

Summary of the Twenty-eighth Annual Session of the International Seabed Authority (Second Part): 10-28 July 2023

The debate over deep-sea mining has intensified over the last few years. Policymakers, the environmental community, deep-sea mining companies, the media, and the general public follow the work of the International Seabed Authority (ISA) with increased interest as the controversy over the commercial exploitation of mineral resources from the deep sea comes into the spotlight.

The arguments over the commercial exploitation of mineral resources from the deep sea are not new. Those in favor of mining point towards a sustainable supply of nickel, manganese, cobalt, or copper, stressing that it will be necessary for a worldwide energy transition and sustainable development, while also pointing towards unsustainable practices in land mining. Those opposed to mining focus on the need to protect the ocean, which is already facing numerous challenges including pollution, biodiversity loss, and climate change, and to study these little-known deep-sea ecosystems, prior to authorizing any extractive activities. In that respect, calls for a ban/moratorium/precautionary pause continue to grow.

In an effort to expedite the development of the regulations and begin commercial exploitation, in June 2021 Nauru submitted to the ISA its intention to apply for approval of a plan of work for exploitation, triggering the “two-year rule,” which stipulates that after such a request, the Council shall complete the adoption of the relevant rules, regulations, and procedures (RRPs) within two years from the submission. The two-year deadline expired on 9 July 2023, making the discussion on possible pathways and implications one of the most anticipated deliberations of these sessions of the ISA Council and Assembly.

The Council aimed to, among other things: continue the negotiations on the draft exploitation regulations; address the possible scenarios and any other pertinent legal considerations in connection with section 1, paragraph 15, of the annex to the Agreement relating to the implementation of the United Nations Convention on the Law of the Sea (UNCLOS) Part XI (the Area), known as the 1994 Implementing Agreement, the so call “two-year rule”; review and adopt the reports of the Legal and Technical Commission’s (LTC) and of the Finance Committee; and further consider matters relating to the Enterprise.

The Assembly’s agenda focused, among other things, on: the annual report of the Secretary-General, providing a summary of

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ISA's annual activities; the draft strategic plan for the period 2024-2028; and international and regional cooperation.

The Council adopted decisions on:

- the establishment of the position of an interim director general of the Enterprise;
- the understanding and application of section 1, paragraph 15, of the annex to the 1994 Implementing Agreement on the two-year rule; and
- the timeline following the expiration of the two-year period.

The Assembly struggled to agree on the meeting's agenda with informal consultations on the addition of two suggested supplementary agenda items taking place throughout the week-long session in an effort to reach consensus. The two supplementary items address: the establishment of a general policy by the Assembly related to the conservation of the marine environment; and terms of reference for the periodic review of the international regime of the Area pursuant to UNCLOS Article 154 (periodic review).

Following difficult negotiations, the Assembly decided to include the periodic review as an agenda item for its 29th session in 2024 with a view to adopt a decision, and requested the Finance Committee to consider budgetary implications pertaining to the undertaking of the periodic review. The proposal on a general policy on the protection of the marine environment will be resubmitted by the proponents for consideration at the 29th session. The Assembly further decided to extend the current Strategic Plan 2019-2023 by two years.

The ISA Council convened for the second part of its 28th session from 28 June - 28 July 2023, in Kingston, Jamaica. The second part of the Council meeting took place from 10-21 July, attracting more than 150 delegates and observers, including representatives from 32 of the 36 Council members. The annual session of the Assembly took place from 24-28 July, including representatives from 64 ISA members. The meetings were preceded by a meeting of the LTC from 28 June – 7 July and a meeting of the Finance Committee from 5-7 July.

A Brief History of the ISA

The 1982 UNCLOS, which entered into force on 16 November 1994, sets forth the rights and obligations of states regarding the use of the ocean, its resources, and the protection of the marine and coastal environment. UNCLOS established that the Area (the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction) and its resources are the common heritage of humankind. All UNCLOS parties are *ipso facto* ISA members. Rwanda became the newest party in May 2023 bringing the total number of members to 169.

Polymetallic nodules were detected for the first time on the deep seabed by the HMS Challenger expedition in 1873. They are distributed on the surface or half-buried across the seabed, principally in the Clarion-Clipperton Zone in the Pacific Ocean. They contain nickel, copper, cobalt, and manganese, among other metals. Other minerals have since been discovered in the Area: cobalt-rich ferromanganese crusts, which are mineral accumulations on seamounts that contain cobalt, nickel, copper, molybdenum, and rare earth elements; and polymetallic sulphides, which are formed through chemical reactions around hydrothermal vent sites, and contain copper, zinc, lead, silver, and gold.

Under the common heritage regime, UNCLOS provides that:

- no state can claim or exercise sovereignty or sovereign rights over any part of the Area or its resources;
- activities in the Area must be carried out for the benefit of humankind as a whole, irrespective of the geographical location of states, taking into particular consideration developing states' interests and needs;
- the Area and its resources are open to use exclusively for peaceful purposes by all states, whether coastal or land-locked, without discrimination; and
- financial and other economic benefits derived from activities in the Area must be equitably shared, on a non-discriminatory basis.

To address certain difficulties raised by developed countries with the UNCLOS regime for the Area, the 1994 Implementing Agreement was adopted on 28 July 1994 and entered into force on 28 July 1996. The Agreement addresses fiscal arrangements and costs to state parties, institutional arrangements, the ISA decision-making mechanisms, and future amendments.

The ISA is an autonomous institution under UNCLOS Part XI and the 1994 Implementing Agreement to organize and control activities in the Area, particularly with a view to administering the resources of the Area. The Authority, based in Kingston, Jamaica, was established on 16 November 1994 and became fully operational in 1996. Among other things, the ISA is mandated to provide for the necessary measures to ensure the effective protection of the marine environment from harmful effects, which may arise from mining activities in the Area.

The ISA organs include the Assembly, the Council, the Finance Committee, the LTC, and the Secretariat. The Assembly consists of all ISA members and has the power to:

- establish general policies;
- set the budgets of the Authority;
- approve the RRP's governing prospecting, exploration, and exploitation in the Area, following their adoption by the Council; and
- examine annual reports by the Secretary-General on the work of the Authority, which provides an opportunity for members to comment and make relevant proposals.

The Council consists of 36 members elected by the Assembly, representing:

- state parties that are major consumers or net importers of the commodities produced from the categories of minerals to be derived from the Area (Group A);
- state parties that made the largest investments in preparation for, and in the conduct of, activities in the Area, either directly or through their nationals (Group B);
- state parties that are major net exporters of the categories of minerals to be derived from the Area, including at least two developing states whose exports of such minerals have a substantial bearing upon their economies (Group C);
- developing state parties, representing special interests (Group D); and
- members elected according to the principle of equitable geographical distribution in the Council as a whole (Group E).

The Council is mandated to establish specific policies in conformity with UNCLOS and the general policies set by the Assembly, and to supervise and coordinate implementation of the Area regime.

The LTC is an organ of the Council, and its current membership is comprised of 41 members elected by the Council on the basis

of personal qualifications relevant to the exploration, exploitation, and processing of mineral resources, oceanography, and economic and/or legal matters relating to ocean mining. The LTC reviews applications for plans of work, supervises exploration or mining activities, assesses the environmental impact of such activities, and provides advice to the Assembly and Council on all matters relating to exploration and exploitation.

