



## Council

Distr.: General  
24 June 2019

Original: English

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### Twenty-fifth session

Council session, part II

Kingston, 15–19 July 2019

Agenda item 10

**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.**

## **Revised suggestions for facilitating the work of the International Seabed Authority**

**Submitted by the delegation of Germany**

### **I. Introduction**

1. During its twenty-fourth session, in July 2018, the Council of the International Seabed Authority discussed a document submitted by Germany entitled “Suggestions for facilitating the work of the International Seabed Authority” (ISBA/24/C/18). A number of delegations and observers explicitly supported the proposals contained therein.<sup>1</sup> The submission was also highlighted in the statement by the President of the Council on the work of the Council during the second part of the twenty-fourth session (ISBA/24/C/8/Add.1, para. 24).

2. Germany welcomes the fact that some suggestions have already been implemented and commends the secretariat for the quick realization of that implementation.

3. On the basis of feedback received from various delegations and other stakeholders during and after the debate at the twenty-fourth session, the objective of the present submission is both to follow up on the previous year’s document and to

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<sup>1</sup> Germany was supported by many in its suggestions, which focused on the following: circulating early annotated agendas; clarifying timelines and milestones for intersessional work; and supporting the Legal and Technical Commission. The Netherlands and Morocco stressed the importance of timely submission of documents. Singapore recommended harmonizing documentation. The United Kingdom of Great Britain and Northern Ireland supported timely circulation of workshop reports, and, with New Zealand, timely notification of workshops’ schedules and venues. On the need for external expertise, Jamaica insisted on a balanced process and Mexico required further examination. The Netherlands proposed translating only the amendments to the draft regulations for budget saving purposes. The Council took note of the submission.



provide further details in relation to a few aspects mentioned therein. These may be considered crucial to further facilitate the work of the Authority.

## **II. Preparation of Council sessions**

4. One of the suggestions put forward in document [ISBA/24/C/18](#) related to the provision of annotated agendas in advance of Council and Assembly sessions. Experience from previous sessions, however, shows that the annotated agendas provided thus far do not necessarily furnish sufficient means to facilitate a smooth advancement of such sessions.

5. Germany would like to highlight and recommend the recent practice by which presidents of the Council have provided informal briefing notes ahead of scheduled sessions in order to structure and outline them. Such a practice, in addition to the provision of provisional agendas and indicative programmes of work, significantly facilitates an effective internal consultation process and overall preparation ahead of sessions. Moreover, briefing notes explaining *ex ante* the steering course of scheduled Council sessions not only facilitate the preparatory work of delegations ahead of sessions, but also ensure and safeguard a smooth deliberation and discussion environment during those sessions. Situations in which delegations must consult their capitals for advice can be effectively avoided in this way. To maximize their impact, such briefing notes must be published at least six weeks ahead of sessions.

6. In relation to the discussion in the forthcoming Council session on the dates of the twenty-sixth annual session of the Authority (as indicated in the information note on matters for consideration before the Council during the second part of the twenty-fifth session of the Authority), a clear understanding of the exact steps to be taken by the Council in its sessions in 2020 is also of crucial importance. Furthermore, if the Council were to deliberate and decide on a prolongation of Council sessions in view of the numerous tasks and challenges ahead, clarification on the course, structure and objectives of such sessions would be urgently needed. Without such clarification – which could be provided, *inter alia*, by means of informal briefing notes – there is a serious risk that, in spite of prolonged sessions, participants would not be able to achieve much progress and that, potentially, the time and resources of States parties and observers would not be used in an efficient manner.

7. Another suggestion relates to the preparatory work of delegations ahead of sessions with regard to iterative document drafting processes, such as the Authority's current work on the draft regulations on exploitation of mineral resources in the Area. As is common practice in other international processes, the provision of any text amendments in revised drafts in a "track changes" format would significantly facilitate the preparatory efforts by all States parties and other stakeholders. Furthermore, in order to increase the transparency and efficiency of work of the Authority when entering the drafting phase, it would be helpful to also include proposals submitted by States parties or observers in amended versions of the draft document. A standard procedure in other international frameworks is the use of text in square brackets as a basis for internal consultations and discussion in the Council.

## **III. Further ideas to facilitate the work of the Authority**

8. One of the suggestions made in document [ISBA/24/C/18](#) related to assisting the Legal and Technical Commission in the light of its ever-increasing workload. The present submission provides an attempt to offer further details on this matter.

9. According to article 165, paragraph 2, of the United Nations Convention on the Law of the Sea, the Commission shall make recommendations to the Council on the protection of the marine environment, taking into account the views of recognized experts in that field (subpara. (e)). Furthermore, it shall formulate and submit to the Council the rules, regulations and procedures referred to in article 162, paragraph 2 (o), taking into account all relevant factors, including assessments of the environmental implications of activities in the Area (subpara. (f)). As has correctly been pointed out by the secretariat, the latter provision makes clear that, except where otherwise specified in the Convention or 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 primary responsibility for formulating regulations, including on all the matters specified in article 17 of annex III, rests with the Commission (ISBA/24/C/10, para. 10).

10. One of the forthcoming mammoth tasks of the Commission relates to the development of standards and guidelines. First steps were discussed during a fruitful workshop organized by the Authority, in partnership with the Government of South Africa and the Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland, in Pretoria, in May 2019.

11. A first prioritized list of standards and guidelines was drafted by the Commission (ISBA/25/C/3, annex, table 1). Participants in the Pretoria workshop recommended that, for 14 subject matters, including those under “Environmental assessment”, standards or guidelines should be developed before the adoption of regulations on exploitation. The Commission will, in all likelihood, update its prioritized list of standards and guidelines accordingly.

12. Thus, the process facilitating the development of certain standards and guidelines (or thematic groups thereof) could be structured as follows:

(a) The Commission should be requested by the Council to submit proposals on the establishment of working groups or correspondence groups tasked with the development of individual prioritized standards and guidelines, or thematic groups thereof;

(b) The Commission should also be requested to draft terms of reference for such working groups and correspondence groups and submit them to the Council for approval. Germany suggests that States parties propose to lead such working groups, which could effectively carry out their work between sessions to expedite the work of the Commission;

(c) Upon approval of the terms of reference, individual working groups or correspondence groups should be established. The internal organization of such working groups could include, for example, a series of workshops focusing on different subjects (including policy, risk assessment and benthic and pelagic aspects). Virtual meetings may prove to be helpful in this regard.

13. The Commission, by providing the fundamental basics and by leading these processes, remains in the driving seat. This approach would therefore ensure respect for the structure provided under the Convention while acknowledging the current constraints within the Commission. Of course, the aforementioned groups should work in a fully transparent manner and be accessible to all States, industry representatives, environmental actors, the marine scientific research community and other interested stakeholders. They could focus on individual standards or on groups of standards, as appropriate for the respective issue. Working groups could also be co-chaired by specific international or other bodies with experience in standard setting.