

Twenty-fifth Annual Session of the International Seabed Authority (Second Part): Friday, 19 July 2019

On Friday, the Council of the International Seabed Authority (ISA) finalized its deliberations, addressing all pending agenda items, including: the report on matters relating to the Enterprise; issues relating to the election of members of the Legal and Technical Commission (LTC), and the LTC Chair report; and the pattern of meetings for the Council and LTC for 2020.

Draft Decision of the ISA Council relating to Financial and Budgetary Matters

The ISA Council continued its deliberations on the draft decision relating to financial and budgetary matters (ISBA/25/C/L.4). CHINA, with CHILE and INDIA, expressed concern on the use of remote simultaneous interpretation for the Assembly and the Council in 2020, suggesting deleting the relevant paragraph due to potential technical issues related to unreliable internet connection, quality of interpretation, and confidentiality matters. The AFRICAN GROUP supported the deletion, stressing that this does not preempt the regional position during the Assembly meeting.

The NETHERLANDS, FRANCE, and BRAZIL expressed flexibility regarding deletion of the paragraph, with BRAZIL recommending preparing a back-up plan for potential internet failures.

UK, supported by CANADA, GERMANY, MEXICO, NORWAY, and the CZECH REPUBLIC, suggested stating that the Council recommends that “consideration is given to use of remote interpretation services,” citing cost-cutting considerations.

Adopting the draft decision, the Council decided to delete the reference to the use of remote simultaneous interpretation.

Report on Matters Relating to the Enterprise

ITALY, with MEXICO, stated that the appointment of an interim director general is not advisable at this time, noting, with BANGLADESH, the need to carefully examine the financial implications. MEXICO supported extending the mandate of the Special Representative.

Noting that since 2012, the Council had approved exploration contracts on the basis of their entering into a joint venture with the Enterprise in the absence of an interim director general, JAMAICA stressed that the Council’s inaction in the past does not relieve it from its obligations under UNCLOS and the 1994 Implementing Agreement, underlining that “the time is always ripe to do what is right.” Concurring, Special Representative for the Enterprise Eden Charles called on Council members to consider the study in detail during the intersessional period so as to be able to take the best decision on this matter at the next meeting.

Secretary-General Lodge noted that if a Secretariat staff member was to be appointed to take on the role of interim director general,

the appointee may not be able to conduct the functions of the office due to conflict of interest concerns; expressed willingness to continue the current arrangements with the Special Representative, noting the need for contributions to the Voluntary Trust Fund (VTF) to finance this position; and reminded delegations of the financial implications related to the establishment of the office of director general.

Noting that the LTC recommendations on the issue are pending, CHINA suggested addressing its recommendations in the next Council session, prior to reaching any decision. JAMAICA clarified that since the Secretariat cannot immediately create the post of the interim director general, an extension of the Special Representative’s contract should be considered.

Council President Yengeni introduced a draft decision (ISBA/25/C/CRP.4), requesting the Secretary-General, subject to the availability of requisite funds, to extend the contract and renew the terms of reference of the Special Representative, until the end of the 26th ISA session.

The AFRICAN GROUP called for informal consultations to conclusively address this and other matters. BANGLADESH and INDIA opposed, referencing the Rules of Procedure. The NETHERLANDS, with a few others, expressed preference to stay in session, underscoring time constraints.

INDIA asked for clarification regarding “requisite funds,” querying from which Authority’s fund they will be derived. Secretary-General Lodge responded that the funds will be provided by the VTF. The AFRICAN GROUP suggested deleting “subject to the availability of the requisite funds” and replacing it with “taking into account the importance of the availability of funds.”

The Council adopted the draft decision with the amendment suggested by the African Group.

Issues Relating to the Election of Members of the LTC

Secretary-General Lodge introduced a proposal by Belgium (ISBA/25/C/22) and a draft decision submitted by the African Group and GRULAC (ISBA/25/C/L.2) relating to the election of members of the LTC.

BELGIUM, supported by DEEP OCEAN STEWARDSHIP INITIATIVE (DOSI), stressed that its submission’s objectives are to ensure that: the LTC’s size and composition remains under the control of the Council; equitable regional representation is reached; and required expertise is present in the Commission. DOSI highlighted the need to include environmental expertise.

The RUSSIAN FEDERATION stressed that the African Group/GRULAC submitted draft decision is simple and comprehensive. ARGENTINA and COSTA RICA supported the African Group/GRULAC proposal, prioritizing geographical representation.

AUSTRALIA, ITALY, and SPAIN supported the Belgian proposal in its alignment with related provisions in UNCLOS Article 163 (organs of the Council). ITALY noted prior calls by the LTC for more expertise related to marine biology, technology, and

the economics of deep-sea mining. FRANCE noted that the size of the LTC is adequate and stressed the need to balance geographical representation and relevant expertise.

INDIA noted that the number of diplomats and lawyers currently in the LTC outweighs the number of scientists; highlighted, with BANGLADESH, the need to consider creating an Economic and Planning Commission as a separate entity from the LTC; and stressed that the membership of the LTC should not exceed 36.

Stressing that related discussions in the past have been tough, lengthy, and complicated, GERMANY urged further considering overarching questions, such as past procedures in dealing with lack of expertise and, supported by BANGLADESH, NORWAY, SINGAPORE, the RUSSIAN FEDERATION, and others, the LTC's opinion on current size and expertise, before addressing the details.

Highlighting the need for predictability, NORWAY and SINGAPORE suggested that a decision on the LTC size be taken well in advance of an election, pointing in that regard towards the Belgian proposal.

