

Summary of the 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) began with the Council meeting, held from 25 February - 1 March 2019 in Kingston, Jamaica. It will be followed by a meeting of the Legal and Technical Commission (LTC) from 4-15 March 2019.

The Council addressed the draft exploitation regulations on deep-seabed mining, and deliberated on:

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

The Council further considered:

- the report on matters relating to the Enterprise, an organ foreseen in the UN Convention on the Law of the Sea (UNCLOS) as the Authority's own mining arm;
- status of contracts for exploration and related matters; and
- cooperation with other international organizations.

More than 200 participants from national governments, civil society, contractors, and academia attended the meeting. The Council made progress on the draft exploitation regulations, while recognizing the need for further work on the payment mechanism, environmental protection, and the Enterprise. Delegates agreed to extend and expand the mandate of the Special Representative for the Enterprise, establishing a voluntary trust fund to support his work.

A Brief History of the ISA

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.

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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 of 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); and
- 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 its 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; the 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).

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).

ISA-25 (Part I) Report

On Monday, Olav Myklebust (Norway), Council President for the 24th session, opened the meeting. ISA Secretary-General Michael Lodge welcomed participants and noted the nomination of Jihyun Lee (Republic of Korea) as the new director of the Office of Environmental Management and Mineral Resources. The Council adopted the provisional agenda (ISBA/25/C/L.1) with no amendments.

Algeria, on behalf of the African Group, nominated, and delegates elected by acclamation, Lumka Yengeni (South Africa) as Council President for 2019. Emphasizing the ISA Council's role in reinforcing UNCLOS principles, Council President Yengeni highlighted the importance of balancing various interests around exploration and exploitation in the Area, and the urgency to protect marine biodiversity from potential harm.

Delegates elected as Council Vice-Presidents: Argentina, for the Latin American and Caribbean Group (GRULAC); Germany, for Western European and Others Group; Poland, for the Eastern European Group; and Tonga, for Asia-Pacific.

Michael Gikuhi (Kenya) was elected to the LTC, following the resignation of Dorca Auma Achapa (Kenya), to serve the remainder of his term.

Status of Contracts and Related Matters

On Monday, Council President Yengeni introduced document ISBA/25/C/9, noting it includes information on the status of exploration contracts, updates on the periodic review of the implementation of approved plans of work for exploration, and recommendations for future actions.

Brazil highlighted the recent, national submission to the Commission on the Limits of the Continental Shelf. He further reiterated that relevant jurisdictional issues should be taken into account, also in relation to the status of contracts. The Council took note of the report.

Report of the Secretary-General on the implementation of the 2018 Council decision relating to the Reports of the Chair of the Legal and Technical Commission

On Monday, ISA Secretary-General Lodge presented the documents on the implementation of the 2018 Council decision relating to the reports of the LTC Chair (ISBA/25/C/12) and the report on the implementation of the Authority's strategy for the development of REMPs for the Area (ISBA/25/C/13). Regarding the LTC Chair's report, Secretary-General Lodge highlighted, *inter alia*: work accomplished in relation to the draft regulations; activities of contractors; the training programme; issues of non-compliance, noting there were none; workshops organized in 2017 and 2018; and the public launch of the database, which is expected to take place after the LTC meeting in March 2019.

Regarding implementation of the strategy for REMPs development, Secretary-General Lodge underscored two workshops held in 2018 and support by an *ad hoc* advisory committee to develop a work programme for the period 2019-2020, including defining goals and establishing a standardized process for each regional workshop.

The African Group announced a submission pertaining to ISA training programmes for developing countries. The UK underlined that the REMPs workshops should have broad participation. Australia noted the importance of transparency of contracts. The Deep Sea Conservation Coalition (DSCC) highlighted the lack of participation of all stakeholders in the development of the Warsaw statement adopted at the second annual consultation between the Secretariat and contractors that was held in Warsaw, Poland, on 15 and 16 October 2018, which is annexed to document ISBA/25/C/12.

The Council took note of both reports.

Cooperation with other International Organizations

On Wednesday, the Secretariat informed delegates that the Memorandum of Understanding between the ISA and the Asian-African Legal Consultative Organization was signed on 9 October 2018. India shared relevant information on training programmes at the national level. China highlighted that the Secretariat is in a position to play an important role in capacity building.

Draft Exploitation Regulations

Financial model: On Monday, Olav Myklebust, Chair of the open-ended working group established to discuss the financial model, reported on its outcomes (ISBA/25/C/CRP.1/Rev.1). He highlighted, *inter alia*: the group's focus on the best payment mechanism and payment terms related to polymetallic nodules; general acceptance of incorporating a ramp-up period into the model; and an expectation that an environmental levy would include a liability trust fund. On financial terms, he noted general preference for a two-tiered payment rate.

Many expressed appreciation for the successful meeting of the working group, calling for further debate and broader participation. The African Group expressed concern that late scheduling limited attendance by developing countries, requesting his statement be included in the official report of the meeting. He highlighted the potential for the payment mechanism to result in lower taxation for deep-seabed mining compared to traditional mining; and a preference for a combined royalty and profit-sharing approach. He called "food for thought" a recent suggestion by Peter Thomson, Special Envoy of the UN Secretary-General for the Ocean, for a 10-year moratorium on seabed mining.

China underscored that: benefit sharing is an important manifestation of the common heritage principle and should be reflected in the draft regulations; further models that combine royalties and profit-sharing should be analyzed; the financial models should reflect the principle of fair treatment, supported by Japan and Singapore; and due consideration should be given to land-based mining and relevant payment rates, supported by Japan, Tonga, and the Republic of Korea.

The Republic of Korea drew attention to potential future price changes of minerals in question. Japan called for balancing sound commercial principles with common heritage considerations, stressing that the financial regime should reflect the total cost for contractors. He further called for systematizing all relevant payments and fees for the contractors in a comprehensive list.

India reminded delegates of relevant submissions, including on the computation of annual rates. The UK suggested developing a range of options to facilitate decision making, including a scaled royalty option. Tonga underscored the need for: the transitional scheme to be as simple as possible and reviewed over time; common accounting and cost-recovery rules; and taking

into account intergenerational equity. He further emphasized, supported by Jamaica, the need to “factor in externalities of environmental costs,” expressing concern, with the Pew Charitable Trusts and DSCC, regarding the way the 1% levy for environmental funds, as envisaged in the current model, had been calculated.

Recognizing progress made in the development of the financial model, Australia, supported by Jamaica, suggested further questions to explore, including the administration cost of the proposed models. Germany, Singapore, Italy, and others called for another inclusive meeting of the open-ended working group before the next Council session in July. Brazil stressed the intergovernmental character of the ISA negotiations, calling for a larger number of government representatives in future meetings of the working group. Canada expressed disappointment that MIT representatives were not present at the session to respond to questions.