The ISA has been developing a Mining Code, which is a set of rules, regulations, and procedures to regulate prospecting, exploration, and exploitation of marine minerals in the Area. To date, the Authority has issued: Regulations on Prospecting and Exploration for Polymetallic Nodules (adopted on 13 July 2000, updated on 25 July 2013); Regulations on Prospecting and Exploration for Polymetallic Sulphides (adopted on 7 May 2010); and Regulations on Prospecting and Exploration for Cobalt-Rich Ferromanganese Crusts (adopted on 27 July 2012). The ISA is in the process of developing exploitation regulations.

Recent ISA Sessions

24th Session: The 24th session of the ISA was held in two parts in March and July 2018. The Council considered issues related to the draft exploitation regulations, including: models for a financial payment system; the role of the sponsoring state; the role and legal status of standards; the LTC's recommendations and guidelines; and broader environmental policy and regulations on exploitation. The Assembly adopted the Strategic Plan for 2019-2023, which consists of a mission statement, context and challenges, strategic directions, and expected outcomes.

The Council further addressed the possible operationalization of the Enterprise and contractors' non-compliance issues. The Enterprise, as envisioned under UNCLOS, is the commercial arm of the Authority, mandated to conduct its own mining, initially through joint ventures with other entities. Until seabed mining becomes a commercial reality, the functions of the Enterprise are to be carried out by the Secretariat.

25th Session: The 25th session of the ISA was held in two parts in February-March and July 2019. The Council made progress on the draft exploitation regulations, addressing, *inter alia*: standards, guidelines, and terms; decision-making; Regional Environmental Management Plans (REMPs); and the inspection mechanism. At the end of the second part, Council members requested more time to submit comments on the draft regulations to ensure a balance between commercial interests and environmental protection.

The Council further considered a report on matters relating to the Enterprise, deciding to extend and expand the mandate of the Special Representative of the Secretary-General of the ISA for the Enterprise for a limited time. At the July meeting, which marked the ISA's 25th anniversary, the Assembly oversaw the operationalization of the Authority's first Strategic Plan, with delegates also deliberating on enhancing participation and transparency through the admission of observers.

26th Session: The 26th session of the ISA convened in two parts over two years due to the COVID-19 pandemic. The Council met for two sessions (17-21 February 2020 and 6-10 December 2021). The Assembly met from 13-15 December 2021. The Council continued its work on the draft exploitation regulations, discussing, among others, a proposal for the development, approval, and review of REMPs and a proposal for minimum requirements for such plans.

It further approved: the plan of work for exploration for polymetallic nodules submitted by Blue Minerals Jamaica Ltd.; and the application for extension of the contracts for exploration for polymetallic nodules by JSC Yuzhmoregeologiya, the Interoceanmetal Joint Organization, Deep Ocean Resources Development Co. Ltd., China Ocean Mineral Resources Research and Development Association, Institut français de recherche pour l'exploitation de la mer, the Federal Institute for Geosciences and Natural Resources of Germany, and the Government of the Republic of Korea.

The Assembly re-elected Michael Lodge as Secretary-General of the ISA for a four-year term (2021-2024), approved the budget for the period 2021-2022, and took other finance-related decisions, including appointing Ernst and Young as auditor for the financial period 2021-2022.

27th Session: The 27th session of the ISA was split into three parts in March, July and November 2022. Throughout three meetings, the Council continued negotiations of the draft exploitation regulations.

At its first meeting, the Council agreed to consider a draft to operationalize the Enterprise at the next Council session. At its second meeting, the Council: approved a memorandum of understanding between the ISA and the African Union; and adopted a decision on the mechanism of the election of LTC members for 2023-2027, among others. At its third meeting, the Council adopted decisions related to: the reports of the Chair of the LTC; the commissioning by the Secretariat of a study on the internalization of environmental costs of exploitation activities in the Area; the development of binding environmental threshold values; and the possible scenarios and any other pertinent legal considerations in connection with section 1, paragraph 15, of the annex to the 1994 Implementing Agreement.

During the Assembly session in July, members adopted, among others, decisions on: the approval of the budget for the financial period 2023-2024 in the amount of USD 22,256,000, as proposed by the Secretary-General; the election to fill the vacancies on the Council; and the implementation of a programmatic approach to capacity development.

28th Session (First Part): The first part of the 28th session convened from 16-31 March 2023, preceded by the LTC meeting from 7-15 March.

Council Members continued negotiating the draft exploitation regulations; addressed the possible scenarios and any other pertinent legal considerations in connection with section 1, paragraph 15, of the annex to the 1994 Implementing Agreement, the so call "two-year rule"; reviewed and adopted the LTC report; considered matters about the Enterprise and the status of contracts for exploration and related issues; and discussed on the operationalization of the economic planning commission. The Council agreed on further intersessional work, including by the establishment of several informal groups.

The Council adopted decisions on: the establishment of the position of an interim director general of the Enterprise; the understanding and application of the two-year rule; and the report on the work of the LTC at the first part of the 28th session.

ISA-28 Council (Part II) Report

On Monday, 10 July, President Juan José González Mijares (Mexico) opened the second part of the Council's 28th session. He encouraged delegates to remain flexible and attempt to reach consensus, and invited them to continue making substantive progress on the draft regulations, including successfully addressing benefit-sharing provisions.

In his welcoming remarks, Secretary-General Michael Lodge highlighted that this meeting is a "unique opportunity to get the regulations right." He drew attention to the work of the LTC and the Finance Committee during the previous two weeks, and invited delegates to the contractors' first poster exhibition.

Council members underscored progress made during the previous session and drew attention to important intersessional work on some of the more contentious issues.

Spain, on behalf of the EU, reiterated that the EU stands with Ukraine and will continue providing the necessary support for as long as necessary. CANADA, also on behalf of AUSTRALIA, NEW ZEALAND, and NORWAY, said the Russian Federation's ongoing illegal war with Ukraine represents a direct violation of the UN Charter, and condemned the damage to civil infrastructure, loss of lives, and other negative impacts, calling Russia to immediately withdraw its forces from Ukraine.

The RUSSIAN FEDERATION urged against politicizing ISA's work, and reiterated his national position on the reasons behind the war in Ukraine.

Ghana, for the AFRICAN GROUP, commended the facilitators on progress in the various working groups and highlighted important intersessional work to further clarify contentious issues. She expressed optimism that "this session will bring us close to our common objective of developing robust exploitation regulations" and urged operationalizing the Enterprise, building on efforts during the previous session and the relevant recommendation from the Finance Committee.

JAMAICA encouraged shared values and perspectives that "will allow us to move beyond our differences in this inclusive multilateral forum," and noted progress during the first part of the meeting and intersessionally. Underscoring that the work of the Authority is under increased public scrutiny, she emphasized the need to ensure effective protection of the marine environment through the development of effective RRP in line with the ISA's mandate.

CHILE noted that the 28th session of the ISA is critical regarding the sustainable governance of ocean resources. He stressed that no exploitation activities can take place in the Area before adequate regulations are in place and highlighted the call for a precautionary pause.

