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Agenda item 13

Report of the Chair of the Legal and Technical Commission on the work of the Commission at its twenty-sixth session

Report of the Chair of the Legal and Technical Commission on the work of the Commission at the first part of its twenty-sixth session

I. Introduction

1. The first part of the twenty-sixth session of the Legal and Technical Commission of the International Seabed Authority was held from 24 February to 6 March 2020.
2. Twenty members of the Commission attended the meetings. A total of eight members from developing countries were not able to participate due to a lack of financial support from the Voluntary Trust Fund, which stood in deficit. Two members were unable to attend due to medical or other reasons. However, several members were able to contribute by email.

II. Activities of the contractors

A. Status of contracts for exploration and related matters

3. The Commission took note of the status of contracts for exploration, as contained in document [ISBA/26/C/4](#).

B. Implementation of training programmes under plans of work for exploration and allocation of training opportunities

4. On 24 February, the Commission was briefed on the selection of candidates for training programmes since July 2019. Between July 2019 and January 2020, 20 first-ranked and 20 alternate candidates had been selected for six training programmes provided by contractors.



5. At the current session, the Commission was invited to select 20 additional candidates for seven training programmes being offered by four contractors pursuant to their contracts for exploration with the Authority. On the basis of the recommendations of the training subgroup, 14 first-ranked and 7 alternate candidates were selected by the Commission, with six training placements being recommended for re-advertisement owing to a lack of suitably qualified candidates (see [ISBA/26/LTC/3](#)).

6. The Commission noted with regret that it had been necessary to re-advertise training opportunities and reiterated the need for members of the Council assist the secretariat and the Commission by suggesting where advertisements for training could be placed in order to attract a wider range of applications by candidates from developing countries.

7. The Commission also noted with regret that there had been instances where candidates were unable to take their training opportunities due to challenges in obtaining visas. The Commission sought the support of the Council in calling for its members and observers to provide the necessary facilitation to the selected candidates, including the issuance of visas.

C. Report on the periodic reviews of the implementation of plans of work for exploration

8. The Commission took note of the information on periodic reviews, as contained in document [ISBA/26/C/4](#). It was acknowledged that members of the Commission had provided comments to the periodic review reports in the intersessional period.

9. With a view to assisting the contractors in reporting on the five-year period of exploration activities, in particular to summarize, evaluate and report on the performance of their plans of work in a concise manner, the Commission had developed a template for the content of periodic reports and had advised the Secretary-General to present the template to contractors.

III. Regulatory activities of the Authority

A. Outstanding issues with respect to the draft regulations on the exploitation of mineral resources in the Area

10. At the twenty-fifth session of the Authority, the Commission had requested that further studies be undertaken on a number of issues to move forward in the development of the draft regulations for exploitation of mineral resources in the Area (see [ISBA/25/C/18](#) and [ISBA/25/C/19/Add.1](#)).

Annex VI to the draft exploitation regulations

11. The Commission had requested that the secretariat present a draft health and safety plan and a draft maritime security plan for consideration at the twenty-sixth session, with a view to making relevant recommendations to the Council concerning annex VI of the draft exploitation regulations.

12. Accordingly, the Secretariat had made available to the Commission a scoping study on the interface of the competencies of the International Seabed Authority and the International Labour Organization and the application of international labour instruments to activities in the Area, as well as a draft health and safety plan and a draft maritime security plan. The report on the competencies of the International

Seabed Authority and the International Maritime Organization in the context of activities in the Area¹ was also before it.

13. The Commission agreed that the current approach reflected in the text of draft regulation 30 of referring to the applicable international rules and standards established by competent international organizations or general diplomatic conferences was sufficient for the foreseeable future.

14. It also decided to recommend to the Council that it draw the attention of the Assembly to the need to encourage member States that had not yet done so, in particular sponsoring States, to become parties to the applicable international rules and standards established by competent international organizations, in particular the Maritime Labour Convention, 2006.

