

Twenty-fifth Annual Session of the International Seabed Authority (First Part): 25 February - 1 March 2019

The first part of the 25th Session of the International Seabed Authority (ISA) Council begins on Monday, 25 February, and will continue until Friday, 1 March 2019 in Kingston, Jamaica. This meeting will be followed by a meeting of the Legal and Technical Commission (LTC) from 4-15 March 2019.

Expectations for the Meeting

The ISA Council is expected to address the draft exploitation regulations on deep-seabed mining, including deliberations on:

- the financial model;
- standards, guidelines, and key concepts;
- decision-making;
- the precautionary approach;
- regional environmental management plans;
- the independent assessment of environmental plans; and
- the inspection mechanism.

Other main items on the agenda for the ISA Council for this session are:

- the report on matters relating to the Enterprise, an organ foreseen in UNCLOS as the ISA's own mining arm;
- status of contracts for exploration and related matters, including consideration, with a view for approval of applications for a plan of work for exploration, if any; and
- cooperation with other international organizations.

Origins of the International Seabed Authority

The 1982 United Nations Convention on the Law of the Sea (UNCLOS), which entered into force on 16 November 1994, sets forth the rights and obligations of states regarding the use of the oceans, their resources, and the protection of the marine and coastal environment. UNCLOS established that "the Area" and its resources are the common heritage of humankind. "The Area" is defined as the seabed and subsoil beyond the limits of national jurisdiction, and its "resources" as all solid, liquid, or gaseous mineral resources *in situ* in the Area at or beneath the seabed, including polymetallic nodules. Polymetallic nodules were detected for the first time on the deep seabed by the HMS Challenger expedition in 1873. They are distributed on the surface or half-buried across the seabed, principally in the Clarion-Clipperton Zone beneath the Pacific Ocean. They contain nickel, copper, cobalt, and manganese, among other metals. Other minerals have since then been discovered in the Area: cobalt-rich ferromanganese crusts, which are mineral accumulations on seamounts and contain cobalt, nickel, copper,

molybdenum and rare earth elements; and polymetallic sulphides, which are formed through chemical reactions around hydrothermal vent sites, and contain copper, zinc, lead, silver, and gold.

Under the common heritage regime, UNCLOS provides that: no state can claim or exercise sovereignty or sovereign rights over any part of the Area or its resources; activities in the Area must be carried out for the benefit of humankind as a whole, irrespective of the geographical location of states, taking into particular consideration developing states' interests and needs; the Area and its resources are open to use exclusively for peaceful purposes by all states, whether coastal or land-locked, without discrimination; and financial and other economic benefits derived from activities in the Area must be equitably shared, on a non-discriminatory basis.

To address certain difficulties raised by developed countries with the UNCLOS regime for the Area, the Agreement relating to the implementation of UNCLOS Part XI (the Area) was adopted on 28 July 1994 and entered into force on 28 July 1996. The Agreement addresses fiscal arrangements and costs to state parties, institutional arrangements, the ISA decision-making mechanisms, and future amendments of UNCLOS.

The ISA was established as an autonomous institution under UNCLOS Part XI and the 1994 Implementing Agreement to organize and control activities in the Area, particularly with a view to administering the resources of the Area. The Authority, based in Kingston, Jamaica, came into existence on 16 November 1994 and became fully operational in 1996. Among other things, the ISA is mandated to provide for the necessary measures to ensure the effective protection for the marine environment from harmful effects, which may arise from mining activities in the Area.

The ISA organs include the Assembly, the Council, the Finance Committee, the LTC and the Secretariat. The Assembly consists of all ISA members and has the power to: establish general policies; set the two-year budgets of the Authority; approve the rules, regulations and procedures governing prospecting, exploration and exploitation in the Area, following their adoption by the Council; and examine annual reports by the Secretary-General on the work of the Authority, which provides an opportunity for members to comment and make relevant proposals.

The Council consists of 36 members elected by the Assembly representing: state parties that are consumers or net importers of the commodities produced from the categories of minerals to be derived from the Area (Group A); state parties that made the largest investments in preparation for and in the conduct of activities in the Area, either directly or through their nationals (Group B); state parties that are major net exporters of the categories of minerals to be derived from the Area, including at least two developing states

whose exports of such minerals have a substantial bearing upon their economies (Group C); developing state parties, representing special interests (Group D); as well as members elected according to the principle of equitable geographical distribution in the Council as a whole (Group E). The Council is mandated to establish specific policies in conformity with UNCLOS and the general policies set by the Assembly, and supervise and coordinate implementation of the Area regime.

The LTC is an organ of the Council and originally consisted of 24 members elected by the Council on the basis of personal qualifications relevant to the exploration, exploitation, and processing of mineral resources, oceanography, and economic and/or legal matters relating to ocean mining. The LTC was expanded to 30 Members at the 22nd session in 2016. The LTC reviews applications for plans of work, supervises exploration or mining activities, assesses the environmental impact of such activities, and provides advice to the Assembly and Council on all matters relating to exploration and exploitation. The reports of the LTC to the Council are discussed during the annual sessions of the Authority.