Organizational Matters and Reports

Election to Fill a Vacancy on the LTC: On Monday, 10 July, President Mijares introduced the relevant document ([ISBA/28/C/18](#)), noting that following the resignation of Jon Copley (UK), the Council will elect a member from the same geographical region or area of interest for the remainder of the term. He announced the nomination of Rebecca Hitchin (UK), a marine ecologist and international policymaker, as a candidate to fill the vacant seat, who was elected.

Credentials: On Monday, 17 July, Secretary-General Lodge presented the credentials report, noting that 27 states submitted their

credentials, and five states appointed representatives. The Council took note of the report.

Report of the Secretary-General on National Legislation: On Monday, 17 July, President Mijares introduced the report of the Secretary-General on the status of national legislation relating to deep seabed mining and related matters ([ISBA/28/C/17](#)). The Council took note of the report.

Report on Proposed Amendments to the Statute of the International Civil Service Commission: On Monday, 17 July, ISA Legal Counsel Mariana Durney presented the report ([ISBA/28/C/14](#) and [ISBA/28/A/5](#)). She explained the ISA applies to its staff the common system of salaries, allowances, and other conditions of service of the UN and its specialized agencies, highlighting that the proposed amendments have no budgetary or administrative implications. The Council took note of the report and recommended that the Assembly accept the amendments adopted by the UN General Assembly at its 77th session in December 2022 in [resolution 77/256 A](#).

Report of the Secretary-General relating to the Reports of the Chair of the LTC

On Monday, 17 July, Secretary-General Michael Lodge introduced the report ([ISBA/28/C/15](#)). He focused on the actions to be taken by the Secretary-General, including on:

- communicating to contractors of the LTC recommendations on the 2022 annual reports, highlighting that where relevant, contractors have provided responses to these comments in their annual reports of 2023, which will be reviewed by the LTC in due time;
- identifying instances of alleged non-compliance and regulatory action, stating that as of 31 May 2023, he had not identified any; and
- continuing to pursue dialogue with contractors who had not yet submitted public templates on their plans of work.

He stated that there have been no new applications during the reporting period and highlighted the preparation of a draft data management strategy for 2023-2028 for consideration by the LTC as well as several updates to ISA's DeepData database.

Regarding the status of contributions to the voluntary trust fund to support the participation of Council members from developing states, he underlined that at the end of the first part of the twenty-eighth session, in March 2023, the fund was in deficit. He noted contributions were received from three contractors (Nauru Ocean Resources Inc. (NORI), Tonga Offshore Mining Ltd., and the UK Seabed Resources Limited), for a total amount of USD 13,500, highlighting that as 31 May 2023, the balance of the fund was USD 548. He urged for voluntary contributions.

Council members thanked the Secretary-General for the report. On cases of non-compliance and regarding delays in the submission of two five-year periodic reports, many Council members urged further refining the review process, including developing recommendations, noting that late submission of annual and periodic review reports is problematic for the effective administration of an exploitation contract.

SPAIN, BELGIUM, MEXICO, and the UK supported authorizing the Secretary-General, in the case of late submission by more than 30 days of an annual report or by more than 45 days in the case of a five-year periodic report, to issue an automatic written warning to the contractor and a monetary penalty equivalent to one half of the annual overhead charge (USD 40,000). CANADA supported

the imposition of penalties, expressing flexibility to discuss further details.

NAURU called for consistency in addressing inadequate or incomplete performance in terms, and supported empowering the Secretary-General to impose administrative penalties until the inspection, compliance, and enforcement (ICE) mechanism is finalized, in line with national frameworks. The RUSSIAN FEDERATION, CHINA, SINGAPORE, and INDIA suggested further discussing the issue of sanctions, stressing that considerations should include: extenuating circumstances; the amount of the fine being commensurate to the severity of the violation; whether it was a first time violation; and providing reasonable opportunity for contractors to remedy the issue.

BRAZIL requested further discussion to improve transparency regarding the LTC and exploration contracts. She drew attention to the critical role of sponsoring states on the development of a procedure and criteria for consideration of a request for the transfer of rights and obligations under a contract for exploration.

FIJI, the DEEP SEA CONSERVATION COALITION (DSCC), and the DEEP OCEAN STEWARDSHIP INITIATIVE (DOSI) called for disclosing the names of the contractors in breach of their obligations, encouraging the development of relevant criteria by the LTC. SINGAPORE drew attention to the need for regular engagement between the LTC and contractors. NAURU and the COOK ISLANDS called for full engagement of sponsoring states.

MEXICO highlighted the issue of effective control in cases of transfer of rights and responsibilities by contractors, stressing the need to establish an effective corporate liability mechanism to guarantee comprehensive compensation in cases of harm or non-compliance, and the need for continued work by the LTC on the development of REMPs.

The RUSSIAN FEDERATION and NAURU drew attention to work on the development of the DeepData database, including improvement on the templates for data presentation. DOSI and the PEW CHARITABLE TRUSTS called for further improvement on the data quality control system, integration, interoperability, and accessibility.

The DSCC, on behalf of GREENPEACE, OCEAN NORTH, THE OCEAN FOUNDATION, and WWF, supported by the PEW CHARITABLE TRUSTS lamented that the NORI spill has not been identified as a case of non-compliance, cautioned against adopting silence procedures for decision making at the LTC, and, with others, called for open meetings of the LTC. The PEW CHARITABLE TRUSTS queried the modalities for issuing warning and imposing penalties to contractors, urging for the development of an ISA compliance strategy.

Secretary-General Lodge responded by highlighting improvement in the DeepData database as well as work with sponsoring states. He drew attention to the discussion on issues of non-compliance, stressing that “this is the beginning of a dialogue,” and urged for contributions to the Voluntary Fund.

The Council took note of the report.

Report of the Chair of the LTC

On Thursday, 13 July, the ISA Council listened the report of LTC Chair Erasmo Lara (Mexico) on the LTC’s work during the second part of the 28th session ([ISBA/28/C/5/Add.1](#)). Chair Lara highlighted, among other topics: implementation of the training

programmes; review of the contractors’ annual reports; development of standards and guidelines; and development of the Indian Ocean REMP.

On Thursday, 20 July, President Mijares invited LTC member Michelle Walker (Jamaica) to represent the Commission in the absence of Chair Lara. Mijares drew attention to: the report on the relinquishment of one-third of the area allocated to the Ministry of Natural Resources and Environment of the Russian Federation under the contract for exploration for cobalt-rich ferromanganese crusts between the Ministry and the ISA ([ISBA/28/C/19](#)); and the LTC’s recommendation on a request by the Government of India to defer relinquishment of part of its contract area ([ISBA/28/C/20](#)).

The Council took note of the report on the relinquishment and approved the request by the Government of India to defer relinquishment of part of its contract area.

Council members thanked members of the LTC for their hard work, and reiterated their continued and full support to the Commission. Discussions focused on, among other issues: the process for the development of environmental thresholds; naming contractors that failed to respond to comments or report on their contractual obligations; the implementation of training programmes; and increasing transparency in LTC’s work, including by holding open sessions.