15. The Commission further proposed that the secretariat enter into discussions with ILO with a view to concluding a cooperation agreement between it and the Authority to keep emerging issues concerning occupational health and safety for personnel involved in exploitation in the Area under review.

16. The Commission considered and made some amendments to the draft health and safety plan and the draft maritime security plan, and decided to recommend to the Council a draft of annex VI of the draft regulations containing those plans, which would be issued as a separate document.

Impact study

17. The Commission, while performing the functions of the Economic Planning Commission, took note of a draft report on the study of the potential impact of polymetallic nodule production from the Area on the economies of the developing land-based producers of those metals that were likely to be the most seriously affected, and also noted that the report would be finalized in April 2020 and published on the website of the Authority. The Commission will consider the finalized report and make recommendations thereon to the Council at its July session.

B. Development of standards and guidelines for activities in the Area

18. In response to the request of the Council (see [ISBA/25/C/37](#)), the Commission undertook work on standards and guidelines as a priority matter, in both plenary and informal working group meetings. It proceeded on the basis of the process and schedule it had recommended to the Council at the second part of its twenty-fifth session for the development of such standards and guidelines (see [ISBA/25/C/19/Add.1](#), annex and enclosures I and II), with a focus on the standards and guidelines deemed necessary to be in place by the time of adoption of the draft regulations on exploitation, those to be initiated immediately but completed after July 2020 and those requiring that the secretariat advance certain studies before work on drafting the guidelines could commence (together referred to as “phase 1 standards and guidelines”). Those standards and guidelines had been considered necessary to guide the development and initial consideration of an application of a plan of work for exploitation.

19. In its discussions, the Commission was guided by the need to ensure consistency in the style and presentation of the various standards and guidelines. It also considered the appropriate level of detail to be included in those documents in the light of its previous recommendation that an outcome-based approach be followed in order to provide for rigorous and contractually binding outcomes while affording flexibility

¹ See [ISBA/25/C/19/Add.1](#).

in the processes used to achieve those outcomes. In that regard, it noted that there was no one-size-fits-all approach and that the level of detail would depend on a number of factors, including the degree of robustness that was sought from the contractor as well as whether a mature body of work composed of international standards, guidelines, guidance and industry practice already existed for a specific issue. For example, the Commission considered that environmental standards and guidelines would likely require a greater level of detail, while matters related to safety could be addressed by reference to existing standards and guidelines.

20. Discussions also took place on which aspects of some of the issues under consideration should be developed as standards or as guidelines, recalling that, under the draft exploitation regulations, standards would be legally binding and adopted by the Council while guidelines would be recommendatory in nature and issued by the Commission. Accordingly, it was considered necessary to develop separate documents for standards and for guidelines.

21. In the light of the interlinkages between a number of the standards and guidelines under consideration, the Commission decided that those standards and guidelines should proceed to the phase of stakeholder consultations at the same time, as those documents were at different stages of development and it was necessary to finish all documents first.

Standards and guidelines deemed necessary to be in place by the time of adoption of the draft regulations on exploitation

22. The Co-Chairs of the technical working group established by the Commission to develop standards and guidelines for environmental impact assessments and for the preparation of an environmental impact statement, and also to develop standards and guidelines for the preparation of environmental management and monitoring plans provided an update on the progress in the work of the working group. The Commission established an informal working group to consider a draft standard on the environmental impact assessment process prepared by the technical working group. A draft version of the standard was endorsed by the Commission. However, it took note that guidelines for the process and for the preparation of an environmental impact statement would be further developed during the intersessional period, and that work could feed back into further consideration of the standard on the environmental impact assessment process. It agreed to revisit those standards and guidelines at the July session. The Commission also took note that standards and/or guidelines on the preparation of an environmental management and monitoring plan would be developed during the intersessional period for consideration at the July session.

23. The Commission also established informal working groups to consider the draft standards and guidelines prepared by the secretariat, with the assistance of consultants where necessary, for the preparation and assessment of an application for the approval of a plan of work for exploitation; the development and application of environmental management systems; and the safe management and operation of mining support vessels. The Commission decided to undertake further intersessional work on those standards and guidelines, with the assistance of the secretariat, and to revert to them at the July session.