Poland suggested incorporating topics related to risk assessment, such as available technology options for processing and mining, time needed for commencing full-scale production, and sensitivity analysis for different scenarios. Singapore suggested not discarding the profit-based option, while underscoring the importance of balance between maximization of revenues for the common heritage and commercial viability. Spain emphasized the need for procedures to ensure efficiency and legal certainty.

Secretary-General Lodge outlined follow-up work by the Secretariat to include:

- conclusion of the MIT report;
- development of options for payment mechanisms;
- developing cost estimates to administer various proposed schemes;
- preparation by the Finance Committee of a formula for equitable benefit sharing;
- a study on impacts of deep-seabed mining on land-based producers; and
- extending the open-ended working group, including possible use of the Voluntary Trust Fund to ensure inclusive participation.

Delegates approved the report’s recommendations on convening a second meeting of the working group and requested the Secretariat to prepare two or three options regarding the payment mechanism based on the discussions of the working group, including proposed regulatory text.

Standards, guidelines, and key terms: On Monday, the Secretariat introduced two documents on standards and guidelines for activities in the Area (ISBA/25/C/3) and key terms (ISBA/25/C/11).

On standards and guidelines, the African Group recommended that compliance must be mandatory and that standards should play a key role in performance monitoring. Germany stressed that all guidelines should be in accordance with the principles of Part XI of UNCLOS and the SDGs. He emphasized, supported by DSCC, that the Authority should not approve any exploitation activity without reaching conclusion on the standards and guidelines.

China called for transparency, stakeholder inclusiveness, and evaluation of best practices. Japan highlighted the flexible character of guidelines, typically non-binding documents, and proposed consideration of financial incentives to enhance compliance, and the use of current applicable exploration regulations on environmental and safety standards as models.

Italy suggested the oil and gas industry as a source of inspiration for determining best practices and called for establishing technical working groups to further address the issue. Spain emphasized the need to specify the legal nature of all guidelines and to avoid excessive regulations. Norway supported looking at regional and national standards that enjoy wide adoption, and emphasized that guidelines and practices should be elaborated as “floors and not ceilings,” so industry and other stakeholders can continue to improve.

Tonga supported drawing on content and process guidelines from parallel industries, and keeping overarching benchmarks for environmental performance in the draft regulations. Nauru supported developing a roadmap for establishing environmental standards. Singapore said the regulatory framework should have an appropriate balance between certainty and flexibility to allow practices to keep pace with expanding knowledge.

Australia and the UK, supported by the Pew Charitable Trusts, suggested the Authority could play a greater role in standards development, given the nascent nature of the industry. The UK highlighted the need to clarify how an environmental performance guarantee would interact with an environmental trust fund. On performance standards, the Holy See suggested taking advantage of expertise within the Authority, with input from the Office of Legal Affairs, to initiate recommendations and solicit input from the public.

The Pew Charitable Trusts and DSCC stressed that standards and guidelines should be open to readjustments. DSCC further emphasized the need for: clear and binding standards; separate treatment for standards and guidelines; and clarity on which guidelines are legally binding. The Deep Ocean Stewardship Initiative (DOSI) stressed that the process should be driven by states and supported by all stakeholders, calling for fully implemented REMPs before exploitation contracts are issued.

On key terms, the African Group suggested drawing inspiration from current legal instruments, such as the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) resolution dealing with “best available science” (resolution 31/XXVIII).

Delegation of functions by the Council and regulatory efficiency: On Tuesday, the Secretariat introduced the document ISBA/25/C/6 on delegation of functions by the Council and regulatory efficiency, including an annex outlining the types of decisions to be delegated.

Algeria, on behalf of the African Group, noted that aspects of some of its previous submissions on the topic had yet to be addressed, describing as a “new element in the debate” the non-paper submitted by Belgium during the second part of ISA-24, on strengthening ISA’s environmental capacity. Jamaica acknowledged progress on building capacities within the Secretariat with recent staff additions; and highlighted the need for mechanisms to increase the Council’s involvement.

In cases of emergency, Germany, supported by Singapore, suggested allowing for remote meetings or establishing a sub-Council to bridge gaps between meetings, pointing towards relevant experience in other bodies, such as the International Maritime Organization (IMO). Australia, supported by the Federated States of Micronesia (FSM), emphasized the importance of transparency and accountability in decision making, stressing the need for an effective division of power among the Authority’s institutions.

Chile, the FSM, Fiji, and others called for consistency between the ISA and other international legal instruments. Chile noted

the need for further clarification on fundamental aspects, such as protection, preservation, commercial purposes, and environmental restoration. France called for greater clarity on the review mechanism for the mining workplan, if the resources are not being mined optimally, questioning whether this would entail a simple adjustment or a modification in the contracts.

Japan stressed that the Council and LTC should be more involved in inspections and in cases of contractors' non-compliance. Tonga suggested additional partnerships between the Secretary-General and the Council. The Netherlands questioned to what extent some functions may be delegated to the Secretary-General and drew attention to the importance of adopting effective and transparent regulations based on due process, good governance, and accountability. Italy underlined that the Secretary-General should be properly empowered to act, especially when there are clear risks for the marine environment. Italy, Singapore, and others stressed that the termination of contracts should remain in the exclusive power of the Council. Singapore emphasized that UNCLOS Article 162 clearly states that the Council is the executive organ of the Authority, noting that certain decisions could be delegated to increase efficiency.

India called for careful consideration regarding the types of emergencies for which decision making would be delegated. Norway said decisions on "non-material matters" could be delegated, such as compliance notices. Nauru supported delegation of some decision-making authority, saying the LTC should develop proposals to authorize review and interventions to protect the environment or for operational safety under critical situations.

Norway, the UK, and Australia supported development of a policy document for material decisions and for reporting on regulatory decisions, as soon as possible, to ensure accountability and transparency.

China recommended that any delegation of power should be based on absolute necessity, especially when involving policies and regulations on exploitation, environmental protection, standards, and conditions related to compliance. The FSM stressed that "clarity will lead to efficiency," supporting a matrix to clarify decision-making roles and responsibilities. He further underscored that "efficiency should not be a panacea," noting that relevant activities, including stakeholder consultations, may take a considerable amount of time. Fiji stated that the burden of loose guidelines and standards should not be transferred to vulnerable small island developing states (SIDS).

The Holy See highlighted "inherent conflicts" in the objectives of the deep-seabed mining regime and within the decision-making structure of the Secretariat, pointing to the example of the Deepwater Horizon oil spill, where separate agencies were created to avoid conflicts.

The Pew Charitable Trusts called for a more careful division of power between the Secretariat and its subsidiary organs, emphasizing, with China, that environmental protection necessarily implies a capacity to quickly intervene. DSCC welcomed current accountability efforts and called for further specifying regulators' responsibilities.