Many members expressed appreciation for the work on the development of environmental thresholds. GERMANY and COSTA RICA stressed the intersessional expert groups should not be limited to 10 experts to ensure informed decision making, transparency, and inclusive governance. BRAZIL noted that expanding the number of experts and conducting stakeholder consultations would be beneficial.

The RUSSIAN FEDERATION, MEXICO, and NAURU supported the expert nomination process. CHINA noted the composition of the expert groups is reasonable, stressing the need for representation of all stakeholder groups, including the contractors. SPAIN noted the LTC provides reasonable explanations on limiting the number of experts in the intersessional sub-groups to 10. POLAND encouraged more flexibility in the expert groups’ composition.

CANADA stressed the importance of broad exchange of knowledge in the development of environmental thresholds, querying whether the mechanism for selection criteria for the appointment of experts has been considered. TRINIDAD AND TOBAGO encouraged nomination of experts on all relevant fields.

DSCC reiterated that the process should be open to the public, and observers and other stakeholders should be able to submit independent scientific information and advice. The PEW CHARITABLE TRUSTS and the INTERNATIONAL UNION FOR CONSERVATION OF NATURE (IUCN) underscored the need for systematic, fair, open, and transparent procedures and wide engagement of a broad group of stakeholders and experts. DOSI expressed concerns over failure to carry out agreed exploration activities and its consequences on generating the necessary environmental baseline data, emphasizing, with IUCN, that “bad thresholds would be a worse situation than no threshold at all.”

GERMANY and COSTA RICA expressed concerns over the LTC not naming contractors that failed to respond to comments or report on their contractual obligations, despite the relevant Council decision. The NETHERLANDS and NORWAY supported naming such contractors. NORWAY, TRINIDAD AND TOBAGO, COOK

ISLANDS, MEXICO, the REPUBLIC OF KOREA, and POLAND emphasized the need for developing relevant criteria and procedures on the process. NORWAY and POLAND drew attention to legal uncertainties and lack of a regulatory framework used by contractors as reasons for non-compliance.

GERMANY and COSTA RICA expressed concerns over the LTC not holding open meetings. BRAZIL and BELGIUM called for more transparency and openness. SPAIN and POLAND suggested the LTC continue improving transparency in its work by holding open meetings on non-confidential issues. The DSCC drew attention to the practice of certain regional fisheries management organizations (RFMOs) that permit observers to follow meetings, subject to requirements to observe confidentiality.

COSTA RICA, the PEW CHARITABLE TRUSTS, and DOSI further underscored that neither the procedure nor the template for the REMPs have been developed, reminding that REMPs need to be in place before the approval of an exploitation contract. CHINA emphasized the need for rapid development of REMPs to provide a level-playing field for contractors.

COSTA RICA and IUCN expressed concerns over the establishment of the silence procedure for decision making in the LTC. POLAND supported the use of the silence procedure in some cases.

ARGENTINA, TRINIDAD AND TOBAGO, NORWAY, POLAND, SPAIN the RUSSIAN FEDERATION, the COOK ISLANDS, BRAZIL, PORTUGAL, and MEXICO underscored progress in implementing training programmes, with many highlighting the special consideration to developing states, and the allocation of gender-balanced training opportunities, with several welcoming the Women in Deep Sea Research Project.

NAURU, the COOK ISLANDS, INDIA and MEXICO highlighted the dialogues between the LTC and contractors, aimed at improving contractors' performance. NAURU expressed disappointment on the lack of further guidance from the Council to the LTC in developing "stage two" standards and guidelines, which are deemed necessary to be in place before the receipt of an application of a plan of work for exploitation.

The NETHERLANDS suggested considering habitat removal. The RUSSIAN FEDERATION drew attention to microplastics. INDIA commented on the further work on the Indian Ocean REMP. BANGLADESH queried the different stages of development of subcontractors regarding exploration of polymetallic nodules, noting that that some submit information on testing their equipment at sea, while others are still conceptually designing the mining system.

The PEW CHARITABLE TRUSTS and DSCC drew attention to the NORI spill incident, described by the contractor as a "temporary overflow of water, which contained sediment particles and fragments of nodules," during test mining in October 2022, highlighting monitoring issues and requesting disclosure of the relevant environmental impact assessment (EIA) report.

LTC member Michelle Walker (Jamaica): noted the legal issues on naming contractors were not discussed during the last LTC meeting due to lack of time, stressing that the item will be addressed on the LTC's meeting agenda in March 2024; explained the work on the development of REMPs; underscored that the LTC is awaiting the Council's directions to consider other standards and guidelines; and took note of the request for holding open meetings noting that, on environmental issues, the LTC "will make arrangements at the necessary stage for open meetings."

Secretary-General Michael Lodge thanked the LTC for its hard work and commitment. He drew attention to LTC's expansion, noting that "dealing with 41 LTC members is a challenging task, but a successful experiment so far," and urged contribution to the voluntary trust fund to enable future successful LTC meetings.

The Council took note of the report.

Report of the Finance Committee

On Monday, 17 July, Finance Committee Chair Khurshed Alam (Bangladesh) presented the report ([ISBA/28/A/4-ISBA/28/C/13](#)). He drew attention, among other things, to the topic of equitable benefit-sharing and a draft proposal for the establishment of a common heritage fund, initially proposed as a seabed sustainability fund; and to the revised supplementary budget proposal for the financial period 2023-2024 ([ISBA/28/C/12/Add.1-ISBA/28/A/3/Add.1](#)), which includes provisions for one position of interim director general for the Enterprise.

BRAZIL stressed that the proposed fund requires further consideration, noting issues such as the protection of the marine environment, increasing and sharing scientific knowledge, and capacity building and transfer of marine technology are prerequisites for deep-sea mining activities and should not be considered as additional benefits.

COSTA RICA emphasized the development of RRP for equitable distribution of benefits is one of the most important aspects of the exploitation regulations, stressing that distribution of benefits received by the ISA in the form of royalties should be discussed by the Council and Assembly as standalone items. She noted the Finance Committee should develop two distinct options, one on distributing part of the received royalty to each member state and one on a potential fund.

FRANCE, SPAIN, and CHINA welcomed the proposal for the establishment of a common heritage fund, with FRANCE suggesting using it for the Ocean's benefit rather than for states. Ghana, for the AFRICAN GROUP, supported the complementary budget proposal. She drew Council members' attention to the supplementary budget put forth by the Finance Committee, relating to the establishment of the position of an interim director general for the Enterprise. GERMANY, BELGIUM, JAPAN, and SINGAPORE noted supplementary budgets can only be submitted under exceptional circumstances.

NAURU supported the supplementary budget proposal and welcomed the proposal to change the name of the seabed sustainability fund to common heritage fund. She proposed, and the COOK ISLANDS supported, further discussions to deliver a hybrid fund model for the benefit-sharing revenue mechanism and the common heritage fund.

The RUSSIAN FEDERATION and the REPUBLIC OF KOREA called for increasing states' dues beginning in 2024, given that many states have already finalized this year's public budget process.

The PEW CHARITABLE TRUSTS underscored the importance of the benefit-sharing mechanism as a standalone agenda item, stressing that decisions on the benefit-sharing mechanism are at the core of operationalizing the common heritage of humankind principle.

