

Agenda item 14: Report of the LTC Chair (ISBA/27/C/16/Add.1 & ISBA/27/C/16)

The Netherlands thanks the Chair of the LTC for the Report.

While noting the significant advances being made by contractors in their annual reports, the latest Report of the Chair of the Legal and Technical Commission (ISBA/27/C/16/Add.1) has prompted this delegation to draw the attention of the Council on what seems to be a repeated call from the Commission to contractors to comply with their contractual obligations, in particular to meet the reporting requirements under the standard clauses of their contracts.

Dating back to the Report of the Chair of the Legal and Technical Commission at the twenty-second session of the Authority (that is 2016), (ISBA/22/C/17) up until the most recent report at this 27<sup>th</sup> session, there is a recurrence of the following issues:

- ✓ the deadline for the submission of the annual reports;
- ✓ the delivery of digital data in line with the DeepData database templates and the specific reporting on work performed in their respective contract area;
- ✓ situations in which a minority of contractors appear to rely on the work performed in other contract areas and are mixing the reporting of data in two contract areas; by which those contractors rescind on their individual reporting obligations for each of their contract and plan of work;
- ✓ the need to provide the expense information, in the recommended format for statements, of actual and direct exploration expenditure as well as duly certified financial statements.

In the Reports of the Chair of the Legal and Technical Commission we also note that the Commission repeatedly calls upon the contractors to fulfil their contractual obligations, as agreed upon in their contracts and further specified in the standard clauses. The Commission further notes that regulations and the contracts are not optional and must be complied with. Additionally, the Commission reminds contractors that the commitments established under each contract represent a separate obligation. Each contract must be reported on separately and a work program delivered for one contract cannot fulfil a contractor's obligations against another.

This message from the LTC is consistently relayed to the Council who in their deliberations and their decisions call upon contractors to fulfill the contractual obligations.

In the most recent Decision of the Council of the International Seabed Authority relating to the reports of the Chair of the Legal and Technical Commission at its 26 session, the Secretary-General is requested (and I quote) *"to communicate the various issues identified during the Commission's review of the annual reports of contractors to the relevant contractors and sponsoring States, to follow up in writing with those contractors that are repeatedly performing inadequately or incompletely against an approved plan of work or that have indicated that the implementation of the plan of activities will be made conditional on external factors, regardless of the applicable contractual requirements, to request meetings with them and to write to the respective sponsoring States to bring that issue to their attention and request a meeting with them to address it."* (cf. ISBA/26/C/57, para 10)

In the Report of the Secretary-General on the implementation of the decision of the Council in 2021 relating to the reports of the Chair of the Legal and Technical Commission (document ISBA/27/C/27), the Secretary-General, in paragraph 12, reports on action taken in engaging with individual contractors on the matters raised by the Legal and Technical Commission. Can the Secretary-General, perhaps through the Compliance Assurance and Regulatory Management Unit, provide some more information on the outcomes of these meetings. In particular, we would wish to receive further information as to whether the engagements with those individual contractors were satisfactory as to resolving the issues raised.

As noted at the beginning of my intervention, significant advances are being made by the contractors in their annual reports. We also recognize the continuing trend of collaboration between contractors in such areas as methodological and analytical standardization, linkages between contractor scientists and international research programmes, sampling in areas of particular environmental interest and exploration areas, and shared vessel time between contractors. These messages are also contained in various Reports of the Chair of the Legal and Technical Commission.

Our delegation has consistently maintained that there exists a symbiotic relationship between the Authority (ISA) and its MS, in particular, the Sponsoring States and their contractors (which include the future Enterprise) as well as the scientific community and the public in general. This symbiotic relationship will continue to exist between all these actors and stakeholders. This is further made evident by the growing number of stakeholder participation in the various consultations held by the Authority.

As the exploitation phase of deep-sea mining draws nearer there is the need for all actors to step up to the plate. We need to set a compliance performance standard in the exploration phase that can carry through to the exploitation phase.

The delegation of the Kingdom of the Netherlands would therefore propose that the Council request the LTC to report back to it at its 28<sup>th</sup> session, and to explicitly mention the names of the contractors that have repeatedly ignored the call from both the Council as well as the LTC (cf. Reports of the President of the Council & Chair LTC), to abide by their contractual obligations.

Our proposal is based on the following arguments:

1. If we get to the next phase of deep seabed mining, we need to have in place a system for exploration and ultimately exploitation that guarantees **responsibility and accountability** of both the Authority and the contractors. A system that ensures the effective protection of the marine environment and ensures that future exploitation of the resources in the Area will (a) benefit mankind (including future generations) and (b) foster commercially viable and sustainable exploitation, including reasonable economic returns of the Area's mineral resources.
2. It is therefore crucial that contractors, during the exploration phase, abide by their contractual obligations. If a track record to that effect is not established during this exploration phase, we fear that the Authority will be embarking on a slippery slope when it comes to future exploitation contracts and the contractors abiding by their contractual obligations.
3. A third argument refers to the last sentence in paragraph 12 of the recent LTC's chair report (ISBA/27/C/16/Add.1) which states, and I quote: *"In addition, such a situation risked having negative connotations for contractors that were fulfilling their individual obligations under their plans of work"*.
4. Last, but not least, my delegation considers it important that the Council supports the purpose as well as the work of the newly established Compliance Assurance and Regulatory Management Unit (CARMU). Its establishment was welcomed by contractors during the fourth annual meeting of exploration contractors and the Secretariat.

For the above reasons, the delegation of the Kingdom of the Netherlands proposes that the Council request the LTC to report back to it at its 28<sup>th</sup> session, and to explicitly mention the names of the contractors that have repeatedly ignored the call from both the Council as well as the LTC (cf. Reports of the President of the Council & Chair LTC), to abide by their contractual obligations. We propose that this request from the Council to the LTC be included in the decision of the Council on the reports of the Chair of the LTC on the work on the Commission in 2022.

#### Draft decision

We propose that this request from the Council to the LTC be included in the decision of the Council on the reports of the Chair of the LTC on the work on the Commission in 2022. This request could read as follows. The Council:

*Requests* the Commission, beginning at the Authority's 28<sup>th</sup> session, to annually name those contractors that have repeatedly ignored the calls from the Council and the Commission to comply with their contractual obligations, in particular, the reporting requirements under the standard clauses of their contracts.