Secretary-General Lodge clarified that the Authority consists of its bodies and subsidiary organs, including, in particular, the Council, the Assembly, the LTC, and the Secretariat. Acknowledging an "evolutionary approach," he suggested conceptualizing the role of the Secretariat and other bodies in the next 10-15 years, given the growing amount of work and responsibilities.

Relationship between the draft exploitation regulations and regional environmental management plans: On Tuesday, the Secretariat introduced document ISBA/25/C/4, which addresses the relationship between the draft exploitation regulations and REMPs.

Many delegates emphasized the importance of REMPs as an integral part of the regulations. France, with Italy and the Netherlands, said the Council has a role to set out REMPs under the Convention as a policy instrument for the environment, and supported including an obligation to assess management plans.

The African Group queried whether a previous Council decision not to allow mining in areas of particular environmental interest in the Clarion-Clipperton Zone is legally binding. He supported the development of multiple REMPs, still underscoring the necessity of an overarching framework, as part of a standardized process. He further noted that REMPs must be in place before mining can take place, supported by the Netherlands, Norway, Germany, Australia, and others.

Singapore observed the usefulness of REMPs, despite not being legally binding *per se*. The African Group stressed that individual parts of REMPs could have binding requirements. China noted with concern that key issues, such as REMPs' legal standing, are not well defined. Germany, with Belgium, requested more information about the *ad hoc* advisory committee on the development of the programme of work for REMPs, and affirmed developing a REMP should be a pre-requisite for exploitation licenses. Japan said if REMPs become legally binding, they should be negotiated as such, and that plans of work should not be submitted until all REMPs are in place.

Italy called REMP development a "work in progress" for the Clarion-Clipperton Zone, noting limitations due to the lack of baseline data, and called for REMPs in areas where mining is likely to occur soon. The Netherlands emphasized inclusion of information to assist decision making by sponsoring states. Spain supported enhancing the environmental capacity of the Secretariat and called for consideration of independent mechanisms to verify the environmental effects of mining. The FSM called for the participation of traditional communities and indigenous peoples in the development of REMPs. Tonga emphasized engagement or consultation with coastal and adjacent states.

The UK, supported by Norway, said early and continuous engagement with contractors fosters compliance, even in the absence of legal obligations. The UK and others also supported continuing workshops on REMPs, underscoring the need to ensure inclusiveness and transparency.

Brazil, India, and the Netherlands stressed that development of REMPs is an ongoing process that may be improved with new data and information. Brazil further suggested taking into account lessons learned from the development of the Clarion-Clipperton Zone REMP. Canada highlighted relevant national experience with strategic environmental assessments. Mexico emphasized the importance of using best available evidence and the precautionary principle when developing REMPs.

Jamaica emphasized that, if a binding rule to develop REMPs prior to any exploitation activity is agreed upon, sufficient funds should be made available to timely develop REMPs for all regions and mineral resources to maintain a level playing field.

The Pew Charitable Trusts noted that it is unlikely the REMP process will be completed before 2020. DSCC highlighted that REMPs should be binding, querying whether additional exploration contracts should be awarded in areas where REMPs have not been adopted, and called for a broad evaluation of

the species in a region to inform REMPs' development. The International Union of Conservation of Nature (IUCN) suggested that REMPs should: be based on global goals; mainstream biodiversity considerations; and include potentially affected states as co-partners. DOSI said REMPs are an important component for adaptive management, where the best available information can be used to update regional plans.

Implementing the precautionary approach to activities in the Area: On Tuesday, the Secretariat introduced document ISBA/25/C/8, including an annex on existing and potential procedural measures to strengthen implementation of the precautionary approach.

Delegates debated terminology and whether to use precautionary "approach" or "principle." The terms were used interchangeably during the discussion. Many delegates stressed the need for the precautionary approach to be applied throughout the work of the Authority. Acknowledging the annex as a useful summary, the African Group suggested developing a similar table for the "protective" and "institutional" aspects, which could include items such as a competitive bid process for exploitation. He further proposed only granting a small and time-limited pilot exploitation license; prioritizing large Areas of Particular Environmental Interest; and withholding exploitation contracts unless and until sufficient marine scientific research has occurred.

Tonga called for further discussion on cost effectiveness to ensure that measures are implemented according to UNCLOS Article 145 (protection of the marine environment). Jamaica noted that the precautionary principle is customary international law and generates contractual obligations.

Belgium underscored the need for a legal framework to operationalize the precautionary approach. Germany said no principle should be interpreted or implemented in isolation, and stressed the need for a structured approach and consistent implementation throughout the entire production cycle. Calling for non-duplication of work, Norway emphasized tackling uncertainty and an inclusive approach when developing standards and guidelines.

Australia highlighted the links between the precautionary approach and many topics already discussed, such as: transparency; flexibility; adaptive management; and clear and robust regulations. India called for a level playing field between contractors and states and noted that no preferential treatment should be given to any stakeholder during the operationalization of the exploitation phase. Brazil, supported by Argentina, defended use of the term "precautionary approach" rather than "precautionary principle," as used in the 1992 Rio Declaration.

The Holy See recalled the need for coherence between ISA's language and the Intergovernmental Conference on an International Legally Binding Instrument under UNCLOS on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ), emphasizing sponsoring states' obligations towards environmental protection when issuing future contracts.

DSCC underlined that the precautionary approach is far more than a procedural tool, noting there are also substantive and institutional steps for its implementation. IUCN highlighted relevant criteria used under the Convention on the Regulation of Antarctic Mineral Resource Activities, observing they provide a useful model. Fiji emphasized that risk-management activities are underpinned by best scientific knowledge, noting that this knowledge must be readily available for all stakeholders, including SIDS. DOSI, supported by the Pew Charitable Trusts,

underscored the need to address ISA's institutional capacity to implement the precautionary approach, and stressed that interpretation by the International Tribunal for the Law of the Sea of the precautionary approach, as part of the due diligence obligation, could be an acceptable standard for ISA.

Independent review of environmental plans and performance assessments: On Wednesday, the Secretariat introduced document ISBA/25/C/10, which considers a mechanism and process for the independent review of environmental plans and performance assessments under the regulations on exploitation of mineral resources in the Area.

The African Group emphasized that contractors and sponsoring states should not participate in the selection of independent experts, given potential conflicts of interest. Germany supported the proposed requirement for a licensed and successfully-performed test mining as a legal prerequisite for any application for exploitation under draft regulation 11. He further explained this should be a mandatory requirement for approval of a plan of work and included as provisions in the draft exploitation regulations. He also recommended an independent and legally-binding, scientific monitoring strategy, partly or completely conducted by third parties, to validate the environmental impact of such activities.