Secretary-General Lodge highlighted this is the first supplementary budget in ISA's history. Council members adopted the draft decision relating to financial and budgetary matters.

Final Decision: In the final decision ([ISBA/28/C/21](#)), the ISA Council recommends that the Assembly approve the supplementary budget for the financial period 2023-2024. The decision and the budget are summarized under the relevant part of the Assembly report.

Consideration of Matters relating to the Enterprise

On Monday, 17 July, President Mijares drew attention to the draft decision on the establishment of the position of an interim director general of the Enterprise. Following informal consultations, Council members addressed the decision on Friday, 21 July, and adopted it without further comments.

Final Decision: In the final decision ([ISBA/28/C/23](#)), the ISA Council requests the Secretary-General to:

- implement the Council's March 2023 decision on the appointment of the position of an interim director general of the Enterprise ([ISBA/28/C/10](#)); and
- include provision for the interim director general of the Enterprise in the proposed budget of the Authority for the financial period 2025-2026, as a separate part of the budget.

Operationalization of the Economic Planning Commission

On Thursday, 20 July, President Mijares suggested, and delegates agreed to, revisit this agenda item at the Council meeting during the third part of the 28th session in November 2023.

Cooperation with Other Relevant International Organizations

On Thursday, 20 July, President Mijares introduced the relevant document ([ISBA/28/C/16](#)), which includes the agreement of cooperation between the International Labour Organization (ILO) and the ISA.

BANGLADESH highlighted the importance of maintaining a good working relationship with the ILO. DOSI suggested developing similar arrangements with RFMOs. The CONVENTION ON BIOLOGICAL DIVERSITY (CBD) provided updates on ongoing collaboration between the CBD and ISA, stressing that cooperation, including enhancing taxonomic capacity, "will underpin our collective efforts to bend the curve of biodiversity loss." She expressed appreciation for the work on the development of REMPs and underscored the developing synergies will support implementation towards achieving the Sustainable Development Goals (SDGs) and will create enabling conditions for effective implementation of the CBD's Kunming-Montreal Global Biodiversity Framework.

The Council took note of the report and approved the agreement for cooperation with the ILO.

Consideration with a View to Adoption, of the Draft Regulations on Exploitation

Open-ended Working Group on the Financial Terms of a Contract: The Working Group, chaired by Olav Myklebust (Norway), met on Monday and Tuesday, 10-11 July. On Monday, Chair Myklebust opened the session noting that "time flies when you are having fun," noting this is the 8th meeting of the Working Group. He stressed while the group covered a lot of ground in its previous meetings, some important issues remain to be resolved, and expressed hope that a draft on the financial terms of a contract will be finalized after the next session in November.

He highlighted two issues that were addressed intersessionally and require further work:

- a possible tax/levy on cases of transfer of rights; and
- an equalization measure to address cases where a contractor pays less domestic tax to the sponsor state than the level assumed in the models.

He further underscored the Chair's further revised text ([ISBA/28/C/OEWG/CRP.4](#)), noting that many written suggestions were incorporated, while others require further discussions. He called for flexibility and a spirit of compromise, stressing that reaching agreement in the Working Group is provisional and "not written in stone," since nothing is agreed until everything is agreed.

Canada, Co-Facilitator of the intersessional discussions on a possible tax on the transfer of rights, stressed that opinions converged on the need for a profit-sharing mechanism, highlighting the 20% threshold contained in the African Group's proposal, submitted in earlier stages of the negotiations. He noted general agreement among the intersessional dialogue participants on the need to ensure the clause will be broad enough to take into account all profit-sharing mechanisms and to review relevant rates as part of the review of the royalty rates. He stressed concerns over potential double taxation and said a draft proposal will be submitted for consideration by Council members.

A regional group noted growing consensus on including a profit share for the transfer of rights, highlighting the group's prior detailed proposal, including for indirect transfers.

Chair Myklebust thanked all involved in the intersessional work for their work, inviting all members and participants to reflect on the text to find common ground.

Australia, Co-Facilitator with South Africa of the informal group focusing on tax equalization measures, shared the main outcomes of intersessional work, which addressed three possible models for equalization measures to compensate for cases where contractors pay different amounts in their sponsoring state as corporate income tax, highlighting diverse perspectives and concerns on each model. The informal group also discussed transparency issues, taxes on the transfer of rights, and the use of effective tax rates as the basis for "fairness."

Richard Roth, Massachusetts Institute of Technology (MIT), [presented](#) on the financial payment system for deep-sea mining of polymetallic nodules. He reviewed the four financial payment system options: fixed *ad valorem*, with the same rate in all years, or under a two-stage system; blended profit, and variable *ad valorem*. He highlighted that in the four systems, rates can be chosen to meet stated goals under baseline conditions and each system would react differently to changes.

He also addressed the concept of "fairness," indicating a level-playing field for deep-sea mining compared to land-based mining, stating that contractors should be subject to the same overall tax burden as equivalent land-based mines using an effective tax rate.

Based on the assumption that not all contractors will pay the same sponsor state corporate income tax, he explained the three approaches for equalization measures as discussed by the informal group: additional fixed rate royalty; additional profit share; and top-up profit share. He described the first two as imperfect equalization results, thus simpler to implement, and the third option as ideal in terms of effective equalization but very complicated, noting it can be outsourced.

In the ensuing discussion, members and observers addressed, among other things:

- fairness vis-à-vis equity as a basis for selecting rates;
- the need to take decisions under uncertainty based on assumptions and future estimates;
- examples where the system of the Organisation for Economic Co-operation and Development (OECD) Global Anti-Base Erosion (GloBE) rules was used across an industry that operates at a global scale, noting that it provides for a coordinated system of taxation intended to ensure large multinational enterprises pay a minimum level of tax on the income arising in each of the jurisdictions where they operate;
- taking into account and differentiating the approach according to the funding source to include potential voluntary contributions;
- differences between conditions in deep-sea mining sites that lead to differing costs;
- the need for simplicity in the regulations;
- the need for equity in terms of relevant land-based activities;
- the lack of adequate data for responsible decision making, including for estimating the external costs associated with reduced carbon sequestrations and marine fauna; and
- a system of separate indicators and their weighted average to assess the financial system's effectiveness.

On Monday afternoon, Council members addressed the revised text of the draft regulations. Chair Myklebust explained the text contains suggestions received during the last Council meeting as well as written submissions that could reach consensus. He was assisted by Jo Feldman and Lisa Koch, Norton Rose Fulbright Australia. One delegate highlighted the absence of a benefit-sharing mechanism and the need to internalize environmental externalities in the financial model.

On **equality of treatment** (regulation 62), discussions focused on whether the provisions should be applied on a “transparent,” in addition to a uniform and non-discriminatory basis, which was agreed. A member suggested including additional details, such as geographic location, regarding the non-discriminatory basis.

