

Twenty-fifth Annual Session of the International Seabed Authority (Second Part): Thursday, 18 July 2019

On Thursday, the Council of the International Seabed Authority (ISA) commemorated Nelson Mandela International Day; continued deliberations on the report of the Chair of the Legal and Technical Commission (LTC); and addressed the report of the Special Representative for the Enterprise.

Report of the LTC Chair on the Work of the Commission at the Second Part of its 25th Session

Responding to questions posed by delegates on Wednesday, LTC Chair Michelle Walker (Jamaica) noted concern about the 2020 deadline for the finalization of the draft exploitation regulations, and cautioned that contractors who do not follow the reporting template may affect data collection and impact stakeholders' access to information.

The AFRICAN GROUP called for additional consultation on the LTC report. Encouraging all participants to confront challenges "with confidence rather than cynicism and doubt," NAURU emphasized the importance of the reporting template for data collection and called for, supported by the UK, the development of standards and guidelines following a clear timeline. NAURU added that the draft exploitation regulations have had a long period of gestation and there has been more than ample time for all stakeholders to offer their comments, stressing that the LTC has fulfilled its mandate and urging "a degree of pragmatism" in the Council's deliberations.

On standards and guidelines, the UK, AUSTRALIA, and others supported that standards should be legally binding and guidelines recommendatory in nature. CHILE, CANADA, NORWAY, and others noted that standards and guidelines need to be adopted before the entry into force of the draft exploitation regulations. CANADA prioritized standards needing urgent development. The UK, AUSTRALIA, GERMANY, NAURU, and others underscored that the development of environmental goals, objectives, and principles should undergo public consultation.

JAMAICA urged that "procedure is as important as substance," strongly cautioning against Plans of Work for exploitation being authorized without sufficient environmental safeguards determined through standards and guidelines.

NEW ZEALAND prioritized the draft exploitation regulations' quality over deadlines, with JAPAN, INDONESIA, GERMANY, FRANCE, NORWAY, AUSTRALIA, BRAZIL, IUCN, and others; and stressed that environmental goals and principles related to the standards and guidelines should be subject to Council approval. INDIA called for more work on the draft exploitation regulations

before adoption. JAPAN underlined the need to balance commercial exploitation with environmental protection.

On annual contractor reports, the UK called for a distinction between substantial and procedural non-compliance, emphasizing the importance of communication. He further underscored the critical role of evidence-based, robust methods to understand environmental impacts in the development of the Mining Code. JAMAICA, FRANCE, and NORWAY proposed that, in cases of non-compliance, contractors be made aware of the existence of effective means to hold them accountable.

GERMANY and the AFRICAN GROUP supported the Belgian proposal on a mechanism for an independent review of environmental plans, ensuring scientific expertise and equitable geographic distribution. The AFRICAN GROUP emphasized the importance of a mechanism that safeguards the independence of experts.

CHINA questioned the role and place of external experts vis-à-vis the proposed technical working groups in the development of the standards and guidelines; and called for clarification on the experts' appointment process.

GERMANY and BELGIUM emphasized the lack of a clear procedure for stakeholder consultation in the evaluation of an environmental impact assessment (EIA) by the LTC. Emphasizing transparency and inclusivity, CANADA highlighted remote methods adopted by the LTC to conduct its work, with FRANCE, and expressed concern over allowing contractual obligations to supersede obligations to the Authority.

ARGENTINA highlighted that the Council could continue negotiations on the draft exploitation regulations, taking into consideration both the Council discussions as well as written submissions. NORWAY called for more intersessional work and clarity on next steps.

Noting that the Secretariat has played an "overly executive function," the PEW CHARITABLE TRUSTS encouraged a revitalized partnership approach for the proposed REMP's workshop; and called on the LTC to name non-compliant contractors and related sponsoring states.

INSTITUTE FOR ADVANCED SUSTAINABILITY STUDIES (IASS), DEEP OCEAN STEWARDSHIP INITIATIVE (DOSI), and IUCN supported the inclusion of external scientific experts in the review of guidance for contractors, suggesting that, to promote transparency, the names and inputs of these experts should be published and that wider consultation should be pursued to engage with a wider range of expertise.

IUCN reiterated that the precautionary principle impels an urgent gathering of additional scientific information, further tests of the potential environmental impacts, and further modelling to understand the implications of these impacts.

LTC Chair Walker clarified that the determination of appropriate mechanisms for the list of indicative guidelines will be forwarded to the technical working groups. She noted that the LTC works according to the mandate agreed by the Council, which includes a 2020 deadline, and will continue to do so unless the Council adjusts its earlier decision. On consultation mechanisms, she pointed to the opportunity for all stakeholders to provide written comments. The ISA Council will return to this agenda item to adopt a draft decision.

Report on Matters Related to the Enterprise

Eden Charles, Special Representative for the Enterprise, presented his report on matters related to the Enterprise (ISBA/25/C/26). He highlighted the study on issues related to the operationalization of the Enterprise, in particular on the legal, technical, and financial implications for the Authority and for parties to the UN Convention on the Law of the Sea (UNCLOS). He pointed out that the Enterprise, among other roles, is a vehicle to allow developing states to participate in seabed mining in the Area. He highlighted that in the absence of an official definition for “commercial principles,” the study has identified considerations based on the common heritage principle, autonomy of the Enterprise, cost-effectiveness, an evolutionary approach to operationalization, and commercial viability.