China highlighted that independent experts must complement and support existing UNCLOS provisions and views of the LTC. He underscored, supported by many, the need for transparency and balanced geographical representation, as well as, supported by the UK and others, consideration of appropriate legal frameworks to avoid conflicts of interest.

The Republic of Korea requested clarification on the timing and frequency of reviews. Japan supported maintaining a roster of experts nominated by parties and objected to entrusting the approval of plans of work to an external independent body, preferring to retain such authority within the LTC.

Tonga queried: whether the review should be a mandatory requirement or be triggered by ISA members; which is the most cost-effective manner to conduct these reviews; and how the reviews would impact exploitation-related costs in the Area. Jamaica expressed that seeking external advice of independent experts should not be seen as lack of confidence in existing expertise within the ISA. She highlighted that, while external advice should not be binding *per se*, the requirement for such advice should be explicitly addressed in the draft regulations. The FSM highlighted the complementary role of experts from the Pacific SIDS and the need to incorporate traditional knowledge, in line with practices of other international organizations. GRULAC stressed that ISA should have its own roster of experts, calling for further reflection on the legal status of related decisions.

Belgium underscored the principles of expertise, independence, and transparency, supported by the African Group and others, noting that evaluations must be easily accessible. The African Group elaborated on the idea of having three external evaluations carried out automatically, separately, and simultaneously, observing that the Council and the LTC could each designate an expert.

Italy emphasized that independent experts must provide added value. France drew attention to the need to evaluate costs involved in contracting independent experts. The Netherlands said the independent review is part of the evolutionary process of the Authority. Norway supported involving independent experts,

but requested clarifications on how the formalized system would impact LTC's autonomy.

Australia opposed the creation of a new scientific body. India questioned the need to create a roster of external experts at this time, emphasizing challenges associated with avoiding bias and ensuring geographical representation, given capacity limitations of developing countries. Argentina recalled that the LTC is already a group of experts supposed to act independently. He supported the adoption of non-binding guidelines, allowing the LTC to seek the opinion of external experts.

The Pew Charitable Trusts proposed a study to identify a small number of practical options, offering financial support to conduct it. DSCC underscored the need for: clear and measurable goals and objectives for any review process; open and well-documented evaluation procedures for LTC decisions; and reviews to be completed before the environmental impact assessment and public comment period. DOSI emphasized: excluding contractors from the review process due to conflicts of interest; utilizing existing rosters; and ensuring adequacy of environmental baseline data.

InterRidge supported increased involvement of scientists in the process, emphasizing the need for diversity of views to inform deliberations and reach consensus decisions. The Fish Reef Project said deficits to nature from deep seabed mining will need to be repaid, outlining his project's efforts to improve ocean health and address food security. IUCN commented that: the LTC's workload will increase once regulations are adopted; most international environmental processes have access to an independent scientific advisory body; and the deep sea may require special expertise. Japan Agency for Marine-Earth Science and Technology noted limited resources to conduct research in the complex deep-sea environment, calling for additional relevant capacity building.

Inspection mechanism: On Wednesday, the Secretariat introduced document ISBA/25/C/5 on implementing an inspection mechanism for activities in the Area, highlighting the need for the Council's input on its function to ensure accountability and transparency.

The African Group endorsed the possible approach to an inspection mechanism, noting the economic efficiency and independent functioning of an inspectorate as key elements. He further supported, with the Netherlands, Norway, and others, considering as a model the mechanisms adopted under CCAMLR. India underlined the need to assess ores at sea to avoid information gaps and, while supporting the use of CCAMLR as a general model, noted that deep-seabed mining would not involve harvesting in a restricted way. Tonga supported drawing on the CCAMLR model in principle, emphasizing the need for a focus on deep-seabed mining, including on interactions with sponsoring states' mechanisms.

Highlighting the need to ensure the highest quality standards, Italy emphasized the contribution of satellites in inspection processes and suggested including observers on vessels in remote areas. The UK supported remote monitoring, and emphasized independence of the inspections and appropriate rules to ensure safety of inspectors, including freedom from harassment.

Germany, supported by Australia, highlighted the necessity for an independent, robust, and transparent inspection regime, without interlinked commercial interests to guarantee a level playing field for all exploitation activities in the Area. He further welcomed advancing cooperation with the IMO in terms of jurisdiction and cooperation. Canada highlighted the need for: inspection contracts as a first step; ensuring separation between

the legislator, the receiver of benefits, and the inspector; and full access by the Authority to raw data feeds from any remote real-time monitoring. Australia emphasized the importance of technological developments. Bangladesh added the necessity of a relevant baseline study. Belgium proposed using an industry-standard definition for remote monitoring and recommended inspections be independent from the sponsoring state. France noted that the use of remote monitoring technology should be prioritized.

China drew attention to the responsibilities of the Authority, sponsoring states, and flag states, mentioning there is no need for frequent spot inspections. The Republic of Korea underlined the need to address: powers given to inspectors; criteria for triggering inspections; and requirements for regular inspections, suggesting use of benchmarks from other industrial sectors. Japan stressed it is not clear who will decide whether and when inspections will be conducted, suggesting the LTC and Council be able to make decisions electronically, in case of urgent circumstances.

Australia highlighted the inspection systems of the Organization for the Prohibition of Chemical Weapons and of the International Atomic Energy Agency as additional potential models, as well as the need to consider a system of inspectors via national authorities to increase efficiency. He added that risk assessment would be helpful to provide guidance on which activities should be inspected and their relevant scope. Nauru invited comments from the contractor DeepGreen, who focused on the need to address climate change and electrify the world's transportation fleet. He stressed that marine metals will allow the transition away from fossil fuels, noting that their production is less energy- and carbon-intensive. He added that, notwithstanding the risks, collecting metals from polymetallic nodules will help build the necessary stock for future recycling and pave the way towards the realization of a circular economy. Belgium invited the contractor Dredging, Environmental, and Marine Engineering Group (DEME-Group) to share experiences in deep sea mining. He outlined his company's vision for the future, providing details on efforts for the development of environmental regulations in the Area, urging the Council to complete its work on the draft exploitation regulations by 2020.

Argentina suggested looking at inspection costs in concert with other control and monitoring costs to avoid duplication, calling for support and assistance from sponsoring states. Guyana recommended further attention to measures that promote compliance. Sri Lanka supported a rule-based order for activities in the Area based on the SDGs, encouraging wide public participation.

The Pew Charitable Trusts supported the creation of a geographically-representative panel of experts, offering financial support for such activity. Observing the trends in global metal needs, DSCC stated that deep-sea mining at scale may not compensate for the potential marine biodiversity degradation, urging the Council not to confuse economic viability with social necessity.