On **incentives** (regulation 63), members engaged in a lengthy discussion on whether to include references to: provision of incentives, including financial ones, to contractors; the standards and guidelines under development; and provision of financial incentives for contractors entering into joint arrangements with the Enterprise. Some members highlighted the need to respect language included in Articles 11 (joint arrangements) and 13 (financial terms of contracts) of Annex III of UNCLOS (basic conditions of prospecting, exploration, and exploitation), while others underscored the need to retain a level-playing field compared to land-based mining. A member suggested discussing the potential temporal character of such incentives. Others requested reference to the economic planning commission. Regarding the reference to the standards and guidelines, members agreed the issue should be addressed when the consolidated draft text becomes available.

Delegates also addressed draft regulations on **the contractors' obligation to pay royalties** (regulation 64), **the form of royalty returns** (regulation 66), **lodging of royalty returns** (regulation 68), and **error or mistake in royalty returns** (regulation 69), without substantive comments.

On the **payment of royalties shown by royalty return** (regulation 70), members discussed provisions on the currency used for the payment of royalties and the potential for installments where

special circumstances exist, with some suggesting the addition of force majeure to reduce legal uncertainty. Delegations agreed to include a provision on contractors declaring the currency to be used to pay royalties before the commencement of commercial production.

On **information to be submitted** (regulation 71), members discussed whether the quantity of mineral-bearing ore recovered should be measured in both wet and dry metric tonnes. One delegate noted that, due to technical limitations, wet weight will only be an approximate value. Another opined that including information on both wet and dry nodule weight is important in order to calculate and verify conversion rates. A couple of delegations suggested including the grades pertaining to each metal, and information regarding changes or modifications in contracts and sale agreements relating to the mineral-bearing ore sold, or removed without sale, from the contract area. Members agreed to add a relevant clarification in the guidelines. On Tuesday morning, delegations agreed on the inclusion of wet metric tons and dry metric tons.

No comments were made regarding that a provision on the Authority requesting **additional information** (regulation 72).

On the **overpayment of royalty** (regulation 73), a delegate suggested clarifying the approval procedure for an overpaid royalty, preventing it from being repeated or used as a practice to obtain indirect benefits of any kind. Members could not reach consensus on the timeframe for a request to reduce a royalty-related amount payable by a contractor, although the options were narrowed to either one or five years.

Council members agreed that the contractor should prepare records to verify the details of all eligible capital expenditures and liabilities by category of expenditure and liability incurred in each mining area or in direct support of activities within it. Delegations also agreed to replace reference to “each mineral” with “minerals by metal,” and to include a reference to the closure plan regarding the period that contractors are requested to maintain all records for inspection and audit.

On the **proper books and records to be kept by contractors** (regulation 74), members noted these can include digital records and electronic means.

Regarding **audit of contractors' records by the Authority** (regulation 75), many delegates suggested distinguishing provisions on audit and inspection. They underscored the relationship between this regulation and work under the Working Group on inspection, compliance, and enforcement, stressing the need for consistency and noting overlaps can be addressed when the consolidated text becomes available. Council members discussed whether the Authority or the contractor should bear the auditing cost, with most delegates agreeing this should be an obligation of the contractors. A member suggested auditing subcontractors engaged in activities in the Area. Delegates further discussed: whether appointments of inspectors by the Secretary-General should require the Council's approval; and the responsibilities of “relevant organs of the ISA,” noting that their functions should be determined when negotiating the consolidated text.

Council members addressed **assessment by the Authority** (regulation 76) without substantive comments.

On a general **anti-avoidance rule** (regulation 77), some delegates and observers noted as the draft regulation is currently drafted, the Secretary-General is solely responsible for dealing with royalties, arguing that ISA's subsidiary bodies should have a role in the

process. Some members suggested broadening the provision to cover any envisaged payments by the contractors and not solely royalty payments. On a provision noting that if the contractor is in “gross and persistent” breach of royalty payment obligations, the Council shall suspend or rescind the contract, a delegate requested clarifications on the meaning of “gross and persistent,” while an observer suggested “serious, persistent, and willful” cases of non-compliance. A few members suggested discussing this provision in relation to regulation 103 (compliance notice, suspension, and termination of exploitation contract). One delegate proposed developing a single, overarching, non-compliance provision.

Council members agreed under **arm’s-length adjustments** (regulation 78) that the Council, following recommendations by the LTC, may adjust the value of costs, prices, and revenues that have not been charged or determined on an arm’s-length basis under a contract or transaction between a contractor and a related party. Delegations also agreed on the addition of a reference that contractors may submit written representations with additional information, after which the Secretary-General shall affirm, amend, or revoke the proposed adjustment.

On the **interest on unpaid royalty** (regulation 79), many delegates expressed that a 20% interest rate is high. However, no consensus was reached, and the 5%, 10%, and 20% options remain.

Regarding the **monetary penalties and suspension or termination of an exploitation contract** (regulation 80), one delegation pointed out the opportunity to better harmonize this regulation alongside the general anti-avoidance rule (regulation 77), the compliance notice, suspension, and termination of exploitation contract (regulation 103), and the power to take remedial action (regulation 104). An informal working group will further discuss the issue intersessionally.

On the **review of the system of payments** (regulation 81), some delegates stressed that any revision shall only apply to existing exploitation contracts by agreement between the ISA and the contractor. A delegate suggested referring to the economic viability of the industry or sector instead of the project. A couple of members noted that the review of the payment system should be harmonized with the decision-making process under regulation 82 (review of rates of payments). On the temporal character of the provision, a couple of delegates supported that the revision shall apply five years after the review takes place, while some queried the potential for an earlier revision if necessary.

On Tuesday afternoon, delegates discussed the **review of rates of payments** (regulation 82), with some members noting that a more detailed, systematic approach is required to ensure that “we will be able to change rates and have an effective rate review mechanism.” Others preferred the original, less detailed formulation, noting consistency with UNCLOS and the 1994 Implementing Agreement. Chair Myklebust encouraged informal intersessional discussions.

Council members had no comments on **recording in the seabed mining register** (regulation 83). On the **beneficial ownership registry** (regulation 83 bis), many members supported such a provision to increase transparency on who is benefitting from mining in the Area. Some suggested integrating the provision under the contractors’ reporting requirements. A member suggested defining “beneficial ownership registry.” Another delegate proposed creating a financial incentive registry to add transparency on potential incentives.

Delegates discussed the **transfer of rights and obligations under an exploitation contract** (regulation 23), addressing the stages and roles during the process, and the concept and scope of monopoly in activities in the Area. Members focused on whether the sponsoring state should be “notified” about transfer of rights and obligations, noting its consent is already required. Delegates further negotiated whether to refer to “prior,” “express,” or “written” consent, reaching agreement on the latter.

Regarding the **commencement of production** (regulation 27), Council members discussed the importance of beginning commercial production consistently with good industry practices. They focused on: whether to refer to “large-scale recovery operations” or “large-scale extraction operations”; a potential definition of commercial production; and the timeframe under which the contractor shall notify the Secretary-General on the proposed date of commencement of commercial production.

On the **annual report** (regulation 38), delegates engaged in a lengthy debate, focusing on:

- whether and how to portray the non-mandatory character of REMPs;
- including all reporting requirements in the annual report;
- a process to review the annual reports and follow-up with recommendations; and
- whether to include reference to standards and guidelines.

