

ISA-27 Assembly Highlights: Monday, 1 August 2022

The 27th session of the Assembly of the International Seabed Authority (ISA) opened on Monday in Kingston, Jamaica. During the first day's deliberations, delegates addressed in the morning items in the meeting's agenda, including the election of the Assembly's President and Vice-Presidents. In the afternoon, a special session was held to commemorate the 40th anniversary of the adoption of the UN Convention on the Law of the Sea (UNCLOS).

Opening of the Session

Olivier Guyonvarch, France, on behalf of Denys Wibaux, France, Assembly President for the 26th Session, opened the meeting.

ISA Secretary-General Michael Lodge welcomed delegates, underscoring Jamaica's Emancipation Day. JAMAICA, as the host country, highlighted the celebration of Emancipation Day and the upcoming celebration of 60 years of independence on 6 August.

Adoption of the Agenda

Acting President Guyonvarch introduced the provisional agenda of the Assembly (ISBA/27/A/L.1). Delegates agreed to remove two agenda items on: the election to fill a vacancy on the Finance Committee since there was no vacancy; and the report on the implementation of the strategic plan and high-level ISA action plan for 2019-2023, as this would form part of the report of the Secretary-General.

CHILE, supported by COSTA RICA, SPAIN, and BRAZIL, reiterated its proposal to add a new agenda item. In a Note Verbale dated 25 July 2022 (ISBA/27/A/9), CHILE presented a proposal for a new Assembly agenda item, "Discussion of the issues relating to the triggering of the two-year timeline." The two-year timeline refers to a provision in Annex I, paragraph 15, of the 1994 Agreement relating to the implementation of Part XI of UNCLOS.

Paragraph 15 states that "if the Council has not completed the elaboration of the rules, regulations and procedures relating to exploitation" within two years following the request of a State who intends to apply for approval of a plan of work for exploitation, then the Council "shall nonetheless consider and provisionally approve such plan of work based on the provisions of the Convention and any rules, regulations, and procedures that the Council may have adopted provisionally, or on the basis of the norms contained in the Convention and the terms and principles contained in this Annex as well as the principle of non-discrimination among contractors." On 25 June 2021, Nauru submitted such a request, in connection with its contractor Nauru Ocean Resources Inc. (NORI).

Acting President Guyonvarch outlined the relevant rules of procedure on submission of new agenda items, noting, *inter alia*, that no additional item may be considered until seven days have elapsed since it was placed in the agenda, unless the Assembly decides otherwise by a two-thirds majority. He added that the proposal is only available in English since translation would require 13 days.

CHILE, supported by COSTA RICA, SPAIN, and BRAZIL, urged addressing the issue, noting that the addition of the agenda item would enable a discussion on the matter to prepare for a decision at a later stage.

NAURU opposed the addition of the agenda item, expressing that the proposal was submitted late and "is at best surprising and will likely derail significant progress."

The UK queried the urgency of addressing the proposed item, and whether the proposal meets the rules of procedure. Although recognizing that the proposal intends to open discussion on the matter, TONGA expressed uneasiness about insufficient time to consider it.

Acting President Guyonvarch deferred the issue to the incoming presidency.

Election of President and Vice-Presidents

Bangladesh, for the ASIA-PACIFIC, nominated Satyendra Prasad, Ambassador and Permanent Representative of Fiji, as Assembly President for the 27th session. Mexico, Norway, and Ghana were nominated as Vice-Presidents with a further nomination pending by the Eastern European Group. All nominees were elected by acclamation. It was agreed that during President Prasad's absence Vice President Olav Myklebust, Norway, will serve as the Acting President for the Assembly.

Acting President Myklebust provided an overview of the meeting's programme of work.

COSTA RICA, CHILE, and the DEEP SEA CONSERVATION COALITION (DSCC) reiterated the importance of discussing the Chilean proposal.

Acting President Myklebust noted that the Chilean proposal will first be addressed by the Bureau.

Consideration of Requests for Observer Status

Delegates considered requests for observer status by the Interamerican Association for Environmental Defense, Cluster Maritime Français, the Ocean Foundation, Oceans North, and the World Organization of Dredging Associations (ISBA/27/A/INF/1-5). All requests were approved.

