

Twenty-fifth Annual Session of the International Seabed Authority (Second Part): Monday, 22 July 2019

On Monday, the Assembly of the International Seabed Authority (ISA) addressed organizational matters; elected its President, Vice Presidents, and a member for the Finance Committee filling a relevant vacancy; considered requests for observer status from four entities; discussed the development of guidelines for observer status requests; heard the report of the ISA25 Council President; and introduced the discussion on the implementation of the Strategic Plan 2019-2023.

Opening of the Session

Mariusz Orion Jędrysek (Poland), Assembly President for the 24th Session, opened the meeting. He emphasized that ISA's 25th anniversary provides an opportunity to reflect on what has been achieved, and look forward to "what we want to achieve in the next 25 years." Underscoring the importance of seabed mining, he stressed that "to save the Earth, we have to exploit metals from the ocean."

Election of the President and Adoption of the Agenda

Brazil, on behalf of GRULAC, nominated Kamina Johnson Smith, Minister of Foreign Affairs and Foreign Trade, Jamaica, as Assembly President for the 25th Session. She was elected by acclamation.

President Johnson Smith welcomed the increased global focus on ocean-related matters, especially Sustainable Development Goal 14 (SDG14 – life below water). She outlined the draft decisions that the Assembly will discuss during the week, including on the implementation of the Authority's Strategic Plan 2019-2023.

Delegates adopted the agenda (ISBA/25/A/L.1/Rev.1) without amendment, and appointed Ghana, Nauru, Poland, and Norway to the positions of Vice-Presidents.

Brazil, Canada, Czech Republic, Kenya, Myanmar, the Netherlands, the Russian Federation, Sri Lanka, and Togo were elected to the Credentials Committee.

Election to Fill a Vacancy on the Finance Committee

President Johnson Smith introduced document ISBA/25/A/3 on the election to fill a vacancy on the Finance Committee. MYANMAR nominated Nyan Lin Aung, who was elected by acclamation, to replace Ye Minn Thein for the remainder of his term.

Implementation of the Strategic Plan

Secretary-General Michael Lodge welcomed President Johnson Smith and observed that the Assembly, the Council, and the Legal and Technical Commission (LTC) all have women at their helms. He introduced the draft high-level action plan for 2019-2023 (ISBA/25/A/L.2), underscoring the performance indicators for the implementation of the strategic plan (ISBA/25/A/5) as well as a

report on considerations to the draft high-level plan (ISBA/25/A/6). He highlighted the consideration of comments collected from public consultation as well as the alignment of indicators to the adopted elements of the Strategic Plan. He concluded that a decision for the high-level action plan is fundamental to the Authority's work, including in preparing business plans and budgets. Delegates will consider this issue on Wednesday.

Consideration of Requests for Observer Status

President Johnson Smith noted four requests for observer status (ISBA/25/A/INF/1-4), and welcomed the draft guidelines for observer status of non-governmental organizations (NGOs) with the ISA (ISBA/25/A/7).

On the application by the organization 'Advisory Committee on Protection of the Sea', Algeria, for the AFRICAN GROUP, with MOROCCO, highlighted the dearth of information contained in the application as well as the inclusion of an individual's name, as opposed to the usual practice of the organization name; and called to defer this application to ISA 26. BELGIUM, with the UK, supported approving the application. BRAZIL, supported by the UK, proposed that the application be approved and renewed after the Assembly considers the new observer status guidelines. Discussions on this application were suspended for further consideration during the current session.

On the application by the Institute for Sustainable Development and Research, the AFRICAN GROUP noted the lack of information and called to defer this application to the next meeting, with a request for more information. Delegates agreed to defer this application to ISA 26.

On the application by the Ocean Society of India, the AFRICAN GROUP queried the conflict of interest potentially arising from the relationship between the applicant and a sitting member of the ISA Assembly. The Assembly accepted the application, without objection.

On the application by Opes Oceani, the AFRICAN GROUP noted that as this is a private sector company, it does not meet the criteria for NGO observer status. The Assembly rejected the application on these grounds.

Alfonso Ascencio-Herrera, Legal Counsel and Deputy to the Secretary-General, ISA Secretariat, introduced the Secretariat note on the consideration of requests for observer status. He noted that while observers' status is addressed under Rule 82 of the Assembly's rules of procedure, no details are given on the application process, the assessment criteria, or the review process. He noted that other international organizations, including the International Maritime Organization (IMO), have detailed requirements in the form of guidelines for assessing applications for observer status. Ascencio-Herrera highlighted that the objective of the guidelines is three-fold, namely to: assist the applicant to comply with all necessary requirements; ensure that observer status is granted to entities contributing to the Authority's mission and activities; and establish

a standardized application format. Inviting delegates to address the draft guidelines and the draft decision, he reminded them that the draft is indicative in nature and it is up to the Assembly's members to decide on its final content.

Many appreciated the development of the guidelines as a good starting point for further discussions and recognized the value of open exchange of ideas with observers as a necessary part of transparency.

ITALY, supported by many, underscored the importance of transparency, close cooperation, public participation, and fact checking in the Authority's work, and highlighted, *inter alia*: that the ISA has a "higher moral role, being at the core of a sophisticated architecture," compared to an organization regulating an industrial sector, like the IMO, supported by COSTA RICA; ambiguity regarding the kind of support activities to ISA's work that an NGO needs to undertake to be granted observer status, with the NETHERLANDS, the INSTITUTE FOR ADVANCED SUSTAINABILITY STUDIES (IASS), and others; that the objectives and functions of an NGO need not be in consonance with those of the Authority, calling for "a plurality of voices," with COSTA RICA, GERMANY, the NETHERLANDS, the PEW CHARITABLE TRUSTS, and others; and concerns regarding the periodic review process, suggesting instead that the observer status be revoked for observers who are absent for two consecutive sessions, with COSTA RICA and the NETHERLANDS.