Following the detailed discussion on the draft regulations, some members expressed thoughts and raised queries on overarching conceptual issues related to the levy on the transfer of rights; the overlap with discussions in other working groups; cases of an indirect transfer of rights; the relationship between royalties and the benefit-sharing mechanism; and the proposed tax equalization measures.

At the end of the day on Tuesday, delegates addressed the [Report on the Value of Ecosystem Services and Natural Capital of the Area](#). Many delegates welcomed the report and requested allocating appropriate time to properly discuss it. They highlighted the finding that it is not feasible to estimate ecosystem values with current data, and emphasized:

- the need for further research to fill knowledge gaps;
- the importance of linking these results with the ongoing development of the financial model and other exploitation regulations;
- the necessity to apply a precautionary pause to the commencement of deep sea mining exploitation; and
- the difficulties to internalize the environmental externalities and lack of relevant data.

One observer proposed to invite the report’s authors to share their expertise, stressing that “this should be the start of the discussion, not the end.”

Chair Myklebust stated that any comments will be welcome prior to 15 September 2023 to be considered at the next ISA Council session in November 2023, and closed the meeting of the Working Group.

The **royalty return period** (regulation 67), **books, records, and samples** (regulation 39), and **confidentiality of information** (regulation 89), as well as Appendix IV on determination of a royalty liability, the draft standards and guidelines, and the schedule of relevant definitions as contained in the Chair’s further revised text, were not addressed during this session of the working group.

On Friday, 21 July, Chair Myklebust presented his oral report on progress, highlighting that the group focused on conceptual and substantive discussions rather than on textual negotiations. He noted further intersessional work on:

- a tax/levy on the transfer of rights, to be led by Canada; and
- equalization measures, to be led by Australia.

He stated that a third revised text will be available for the Council meeting in November 2023. He underscored the group addressed the report on the value of ecosystem services and natural capital of the Area. One observer expressed disappointment that adequate time was not devoted to the report's discussion, requesting allocating sufficient time to it at the next session.

The Council took note of the oral report.

Informal Working Group on the Protection and Preservation of the Marine Environment: The Working Group, facilitated by Raijeli Taga (Fiji), met on Wednesday and Thursday, 12-13 July.

On Wednesday, Facilitator Taga opened the session, introducing the revised text ([ISBA/28/C/IWG/ENV/CRP.2/Rev.1](#)). She reminded Council members that “nothing is agreed until everything is agreed,” and invited the co-facilitators of informal intersessional working groups to present the outcomes of their work.

The UK reported on the intersessional work on a standardized stakeholder consultation approach. She explained the group focused on three main areas: the stages at which consultation should be required; the core elements of a standardized consultation process; and an approach to identify “key” stakeholders, including coastal states. She highlighted the aim to ensure transparency and inclusivity in the standardized approach to consultation and stressed that stakeholder consultation is required for informed decision making. She underscored that the group proposed categorizing other types of consultations as “engagement.” She noted the need to define “key stakeholders,” and address documents that may require frequent review.

Council members highlighted:

- the progress and outcomes of the intersessional informal group and the approach used to conduct it;
- the importance of integrating the outcomes of this work with discussions in other intersessional groups, including on coastal states' rights and obligations; and
- the relevance of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention.)

On intersessional work regarding coastal state obligations, Mexico noted that further informal discussions will take place over the next few days.

On underwater cultural heritage, the Federated States of Micronesia noted that the informal intersessional group discussed whether underwater cultural heritage should be addressed in the regulations and, if so, whether the scope should focus on both tangible and intangible underwater cultural heritage. He said that the group focused on whether draft regulation 35 (human remains and objects and sites of an archaeological or historical nature) sufficiently covers tangible underwater cultural heritage or a more expansive approach is necessary. Regarding intangible underwater cultural heritage, he stressed discussions focused on whether it should be treated under regulations referring to traditional and Indigenous knowledge or as a standalone concept.

A member stressed that underwater cultural heritage must be considered also in EIAs along with other socio-economic factors. Another delegate noted: the regulations cannot impose obligations to the contractors that fall outside UNCLOS; the exploitation regulations are not a proper mechanism for dealing with issues of cultural heritage; and draft regulation 35 is broad enough to address members' concerns. Yet another delegation highlighted the potential to foster better collaboration between the ISA and other international agreements, including the international legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ Agreement). Observers emphasized the importance of addressing tangible and intangible underwater cultural heritage in the exploitation regulations.

On **general obligations** (regulation 44), Spain presented the outcome of intersessional informal work on streamlining and restructuring the regulation, noting that further work is needed. He proposed a structure along four main conceptual elements:

- subjects with environmental obligations;
- environmental principles and approaches;
- recommendatory function of the LTC; and
- application of international environmental law.

Many members supported the need to simplify and streamline the draft regulation. They focused on, among other things:

- the need to clarify the obligations of different entities and bodies;
- whether to refer to the precautionary principle or approach, or follow the BBNJ text, which refers to the “precautionary principle or precautionary approach, as appropriate”;
- amending the section's title to refer to obligations related to the protection and preservation of the marine environment;
- expanding provisions referring to the protection of rare and fragile ecosystems, noting they are not the only ones in need of protection;
- whether to refer to environmental “effects” or “impacts”;
- whether to include references to “international law”;
- whether to include “offset as a last resort” on a provision on the need to avoid, minimize, mitigate, and remediate harm to the marine environment, with observers highlighting that scientific evidence has demonstrated it is not possible to restore the deep-sea floor and offsetting is not applicable to the deep sea; and
- avoiding overlap and repetition in stipulating general principles.

They further discussed:

- whether to refer to ecosystem “integrity” or to “structure, function, and resilience”;
- including reference to the polluter pays principle, with some members noting that polluters should bear the cost of meeting pollution prevention and control as well as reparation and restoration;
- terminology around flag states;
- whether to include references to climate mitigation, carbon burial and sequestration, and nutrients recycling;
- the need to differentiate references to the Area from those to the continental shelf;
- the need to explicitly acknowledge knowledge gaps and uncertainties; and
- whether to address traditional knowledge as part of best environmental practices or as a standalone item.

On **REMPs** (regulation 44 bis), delegates addressed a provision noting the LTC shall only consider an application for a plan of work if the respective REMP has been adopted by the Council for the particular area concerned.

Some Council members stressed the need to prepare REMPs for all areas before any plan of work is considered to provide a level-playing field for contractors. Others supported adding that a REMP needs to be adopted for the particular area and “type of resource” concerned. Some delegates stressed the LTC work on a REMP standardized process and template should be completed as a matter of priority.

On the development of **environmental standards and guidelines** (regulation 45), Germany presented the outcome of intersessional consultations. He noted attempts to improve the structure, including distinguishing between standards and guidelines. He outlined modifications to the previous version, including a new paragraph on the need for regularly reviewing standards and guidelines, and noted that, while consensus was not achieved, there was broad agreement on the overall structure and most individual elements.

