

## ISA-23 HIGHLIGHTS: FRIDAY, 11 AUGUST 2017

On Friday, 11 August, the Council addressed the report of the Legal and Technical Commission (LTC), and considered draft decisions on financial and budgetary matters, and on future elections of LTC members.

### COUNCIL

**LTC REPORT:** LTC Chair Reichert reported on the LTC work in 2017 (ISBA/23/C/13), highlighting that: most contractors met their reporting requirements, but there were some non-compliance cases, including a failure to report environmental data; two contractors appeared not to have advanced environmental objectives at all; the Commission was pleased with the quality of contractors' environmental studies; the ISA needs all contractors to collect samples consistently and to fully report data to generate appropriate regional environmental management plans (EMPs), noting significant progress; and the Commission supported increasing collaboration between contractors, extended to environmental surveys and data collection that potentially enables an improved regional understanding of environmental patterns.

On draft exploitation regulations, LTC Chair Reichert reported on: consideration of an overview of stakeholders' submissions to the revised working draft, stressing transparency, as well as potential duplication, ambiguity and inconsistency between separate regulations on environmental matters and a mining inspectorate; consideration of a discussion paper on drafting environmental regulation, issued by the Secretariat in January 2017; the need to clarify ambiguities in the draft regulations presented by the Secretariat; plans to review the outcome of consultations on the design of a payment mechanism and financial terms, to be prepared by the Secretariat; and discussion of a roadmap for the delivery of the draft regulations to the Council, including stakeholder consultation.

He further highlighted: extensive deliberations on the draft revised recommendations on contractors' environmental impact assessments (EIAs), to provide up-to-date guidance on current best available methodology and technology, and the decision to provide a revised draft to contractors for comment; and the lack of EMPs for massive seafloor sulphide deposits associated with mid-ocean ridges of the Atlantic and Indian Oceans or for the cobalt-rich crusts of the seamount in the Pacific Ocean, underscoring the need for a regional approach.

Underlining the importance of transparency, GREENPEACE reiterated his request for the LTC to open its meetings to submissions and observers.

**Contractors' non-compliance:** The NETHERLANDS, supported by AUSTRALIA, MEXICO and ARGENTINA, called for clarification on whether contractors' non-compliance with their reporting requirements is persistent, recommending that contractors'

names be included in the LTC reports, for the Council to discharge its responsibility to act on cases of non-compliance, including by imposing monetary penalties or suspending contracts. The UK supported informing the Council on contractors' non-compliance, in an appropriate format. The DSCC noted that the Article 154 review provides an opportunity for introducing more transparency, including, supported by GREENPEACE, the establishment of an environmental scientific committee.

Supported by AUSTRALIA, ARGENTINA and the DEEP SEA CONSERVATION COALITION (DSCC), the AFRICAN GROUP called for the LTC to suggest measures to address cases of non-compliance, with BRAZIL requesting clarification on the role of the LTC, as well as actions to address non-compliance with contractors' obligations to advance environmental objectives. INDIA noted the heavy workload for the LTC in reviewing contractors' reports; and the need to ensure data security and confidentiality according to UNCLOS. CHINA underscored the sponsoring states' obligation to keep contractors under annual review.

BRAZIL expressed concern that one contractor had not provided data owing to confidentiality clauses of an international research programme. The UK cautioned against establishing a precedent by not taking measures on this. CANADA expressed concern about confidentiality agreements that prevent information sharing. IUCN underscored that compliance issues are not limited to data provision, but extend to the assessment methodology of possible impacts during exploration; and enquired about follow-up and remedial action for contractors' small sample sizes, insufficient numbers of sampling stations and lack of description of pelagic communities.

ISA Secretary-General Lodge underscored that contractors will be major contributors and users of the data. LTC Chair Reichert clarified that: the LTC does not generally reveal the identity of contractors failing to meet requirements; currently the LTC cannot assess whether non-compliance cases are persistent, as it deals with annual reports; and a list of particular issues noted by the LTC is forwarded to the Secretariat, for it to contact contractors to address the issues and take the necessary steps.

**Review of recommendations for the guidance of contractors' EIAs:** CHINA supported sharing with contractors the revised draft recommendations. The DSCC called for making publicly available contractors' preliminary impact assessments and the reasoning behind the LTC's recommendations to approve exploration work plans, as well as Commission reports and annual reviews of contractors' environmental performance, excluding matters of commercial confidentiality. IUCN requested including a wider range of stakeholders, in addition to contractors, in future discussions of the revised draft recommendations.

**EBSAs:** The NETHERLANDS, supported by GREENPEACE and IUCN, called for the Council to consider the work of other multilateral environmental agreements including the CBD, and requested the LTC to address the issue of impacts on EBSAs in

other applications for approval of work plans and extension of exploration contracts, as well as in the exploration regulations. NEW ZEALAND, supported by GREENPEACE, underscored the need to also account for vulnerable marine ecosystems (VMEs). IUCN noted that with respect to Poland's application, the Lost City Hydrothermal vent field has been put forward as an area meeting the World Heritage Convention criteria.

LTC Chair Reichert pointed to: the absence of binding regulations on EBSAs, and to the possibility of strictly reserving or ruling out areas from further exploration on the basis of binding regulations; the ISA's responsibility for the seabed, not the water column; and support from the Secretariat in verifying areas of overlap with essential navigation lanes or intense fisheries areas, including in the context of a Memorandum of Understanding with the IMO, with a view to informing the LTC's consideration of applications.