24. In addition, the Commission, after having considered whether the environmental aspects of the standards and guidelines on hazard identification and risk assessments should be incorporated into other environment-related standards and guidelines, decided that it would revisit the need for standards and guidelines on that topic in the light of the content of other relevant standards and guidelines currently under development.

Standards and guidelines to be initiated immediately but completed after July 2020

25. The Co-Chairs of the technical working group on the expected scope and standard of baseline data collection provided an update on the progress in the work of the working group. The Commission took note of the information, noting that a report on progress towards a draft standard and/or guideline would be made available to it at the July session.

26. The Commission also took note that the secretariat, with the assistance of a consultant, was currently developing draft standards and/or guidelines for the preparation and implementation of emergency response and contingency plans.

27. The Commission further took note of a call for proposals launched by the secretariat for a consultancy to undertake a gap analysis and develop draft standards and/or guidelines for the form and calculation of an environmental performance guarantee, which would be made available to it at the July session.

Standards and guidelines requiring that the secretariat advance certain studies before work on drafting the guidelines could commence

28. In relation to health and safety matters, the Commission, having considered a note prepared by the Secretariat on those issues, agreed to revert to the issue of whether standards and guidelines would be required for health and safety management systems at the July session.

29. In its discussion on insurance requirements under an exploitation contract and placing of insurance risk, based on a note prepared by the secretariat and in the light of a number of unknowns relating to the availability of seabed mining-specific insurance products and the capacity to satisfy insurance needs related to exploitation in the Area, the Commission acknowledged the need for continued investigation and consultations with stakeholders and the insurance industry. It requested the secretariat to conduct a survey among contractors on access to insurance and insurance cover under current exploration contracts and potential areas that would require additional insurance coverage for exploitation.

C. Continued review of the process for environmental impact assessments for designated activities during exploration

30. On 5 March, the Commission considered and endorsed the process for reviewing the environmental impact statement in relation to the testing of mining components or other activities requiring an environmental impact assessment during exploration, as well as a template for reporting an environmental impact assessment undertaken during exploration, which will be incorporated as annexes into a revision of document [ISBA/25/LTC/6](#).

IV. Environmental management plans

31. On 24 February 2020, the Commission took note of the outcomes of the two workshops organized by the secretariat, held during October and November 2019, on deep sea biodiversity of the Clarion-Clipperton Fracture Zone and on the regional environmental management plan for the Area of the northern Mid-Atlantic Ridge, as

presented in the workshop reports² and summarized in [ISBA/26/LTC/2](#). The Commission was also briefed on forthcoming workshops to further develop the regional environmental management plans for the Area of the northern Mid-Atlantic Ridge, to be held in Saint Petersburg, Russian Federation, in June 2020, and for the Area of the north-west Pacific, to be held in Jeju, Republic of Korea, during the fourth quarter of 2020.

32. Furthermore, the Commission held an informal workshop on 29 February 2020 and discussed the key scientific approaches and results of the two above-mentioned workshops held during October and November 2019. Members of the Commission recognized the significant scientific achievements of the two workshops and highlighted the continued evolution of the scientific approaches as regional environmental plans were being developed in regions with different mineral resources and ecosystems.

33. In the light of the above discussions, the Commission acknowledged, on 5 March, the need for additional areas of particular environmental interest in the Clarion-Clipperton Fracture Zone to improve representativity and to close spatial gaps in the current network of such areas. The Commission took note of further work to be carried out during the intersessional period on the placement and configuration of additional areas of particular environmental interest, with assistance from the secretariat. The Commission decided to reconsider the issue at the July session, with a view to formulating recommendations for the consideration of the Council.

34. Pursuant to the decision of the Council concerning a standardized approach for the development, approval and review of regional environmental management plans in the Area, as contained in document [ISBA/26/C/10](#), the Commission discussed steps to be taken during the intersessional period in implementing the decision, with a view to discussing the results of that intersessional work at the July session.