The Enterprise

On Thursday, Eden Charles, Special Representative for the Enterprise, introduced document ISBA/25/C/7, which contains his report on the Government of Poland's proposal for a joint venture with the Enterprise, including two drafts. Focusing on the second draft, he explained that the current framework is still under review by Poland and that text lacking agreement remains in brackets.

On his accomplishments, he highlighted, *inter alia*: liaising with representatives from Poland on forming a joint venture with the Enterprise; conducting an independent assessment of Poland's proposal, including whether it corresponds to sound commercial principles; and preparing a report on his activities.

On specific terms of the draft agreement, he noted, *inter alia*:

- commercial terms for the joint venture;
- areas of operation and duration;
- a business proposal covering a work programme over a 15-year period; and
- development of national legislation governing activities in the Area.

Special Representative Charles outlined additionally:

- the need for an enabling environment to ensure the Enterprise is able to directly engage in mining activities in the Area;
- phasing of the proposed programme of work;
- potential triggers that would make the Enterprise independent;
- potential factors defining sound commercial principles; and
- the need for a representative of the Enterprise to participate in Assembly and Council meetings.

He described potential Council actions, including, *inter alia*: extending the time frame for negotiating a business proposal; agreeing the proposal should comply with the provisions of Section II of the annex to the 1994 Agreement; extending the contract and renewal of the Special Representative; and initiating a discussion on amendments to the rules of procedure to consider participation of the Enterprise.

Operationalization of the Enterprise: On Thursday, many delegates commended the Special Representative for his work. Cameroon, Tonga, Jamaica, and others supported the continuation of the work of the Special Representative for the Enterprise.

China stressed that the Enterprise is an important manifestation of the common heritage principle. Tonga emphasized the need to ensure inclusiveness and transparency. The Holy See said operationalization of the Enterprise "is not an option, it's a duty." The UK called "too forward leaning" language stating "any failure to operationalize the Enterprise would affect the direct implementation of the principle of the common heritage, which is a peremptory norm of international law." The Netherlands said more information and analysis is needed to clarify requirements under the Convention on operationalization.

The African Group underlined the two trigger events required to operationalize the Enterprise: the application for a joint venture or grant of exploitation contract. He queried if any consideration had been given to the 11 exploration contracts, whose contractors have chosen the option of giving an equity interest to the Enterprise in a joint venture in any future exploitation contract. He pointed out the importance of having an independently-functioning Enterprise and that, as an organ of the Authority, the Enterprise should not be left behind in the draft exploitation regulations.

The African Group, GRULAC, Jamaica, and China noted current gaps in the implementation of the Enterprise, recalling relevant obligations under UNCLOS. Belgium requested further clarification on the timing and different steps of the Enterprise's inception, as well as related costs.

Poland reiterated that the Enterprise is a unique entity established in international law to engage in exploration and commercial activities in the Area. He underscored that the proposal creates an opportunity for developing countries to participate in activities in the Area.

Spain suggested that the decision on the Special Representative mandate be delayed until the next Council session. Spain and France inquired on potential budget implications, to which the African Group responded that the proposal bears no extra burden for the regular budget, as it will be financed by voluntary contributions. France suggested greater involvement of the Finance Committee.

China requested clarification on the terms of reference for the Special Representative, noting the mandate is not clear enough, remarking that the Council's rules of procedure may need to be amended to widen the mandate. Regarding the Special Representative, Norway queried: whether his mandate is time-specific; the content of the terms of reference, noting the Council's lack of familiarity with them; and his legal status regarding the work of the Authority. Australia requested clarification on the terms of reference related to barriers to the Enterprise's participation in the development of the draft exploitation regulations.

Fiji, India, Jamaica, Argentina, and others called for appointing, without delay, an interim director of the Enterprise, noting that such an appointment has been pending since 2013.

Joint venture with Poland: On Thursday, Nauru underlined the importance of ensuring that the joint venture is in compliance with relevant law and based on sound commercial principles. He observed the terms of the joint venture are still incomplete.

The African Group highlighted that the use of "ISA" in the agreement could be confusing since the relevant party to a joint venture agreement should rather be "the Enterprise." He drew attention, supported by China, to the fact that the relationship between any joint venture that includes the Enterprise and the ISA should be under an application for a plan of work and contract, following general regulations and standard contract terms, rather than an individually-negotiated contract. He further suggested, supported by GRULAC, informal consultations on a draft decision by the Council regarding future actions, aiming at a full proposal for a joint venture for consideration at the next Council session.

Japan queried: which provision of the draft joint venture deals with liability, calling for stipulating the relevant share of liability for the Enterprise; and, with China, whether the terms and conditions in the draft joint venture will set a precedent for other joint ventures. China emphasized that there are no clear rules on a variety of issues, including the share of the Enterprise in the joint venture, applicable law, and dispute settlement. He suggested the Council consider the development of substantial and procedural requirements, including for joint ventures.

DSCC shared concerns in relation to: the applicable law; the lack of reference to the protection of the environment; and transparency in arbitration used as a dispute settlement mechanism. The Pew Charitable Trusts queried the rationale for and ramifications regarding: the proposed 95/5 share split between Poland and the Authority; and Poland's reserved right "not to disclose the research methods used," unless required by international law.

India called for: an independent assessment of the Enterprise and the joint venture suggested by Poland; additional clarity on the rules and regulations regarding joint ventures, noting that the process is currently obfuscated; and the development of terms of reference for the Special Representative to create the enabling conditions for the Authority to fulfill its mandate.

Responding to comments, Secretary-General Lodge informed delegates that the study on the legal, administrative, financial, and technical operations of the Enterprise would be presented in draft form to the LTC next week and in final form during the second part of ISA-25 in July 2019. He further noted the expiration of the terms of reference for the Special Representative and the absence of any budget provision for his retention, and observed that the Council may invite others to participate in informal sessions, stressing that amendments to the rules of procedure need to be carefully considered.

Jamaica requested clarification about the Assembly decision “tying the hands” of the Secretariat, commenting that the Council cannot act contrary to the Convention and that an Assembly decision precluding something mandated by the Convention would be beyond its power.

Draft decision on the Special Representative: On Thursday, the African Group tabled a draft decision related to the Special Representative, which, *inter alia*, requests the Secretariat to:

- extend the time frame for the negotiation of the draft proposal for a joint venture, with the expectation to have a full proposal in the Council’s agenda in 2019;
- extend the contract and renew the terms of reference for the Special Representative;
- invite the Special Representative to participate in the negotiations for the draft exploitation regulations; and
- establish a voluntary trust fund to support the Special Representative’s work.

India and Cameroon supported the draft decision. Germany supported the extension of the Special Representative’s contract, but opposed the expansion in scope. He further stated that, until the Enterprise starts operating independently, the interim Director-General has to be appointed from within the Secretariat staff. Australia expressed the need to further clarify parts of the draft decision.

