



Legal and Technical Commission

Advance Unedited Version
8 June 2023

English only

Twenty-eighth session

Legal and Technical Commission session, part II
Kingston, 28 June – 7 July 2023

Agenda item 20

Use of the silence procedure in the adoption of decisions by the Commission and improvement of procedures for greater transparency

Decision making by consensus and the use of ‘silence procedure’ by the Legal and Technical Commission

Note by the Secretariat

1. In its decision ISBA/27/C/44, adopted at the twenty-seventh session in 2022, the Council requested the Commission to clarify the criteria for and use of ‘silence procedure’ in the adoption of decisions. The purpose of the present note is to summarise the procedure and methodology adopted by the Commission in this respect during the twenty-sixth and twenty-seventh sessions.

2. Silence procedure, for the purpose of formally adopting draft decisions when plenary meetings of the organ concerned were impracticable, was used during the Covid-19 pandemic. In its decision 74/544 of 27 March 2020,¹ the General Assembly of the United Nations authorized the President of the General Assembly, where, in his view, a plenary meeting of the General Assembly was not practicable due to the coronavirus pandemic, to circulate, after consultation with the General Committee, draft decisions of the General Assembly to all Member States under a silence procedure of at least 72 hours. The General Assembly further decided that, if the silence is not broken, the decision should be considered adopted, and the General Assembly should take note of the decision at its first plenary meeting when that became practicable. A similar process was adopted by the thirtieth Meeting of State Parties to the United Nations Convention on the Law of the Sea.²

3. In the case of the Authority, both the Assembly and Council agreed to adopt decisions on time-sensitive matters under silence procedure. Under this procedure, decisions were deemed

¹ see Procedure for taking decisions of the General Assembly during the Coronavirus disease 2019 (covid-19) Pandemic - <https://www.un.org/pga/74/2020/06/10/decision-number-74-544-procedure-for-taking-decisions-of-the-general-assembly-during-the-coronavirus-disease-2019-covid-19-pandemic>

² See -

https://www.un.org/depts/los/meeting_states_parties/documents/20200706PresLetSp.pdf

adopted if no objections were raised within 72 hours from the tabling of the proposal for adoption. The President of the relevant organ was required to announce the adoption of each decision dealt with under silence procedure by letter which was communicated by note verbale to members and which was also posted on the website of the Authority. It was understood that the use of silence procedure would not amount to an amendment of the relevant rules of procedure for the Council and Assembly and at their first plenary meeting, the respective organs would take note of all decisions adopted by silence procedure.

4. The Commission was also unable to meet in person during 2020 and 2021. All meetings were held in virtual format. To progress the work of the Commission and ensure continuity in its work, in June 2020, the Chair of the Commission circulated a guidance setting out a step-by-step process for the Commission to confirm consensus on any draft recommendation or draft report. The process adopted is reflected in annex I.

5. This procedure was used effectively throughout 2020, 2021 and once in 2022. A total of 22 draft reports and recommendations of the Commission to the Council were adopted by silence procedure. These are listed in annex II. The silence procedure operates in tandem with rule 44(4) of the rules of procedure of the Commission which states that as a rule, decision-making in the Commission should be by consensus (defined as the absence of any formal objection). All decisions, as well as the mode of their adoption, were also noted in the reports of the Chair of the Commission during those years.³

6. Overall, the use of this procedure by the Commission was very well received by members who were able to continue working intersessionally to form consensus and to formalize collective decisions. Only one objection to the adoption of a document by silence procedure has been received. During the drafting of the standard and guideline for the preparation of Environmental Impact Statement, the Commission discussed the document during three online meetings held on 6, 27 and 28 July 2020 respectively. Thereafter, a first draft was placed by the Chair for adoption through the silence procedure on 28 July 2020. The silence was broken on 30 July 2020, before the deadline of 72 hours lapsed, by one member who asked for the text to be further developed. Accordingly, the document was further discussed and revised by the Commission and eventually adopted by silence procedure on 1 April 2021.