Special Representative Charles outlined the four phases identified to operationalize the Enterprise: reinforcement of current arrangement; appointment of interim director general; period post-directive by the Council for the Enterprise’s independent functioning; and period immediately subsequent to the appointment of the director general.

JAPAN, supported by GERMANY, stressed that many steps need to be taken for the Enterprise to become independent, noting that detailed discussion may be difficult at this stage. BAHAMAS supported the four-step approach to operationalize the Enterprise and endorsed the report’s recommendations.

The AFRICAN GROUP, *inter alia*: underscored that the appointment of a director general to head the Enterprise was mandated by UNCLOS; noted that the extension of the mandate of the Special Representative and the appointment of an interim director general are not mutually exclusive options; and called on Poland to provide information on steps taken to resume talks on its joint venture proposal with the Enterprise.

POLAND responded that the final regulations that govern the functioning of the Enterprise will influence relevant decisions, stressing the need to ensure that no legal and organizational gaps exist. TRINIDAD AND TOBAGO said that the proposed joint venture with Poland should serve to operationalize the Enterprise. CHINA suggested that progress in the negotiations on the proposed joint venture should be considered to clarify whether further recommendations on the operationalization of the Enterprise are necessary, emphasizing the need for the formulation of concrete procedures and standards for joint ventures. The REPUBLIC OF KOREA requested clarification on potentially garnering funds from contractors to fund the Enterprise, noting that this would be inconsistent with UNCLOS.

BANGLADESH requested clarification on: the financial implications of the operationalization of the Enterprise, with BELGIUM; and whether Canada’s 2012 proposed sponsorship for a joint venture was still valid.

BRAZIL, SOUTH AFRICA, TRINIDAD AND TOBAGO, SINGAPORE, JAMAICA, FRANCE, and others supported extending the mandate for the Special Representative. FRANCE noted financial constraints for an extension due to arrears to the payment of contributions. The REPUBLIC OF KOREA expressed support for the Special Representative to assume the role of interim director general, urging for cost-effective options. INDIA

highlighted the financial burden already posed on contractors towards the operationalization of the Enterprise.

CHINA noted that the LTC recommendation for a temporary appointment of an interim director general is “balanced, reasonable, and practical.” Brazil, for GRULAC, emphasized that the interim director general position can be created if it has no budgetary implications. NORWAY indicated that the appointment of an interim director general is premature without clarity on relevant budgetary consequences, pledging support for the continued work of the Special Representative of the ISA Secretary-General for the Enterprise through a USD 10,000 pledge to the Voluntary Trust Fund. JAPAN and GERMANY noted that an interim director general should be appointed from within the Authority’s staff, stressing that the creation of an additional post needs to be discussed in the Finance Committee. SINGAPORE and CHINA proposed that a decision be taken during the 26th ISA annual session regarding the interim director general.

TRINIDAD AND TOBAGO supported the appointment of an interim director general in the near future. ARGENTINA supported the creation of a new position, noting that the draft budget for 2020 should include the cost for creating such a post.

Special Representative Charles highlighted that further consideration of budgetary implications will be taken up in the 2020 session of the Finance Committee. Secretary-General Lodge clarified that the independent report was commissioned in response to a request made by the Council.

The AFRICAN GROUP, supported by GRULAC, ARGENTINA, and the UK, requested informal consultations before concluding deliberations. INDIA expressed frustration that the programme of work introduced the draft exploitation regulations prior to important considerations regarding process, saying “any decision made in hurry and haste is not in the interest of anyone present in this hall” and calling for “due process with transparency.”

The Council adjourned to allow for informal consultations.

In the Breezeways

On Thursday, the Council joined the world in marking Nelson Mandela International Day, with several delegates expressing hope that Madiba’s spirit of freedom and justice would infuse their negotiations on seabed mining.

Turning their attention to the operationalization of the Enterprise, several delegates lauded the role of Special Representative Eden Charles in furthering the goals of the Enterprise, with some suggesting he take up the role of interim director general for the Enterprise. Others, however, raised the pragmatic issue of financial resources to support this role, preferring to kick the discussion on the appointment down the road to the next Council session. “We are happy to allow the current situation to continue for a little longer, while we finalize the draft regulations,” stated one delegate, confident that the Special Representative, via an extended mandate, could adequately represent the Enterprise in consultations on a joint venture with Poland or other related activities.

Some Council members expressed hesitation about the calls for seabed mining contractors to financially contribute to the Voluntary Trust Fund for the operationalization of the Enterprise. “We are supposed to be partners in a joint venture. It feels unfair to ask one half of a partnership to pay for the activities of the other half,” said a delegate from a sponsoring state.

With one day to go before the closure of the Council, India called for the finalization of the draft exploitation guidelines, noting, however, that “any decision made in haste is not in the interest of anyone present.” With this in mind, the meeting was adjourned early to allow delegates to meet informally to discuss the way forward for the draft exploitation guidelines. “We need to know where to go from here,” confided one delegate, “Based on the discussions, it is evident that these regulations still require a lot of work.”