SINGAPORE requested clarification on how the type of expertise and number of seats will be determined under the Belgian proposal. The Republic of Korea, on behalf of ASIA-PACIFIC GROUP, with NORWAY, requested further time for consideration, proposing to defer a decision to the 26th Council meeting.

The AFRICAN GROUP and GRULAC emphasized that if a decision is not taken at this meeting, the election of members of the LTC would need to be postponed from 2021 to 2022, stating that the Council would need to make a decision on the postponement of the election.

In the afternoon and following informal consultations, including with the Asia-Pacific Group, the AFRICAN GROUP, supported by COSTA RICA, proposed adopting ISBA/25/C/L.2.

INDIA noted that they had not been consulted, and, with NORWAY, preferred deferring the consideration of the draft decision to the next meeting. ITALY, with GERMANY and NORWAY, did not support the adoption of the African Group/GRULAC draft decision. Expressing disappointment, the AFRICAN GROUP then agreed to defer this discussion to the next meeting.

The AFRICAN GROUP and GRULAC suggested that if a decision is taken to defer the item to the next session, it should be placed at the top of next meeting's agenda.

The ISA Council decided to defer the issue to its 26th session, placing it at the top of that meeting's agenda.

Draft Decision on the Report of the LTC Chair

AUSTRALIA, co-facilitator with NEW ZEALAND of the informal session, presented the revised draft decision related to the report of the LTC Chair (ISBA/25/C/CRP.5).

Reporting on outcomes from informal consultations, the AFRICAN GROUP suggested, *inter alia*, that: the Council take up the development of the draft exploitation regulations, with the option to refer technical matters to the LTC in the future; proposals be compiled, using track-changes, by the Secretariat; and meeting days of the Council remain the same, sequencing the first session prior to the LTC to promote sequential coordination on technical matters.

GERMANY, supported by many, requested deleting duplicate reference to "standards and guidelines." COSTA RICA opined that all standards should be ready by the time of adoption of exploitation regulations, rather than a set of prioritized standards. SINGAPORE emphasized that the prioritized list is an outcome of the Pretoria workshop, offering, with NORWAY and JAMAICA, that continued development of standards can occur after adoption of the draft exploitation regulations. GRULAC supported the deletion of "priority" standards, underlining that workshop outcomes are not recommendations.

SINGAPORE, supported by COSTA RICA, proposed that "necessary" rather than "priority" standards and guidelines be developed before the adoption of the regulations.

On reporting requirements for contracts, INDIA highlighted that not all infractions are equal, calling on the Secretariat to better engage with contractors to improve compliance, rather than submit relevant cases to the LTC. He further announced India's willingness to host a workshop on REMPs in the Indian Ocean in 2020.

Regarding the submission of proposals and observations for the Secretariat to prepare a compilation, BELGIUM and DEEP SEA CONSERVATION COALITION (DSCC) queried whether all stakeholders may submit proposals, to which AUSTRALIA responded affirmatively.

The Council adopted the draft decision amending it to refer to "necessary" standards and guidelines, as suggested by Singapore, and enabling all stakeholders to submit proposals and observations, as proposed by Belgium and DSCC.

Pattern of Meetings for the Council and the LTC for 2020

Secretary-General Lodge introduced a note on the pattern of meetings for the Council and the LTC for 2020 (ISBA/25/C/CRP.3.Rev.1). He recommended the most cost-efficient and flexible option, consisting of two sessions of seven and nine days for the work of the LTC and the Council respectively. He cautioned that the dates are not flexible, as they are selected in advance in coordination with the Department for General Assembly and Conference Management.

Dates of the Next Session

Secretary-General Lodge announced that the 2020 Council meetings will be held during the periods from 17 February to 6 March, and 6 to 31 July.

Other Matters and Closure of the Meeting

ISA Legal Counsel and Deputy to the Secretary-General Alfonso Ascencio-Herrera introduced amendments to the ISA staff regulations (ISBA/25/A/9 – ISBA/25/C/28). BRAZIL and BANGLADESH supported the proposal. The Council adopted the amendments.

The AFRICAN GROUP proposed using the UN numbering system to differentiate draft decisions from other documents; and urged storing video records in the ISA archives.

Council President Yengeni closed the meeting at 6:11 pm.

In the Breezeways

On Friday, Council members arrived ready to craft a way forward, tying up the many loose ends left. However, rather unexpectedly, they engaged in a lengthy discussion as to whether to convene informal consultations to try to reach consensus on outstanding issues. Many saw closed-door negotiations on the stickier issues as the only way to meaningfully address delegations' concerns. Others, however, preferred to use the time in plenary to get through the remaining issues. "I've never heard of the rules of procedure being invoked to block informal discussions. The rules should work for us," said one exasperated delegate, asking a colleague whether she has ever experienced anything similar in multilateral environmental negotiations. In an audible sigh of frustration, one delegate expressed that "the purpose and objective of suspending for informal discussions is to reach consensus, however by forcing people to come together to bring harmony, you are more than likely to get discord."

Perhaps reading the writing on the wall, discord continued to erode consensus across some agenda items. Particularly slippery was reconciling long-standing controversial items, like the LTC size and composition ahead of the 2021 elections, leaving even seasoned negotiators expressing "confusion on the way forward." As the Council concluded deliberations for its 25th session by deferring LTC-related decisions to its next session, it was clear for most participants that entrenched positions may allow limited flexibility when the Council readdresses the issues. One delegation explicitly warned that such development may well be the case during the next session: "Forewarned is forearmed," she concluded. Still, the cordial atmosphere that prevailed among participants during the closing made most delegates cautiously optimistic for the future.