Special Representative Charles highlighted the need for the Council to decide on certain matters, notably related to the preservation of the marine environment, voluntary financial contributions, and modalities of the joint venture with Poland. President Yengeni suspended deliberations to allow for further informal consultations. Algeria reported back that discussions on the proposal by the African Group were fruitful, but further time was needed.

On Friday, the African Group noted that delegates were not able to agree on expansion of the terms for the Special Representative or on establishment of a voluntary trust fund. Stressing that the 2017 Assembly decision against appointing an interim Director-General (ISBA/23/A/13) should not be seen as a permanent limitation, Argentina, supported by the African Group, underscored: the change in context since 2017, including initiation of discussions on the mining code, and Poland’s proposal; and the apparent “double standard” of limiting participation of the Special Representative, yet allowing countries to give the floor to contractors. He further noted that two regional groups urged finding an interim solution until July. Cameroon emphasized the need to agree on the terms for the Special Representative’s work to move towards the operationalization of the Enterprise and the realization of the common heritage, stressing that “no one should be left behind.”

Australia queried whether establishment of a voluntary trust fund would have financial implications, thus requiring review by the Financial Committee. The Pew Charitable Trusts requested that informal consultations be open to observers.

Secretary-General Lodge clarified that the decision to establish a voluntary trust fund does not involve any additional budget requirements. He noted it is not a decision that requires consultations with the Finance Committee, but underlined that the fund’s establishment must be reported at its next meeting.

Following further informal consultations, the Council adopted the draft decision, with suggested amendments.

Final Decision: Regarding the Special Representative for the Enterprise, the Council requests the Secretariat, *inter alia*, to:

- extend the contract and renew the terms of reference of the Special Representative, taking into consideration the need to finalize the joint venture with Poland;
- invite the Special Representative to participate, exceptionally, to represent the perspective of the Enterprise up to and including the ISA-25 Part 2 session, in negotiations concerning the development and conclusion of the exploitation regulations in the Area and other related matters; and
- establish a voluntary trust fund to provide the requisite funds related to the work of the Special Representative, and encourage Member States, observers and other stakeholders to contribute financially to the voluntary trust fund.

The decision further:

- requests the Secretary-General to extend the time frame to negotiate the draft proposal to form a joint venture and develop a business proposal, taking into consideration the expectation of having a full proposal on the Council agenda in 2019;
- recognizes the importance of ensuring that the perspective of the Enterprise is submitted and taken into account in development and adoption of the exploitation regulations; and
- requests the Secretary-General to consider recommendations in the 25th session, taking account of the ISA technical study, on the appointment of an interim Director-General to represent the perspective of the Enterprise in line with the Convention and the Implementing Agreement, in future negotiations connected to the reserved areas and to define parameters to facilitate discussions with other states, regional groups, and other entities on matters related to the operationalization of the Enterprise.

Other Matters

The UK stressed the importance of strengthening relevant capacity building and noted the need to address corruption and harassment on vessels. Chile reiterated his commitment to ISA, noting that the process leading to deep-seabed mining should not be hurried and performed in isolation, mentioning that the inclusion of all points of view is important. Cameroon emphasized the need to strengthen the Secretariat’s capacity.

Closing Plenary

On early Friday afternoon, Jamaica, as the host country, thanked all participants for the spirit of compromise and effort for a successful meeting. Secretary-General Lodge highlighted that the second part of the 25th ISA session, in July 2019, will celebrate the 25th anniversary of the Authority, inviting all participants and looking forward to a productive intersessional period. President Yengeni gavelled the meeting to a close at 1:31 pm.

A Brief Analysis of the Meeting

Time passes irrevocably – Virgil

Two hours and thirty-six minutes. That is the time needed by explorer and filmmaker James Cameron to reach 11 kilometers-deep, vertically piloting the Deepsea Challenger in the crushing pressure of the Mariana Trench. He brought back impressive 3-D images of the freezing cold, pitch black, and largely unknown marine environment.

The work of the International Seabed Authority (ISA) and the potential impacts of deep-seabed mining could also be described as a dive into unknown waters. Delegates meeting at ISA headquarters in Kingston, Jamaica, are in the process of tackling the herculean task of building the legal, institutional, and economic frameworks of an unprecedented expedition. The final outcome of the deliberations, the draft regulations on exploitation of mineral resources in the Area, will govern future relevant activities in the oceans. Their development will need to ensure environmental protection and simultaneously balance stakeholders' interests.

The first part of the 25th session of the ISA Council experienced a week of fruitful exchanges, revealing increased complexity in the Authority's work. Following an "evolutionary approach" as enshrined in the 1994 Agreement, the Authority will have to grow and develop in the near future to overcome key challenges. Secretary-General Michael Lodge emphasized the need to "start thinking about the ISA's next 10-15 years," acknowledging that much work needs to be done now for the Authority and its organs to fulfill their mandates.

This brief analysis examines the main achievements, dilemmas, and questions that surfaced during the Council meeting related to the economic model and the relevant payment mechanism, the Enterprise, and protection of the marine environment. It further outlines key outstanding issues that will re-appear on the Council's agenda when it meets in July 2019.

The Economic Model

Many delegates view the economic model as the backbone of the draft exploitation regulations. The economic model will, once adopted, calculate the monetary resources that will flow into the ISA and, eventually, be distributed to states to share profits from the commercial exploitation of resources that the United Nations Convention on the Law of the Sea (UNCLOS) has defined as the common heritage of humankind. Consequently, the economic model will also be one of the main components of the benefit-sharing mechanism, realizing, to some degree, the promise of fairness towards the vast majority of countries that cannot participate in deep-sea minerals' commercial exploitation due to limited capacity.

The need to focus on the economic model has long been identified by all the Authority's organs and the vast majority of participants. Answering to these calls, an open-ended working group was established, following a proposal by Germany during ISA-24. The working group met for two days prior to the Council meeting. This allowed in-depth discussions on four suggested economic models and further elaboration on the pros and cons of calculations based on royalties upon net metal value or profit-sharing.

Deliberations in the working group and, subsequently, the ISA Council were productive, according to most delegates. Essential considerations took central stage, including the need to take into account: a ramp-up period where operations are not at full

capacity; the magnitude and scope of a levy for environmental funds; and the need for a liability fund. Areas for further work were identified, such as the importance of studying economic impacts on land-based mining, forecasting future metal prices and markets' development, as well as developing a formula for equitable benefit-sharing. Increased focus on the economic model was also evidenced by a significant number of observers attending the workshop, "a vivid illustration of the role of stakeholders in the development of the exploitation regulations," in the words of Secretary-General Lodge.