V. Implementation of the data management strategy of the Authority

35. The Commission received an update on the progress of the implementation of the data management strategy and the public launch, held in July 2019, of the database (DeepData) of the Authority on its website, in which environmental data was made available for public access. The Commission noted the five pillars according to which the data management strategy was being developed, namely, data identification, data storage, data provision, data processing and data governance. The Commission also noted that user experience and feedback had been incorporated into the planned work activities, including development of additional features on DeepData.

36. The Commission also took note of the needs for further strengthening the recommendations for the guidance of contractors on the content, format and structure of annual reports (see [ISBA/21/LTC/15](#)), to align those recommendations with the data management strategy, as well as the need to provide the contractors with a template table for providing an inventory of the digital data submitted.

² The reports of the two workshops are available on the following websites: https://ran-s3.s3.amazonaws.com/isa.org.jm/s3fs-public/files/documents/deep_ccz_biodiversity_synthesis_workshop_report_-_final.pdf (Clarion-Clipperton Zone workshop report), and https://ran-s3.s3.amazonaws.com/isa.org.jm/s3fs-public/files/documents/evora_workshop.pdf (northern Mid-Atlantic Ridge workshop report).

VI. Issues relating to the operation of the Enterprise, in particular the legal, technical and financial implications for the Authority

37. The Commission considered a study related to issues on the operationalization of the Enterprise.³

38. The Commission recalled that the Enterprise was the organ of the Authority established by article 170 and annex IV of the Convention to carry out activities in the Area according to article 153 (2) (a) of the Convention, as well as the transporting, processing and marketing of minerals recovered from the Area.

39. The Commission further recalled that the 1994 Agreement, adopting an “evolutionary approach”, provided for the operationalization of the Enterprise through a step-by-step progression based on the functional needs of the Enterprise at each of the steps. Furthermore, prior to the independent functioning of the Enterprise, the 1994 Agreement required that an interim director general should be appointed from the staff of the Authority to oversee specified functions listed in section 2 (1) of the annex to the 1994 Agreement.

40. The Commission was also conscious that the development of the draft regulations on the exploitation of mineral resources in the Area was at an advanced stage and there was an expectation that the draft regulations would be adopted in the not-too-distant future. At such time, joint ventures with the Enterprise could be initiated. In that connection, it should be recalled that there were 11 exploration contracts in place that anticipated future joint ventures with the Enterprise, and several reserved areas were also available for joint ventures.

41. The Commission, on the basis of what was stated in paragraphs 37 to 40 above, recommended that the Council consider requesting the Assembly, subject to the availability of the requisite funds, to establish the position of interim director general within the secretariat and for the Secretary-General to appoint a person to the position to oversee the specified functions listed in section 2 (1) of the annex to the 1994 Agreement.

VII. Other matters

Exchange of views on the current and future needs of qualifications for the membership of the next Commission

42. In line with the decision of the Council relating to the election in 2021 of members of the Legal and Technical Commission ([ISBA/26/C/9](#)), the Commission considered the request of the Secretary-General regarding its assessment of the current and future needs for specific areas of expertise of the next Commission and provided suggestions to the Secretary-General, which were to be included as a part of his report to the Council.

Concerns over the status of the voluntary trust fund

43. The Commission noted with grave concern the fact that a total of eight members of the Commission from developing countries had been unable to participate in the meetings of the Commission owing to a lack of financial support from the voluntary

³ Edwin Egede, Mati Pal and Eden Charles, “A study related to issues on the operationalization of the Enterprise: legal, technical and financial implications for the International Seabed Authority and for States parties to the United Nations Convention on the Law of the Sea”, Technical Report 1/2019 (International Seabed Authority, 2019).

trust fund. A further deficit in the fund could raise the issue of a quorum at the meetings of the Commission in July. The Commission urged the Secretary-General to make every effort to solicit contributions to the fund and to bring the issue to the Council's attention at its July session.
