparing the Regulations on prospecting and exploration for polymetallic nodules in the Area. It was noted that holding a separate meeting of the Commission several months before the annual session of the Authority would make it possible for the Commission to circulate its recommendations and proposals to members of the Council well in advance and thus enable members of the Council to consider and reach a position on such recommendations and proposals during the same year. The second session of the Commission would take place the week immediately prior to the session of the Council as is currently the case.

¹¹ Rule 16 of the rules of procedure of the Commission.

18. Another factor to be taken into consideration is that there are many issues on which the Council cannot make progress without a recommendation by the Commission. Accordingly, holding meetings of the Council and the Commission in parallel is becoming increasingly impractical and inefficient.

D. Subcommittees and working groups

19. The establishment of subcommittees or working groups that subsequently report to the full Commission does not result from a formal procedure; rather it has developed as a frequent practice of the Commission for specific purposes involving the detailed consideration of complex technical and legal issues. For example, the Commission has often divided itself into informal working groups to evaluate the annual reports of contractors with the Authority, to draft the sulphides and crusts regulations and to consider applications for approval of plans of work for exploration. The appointment of a small group from the membership of the Commission has also been the method used to carry out an initial review and appraisal of the nominations of candidates for training programmes and to report back to the full Commission.

20. In some years, depending on the workload, the Commission decided, before the end of its session, to appoint an informal subcommittee with the task of arriving in Kingston in advance of the next year's meeting of the Commission in order to conduct a preliminary evaluation of the contractors' reports. In recent years, however, the working groups were convened during regular sessions, without interpretation, as they were involved mainly in reading and summarizing the views of the groups for consideration in plenary meetings of the Commission.

21. The Commission has also requested small groups of members with specific expertise to work between sessions on the preparation of draft documents; for example, in 2011 an environmental working group was appointed to prepare draft recommendations for the guidance of contractors on the assessment of the environmental impacts of exploration for polymetallic sulphides.

E. Decision-making

22. As a general rule, decisions of the organs of the Authority, including the Commission, should be by consensus. If, in spite of all efforts, there is no consensus, then decisions by voting are made by a majority of members of the Commission present and voting.¹² To date, the Commission has taken all its decisions by consensus.

F. Open and private meetings

23. The question of holding open or private meetings was controversial in the early years of the Authority. A compromise was found in rules 6 and 53 of the rules of procedure of the Commission. Rule 6 establishes that the meetings of the Commission are held in private unless the Commission decides otherwise; rule 6

¹² Part XI Agreement, annex, section 3, paragraphs 2 and 13; rule 44 of the rules of procedure of the Commission.

also states that the Commission shall take account of the desirability of holding open meetings when it discusses issues of general interest to members of the Authority which do not involve the discussion of confidential information. Further, rule 53, *inter alia*, allows any member of the Authority, with the permission of the Commission, to send a representative to attend a meeting of the Commission when the Commission considers a matter particularly affecting that member.

24. In light of the above, the practice of the Commission is to hold open meetings when matters of general concern, such as the draft regulations or the draft environmental management plan for the Clarion-Clipperton Zone, are considered in order to allow members and observers of the Authority to follow the discussions.¹³ At the same time, the Commission has carefully preserved the confidentiality of its discussions on matters involving the consideration of confidential information, such as the evaluation of the confidential information in the annual reports of the contractors or the review of applications for approval of plans of work, those being always discussed in closed meetings. Those private meetings are scheduled, to the extent possible, when the Commission meets alone, prior to the opening of the session of the other organs of the Authority.

G. Expertise from outside the membership of the Commission

25. In order to assist the work of the Commission when issues of a highly technical nature arise, experts from outside the membership of the Commission may be invited to participate in its work. The Convention itself encourages such a practice¹⁴ and previous Commissions benefited from external expertise at the time of drafting the regulations on prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts in the Area.¹⁵ The Commission also receives briefings on the technical workshops convened regularly by the Secretariat. The Commission was, for example, given presentations on the geological model for nodules in the Clarion-Clipperton Zone, on the establishment of areas of an environmental interest in the Clarion-Clipperton Zone and on the Code for environmental management of marine mining of the International Marine Minerals Society.¹⁶

III. Anticipated workload of the Commission for the period 2012-2016

26. The anticipated programme of work of the Commission over the next five-year period includes two kinds of agenda items. There are regular items which are annually or periodically considered by the Commission and those which are not placed on the agenda of the Commission on a regular basis. The regular agenda items mainly include the evaluation of the annual reports of the contractors, the formulation and revision of regulations and recommendations for guidance to

¹³ See, for example, ISBA/8/C/6, para. 7. Issues relating to the biodiversity of the Area were also discussed in open session. See ISBA/9/C/4, para. 15, and ISBA/10/C/4, para. 20.

¹⁴ Article 165 (2) (e) of the Convention.

¹⁵ See, for example, ISBA/10/C/4, para. 12.