Yet, not everything was smooth. Two regional groups expressed concern about limited participation of developing countries in the working group's deliberations, due to late scheduling and resource limitations. In that respect, the use of the Voluntary Trust Fund to support participation of Council members from developing states also for future meetings of the working group may facilitate greater participation. Furthermore, while the MIT representatives thoroughly presented and discussed their studies in the working group, they were not present in the Council deliberations, disappointing some delegates. "Not everyone could attend the working group. It would be productive to have some interaction in the Council," a veteran emphasized.

Following the dense discussion on the economic model in the Council, a delegate expressed concern. "The discussion was good, but not always easy to follow without a solid background in economics," he argued. "I feel a bit lost amidst net present values, internal rates of return, and future cash flows," he admitted. He also stressed that a significant amount of work awaits delegates and technical experts. "We need to take into account that our considerations are interrelated. The full operationalization of the Enterprise, for instance, could provide to the Authority independent information on deep-sea mining, as well as relevant, background baseline data."

The Enterprise

Considered as the commercial arm of the Authority, the Enterprise was designed to act autonomously in carrying out deep-seabed activities and to provide benefits for all parties, but especially developing countries, while also ensuring protection of the marine environment. In theory, the Enterprise has been in place since 1994, but, in practice, its operationalization has remained "evolutionary," as work on the regulatory framework continues. That ponderous pace quickened with Poland's recent proposal for a joint venture. Not only does the proposal create a legal trigger for the operationalization of the Enterprise, it also represents what some see as an opportunity to finally move towards realization of the Authority's mandate.

Delegates applauded the decision to mandate the Special Representative to continue liaising with Poland on a potential joint venture, until the next Council meeting in July 2019. Special Representative Eden Charles' report to the Council comprised an independent assessment of the proposal, including an elaboration of factors to determine whether it is consistent with "sound commercial principles," which could provide standards for future joint ventures or independent activities by the Enterprise. With delegates viewing the prospect of a joint venture as a key turning point, some wondered why its discussion had been scheduled at the end of the session, especially given that a full proposal is expected to be presented at the next Council meeting in July 2019. Others, on the contrary, viewed the pace as a bit rushed, targeting their concerns on: the proposed 95/5 split of shares;

dispute settlement; transparency; liability; and environmental protection.

An upcoming study on the legal, administrative, financial, and technical operations of the Enterprise, which is expected to be on the Council's agenda at its next meeting, is expected to shed light on issues related to the operationalization of the Enterprise. Even amidst those concerns, the decision to extend the Special Representative's tenure, along with the time frame for negotiations on the joint venture, sent a clear message that operationalization of the Enterprise is now a priority for the Council. This is relevant, even more so, considering the explicit recognition, contained in the relevant Council decision on the Special Representative, that he will participate in the further development of the draft exploitation regulations. In the short term, the ability to realize those intentions will depend on states' willingness to contribute to the Voluntary Trust Fund established to support the Special Representative's work.

Following lengthy negotiations on the decision on the Special Representative, a participant offered a strategic view of the ongoing discussions. "The Enterprise's role as a facilitator of the common heritage principle is practically enshrined in UNCLOS," he noted. "One of the main components of the common heritage is environmental protection. Shouldn't the joint venture proposal explicitly contain environmental provisions?" This question, portraying the link between the Enterprise and environmental protection, reflects broader environmental concerns, some of which were addressed during the Council's meeting.

Environmental Concerns

Deliberations on environmental issues were seen by most delegates as more targeted and less controversial than at past sessions, permeating discussions on: the implementation of an inspection mechanism and precautionary approach; the consideration of a process for the independent review of environmental plans and performance assessments; and the relationship between the draft exploitation regulations and regional environmental management plans (REMPs).

Discussions on REMPs were positive, with many observers impressed by the level of support for making REMPs binding and for adopting them prior to mining activities. Deciding upon the modus operandi of REMPs is, according to most observers, crucial to ensure that draft exploitation regulations give sufficient weight to environmental protection.

On the substantive and institutional dimensions of precaution, delegates revealed an understanding that the concept involves more than just procedural measures. A delegate expressed surprise that much of the discussion focused on differences between the terms precautionary "principle" or "approach," and their potential legal implications, rather than on efforts to give effect to the notion of precaution during the exploitation phase. "This game of semantics does not advance our discussions. What we really need is step-by-step guidance on what precaution actually means for each stage of development of exploitation activities," she stressed. Another disagreed, noting that terminology questions are worthy of consideration at a future session, stating that the notion of precaution generates commitments for contractors and thus deserves to be well defined.

The discussion on the development and implementation of an inspection mechanism highlighted issues around compliance and enforcement. As the Holy See emphasized in plenary, given the interrelated considerations and bodies that might generate conflicts of interest, it may be wise to think of separate agencies

to deal with such a variety of economic, environmental, and social objectives. In this context, he cited the need to take into account lessons learned from past cases, such as the Deepwater Horizon oil spill in the Gulf of Mexico in 2010.

While this session of the Council fostered progress on some of the environmental topics requiring further consideration, most delegates and participants agreed that much remains to be done. Some called for further efforts to balance environmental concerns with economic considerations, noting that their moral duty to explicitly take into account protection of the marine environment is an important part of the mandate on common heritage. Among a variety of considerations to address this challenge, delegates will need to refine their understanding of the benefits and costs associated with implementing environmental safeguards, as well as address the interactions between deep-seabed mining and other global environmental threats, notably climate change and biodiversity loss.

Leaving No One Behind

Time is not the best friend of multilateral negotiations, especially when urgent issues need to be addressed. "Nothing is agreed until everything is agreed" is almost a cliché in UN negotiations. And yet consensus building is time consuming. The ISA is a case in point. Not only must it develop a mutual understanding on novel and complex issues, it must do so in a timely manner.

It is fair to say that the Council meeting concluded its agenda successfully, with all delegates demonstrating a willingness to move forward. The uncomfortable reality, however, is that "forward" does not always imply a straight line. As one delegate put it, sometimes it may even widen disagreements: "We do move, but for some this means moving to the right, while for others to the left."

The "Game of Nodules" could become a series. It has an increasing audience, many unknowns, adventure, drama, important decisions, and future financial rewards. The Authority and its organs, including the Council, face difficult decisions as they work to produce balanced, wisely-crafted exploitation regulations in order to allow for the commercial exploitation of deep-sea minerals. This unprecedented challenge becomes even more difficult, as it must simultaneously give effect to the principle of the common heritage of humankind. In that respect, calls were repeatedly made during the Council's proceedings to "leave no one behind," expressing the concerns of developing countries that have less capacity to equitably participate in this "game."

The Authority and all involved in relevant decision-making will, one way or the other, be part of human history. As a long-standing negotiator emphasized, "We have the opportunity to get it right. We have the opportunity to show the world that fair benefit-sharing can take place. And furthermore, together with the forthcoming UN Ocean Decade, it is our best chance to attract attention to the oceanic ecosystems, an invaluable part of life on Earth."