Statement by the Council President on the Work of the Council

ISA27 Council President Tomasz Abramowski, Poland, summarized the work of the Council during the 27th session (ISBA/27/C/21 and ISBA/27/C/21/Add.1), highlighting progress made during the first two parts of the session (21 March – 1 April 2022 and 18 – 29 July 2022), held in a hybrid format.

In both sessions, a key topic were the negotiations of the draft exploitation regulations through informal and open-ended working groups.

In part I, the Council discussed, *inter alia*, the importance and operationalization of the Enterprise, and agreed to consider, at the next Council meeting, a draft to operationalize the Enterprise.

In part II, the Council *inter alia*:

- adopted a budget for the ISA for 2023-2024, following a recommendation by the Finance Committee;
- approved a memorandum of understanding between the ISA and the African Union; and
- adopted a decision on the mechanism of election of Legal and Technical Commission (LTC) members for 2023-2027.

AUSTRALIA, with CANADA, NEW ZEALAND, the UK, and France, on behalf of the EU, condemned the invasion of the Russian Federation into Ukraine. The RUSSIAN FEDERATION cautioned against politicizing the work of the Authority.

Ghana, for the AFRICAN GROUP, commended the Council's decision to elect the next LTC members by silent procedure, but urged continued work on a permanent mechanism for the election of LTC members. He expressed regret that the Council had not decided on the Enterprise and the Economic Planning Commission, and stated that the group would submit a relevant proposal.

The UK underscored the importance of operationalizing of the Enterprise and the Economic and Planning Commission, looking forward to further work. GERMANY stressed the need for establishing mandatory test mining, and developing binding thresholds for the protection of the marine environment. He further drew attention to the G-7 agreed text on possible future seabed mining, emphasizing the need to follow the precautionary approach and ensure the protection of the marine environment.

BRAZIL called for further efforts for: better understanding the cumulative impact of human activities on the marine environment; a full regulatory framework prior to any industrial activities on the seabed; and taking into account recent developments in other fora. ARGENTINA supported calls for equitable geographical distribution.

The DSSC provided numerous reasons why the two-year rule should not be followed, and joined the call for a moratorium on deep seabed mining made by the IUCN and championed by many at the UN Ocean Conference.

The Assembly took note of the oral report by the President of the Council.

Tribute to the Memory of Nii Allotey Odunton

Secretary-General Lodge introduced the agenda item, noting that the late Nii Odunton served as ISA Secretary-General from 2009-2016 and passed away on 13 February 2022, and provided an overview of his life and work.

Ghana, for the AFRICAN GROUP, SOUTH AFRICA, JAMAICA, CHINA, INDIA, MEXICO, ALGERIA, EGYPT, and the DSSC, mourned the loss of Odunton, stressing he had dedicated his life to protecting the marine environment and developing a robust regulatory framework for the deep seabed.

Special Session to Commemorate the 40th Anniversary of the adoption of UNCLOS

Noting that this 40th anniversary coincides with the 60th anniversary of Jamaica's independence, ISA Secretary-General Lodge reflected on Jamaica's key role as a host to meetings leading up to and marking UNCLOS' opening for signature in Montego Bay on 10 December 1982, and as the ISA host.

Kamina Johnson Smith, Minister of Foreign Affairs and Trade, Jamaica, referred to UNCLOS containing best practices for ocean governance based on the precautionary approach and equity.

Delegates emphasized that UNCLOS provides a comprehensive legal framework for all activities in the ocean, serving as a "Constitution for the Ocean." They highlighted the Convention's role as an integral part of the global system for peace and security, offering a basis for cooperation and collaboration among states, setting up rights and obligations, and balancing interests of coastal, vessel, and landlocked states.

Geoffrey Onyeama, Foreign Affairs Minister, Nigeria, on behalf of the AFRICAN GROUP, said its constitutional character is an enduring quality of UNCLOS, in light of its comprehensiveness and primacy.

Athill Dean Jonas, Ministry of Social Transformation, Human Resource Development and The Blue Economy, Antigua and Barbuda, referred to UNCLOS as one of the most respected and effective international agreements, emphasizing its particular importance for small island developing states (SIDS).

Noting that 2022 is a vital year for the ocean, Vanessa Frazier, Malta, President of the 32nd Meeting of State Parties to UNCLOS, said the blue economy approach can especially benefit SIDS and stressed the importance of ongoing work on biodiversity in areas beyond national jurisdiction (BBNJ).

Costa Rica, for GRULAC, highlighted that most states have established the respective maritime zones in accordance with UNCLOS, and the need to work constructively towards solid, fair, environmentally sound regulations.