¹⁶ See, for example, ISBA/16/C/7, paras. 15-17; ISBA/15/C/5, para. 21; ISBA/14/C/8, paras. 15-18; and ISBA/13/C/3, paras. 19 and 20.

contractors, the environmental management of impacts that may result from activities in the Area and applications for approval of plans of work for exploration as they are submitted. Items which are not periodically addressed by the Commission are a result of specific requests from the Council relating, for example, to the interpretation of provisions. Moreover, a distinction can be drawn between those agenda items requiring priority action and those to which consideration can be given in due course between 2013 and 2016. The anticipated programme of work of the Commission is set out below, based on the assumption that the necessary resources will be made available to enable the Commission to discharge its functions.

A. Agenda items requiring action in 2012

27. Among the regular agenda items mentioned above, several relate to the evaluation of activities of the contractors that the Commission will need to address on an annual basis over the five-year period. To date, the Authority has concluded 10 contracts for exploration for polymetallic nodules and one contract for exploration for polymetallic sulphides. A second contract will be concluded in 2012. Details of the current contractors with the Authority appear in annex I to the present note. Under the regulations, contractors are required to submit an annual report on their activities by 31 March each year. These are to be submitted in accordance with a recommended format, developed by the Commission in 2002. One of the most important, and time-consuming, tasks of the Commission is to review the annual reports of contractors and provide advice thereon to the Secretary-General of the International Seabed Authority. To assist the process, the Secretariat prepares a preliminary technical evaluation and analysis of the data and information in the annual reports prior to the meeting of the Commission. The review of the Commission is the subject of a report to the Secretary-General, who subsequently convey requests for clarification or information to the contractors. The outgoing Commission also included a section of general observations regarding the annual reports of contractors in the summary report of the Commission on its work.

28. The number of annual activity reports of contractors to be evaluated yearly has not ceased to increase. Between 2002 and 2006, it was 7; from 2007 until 2011 it was 8. In 2012, the Commission will evaluate nine activity reports and from 2013 to 2016 the 12 annual reports will be reviewed each year. The Commission will need to find the most efficient and effective working methodology in order to complete the review of annual reports in the time available. In the past, this has presented a challenge to the Commission.

29. The Commission will also proceed to the selection of candidates from developing countries for the training programmes related to the contracts concluded with the Authority in 2011 and 2012. The last selection, in 2008, also included alternate candidates in the event that the first-ranked candidates did not accept the training or were unable to take part at short notice. The current training opportunities fall into three broad categories: at-sea training onboard contractor vessels; bursaries and fellowships to allow candidates to participate in scheduled or specific training programmes; and engineering training. It is expected that over 15 training opportunities will become available starting in 2012. In the past, the main difficulty has been to attract suitable candidates who could benefit from the training opportunities offered by the contractors. In order to overcome this

difficulty, on 1 February 2012, the Secretariat invited prospective trainees to register their interest in order to draw up a roster of suitable candidates for training opportunities over the five-year period starting in 2012.

30. Another item requiring priority action by the Commission in 2012 is the formulation of recommendations for the guidance of contractors with respect to the collection of standardized data during the exploration for sulphides in order to establish environmental baselines which are an indispensable condition for the assessment of impacts. This will be facilitated by the draft recommendations that a subgroup of environmental experts from the Commission has prepared intersessionally in light of the importance stressed by the Council and by the outgoing Commission to have such recommendations issued before the start of contractors' exploration activities. Several other environmental items will also be placed before the Commission in 2012. These include the review of the outcomes of the Authority's workshop on environmental impact assessment, which took place in November 2011 in Fiji, and the results of a meeting the Secretary-General convened with contractors in January 2012 in Kingston. The latter meeting provided an opportunity for contractors to present the results of their environmental studies and to discuss with the Secretariat possible ways of collating and standardizing these results with a view to establishing a baseline for future impact assessment and identifying gaps in research and potential avenues for cooperation. The last environmental item on the agenda of the Commission will relate to the outcomes and implications of the meeting of the Ad Hoc Open-ended Informal Working Group of the General Assembly to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, to be held in May 2012, prior to the meetings of the Authority.

31. A further item requiring priority action by the Commission in 2012 is the request made by the Council at the last session for the nodules regulations to be revised in the light of the sulphides regulations since 10 years separate the approvals of the two sets of regulations. In spite of their numerous similarities, there are two areas in particular where concerns have arisen. The environmental provisions of the sulphides regulations are much stricter than those of the nodules regulations, and the fees provided for under the nodules regulations are out of date and too low to reflect the actual costs of administering the applications. To facilitate the work of the Commission, the Secretariat has prepared a draft document for consideration by the Commission, identifying the differences between the two sets of regulations and the revisions that would be necessary to align the nodules regulations with the sulphides regulations. It is hoped that this will enable the Commission to make rapid progress in formulating a recommendation to the Council during the eighteenth session.

32. In the event that any new applications for approval of plans of work are received prior to the session, the last category of regular agenda item for the Commission will be the review of applications for plans of work for exploration either for polymetallic nodules or for sulphides, in order to make recommendations thereon to the Council.

