



# Council

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## Thirty-first session

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**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 for 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 for 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 contracts (ISBA/30/C/19, para. 9)**

1. The Council, in its decision relating to the reports of the Chair of the Legal and Technical Commission (ISBA/30/C/19), 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. In a circular dated 15 January 2026, the Secretary-General requested all contractors to provide the following information by 10 February 2026:

(a) Any incidents, activities or events that may place the contractor at risk of non-compliance with its contractual obligations, in particular with sections 13 and 27 of the standard clauses, especially sub-sections 13.2 and 27.2;

(b) With respect to section 27 of the standard clauses, any information relating to the contractor, its employees, subcontractors, agents and all persons engaged in

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\* ISBA/31/C/L.1.



working or acting for them in the conduct of its operations under the exploration 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 United Nations Convention on the Law of the Sea 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;

(c) Detailed information on the mechanisms 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 at 13 February 2026, the secretariat had received responses from all 21 contractors. All the contractors informed the Secretary-General that there had been no incidents, activities or events that might place them 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, 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 to 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, administered by the Legal and Technical Commission, for monitoring contractors' compliance and identifying instances of non-compliance ([ISBA/29/LTC/5](#)) 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 was not empowered to assume an active supervisory or monitoring role. They considered that, in purporting to delegate to the Secretary-General powers to conduct inquiries into contractors' compliance with their contractual obligations, Council decision [ISBA/30/C/19](#) was unlawful, and that the circular was *ultra vires* to the powers granted to the Secretary-General under the Convention. The two contractors stressed that they reserved all their rights and remedies, including all dispute resolution rights available under their exploration contracts, the exploration regulations and the Convention. That reservation included, without limitation, the right to initiate immediate proceedings, including seeking provisional measures, under any applicable dispute settlement mechanism should the contractors consider that the International Seabed Authority had acted inconsistently with its obligations or in a manner prejudicial to their rights.

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

(a) First, 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. 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 of the Convention and International Seabed Authority rules and decisions (sections 13.1 and 13.2(b) of the standard clauses and regulation 14(a) of the regulations on prospecting and exploration for polymetallic nodules in the Area);

- (ii) Act in good faith (section 13.2(d) of the standard clauses and regulation 14(c));
- (iii) Accept the Authority's control over activities in the Area (section 13.2(c) of the 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) Second, the powers and functions of the organs of the Authority are clear. The Council, the executive organ of the Authority, shall supervise and coordinate the implementation of the provisions of Part XI of the Convention on all questions and matters within the competence of the Authority and invite the attention of the Assembly to cases of non-compliance (art. 162.2(a) of the Convention) and exercise control over activities in the Area in accordance with article 153.4 and the rules, regulations and procedures of the Authority (art. 162.2(l)). 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 (art. 166.3). Moreover, the Secretary-General may from time to time reasonably require the contractors to submit additional information to supplement the information contained in their annual reports in order to carry out the Authority's functions under the Convention, the regulations and their contract (section 10.3 of the standard clauses). The Legal and Technical Commission, a subsidiary organ of the Council, shall make recommendations with regard to the exercise of the Authority's functions upon the request of the Council (art. 165.2(a) of the Convention). In the 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) Third, 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".<sup>1</sup> Because of unilateral regimes posing a threat to the multilateral legal framework established by the Convention, the 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 decision [ISBA/30/C/19](#), the Commission recommends that the Council:

(a) Remind all contractors of their contractual obligations as described in paragraph 5 above, including but not limited to respect for Part XI of the Convention, the Agreement and other rules of international law not incompatible with the Convention, International Seabed Authority rules and decisions, and of the exclusivity of their exploration rights;

(b) Remind all sponsoring States of their due diligence obligations according to articles 139, 153.4 and annex III, article 4.4, of the Convention, as interpreted by the International Tribunal for the Law of the Sea Seabed Disputes Chamber in its

<sup>1</sup> International Tribunal for the Law of the Sea, *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, para. 130.

advisory opinion of 2011.<sup>2</sup> 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 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 humankind 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 153.4 of the Convention, to "assist" the Authority, which, as stated in article 137.2 of the Convention, acts on behalf of humankind. Both sponsoring States and contractors shall refrain from undermining the Convention;

(c) Remind all sponsoring States of their obligation under article 311.6 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 humankind set forth in article 136 and that they shall not be party to any agreement in derogation thereof. In this sense, the Commission recommends that the Council request clarification and information on any agreements that sponsoring States have already entered into<sup>3</sup> or may enter into in the future that may run counter to the above-mentioned provisions of the Convention;

(d) 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, and what actions or measures they will take to ensure that, on the one hand, the exclusive exploration rights of the contractor remain within the limits of the Convention and of the International Seabed Authority 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 for additional information from contractors at risk of non-compliance with their contractual obligations, in particular with section 27 of the standard clauses for exploration contracts (ISBA/30/C/19, para. 10)**

7. In paragraph 10 of its decision [ISBA/30/C/19](#), the Council urged the Commission, with reference to paragraph 9 of the decision 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

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<sup>2</sup> International Tribunal for the Law of the Sea, Seabed Disputes Chamber, *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Advisory Opinion of 1 February 2011.

<sup>3</sup> See [https://www.noaa.gov/sites/default/files/2026-01/TMC\\_USA-B\\_Exploration\\_License\\_Application\\_July\\_2025\\_Redacted\\_FINAL.pdf](https://www.noaa.gov/sites/default/files/2026-01/TMC_USA-B_Exploration_License_Application_July_2025_Redacted_FINAL.pdf) (sections 4.5.5 and 4.5.6).

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.

8. 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 the decision 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. Furthermore, the Commission took into account the elements included in paragraph 10 of the decision in order to identify other contractors that might require specific attention for possible non-compliance arising 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. The Commission will report to the Council on this issue during the second part of its thirty-first session.

9. The Commission will also take into consideration the elements included in paragraph 10 of decision [ISBA/30/C/19](#) during the new annual reporting period of the second part of its thirty-first session, in order to identify contractors requiring specific attention for possible non-compliance arising 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.