GRULAC suggested informal discussions among member states to improve the guidelines. COSTA RICA, supported by NORWAY, stressed that requesting potential observers to "reasonably demonstrate their interest" is ambiguous; cautioned against having to fulfill all five criteria contained in the draft guidelines for observer status to be granted; emphasized that monitoring, control, and criticism are among the essential functions of NGOs; and called for taking into account Rio Declaration Principle 10 (public participation) and SDG 17 (partnerships for the goals) in the development of the draft guidelines.

TONGA lauded the reference to the IMO rules and guidelines for consultative status of NGOs; and pointed to the vital role of observers in building the capacities of small delegations.

GERMANY stressed, with the NETHERLANDS and many others, that transparency was chosen as one of the ISA's guiding principles due to its fundamental role in building trust and enhancing accountability and credibility; and suggested redrafting the guidelines for adoption by the end of the week.

The NETHERLANDS, with the UK, NEW ZEALAND, AUSTRALIA, CANADA, SPAIN, and others, noted that the draft guidelines pose "too strict" requirements for observers, highlighting that some of the guidelines are based on a "notion of reciprocity," with NGOs contributing to the work of the ISA.

CHINA requested clarification on the withdrawal of observer status from organizations that do not make a "substantial contribution" to the ISA's work, with CHILE; and called for clarity on an "incremental approach" in building the process for granting observer status.

CHILE called for guidelines for all observers, not only NGOs; and, with AUSTRALIA and NEW ZEALAND, called for further discussions on conflict of interest scenarios. ECUADOR called for amendments to the guidelines to be made in alignment with the Strategic Plan.

AUSTRALIA and NEW ZEALAND, supported by many, proposed a review of the draft guidelines to allow for an increased balance of interests, avoid being "overly prescriptive." CANADA said that the observer status should be broad to include indigenous groups.

DEEP OCEAN STEWARDSHIP INITIATIVE (DOSI) highlighted the need to, *inter alia*: reconsider the categorization of observers; include the Authority's obligation to promote marine scientific research as well as include the common heritage

of humankind principle, with DEEP SEA CONSERVATION COALITION (DSCC), IASS, and IUCN; and clarify potential cases of "conflict of interest." DSCC stressed that restrictive provisions would discourage open debate and participation, emphasizing that the draft guidelines run counter UNCLOS Article 169 (consultation and cooperation with NGOs) and ISA's Strategic Plan, and suggesting the draft guidelines be withdrawn and a comparative study on up-to-date observer rules and practices be performed. THYSSEN-BORNEMISZA ART CONTEMPORARY reminded delegates that the common heritage principle requires broad participation for transparency and credibility, even when participants' views are not in line with those of the Authority. IASS emphasized that important elements are missing in the mechanism for the periodic review of the list of NGOs, including observers' right to defend their position.

In response, Ascencio-Herrera noted, *inter alia*, that: criteria of what is considered "substantial contributions" are included in the document; the guidelines may be reviewed in the future; and the Secretariat prepared the document based on the IMO's guidelines as requested by the Assembly, reiterating that the guidelines constitute an indicative list. Discussions continued in an informal group, facilitated by Norway.

Statement by the President of the Council

ISA25 Council President Lumka Yengeni (South Africa) made an oral presentation of the work of the Council, highlighting progress made during the two sessions (25 February-1 March and 15-19 July 2019), including that the Council, *inter alia*: approved a plan of work for exploration of polymetallic nodules by the Beijing Pioneer Hi-Tech Development Corporation; considered the draft exploitation regulations submitted by the LTC; extended the contract of the Special Representative of the Secretary-General for the Enterprise; and requested the Open-ended Working Group on the Financial Model to reconvene for a third meeting. She highlighted that the Council had been unable to reach consensus on the election of members of the LTC. The Assembly lauded ISA25 Council President Yengeni for her report, acknowledging the Council for its achievements in furthering the work on the regulations. The Assembly took note of the oral report.

In the Breezeways

The 25th Assembly of the ISA opened on Monday, with many welcoming the leadership of the new President Kamina Johnson Smith as a breath of fresh air. "Under her guidance," confided one delegate, who also holds a seat on the ISA Council, "we will certainly make efficient progress this week."

And indeed, the meeting took off at a brisk pace, with delegates quickly opening a majority of the agenda items to be considered over the week. The substantive discussions of the day focused on the draft guidelines for observer status of NGOs. Although many acknowledged the Secretariat's draft as a "good starting point," several pointed to the more "problematic issues" raised by the draft. For instance, some were concerned about the heavy reliance on the IMO's rules and guidelines for consultative status of non-governmental international organizations. "The IMO rules date back to the 1960s and have an entirely different focus," noted one NGO participant, with another underlining that "this Authority has a higher moral role." Going a step further, several delegates pointed to the need for the guidelines to enhance transparency, a value "chosen as one of the guiding principles of the Authority," as one delegate recalled, who stressed that a multitude of different views, although not always easy to comprehend, will eventually enhance "the legitimacy of what we are doing here." The informal group set out to address the flaws in the draft guidelines "has its work cut out for it," said one participant, acknowledging the need to make these guidelines specifically relevant for this body and stressing that "we must find a way to accommodate the views that won't necessarily coincide with those of the Authority."