

Twenty-fifth Annual Session of the International Seabed Authority (Second Part): Monday, 15 July 2019

On Monday, the Council of the International Seabed Authority (ISA) met for the second part of the 25th annual session in Kingston, Jamaica. The main items discussed included national legislation with respect to activities in the Area and the implementation of the 2018 Council Decision relating to the summary report of the Legal and Technical Commission (LTC) Chair. The Council also started its consideration of components of the draft regulations for exploitation of mineral resources in the Area, focusing on the financial model and the outcomes of the relevant Working Group.

Opening

Lumka Yengeni (South Africa), Council President for the 25th session, opened the meeting. ISA Secretary-General Michael Lodge highlighted updates from the intersessional period, including the submission of the note and recommendations on the draft exploitation regulations by the LTC, the review of the action plan on standards and guidelines by the LTC and the corresponding workshop on standards and guidelines hosted by South Africa, and progress on the financial terms of contracts.

Election to fill a vacancy on the LTC

Delegates elected Erasmo Alonso Lara Cabrera (Mexico) to replace Alonso Francisco Martinez Ruiz (Mexico) on the LTC until 2021 (ISBA/25/C/23).

National legislation

Alfonso Ascencio-Herrera, Legal Counsel and Deputy to the Secretary-General, introduced the document on laws, regulations, and administrative measures adopted by sponsoring States and other members of the ISA with respect to activities in the Area, and related matters, including a comparative study of existing national legislation (ISBA/25/C/24).

Algeria, for the AFRICAN GROUP, suggested that the ISA take the lead in setting rules and mechanisms that govern compensation for harm arising from seabed mining activities carried out beyond national jurisdiction. INDONESIA stressed the need to ensure that national legislation is not in conflict with international law or ISA regulations. The ISA Council took note of the report.

Consideration, with a view to approval, of an application for a plan of work

Council President Yengeni introduced an application for a plan of work for exploration of polymetallic nodules by the Beijing Pioneer Hi-Tech Development Corporation, sponsored by China, in the western Pacific Ocean (ISBA/25/C/30). The Council approved the plan of work, with no objection.

Report on the implementation of the decision of the Council in 2018 relating to the reports of the Chair of the LTC

Secretary-General Lodge introduced the report (ISBA/25/C/12/Add.1), highlighting *inter alia*: technical details to be discussed

regarding transparency of exploration contracts; contractors' fulfillment of revised annual overhead fees and voluntary contributions; and several workshops planned to facilitate the development and review of regional environmental management plans (REMPs).

ITALY, BELGIUM, the UK, AUSTRALIA, and others, welcomed progress on the draft regulations for exploitation, the development of REMPs, and the data management strategy.

The AFRICAN GROUP, with ITALY, CHILE, and others, welcomed steps taken to increase transparency of activities of contractors. The AFRICAN GROUP further requested that Member States be included in creation of a template for public disclosure.

COSTA RICA called for additional information on contractors' acceptance of requirements associated with increased transparency. DEEP SEA CONSERVATION COALITION (DSCC) emphasized the need for transparency in contracts, calling for revisiting the release of contracts issued in light of difficulties experienced with the template for public disclosure.

On a data management strategy, BRAZIL and CHILE requested clarification on which other databases will be linked to the ISA database.

JAMAICA, CHILE, and ITALY noted the role of workshops as a key element in developing draft regulations on exploitation. JAMAICA called for livestreaming REMPs workshops to include more participants, supported by CANADA and DSCC, and emphasized, with the FEDERATED STATES OF MICRONESIA (FSM), the need to further clarify how the outcomes of the workshops feed into the work of the LTC and the Council. BRAZIL stressed that the outcomes of REMPs workshops are non-binding.

GERMANY, supported by BELGIUM, AUSTRALIA, the PEW CHARITABLE TRUSTS, and others, presented suggestions for best practices for future work of the Authority (ISBA/25/C/27), highlighting: clarification for proposed prolonged 26th session; proposals for future drafts on exploitation regulations; and guidelines for the structure of work for the LTC.

BELGIUM, supported by the PEW CHARITABLE TRUSTS and DSCC, called for a more inclusive process, tapping on the expertise of Parties and involving independent experts in working groups to be created to develop prioritized standards and guidelines. INDIA called for REMPs workshops for the Indian Ocean in addition to the Pacific's Clarion-Clipperton Zone, and, with CHINA, expressed reservations on the inclusion of independent environmental experts given the mandate of the LTC as an expert body under the ISA.

The UK called for greater participation in the REMP workshop for North-West Pacific, emphasizing, with the FSM and FIJI, effective attendance of regional coastal states. The FSM called for standardizing the results of the workshops on REMPs. CHINA called on the Secretariat to ensure that all stakeholders receive information of planned REMPs workshops.

CANADA suggested that REMPs could identify Areas of Particular Environmental Concern; and drew attention to his country's environmental assessment process in the oil sector, including consultation with indigenous peoples, noting that this could be considered best practice.

In response, Secretary-General Lodge highlighted *inter alia*: the need for sensitivity in addressing legally-binding signed contracts; appreciation for suggestions from Germany and Belgium on working practices; the need for further elaboration on how workshops' outputs will be treated by the LTC and the Council; and prioritization of relevant participation in workshops with dedicated financial support. The Council took note of the report.

Draft regulations for exploitation of mineral resources in the Area

Financial Model: Olav Myklebust (Norway), Chair of the open-ended Working Group on the financial model, reported on the outcomes of the Working Group's second meeting, held from 11-12 July 2019. He highlighted, *inter alia*: divergence on the three options for payment mechanism proposed by the Massachusetts Institute of Technology (MIT) report, namely a fixed rate royalty mechanism, an *ad-valorem* only royalty, and a combined profit-based system; and options for setting up an environment fund.