The ISA has been developing the “Mining Code,” which is the set of rules, regulations, and procedures to regulate prospecting, exploration, and exploitation of marine minerals in the Area. To date, the Authority has issued Regulations on Prospecting and Exploration for Polymetallic Nodules (adopted on 13 July 2000, updated on 25 July 2013); Regulations on Prospecting and Exploration for Polymetallic Sulphides (adopted on 7 May 2010), and Regulations on Prospecting and Exploration for Cobalt-Rich Ferromanganese Crusts (adopted on 27 July 2012). The regulations include the forms necessary to apply for exploration rights, as well as standard terms of exploration contracts; and are complemented by the LTC recommendations for the guidance of contractors on assessing the environmental impacts of exploration. The ISA is in the process of developing exploitation regulations.

Recent ISA Sessions

22nd Session: At its 22nd session (11-22 July 2016), the Assembly elected Michael Lodge (United Kingdom) as Secretary-General, and called for a further round of written observations by parties, observers, and stakeholders on the interim report of the first periodic review of the ISA pursuant to UNCLOS Article 154. The Council, *inter alia*, welcomed the LTC’s work on the framework of the exploitation regulations, requested the LTC to continue this work as a matter of priority, and endorsed the LTC’s list of priority deliverables.

23rd Session: At its 23rd session (8-15 August 2017), the Assembly discussed the final report of the first period review of the ISA and adopted decisions addressing transparency and environmental issues. The Council considered the first report of the Secretary-General on the implementation of the Council’s decision adopted in 2016, and draft exploitation regulations, which were released by the Secretariat in the form submitted to the LTC, which convened from 31 July – 9 August 2017. The draft exploitation regulations were open for stakeholder comment on the basis of a series of general and specific questions proposed by the Secretariat. The Council also adopted a decision on a revised meeting schedule to engender a mutually responsive dialogue between the Commission and the Council on the draft exploitation regulations.

24th Session: The 24th session of the ISA was held in two parts. The first part consisted of a meeting of the Council (5-9 March 2018), followed by a meeting of the LTC (12-23 March). The

second part consisted of meetings for the Council (16-20 July 2018) and the Assembly (23-26 July), preceded by meetings of the LTC (2-13 July) and of the Finance Committee (9-12 July).

The Council considered issues related to the draft exploitation regulations, including: models for a financial payment system; the role of the sponsoring state; the role and legal status of standards; LTC’s recommendations and guidelines; and broader environmental policy and regulations on exploitation. The Council further addressed the possible operationalization of the Enterprise and contractors’ non-compliance issues. The Assembly considered the annual report of the Secretary-General and the proposed budget for 2019-2020, and adopted the Strategic Plan for 2019-2023, which consists of a mission statement, context and challenges, strategic directions, and expected outcomes. Regarding the Strategic Plan, many welcomed the placing of the ISA’s mandate in the context of the Sustainable Development Goals (SDGs).

Intersessional Highlights

1st BBNJ IGC Session: The first session of the Intergovernmental Conference (IGC) on an international legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ) took place at UN Headquarters in New York from 4-17 September 2018.

Delegates considered a document prepared by the IGC President, which identified areas for further discussion not containing treaty text, aimed at leading to substantive discussions based on the elements of a package agreed in 2011 on: marine genetic resources, including questions on benefit-sharing; environmental impact assessments; area-based management tools (ABMTs), including marine protected areas; and capacity building and marine technology transfer. IGC-1 made some progress in clarifying delegations’ positions on the elements of the package and tabling more detailed options for a process on ABMTs.

CBD COP14: The 14th meeting of the Conference of the Parties (COP) of the Convention on Biological Diversity was held from 14-29 November 2018 in Sharm El-Sheikh, Egypt. COP14 adopted two decisions on marine and coastal biodiversity. On ecologically or biologically significant marine areas (EBSAs), COP14 called for further collaboration and information sharing among various international organizations and bodies, including the ISA, regarding the use of scientific information related to EBSAs. COP14 further urged parties to increase their efforts regarding: avoiding, minimizing, and mitigating the impacts of marine debris on marine and coastal biodiversity and habitats; protecting biodiversity in cold-water areas; and addressing the potential impacts of deep-seabed mining on marine biodiversity.

73rd Session of the UNGA: At its 73rd session, the UN General Assembly adopted resolution 73/124 on Oceans and the Law of the Sea, which, *inter alia*, reaffirmed the importance of ISA’s work; welcomed progress on draft regulations for exploitation of mineral resources in the Area, taking note of the development of a roadmap for the adoption and approval of such regulations; and encouraged the Authority to continue such work as a matter of priority.

ISA Working Group on the Financial Model: A meeting of an informal open-ended working group to discuss the financial model, under consideration as part of the draft regulations for exploitation of mineral resources in the Area, was held from 21-22 February 2019 in Kingston, Jamaica. Participants addressed, *inter alia*, the comparative study of four alternative economic models regarding the financial regime for polymetallic nodule mining, prepared by the Massachusetts Institute of Technology (MIT).