Several delegates highlighted the three institutions of UNCLOS: the International Tribunal for the Law of the Sea, the Commission on the Limits of the Continental Shelf, and ISA. SINGAPORE expressed that the principles in UNCLOS are universal and sufficiently flexible to adapt to new matters. The PHILIPPINES drew attention to the 2021 World Ocean Assessment and ocean-related challenges, noting that regional and geopolitical disputes prevent full UNCLOS implementation. BANGLADESH said UNCLOS has helped settle disputes peacefully, preventing conflicts.

MONACO said that during these uncertain times it is essential to protect the ocean and to balance different interests. CANADA, also on behalf of Australia and New Zealand, said that UNCLOS

and its maritime zones can contribute to sustainable development of marine resources, stressing the need for further rules, including on BBNJ.

CHILE drew attention to the importance of protected areas and to ongoing negotiations for a new implementing agreement on BBNJ. ARGENTINA stressed that UNCLOS being healthy 40 years after its adoption is a testament of hard work and called for the promotion of participation of developing states in activities carried out in the deep sea.

BRAZIL noted that the ISA has many reasons to celebrate its own achievements, and, with MEXICO, called for recognizing challenges lying ahead to ensure the protection of the marine environment and its resources as common heritage of mankind. The DOMINICAN REPUBLIC underscored the role of UNCLOS in promoting cooperation among states and the sustainable development of the ocean.

FRANCE invited Member States to join the High Ambition Coalition for BBNJ. The UK pointed to declining health of the ocean and, as a member of the High Ambition Coalition for BBNJ, looked forward to the conclusion of a BBNJ agreement.

ITALY highlighted the precautionary and ecosystem-based approaches, and said deep seabed mining should not proceed unless there are complete regulations. BELGIUM stated that UNCLOS remains pertinent to tackle new and emerging issues, and underscored that respect for the precautionary principle is key. Noting that human health is linked to ocean health, PORTUGAL underscored a sense of responsibility to halt the decline in the health of ocean ecosystems, and to protect and restore ecological integrity.

The RUSSIAN FEDERATION highlighted that establishing the notion of the common heritage of mankind on the deep seabed and its resources has been one of the main achievements of UNCLOS.

SOUTH AFRICA emphasized the delicate balance in UNCLOS between the need for economic and social development, and the need to conserve and manage marine resources. BURKINA FASO, as a land-locked state, expressed interest in opportunities for cooperation under UNCLOS. TOGO drew attention to national efforts to protect the marine environment, and combat maritime piracy and illicit acts at sea.

TONGA drew attention to evolving and emerging issues, particularly facing SIDS, such as climate change, biodiversity, the destruction of marine ecosystems and resources through overfishing, and marine pollution, as an "unprecedented reality" that was not contemplated at the time of the adoption of UNCLOS.

GREENPEACE INTERNATIONAL, also speaking on behalf of other non-governmental organizations (NGOs), stated that multilateral legal frameworks must undergo much needed changes to be able to address existential risks such as climate change. Noting that the right to a healthy environment recently adopted by the UN General Assembly includes the ocean, DSSC stressed the need for a new UNCLOS implementing agreement on BBNJ and, with other NGOs, a moratorium on deep seabed mining. OCEANCARE warned that deep seabed mining impacts are largely unknown and cautioned against disturbing the biggest carbon sink in the world.

In the Corridors

As the Assembly started, many delegates had already participated in the two-week Council session that preceded the Assembly, getting used to the space constraints at the interim venue, while the Jamaica Conference Centre undergoes renovations. Opening the Assembly, Secretary-General Lodge predicted that "the temperature in the room will likely go up" over the coming days, yet expressed hope that the intimate venue at the Knutsford Court Hotel would be conducive to consensus.

While Member States are physically enjoying each others' close company in the main meeting room and observers have been relegated to a downstairs overflow room from which they can make interventions, respective positions, especially on the timelines and procedure for developing deep seabed mining regulations, remain far apart. This distance partially surfaced during the discussion on potentially including a new agenda item relating to the triggering of the two-year timeline following the request of a State who intends to apply for approval of a plan of work for exploitation. Some urged addressing what they considered to be "the elephant in the room," while others opposed, offering procedural arguments. The "hot potato" is on the Bureau's hands and next steps will be decided during the following days.