Many delegates welcomed the recommendations of the Working Group, including reconvening the Working Group. CHILE stressed that discussions need to continue, cautioning against subjecting the deliberations to a deadline.

Brazil, for GRULAC, supported by TONGA, suggested holding future meetings of the Working Group during the Council session to bolster participation. The AFRICAN GROUP, the UK, COSTA RICA, and others expressed flexibility, stressing the importance of increased participation. BRAZIL and COSTA RICA called for actively involving the Special Representative of the Enterprise in the discussion on the financial model.

TONGA expressed support for the fixed rate *ad valorem* royalty option; suggested further consideration of the rates for the environmental fund; and stressed that for a sufficient review to be undertaken, a set implementation period must be explicitly clear in the draft regulations.

The AFRICAN GROUP introduced two submissions on possible payment regimes for consideration by the ISA Council.

Eden Charles, Special Representative of the Secretary General for the Enterprise, stressed: the importance of compensating the resource owner, in this case the whole of humanity; the need to compensate first-mover contractors in seabed mining taking into account their investment risk; the need to take into account environmental effects; and the importance of reviewing the payment mechanism to ensure the model is up-to-date in future.

CHINA supported a combination of royalty and profit-sharing, reflecting the variability of metal prices, and taking into account contractors' significant investments in the exploration and exploitation phases. The UK noted the need for a commercially viable set of regulations, expressing skepticism about the profit-based payment system.

JAPAN commented on the continued need to *inter alia*: provide incentives to cover risks for pioneer activities in deep-seabed mining, with INDIA; and ensure that current modelling is only applied to polymetallic nodules, with other resources considered separately. INDIA emphasized the difficulty in forecasting future metal prices and drew attention to the unique characteristics of resources in the Indian Ocean.

SINGAPORE suggested an initial fixed rate as the first stage followed by an *ad valorem* system pegged to mineral market prices. The RUSSIAN FEDERATION opted for a two-tier progressive royalty mechanism; highlighted scientific research as part of environmental protections; and called for clarifying how the financial indicators will be integrated in the exploitation regulations.

MEXICO called for a dedicated environmental compensation fund. COSTA RICA called for more time and information to consider relevant payment rates and urged discussion on the payment regime for environment compensations, including the use of the environmental compensation fund.

CHINA, INDIA, NAURU, and others stressed that due consideration must be given to pioneer contractors, who undertake

significant financial risks. NAURU supported a progressive *ad valorem* royalty system tied to metal prices.

DSCC and others stressed the importance of an environmental liability fund, noting that it is separate from the sustainability fund and cannot be funded from exploitation proceeds alone. The INTEROCEANMETAL JOINT ORGANIZATION (IOM) stated that the models provide clarification on the manner in which deep sea mining could be structured. MINING STANDARDS INTERNATIONAL stressed the need for further assessment of the assumptions underpinning the models and underlined the need for market-regulated royalties.

The Council approved the Working Group's recommendations.

Introduction: Council President Yengeni opened the discussion on the draft exploitation regulations (ISBA/25/C/WP.1) and the LTC note (ISBA/25/C/18). GERMANY, supported by AUSTRALIA, proposed including reference to effective protection of marine environment, equitable sharing of financial and economic benefits, and the Sustainable Development Goals (SDGs). The AFRICAN GROUP questioned the reference to the SDGs which only extend to 2030, and called for a standalone regulation on fundamental principles. COSTA RICA, supported by DSCC, called for differentiating fundamental principles from policies.

The Special Representative for the Enterprise suggested language on the effective participation of the Enterprise. SPAIN expressed concern on accumulated and potential irreversible environmental impacts, proposing an additional reference to regional fisheries management organizations and alignment with terminology used at the biodiversity beyond national jurisdiction (BBNJ) intergovernmental conference.

SOUTH AFRICA expressed concerns over potential impact on the country's domestic economy resulting from a reduction of mineral resources caused by deep sea mining and called for an urgent scientific impact study.

BELGIUM highlighted expertise, independence and transparency for ISA's decision-making process and, with COSTA RICA, noted the importance of seeking external environmental expertise.

COSTA RICA, supported by AUSTRALIA, JAPAN and DSCC, stressed the need to ensure ISA members and contractors "shall cooperate" with the Authority. DSCC underscored the need to maintain reference to conservation of natural resources in the Area, and stressed the importance of public participation.

JAPAN suggested relevant language from the Rio Declaration to clarify the application of the polluter pays principle, and called for the development of Serious Harm guidelines before the adoption of the draft regulations. AUSTRALIA welcomed the explicit requirement for REMPs, noting that they are not optional.

In the Breezeways

The first day of the second part of the 25th session of the ISA Council 2019 kicked off with an increased number of participants than the last, which, as highlighted by Secretary-General Lodge, indicates the growing global interest in the Authority's work.

Although deliberations in plenary and in the breezeways addressed a variety of issues at the start of the meeting, many delegates focused on the need for increased transparency as well as on the standardization of a process for the development of regional environmental management plans.

Delegates also spent some time trying to tease apart the perplexing financial model options, fueled by a two-day working group discussion convened prior to the opening of the Council. The discussion revealed that, despite divergent opinions on the different payment options and other elements of the financial model, including the amount of funds dedicated to environmental protection and incentives for seabed mining pioneers, most delegates have started to develop a more uniform understanding of the necessary building blocks of the exploitation regulations, including the parameters of the payment mechanism.

As a seasoned delegate noted leaving plenary for the day, "we will have a lot of negotiating to do before any agreement is reached, but, at least, we seem to be on the same page on the basics."