7. It is worth noting that the silence procedure followed by the Commission presents important differences with the silence procedure used by the Assembly and Council during the COVID-19 pandemic. The use of this procedure in the Commission was agreed to be a tool to support the consultative decision-making process it follows. It is not limited to procedural issues of a time-sensitive nature. In that regard, this procedure has been used to consolidate the working practice of the Commission at a time where in person meetings were not possible, by ensuring the necessary flexibility for members of the Commission to consult and progress discussions until it reaches the point where a decision could be made. As a result, the use of the silence procedure became a tool at the disposal of the Commission to work beyond schedule of in person meeting and ensure efficiency as well as continuity in its work. Furthermore, the use of silence is a confirmatory process as objections can be raised but if none is raised, it supports consensus building.

8. The silence procedure is not intended to be a substitute, supplement or exception to decision-making in plenary as set out in the rules of procedure. Instead, it serves as a tool to assist the Commission to discharge its functions effectively when it has to make decisions intersessionally. It is not incompatible with the rules of procedure. This is particularly important considering that not all the members of the Commission are able to attend the whole of every meeting of the Commission and considering the need for several aspects of the Commission's work to be continuous in nature.

³ ISBA/26/C/12 and Add.1 and Add.2; ISBA/27/C/16

Recommendation

9. The Commission is invited to take note of the practise used by the previous Commission as contained in this report. The Commission is also invited to reach a common understanding on future practise for use of the silence procedure .

Annex I

Step-by-Step Process for the Commission to reach consensus on any draft recommendation or draft report

In order to ensure consistency and clarity in the decision-making process, it is suggested that any draft recommendation or report of the Commission will be adopted, unless decided by the Commission otherwise, under a silence procedure as follows:

1. The text of any draft recommendation or report (in the format of CRP, with CRP number allocated during the meeting) prepared by any working group or by the Chair will be circulated by the Secretary through email to all members of the Commission at least two days in advance of the plenary of the Commission.
2. The text of any draft recommendation or report will be fully discussed at the plenary of the Commission and, if needed, the Commission may decide that the relevant working group or the Chair prepares a revised draft text based on the discussions for further consideration. If a revised draft text is not needed, the Chair may proceed to paragraph 4.
3. The revised text of any draft recommendation or report prepared by the relevant working group or the Chair will be circulated by the Secretary to all members of the Commission at least two days in advance of the next plenary of the Commission for its discussion. The same process may be repeated where necessary.
4. In the event that there are no further comments from any member of the Commission, the Chair may announce that the final draft recommendation or report is ready to be circulated under the silence procedure.
5. The Secretary will then circulate through email the final draft recommendation or report and indicate in the same email that “if no objection is received from any member of the Commission in the next three days/by close of business on (Date), the final recommendation or report will be deemed as adopted by the Commission by consensus”.
6. Should any objection to the adoption of the final draft recommendation or report be raised within the three-day period in accordance with paragraph 5 above, the Chair will circulate an email informing that the silence has been broken. Any such objection will be considered by the Commission in the same manner as set out under the paragraphs 2 to 5 above. Any such objection should clearly indicate the reasons of objection.