**Draft exploitation regulations:** GERMANY encouraged stakeholders' comment on the publicly available draft regulations. AUSTRALIA requested sufficient time for member states to provide substantial inputs and for stakeholder engagement; and, with the UK and CANADA, sharing the LTC comments on the draft regulations, without compromising confidentiality. NEW ZEALAND stressed the importance of effective environmental protection and informed stakeholder consultations.

JAPAN called for stakeholder comments at each stage of the discussions on the exploitation regulations, as well as on the financial model and terms, and the technical criteria, recommendations and guidelines to support the delivery of the regulations.

**Roadmap:** The NETHERLANDS, with GERMANY, welcomed the "ambitious" roadmap for the delivery of the draft regulations to the Council, and suggested that the Council incorporate it in its decision. ARGENTINA, with the UK and CANADA, noted the need to coordinate the Council's consideration of the roadmap for exploitation regulations with the proposed revised schedule of meetings, to be discussed by the Assembly. FRANCE congratulated, with CANADA, the Secretary-General for sharing the draft exploitation regulations; and with MOROCCO, the development of the roadmap to increase visibility and transparency.

Considering the timetable for the exploitation regulations premature, CHINA noted the complex nature of the exploitation regulations, the LTC's heavy workload, the variety of options for payment mechanisms, the early stage of discussions on liability, and unclear prospects for commercial exploitation due to the global metal market. He also emphasized, supported by GREENPEACE, that future workshops should encourage wide participation from experts in different fields, including policy experts, and a wide representation of government representatives. GREENPEACE called for: with IUCN, open meetings of the working group on responsibility and liability; and establishing a liability fund as suggested by the ITLOS Seabed Disputes Chamber. President Fernández proposed, and delegates agreed, that the Council recommend the proposed timeline to the Assembly.

**Environmental Management Plans:** The NETHERLANDS queried the reference to "a regional approach" in establishing effective EMPs in light of the exploitation regulations and the applications for exploration contracts. AUSTRALIA underscored the need for EMPs, encouraging broad participation in a workshop on implementing the Clarion-Clipperton Zone plan, with GREENPEACE suggesting a structured series of open workshops and consultation with states and stakeholders for developing and reviewing EMPs. The DSCC, PEW CHARITABLE TRUSTS and WWF considered the development of regional environmental plans a matter of urgency.

Lamenting lack of consideration of EBSA descriptions and of data regarding pelagic impacts, WWF called for: capturing environmental variability against a baseline; encouraging and funding independent scientific research to complement contractors' data, noting the link between data transparency and accountability; and urgently reviewing the Clarion-Clipperton Zone EMP.

ISA Secretary-General Lodge called on member states and others to partner with the Secretariat on developing EMPs.

**Matters referred to the Commission by the Council:** BRAZIL and INDIA expressed concern that the LTC was unable to discuss issues related to the monopolization of activities in the Area, the concept of abuse of dominant position, and the operation of the Enterprise, noting that these will be important in discussing the mining code.

**FINANCIAL AND BUDGETARY MATTERS:** Delegates considered a revised draft decision. The AFRICAN GROUP noted that his proposals had not been included, notably a preambular paragraph stressing the imperative of the highest level of Council members' participation during its sessions, and an operative paragraph stating that "the Voluntary Trust Fund shall also serve to defray the costs of participation of one representative of each developing country member when the Council meets more than once a year." BANGLADESH, supported by INDIA, considered the proposed preambular language problematic. President Fernández suggested, and delegates agreed, reference to "the imperative of members' participation during Council sessions, including those of developing country members." On the suggested operative paragraph, INDIA pointed to a contradiction between referencing the currently depleted status of the Fund and additional costs for developing country members' participation. The AFRICAN GROUP eventually withdrew the proposal, noting that it could be discussed by the Finance Committee and Council in future sessions.

**FUTURE ELECTIONS OF LTC MEMBERS:** Delegates considered a draft decision introduced by the AFRICAN GROUP and GRULAC, addressing the issues faced at prior elections. The draft was supported by ARGENTINA, SOUTH AFRICA, TRINIDAD AND TOBAGO and CHILE, with JAMAICA noting that it would address the issue of predictability of the LTC composition, and UGANDA supporting a cap on LTC membership.

The ASIA-PACIFIC GROUP, supported by CANADA, FRANCE, CHINA, AUSTRALIA, TONGA and INDIA, noted that the economic factor stipulated in UNCLOS Article 163 (Organs of the Council) has been excluded from the draft, and called for a report on the LTC effectiveness in its current format and a comparison between a 30-member LTC and a smaller one, with the UK recalling that the Council at the 22nd session had set the starting basis for LTC membership at 25. CHINA reiterated that the LTC composition should follow specific requirements. AUSTRALIA expressed concern about the interpretation of UNCLOS in the proposal. TONGA suggested allowing more time for the LTC to work at its current size. The AFRICAN GROUP noted that: regional groups coordinate "when it comes to elections"; and in the absence of consensus, all candidates are put forward for the spaces allocated to the group. President Fernández suggested additional discussions among regional groups.

### **IN THE BREEZEWAYS**

The role of contractors in realizing the promises of the common heritage regime emerged from the Council members' praises for delivering capacity building through training programmes, but was accompanied by expressions of concern about the insufficient provision of environmental data for global information-sharing supporting environmental management. "It should come as no surprise," commented a participant, "that some delegations proposed that the Council should be more involved in cases of contractors' non-compliance, including through naming-and-shaming." "Or the Secretariat's letters conveying the LTC's observations on non-compliance to relevant contractors could be published online," he added.

Accountability in terms of the common heritage principle is also expected to feature prominently in the upcoming discussion of the draft exploitation regulations on Monday, with many delegations gearing up for these discussions by attending an NGO weekend workshop at a seaside resort.