Upcoming Meetings

ISA Legal and Technical Commission Meeting: The first part of the LTC session will cover, among other issues: activities of the contractors; applications for approval of plans of work for exploration; regulatory activities of the Authority; environmental management planning; data management and matters referred to the Commission by the Council. **dates:** 4-15 March 2019

location: Kingston, Jamaica **contact:** ISA Secretariat **phone:** +1-876-922-9105 **fax:** +1-876-922-0195 **email:** <https://www.isa.org.jm/contact-us> **www:** <https://www.isa.org.jm/>

Sixth World Ocean Summit: This event will bring together political leaders and policymakers, heads of global business, scientists, non-governmental organizations, and multilaterals from across the globe to build greater collaboration across regions and connect the world to new ideas and perspectives on the future of the ocean. The overarching theme for the Summit is Building Bridges, and featured topics are: finance; technology and innovation; and governance, including illegal fishing and lessons from land economies. **dates:** 5-7 March 2019 **location:** Abu Dhabi, United Arab Emirates **contact:** World Ocean Initiative **email:** <https://www.woi.economist.com/contact-us/> **www:** <https://www.woi.economist.com/world-ocean-summit/>

Preparatory meeting for the 20th meeting of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea (ICP-20): ICP-20 will focus its discussions on the topic “Ocean Science and the United Nations Decade of Ocean Science for Sustainable Development.” **date:** 18 March 2019 **location:** UN Headquarters, New York **contact:** UN Division for Ocean Affairs and the Law of the Sea **phone:** +1-212-963-3962 **fax:** +1-212-963-5847 **email:** doalos@un.org **www:** http://www.un.org/Depts/los/consultative_process/consultative_process.htm

Second Session of the Intergovernmental Conference on an International Legally Binding Instrument under UNCLOS on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction: This session will address namely the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, in particular, marine genetic resources, including questions on the sharing of benefits, marine protected areas, environmental impact assessments and capacity building and the transfer of marine technology. **dates:** 25 March - 5 April 2019 **location:** UN Headquarters, New York **contact:** UN Division for Ocean Affairs and the Law of the Sea **phone:** +1-212-963-3962 **fax:** +1-212-963-5847 **email:** doalos@un.org **www:** <https://www.un.org/bbnj/>

The Ninth Deep Sea Mining Summit 2019: This event seeks to deliver leading market intelligence and industry presentations on the latest in deep sea mining advancements. **dates:** 29-30 April 2019 **location:** London, UK **contact:** Sean Collins - Conference Producer **phone:** +1-206-582-0128 **fax:** +1-206-582-0258 **email:** delegates@iQ-Hub.com **www:** <https://www.deeppsea-mining-summit.com/index>

14th round of Informal Consultations of States Parties to the UN Fish Stocks Agreement (ICSP/14): This meeting will be focusing on the topic “Performance reviews of regional fisheries management organizations and arrangements.” **dates:** 2-3 May 2019 **location:** UN Headquarters, New York **contact:** UN Division for Ocean Affairs and the Law of the Sea **phone:** +1-212-963-3962 **fax:** +1-212-963-5847 **email:** doalos@un.org **www:** http://www.un.org/depts/los/convention_agreements/fish_stocks_agreement_states_parties.htm

ISA Workshop on Standards, Guidelines, and Key Terms: This workshop will address standards, guidelines, and key terms related to activities in the Area. **dates:** 13-17 May 2019 (tentative) **location:** Pretoria, South Africa **contact:** ISA Secretariat **phone:** +1-876-922-9105 **fax:** +1-876-922-0195 **email:** <https://www.isa.org.jm/contact-us> **www:** <https://www.isa.org.jm/>

20th meeting of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea (ICP-20): ICP-20 will focus its discussions on the topic “Ocean Science and the United Nations Decade of Ocean Science for Sustainable Development.” **dates:** 10-14 June 2019 **location:** UN Headquarters, New York **contact:** UN Division for Ocean Affairs and the Law of the Sea **phone:** +1-212-963-5915 **fax:** +1-212-963-5847 **email:** doalos@un.org **www:** http://www.un.org/Depts/los/consultative_process/consultative_process.htm

29th Meeting of States Parties to the 1982 United Nations Convention on the Law of the Sea: The 29th meeting of the parties to UNCLOS will convene in New York and review, among others, the work of the International Seabed Authority. **dates:** 17-19 June 2019 **location:** UN Headquarters, New York **contact:** UN Division for Ocean Affairs and the Law of the Sea **phone:** +1-212-963-3962 **fax:** +1-212-963-5847 **email:** doalos@un.org **www:** http://www.un.org/Depts/los/meeting_states_parties/meeting_states_parties.htm

Commission on the Limits of the Continental Shelf: The fiftieth session of the Commission on the Limits of the Continental Shelf will convene for seven weeks. **dates:** 1-26 July 2019 for the Sub-commissions; 29 July - 2 August 2019 for the Plenary; 5-9 August 2019 for the Sub-commissions; and 13-16 August 2019 for the Plenary **location:** UN Headquarters, New York **contact:** UN Division for Ocean Affairs and the Law of the Sea **phone:** +1 212-963-5915 **fax:** +1 212-963-5847 **email:** doalos@un.org **www:** http://www.un.org/Depts/los/clcs_new/clcs_home.htm

25th Session of the ISA Assembly and the ISA Council (Part II): The ISA Council will consider the 2017 report of the Finance Committee, including the 2019-2020 budget proposals, and the 2018 report of the LTC. The ISA Assembly will consider the 2019-2020 budget, a draft strategic plan for the ISA, and the Council’s report. **dates:** 8-10 July 2019 for the Finance Committee; 15-19 July 2019 for the Council; and 22-26 July 2019 for the Assembly **location:** Kingston, Jamaica **contact:** ISA Secretariat **phone:** +1-876- 922-9105 **fax:** +1-876-922-0195 **email:** <https://www.isa.org.jm/contact-us> **www:** <https://www.isa.org.jm/>

For additional meetings, see: <http://sdg.iisd.org/>

Glossary

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| Area | Seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction |
| CCAMLR | Convention for the Conservation of Antarctic Marine Living Resources |
| DOSI | Deep Ocean Stewardship Initiative |
| DSCC | Deep Sea Conservation Coalition |
| FSM | Federated States of Micronesia |
| GRULAC | Latin American and Caribbean Group |
| IMO | International Maritime Organization |
| ISA | International Seabed Authority |
| LTC | Legal and Technical Commission |
| IUCN | International Union for Conservation of Nature |
| MIT | Massachusetts Institute of Technology |
| REMPs | Regional environmental management plans |
| SDGs | Sustainable Development Goals |
| SIDS | Small island developing states |
| UNCLOS | UN Convention on the Law of the Sea |