Annex II

s/n	Related official document number	Title of Document	Circulation period and deadline for objection (Jamaican Time)	
1.	-	Report on the implementation of the Strategic Plan by the Legal and Technical Commission	72 hours	Close of business 15 July 2020
2.	ISBA/26/C/22	Report and recommendation of LTC to the Council relating to an application for approval of a plan of work for exploration for polymetallic nodules by Blue Minerals Jamaica Ltd.	72 hours	11:30 p.m. 29 July 2020
3.	ISBA/26/LTC/5	Review of the environmental impact statement submitted by the Ministry of Earth Sciences of the Government of India	72 hours	1:45 a.m. 30 July 2020
4.	ISBA/27/C/3	Guideline on the preparation and assessment of an application for the approval of a Plan of Work for exploitation	72 hours	10:30 p.m. 30 July 2020 and 5:00 p.m. 15 October 2021
5.	-	Revised recommendations on the Impact Study for land based developing countries (https://www.isa.org.jm/wp-content/uploads/2022/06/Study_of_the_Potential_Impact_of_Polymetallic_Nodules_0.pdf)	72 hours	11:35 p.m. 29 July 2020
6.	ISBA/26/LTC/6 ISBA/26/C/31	Application for extension of the contract for exploration for polymetallic nodules between Interoceanmetal Joint Organization and the International Seabed Authority, Report and recommendations of the Legal and Technical Commission	72 hours	9:00 a.m. 3 May 2021
7.	ISBA/26/LTC/6 ISBA/26/C/32	Application for extension of the contract for exploration for polymetallic nodules between JSC Yuzhmorgeologiya and the International Seabed Authority, Report and recommendations of the Legal and Technical Commission	72 hours	9:00 a.m. 3 May 2021
8.	ISBA/26/LTC/6 ISBA/26/C/33	Application for extension of the contract for exploration for polymetallic nodules between the Government of the Republic of Korea and the International Seabed Authority, Report and recommendations of the Legal and Technical Commission	72 hours	9:00 a.m. 3 May 2021
9.	ISBA/26/LTC/6 ISBA/26/C/34	Application for extension of the contract for exploration for polymetallic nodules between Deep Ocean Resources Development Co. Ltd. and the International Seabed Authority, Report and recommendations of the Legal and Technical Commission	72 hours	9:00 a.m. 3 May 2021

10.	ISBA/26/LTC/6 ISBA/26/C/35	Application for extension of the contract for exploration for polymetallic nodules between the China Ocean Mineral Resources Research and Development Association and the International Seabed Authority, Report and recommendations of the Legal and Technical Commission	72 hours	9:00 a.m. 3 May 2021
11.	ISBA/26/LTC/6 ISBA/26/C/36	Application for extension of the contract for exploration for polymetallic nodules between the Institut français de recherche pour l'exploitation de la mer and the International Seabed Authority, Report and recommendations of the Legal and Technical Commission	72 hours	9:00 a.m. 3 May 2021
12.	ISBA/26/LTC/6 ISBA/26/C/37	Application for extension of the contract for exploration for polymetallic nodules between the Federal Institute for Geosciences and Natural Resources and the International Seabed Authority	72 hours	9:00 a.m. 3 May 2021
13.	ISBA/27/C/11	Guidelines for the establishment of baseline environmental data	72 hours	1:00 p.m. 1 April 2021 and 5:00 p.m. 15 October 2021
14.	ISBA/27/C/4	Standard and Guidelines for environmental impact assessments	72 hours	1:00 p.m. 1 April 2021 and 5:00 p.m. 15 October 2021
15.	ISBA/27/C/5	Guidelines on the preparation of an environmental impact statement	72 hours	1:00 p.m. 1 April 2021 and 5:00 p.m. 15 October 2021
16.	ISBA/27/C/6	Guidelines for the preparation of an environmental management and monitoring plans, accompanied by Appendix A, B and C	72 hours	1:00 p.m. 1 April 2021 and 5:00 p.m. 15 October 2021
17.	ISBA/27/C/10	Standard and Guidelines for the Environmental Performance Guarantee		5:00 p.m. 15 October 2021
18.	ISBA/27/C/8	Guidelines on tools and techniques for hazard identification and risk assessments	72 hours	1:00 p.m. 1 April 2021 and 5:00 p.m. 15 October 2021

19.	ISBA/27/C/12	Standard and Guidelines for the preparation and implementation of emergency response and contingency plans	72 hours	1:00 p.m. 1 April 2021 and 5:00 p.m. 15 October 2021
20.	ISBA/27/C/9	Standard and Guidelines for the safe management and operation of mining vessels	72 hours	1:00 p.m. 1 April 2021 and 5:00 p.m. 15 October 2021
21.	ISBA/26/C/43	Review of the implementation of the environmental management plan for the Clarion-Clipperton Zone	72 hours	1:00 p.m. 1 April 2021 and
22.	ISBA/27/C/16/Add.2	Review of the environmental impact statement submitted by Nauru Ocean Resources Inc.	72 hours	2:00 p.m. 2 September 2022