



Council

Advance Unedited Version
5 March 2026

English only

Thirty-first session

Council session, part I

Kingston, 9-20 March 2026

Item 13 of the provisional agenda*

**Report of the Chair of the Legal and Technical
Commission on the work of the Commission at its
thirty-first session**

Report of the Legal and Technical Commission on the implementation of the Council's decision relating to a request of additional information from contractors at risk of non-compliance with their contractual obligations

Addendum

I. Implementation of the Council's decision relating to a request of additional information from contractors at risk of non-compliance with their contractual obligations, in particular with sections 13 and 27 of the standard clauses for exploration contract (ISBA/30/C/19, paragraph 9)

1. The Council, in its decision relating to the reports of the Chair of the Legal and Technical Commission ("the Commission") at its thirtieth session, requested the Secretary-General to require, in accordance with section 10.3 of the standard clauses for exploration contracts, additional information from Contractors at risk of non-compliance with their contractual obligations, in particular with sections 13 and 27 of the standard clauses. It further requested the Secretary-General to forward that information to the Commission for its consideration and requested the Commission to report and make appropriate recommendations to the Council during the first part of its thirty-first session on the outcome of the inquiry.

2. By a circular dated 15 January 2026, the Secretary-General requested all Contractors to provide the following information by 10 February 2026:

- i Any incidents, activities or events that may place the Contractor at risk of non-compliance with their contractual obligations, in particular with sections 13 and 27 of the standard clauses, especially sub-sections 13.2 and 27.2;
- ii With respect to section 27 of the standard clauses, any information relating to the Contractor, its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under the exploration

* ISBA/31/C/L.1

contract, where possible non-compliance may arise out of direct or indirect actions related to activities in the Area, including contractual obligations to act in accordance with the multilateral legal framework established by the Convention and the Agreement;

iii Detailed information on the mechanism in place and measures adopted by the Contractor to monitor the activities of its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under the exploration contract to ensure their compliance with the applicable law referred to in section 27.1 of the standard clauses.

3. As of 13 February 2026, the secretariat received responses from all 21 contractors. All of the contractors informed the Secretary General that there have been no incidents, activities or events that may place them at risk of non-compliance with their contractual obligations, in particular with sections 13 and 27 of the standard clauses, especially subsections 13.2 and 27.2 and provided the information requested. They also reassured the Secretary General that they remained committed to full compliance with their contractual obligations.

4. Without prejudice of the above, two of the contractors also stressed that, in their view, the Council's Decision and the Circular were unlawful. They noted that there was already an established process (ISBA/29/LTC/5), administered by the Commission, for monitoring Contractors' compliance and identifying instances of non-compliance and that under the Commission's long-standing practice, the Secretary-General's role was limited to administrative functions and to transmitting comments between the Commission and Contractors. In their opinion, the Secretary-General is not empowered to assume an active supervisory or monitoring role. They consider that in purporting to delegate to the Secretary-General powers to conduct inquiries into Contractors' compliance with their contractual obligations, the Council's Decision ISBA/30/C/19 is unlawful and that the Circular is ultra vires to the powers granted to the Secretary-General under the Convention. With that, the two contractors stressed that they reserved all of their rights and remedies, including all dispute resolution rights available under their exploration contract, the Exploration Regulations, and the Convention. This reservation includes, without limitation, the right to initiate immediate proceedings, including seeking provisional measures, under any applicable dispute settlement mechanism should the Contractors consider that the Authority has acted inconsistently with its obligations or in a manner prejudicial to their rights.

5. The Commission considered all of the information received and draws the attention of the Council to the following.

a) Firstly, the Commission wishes to highlight that the inquiry pursuant to the decision of the Council is consistent and in conformity with the Convention and the Agreement. It noted that Contractors have obligations to, *inter alia*, carry out exploration in accordance with the terms and conditions of their contract, the Regulations, Part XI of the Convention, the Agreement and other rules of international law not incompatible with the Convention. The rights of the contractor under an exploration contract are exclusive rights and bind the contractor to exercise such rights effectively. Moreover, contractors have a legal obligation to:

- i. Comply with Part XI, ISA rules and decisions (sections 13.1 and 13.2.b of Standard Clauses and Regulation 14.a of Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area);
- ii. Act in good faith (section 13.2.d of Standard Clauses and Regulation 14.c);
- iii. Accept the Authority's control over activities in the Area (section 13.2.c of Standard Clauses and Regulation 14.b);

iv. Prevent unlawful actions by their employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of their operations under their Exploration Contracts (section 27.2 of the Standard Clauses).

b) Secondly, the powers and functions of the organs of the Authority are clear. The Council, executive organ of the Authority, shall supervise and co-ordinate the implementation of the provisions of Part XI on all questions and matters within the competence of the Authority and invite the attention of the Assembly to cases of non-compliance (UNCLOS art. 162.2.a) and exercise control over activities in the Area in accordance with article 153, paragraph 4, and the rules, regulations and procedures of the Authority (UNCLOS art. 162.2.1). The Secretary-General shall be the chief administrative officer of the Authority and shall act in that capacity in all meetings of the Assembly, of the Council and of any subsidiary organ, and shall perform such other administrative functions as are entrusted to the Secretary-General by these organs (UNCLOS art. 166.3). Moreover, the Secretary-General may from time to time reasonably require the Contractors to submit such additional information to supplement the information of their annual reporting in order to carry out the Authority's functions under the Convention, the Regulations and their contract (Standard Clauses 10.3). The Legal and Technical Commission, subsidiary organ of the Council, shall make recommendations with regard to the exercise of the Authority's functions upon the request of the Council (UNCLOS art. 165.2.a). In light of the above, the Council decision and subsequent Secretary-General inquiries, as well as the Commission's recommendations are in accordance with the Convention.