B. Items requiring action between 2013 and 2016

33. Based on the approved programme of work of the Authority, it is anticipated that the workload of the Commission between 2013 and 2016 will require the

preparation of two sets of regulations for consideration by the Council: draft regulations for the exploitation of polymetallic nodules in the Area, and draft regulations on the implementation of article 82 of the Convention.

34. In 2014, the Commission will be required to undertake a review of the environmental management plan for the Clarion-Clipperton Zone which was adopted by the previous Commission in 2011.

35. As requested by the Council in 2011 (see ISBA/17/C/20), the Commission will in due course need to provide advice in relation to regulation 11.2 of the nodules regulations and regulation 11.2 of the sulphides regulations, concerning the identification of the sponsoring State(s) in circumstances where the applicant has the nationality of one member State of the Authority, but is effectively controlled by another member State of the Authority or its nationals. The Council had also requested the Commission to consider drawing up recommendations for criteria for the implementation of regulation 23, paragraph 7, of the sulphides regulations relating to monopolization of activities in the Area.

36. Another task for the Commission will be to provide guidance on mechanisms of compensation, such as liability insurance or special funds, for environmental damage in situations where neither the contractor nor the sponsoring State is responsible. It is also proposed that the Commission provide guidance on the implementation of monitoring programmes and provision for a staff of inspectors.

37. A table summarizing the anticipated workload of the Commission is provided in annex II to the present note. It should be stressed that this is an indicative programme that may evolve in light of future requests from the Council over the five-year period under consideration, as well as the pace of development of activities in the Area and the time taken by the Commission to deal with each matter. For example, it may be highly optimistic to expect the Commission to be able to prepare exploitation regulations in only one session. Many matters on the agenda require considerable advance preparation, including technical studies and expert advice.

38. It should also be emphasized that the timing of various activities is purely for indicative purposes, and is based on the Secretariat's assessment of when it may be possible to address each item on the basis of the existing resources available to the Authority, both in terms of the Secretariat and the resources available to service meetings of the Commission. In this regard, it is apparent that the workload of the Commission has increased substantially over the past five years and is continuing to increase in light of additional requests from the Council, as well as increasing activities in the Area. Unless additional resources are made available to the Authority, it may be difficult for the Commission to cope with the projected workload.

Annex I

List of contractors

| <i>Contractor</i> | <i>Date of contract</i> |
|--|-------------------------|
| Contractors exploring nodules | |
| Yuzhmorgeologiya (Russian Federation) | 29 March 2001 |
| Interoceanmetal Joint Organization (Bulgaria, Cuba, Czech Republic, Poland, Russian Federation and Slovakia) | 29 March 2001 |
| Government of the Republic of Korea | 27 April 2001 |
| China Ocean Mineral Resources Research and Development Association (China) | 22 May 2001 |
| Deep Ocean Resources Development Company Ltd. (Japan) | 20 June 2001 |
| Institut français de recherche pour l'exploitation de la mer (France) | 20 June 2001 |
| Government of India | 25 March 2002 |
| Federal Institute for Geosciences and Natural Resources (Germany) | 19 July 2006 |
| Nauru Ocean Resources Inc. | 22 July 2011 |
| Tonga Offshore Mining Limited | 11 January 2012 |
| Contractors exploring sulphides | |
| China Ocean Mineral Resources Research and Development Association (China) | 18 November 2011 |
| Ministry of Natural Resources and Environment (Russian Federation) | In 2012 |

Annex II

Summary of the anticipated workload of the Legal and Technical Commission for the period 2012-2016

Regular agenda items over the five-year period

- 9 annual reports of contractors in 2012 and 12 annual reports of contractors from 2013 to 2016 on the basis of the existing contracts
- Implementation of four training programmes following the conclusion of four contracts for exploration in 2011 and 2012

Agenda items requiring priority action in 2012

- Issuance of recommendations for the guidance of the contractors for the assessment of the possible environmental impacts arising from exploration for polymetallic sulphides in the Area
- Review of applications for approval of plans of work for exploration for polymetallic nodules and recommendations to the Council, if any
- Review of applications for approval of plans of work for exploration for polymetallic sulphides and recommendations to the Council, if any
- Recommendations for the revision of the nodules regulations

Agenda items requiring action between 2013 and 2016

- Draft regulations for the exploitation of polymetallic nodules in the Area (2013)
 - Draft regulations on the implementation of article 82 of the United Nations Convention on the Law of the Sea (2013)
 - Review of the environmental management plan for the Clarion-Clipperton Zone (2014)
 - Analysis of regulation 11.2 of the nodules regulations and regulation 11.2 of the sulphides regulations (estimated 2014)
 - Recommendations for criteria for the implementation of regulation 23, paragraph 7 of the sulphides regulations relating to monopolization of activities in the Area (estimated 2015)
 - Guidance on mechanisms of compensation for damage when neither the contractor nor the sponsoring State is responsible (estimated 2016)
 - Guidance on implementation of monitoring programmes and provision for a staff of inspectors (estimated 2016)
-