c) Thirdly, the inquiry pursuant to the decision of the Council is in conformity with the object and purpose of the Convention and the principle of its evolutive dynamic interpretation as a "living instrument"¹. Because of unilateral regimes posing a threat to the multilateral legal framework established by the Convention, the 1994 Agreement and the Authority's mandate, unprecedented legal questions arise. Every contractor and sponsoring State will be treated in a uniform manner with regard to those unprecedented questions. The Commission wishes to stress that the non-discrimination principle only prohibits different treatment of similar situations.

6. In respect of the information received in relation to paragraph 9 of ISBA/30/C/19, the Commission recommends to the Council:

i. To remind all the contractors of their contractual obligations as described in paragraph 5 above, including but not limited to the respect of Part XI of the Convention, the Agreement and other rules of international law not incompatible with the Convention, ISA rules and decisions, as well as of the exclusivity of their exploration rights.

ii. To remind all Sponsoring States of their due diligence obligations according to articles 139, 153.4 and 4.4 Annex III, as interpreted by the ITLOS Seabed Disputes Chamber in its Advisory opinion of 2011². According to paragraphs 75 and 76 of the Advisory opinion, the purpose of requiring the sponsorship of applicants for contracts for the exploration and exploitation of the resources of the Area is to achieve the result that the obligations set out in the Convention, a treaty

¹ ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion of 21 May 2024, p.130.

² ITLOS, Seabed Dispute Chamber, *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Advisory Opinion of 1st February 2011.

under international law which binds only States Parties thereto, are complied with by entities that are subjects of domestic legal systems. This result is obtained through the provisions of the Authority's Regulations that apply to such entities and through the implementation by the sponsoring States of their obligations under the Convention and related instruments. The role of the sponsoring State, as set out in the Convention, contributes to the realization of the common interest of all States in the proper application of the principle of the common heritage of [hu]mankind which requires faithful compliance with the obligations set out in Part XI. The common interest role of the sponsoring State is further confirmed by its obligation, set out in article 153, paragraph 4, of the Convention, to "assist" the Authority, which, as stated in article 137, paragraph 2, of the Convention, acts on behalf of [hu]mankind. Both Sponsoring States and contractors shall refrain from undermining the Convention.

iii. To remind all Sponsoring States of their obligation under article 311, paragraph 6 of the Convention, according to which: "States Parties agree that there shall be no amendments to the basic principle relating to the common heritage of [hu]mankind set forth in article 136 and that they shall not be party to any agreement in derogation thereof". In this sense, the Commission recommends the Council to request clarification and information on any agreements that Sponsoring States have already entered³ or may enter in the future that may run counter to the referred provisions of the Convention and,

iv. To require additional information from such Sponsoring States as to how they plan on achieving the result of the obligations set out in the Convention by their sponsored contractors, as well as what actions or measures they will take to assure that, on the one hand, the exclusive exploration rights of the contractor remain within the limits of the Convention and of the ISA mandate and, on the other hand, that the contractors continue to assume their legal obligations to act in accordance with the multilateral legal framework established by the Convention and the Agreement.

II. Implementation of the Council's decision relating to a request of additional information from contractors at risk of non-compliance with their contractual obligations, in particular with section 27 of the standard clauses for exploration contract (ISBA/30/C/19, paragraph 10)

1. In paragraph 10 of its Decision ISBA/30/C/19, the Council urged the Commission, with reference to paragraph 9 and in accordance with section 27 of the standard clauses for exploration contracts, to pay specific attention to possible non-compliance of contractors with the obligation that they, their employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of their operations under their exploration contracts shall observe the applicable law, in particular where such possible non-compliance may arise out of direct or indirect actions related to activities in the Area, including contractual obligations to act in accordance with the multilateral legal framework established by the Convention and the Agreement.

2. The Commission took note of the Council's decision. During the first part of its thirty first session, it took into account the elements included in paragraph 10 of ISBA/30/C/19 within its established process of Criteria for identifying contractors (ISBA/29/LTC/5) in order to request additional information from one already identified contractor requiring specific attention for potential inadequate performance.

³ See https://www.noaa.gov/sites/default/files/2026-01/TMC_USA-B_Exploration_License_Application_July_2025__Redacted_FINAL.pdf (4.5.5 and 4.5.6)

Furthermore, the Commission took into account the elements included in paragraph 10 of ISBA/30/C/19 in order to identify other contractors who may require specific attention to possible non-compliance that may arise out of direct or indirect actions related to activities in the Area, including obligations to act in accordance with the multilateral legal framework established by the Convention and the Agreement. One contractor was identified as falling within this category and the Commission requested additional information from it as well. The Commission will report to the Council on this issue during the second part of its thirty-first session.

3. The Commission will also take into consideration the elements included in paragraph 10 of ISBA/30/C/19 during the new annual reporting period of the second part of its thirty first session, in order to further identify contractors who require specific attention to possible non-compliance that may arise out of direct or indirect actions related to activities in the Area, including obligations to act in accordance with the multilateral legal framework established by the Convention and the Agreement. The Commission will report on this to the Council during the second part of its thirty-first session.