Many delegates supported the revised version of the draft regulations, suggesting, among other things:

- replacing reference to “baseline investigations” with “baseline studies”;
- specifying the timeframe for review of standards and guidelines;
- incorporating the three-phase approach for the development of standards and guidelines as suggested by the LTC;
- including a reference to traditional knowledge;
- covering the whole mitigation hierarchy under standards and guidelines;
- reconsidering the placement of a provision noting the ISA shall not approve any exploitation activities unless the environmental standards have been adopted, with some further proposing to add reference to guidelines;
- distinguishing between measures for control and remediation; and
- developing definitions for restoration and rehabilitation.

On the **environmental management system** (regulation 46), delegates discussed the periodicity of the review and audit; whether to include references to “best available science,” “best environmental practices,” and “internationally recognized standards”; and the non-binding legal nature of REMPs. Some members proposed a new annex on the process for identifying and selecting the relevant independent expert. One observer highlighted that the environmental management system should be aligned with the Authority’s environmental objectives.

Many members supported the proposal to merge and streamline **environmental monitoring** (regulation 46 bis) with the **environmental management and monitoring plan (EMMP)** (regulation 46 ter).

On sharing the findings and results of the EMMP, one delegation suggested adding data sharing. Some delegations highlighted the need to periodically update the independent monitoring programme, with a few delegations proposing to do so every five years. Others queried the proposed duration, given that cumulative impacts will be more significant towards the end of the exploitation, suggesting this monitoring should last for the complete operation and post-closure stages. A member requested redrafting a provision on contractors

providing information on the implementation of the EMMP, and publicly release environmental data and information, noting the need to distinguish between the two types of information. An observer highlighted the need to clarify the relationship between the EMMP and the contractor’s environment programme.

On the **EIA process** (regulation 47), Germany presented the outcomes of intersessional work, noting it focused on the structure of the EIA provisions. He drew attention to a flowchart illustrating the overall EIA process, the interlinkages between the different steps, and the regulations, standards, and guidelines that guide the process. He suggested attributing separate regulations to each of the procedural EIA steps: scoping; the EIA; and the EIA statement. He further proposed that a significant part of the details be placed under a relevant standard.

Many delegates supported the restructuring as well as moving some of the details under relevant standards. Some members opposed a provision noting that the EIA should be subject to an independent scientific assessment prior to its submission to the ISA, stressing the LTC is the competent body to perform the independent review and can engage independent experts, if necessary.

A member suggested starting the regulation with the purpose of an EIA, and developing a new regulation providing details on how to undertake an EIA. Another urged addressing the issue of compensation for environmental harm and distinguishing it from preventive measures. Yet another proposed developing a definition on “offsetting,” noting that many different approaches exist. Some requested reference to synergistic impacts in addition to cumulative ones. A member highlighted the importance of proactive consultation between an applicant or contractor and stakeholders at all stages. Several delegates and observers emphasized that the mitigation land hierarchy of avoidance, minimization, restoration, and offset cannot be equally replicated in the deep sea and suggested using “prevent, mitigate, and manage” as in the BBNJ Agreement.

On Thursday, the working group continued addressing the **EIA** (regulation 47 bis). Delegates expressed different views on whether to include reference to “general international law.” Some delegations suggested that language on the aims of EIAs to “ensure effective protection for the marine environment from harmful effects which may arise from such proposed activities” and “avoid serious harm to the marine environment arising out of the proposed activities” is redundant.

Many delegations highlighted consultations between the sponsoring state and the contractor and coastal states with respect to resource deposits in the Area that lie across limits of national jurisdiction, should be open to all coastal states, not just “affected” ones. A delegate suggested including a provision on assessment of the impacts on human health, including on radioactive levels.

An observer reinforced concerns on radioactive levels, adding that a recent study by the Alfred Wegener Institute found levels of radioactivity in manganese nodules that, in some cases, exceed the safe limit defined in the German Radiation Protection Ordinance. Another observer emphasized the conceptual difference between cumulative and synergistic effects, noting that “cumulative effects are additive effects, meaning that the sum of effects equals the individual effects combined; synergistic effects are a form of interactive effects, meaning that the sum does not equal the individual effects combined,” proposing that, if no agreement is

reached on including both, the definition of cumulative effects can be updated to include synergistic effects.

On the **EIA scoping report** (regulation 47 ter), a member suggested limiting the consultation process, noting that such processes are also envisaged for the environmental impact statement and the EIA. Another delegate proposed specifying the extent and timeframe for such consultation. On a provision noting that an EIA scoping report shall include “confidence levels of experts to account for uncertainty and a precautionary approach,” a member noted that uncertainty depends on the quantity and quality of collected data, adding that, in cases of uncertainty, non-action should be the norm. The same member further suggested that the final version of the scoping report should be made available on the ISA’s website for transparency.

Another delegate noted that guidelines are recommendatory in nature, adding that contractors should not be obliged to describe and explain “any divergence from ISA guidelines.” Some requested deleting references to underwater cultural heritage, while others suggested further discussions. A couple of delegates stressed the need to revisit the regulation’s structure, and reiterated that various detailed provisions should be covered under the standards and guidelines.

On the **environmental impact statement** (regulation 48), many delegates supported moving part of the regulation’s content to a standard. Some noted that much of the detail was originally captured in an annex, emphasizing that if these provisions are moved to a standard, their core elements should be captured in the draft regulations, functioning as signposts for the development of relevant standards and guidelines.

A regional group stressed the peer review of the environmental impact statement should not be mandatory as the LTC is the appropriate body to perform an independent review, supported by some but opposed by an observer querying if the LTC can play the same role as a peer reviewer. She also stated that the intended use of the mined material falls out of ISA’s scope, and environmental impact statements should be made publicly available.

A member noted that reference to environmental baseline data is redundant and stressed the need to distinguish between oceanography and geology. Another proposed including requirements: for a stakeholder consultation process; for the contractor to provide the rationale for any differentiation from the agreed terms of reference; for providing “detailed” descriptions of various elements such as the environmental setting, and spatial and temporal boundaries, supported by others; and for describing any potential cumulative environmental effects and unavoidable residual impacts and effects. A delegate suggested deleting the reference to international law, noting it is too general and creates legal uncertainty.

On a **new EIA and a revised environmental impact statement** (regulation 48 bis), some delegates highlighted the links between material changes and regulation 57 (modification of a plan of work by a contractor). A member suggested considering whether only the contractor can request a material change; and, with others, prescribing a role for the Council, in addition to the LTC, in requesting new EIAs. A couple of delegates proposed referring to an “additional” or “revised” EIA rather than a “new” one.

On **test mining** (regulation 48 ter), Belgium presented the outcome of intersessional work. He noted that while the informal group did not reach consensus, the dialogue enabled better mutual

understanding of different positions and the outcome constitutes a good basis for further work. He stressed the need for defining test mining, adding that: it should be mandatory and take place before an application for a plan of work; it should comply with the highest environmental standards; and a period should be determined for monitoring compliance with the plan of work, including appropriate responses in cases of non-compliance.

In the ensuing discussion, the working group focused on, among other things:

- whether test mining should be mandatory and should take place prior to an application of a plan of work for commercial production;
- the need for a clear test mining definition;
- whether to require a stand-alone mining report or include it in the EIA report;
- possible alternatives to *in situ* test mining;
- whether test mining should be performed during the exploration or the exploitation phase;
- clarifying the implications of different test mining results;
- the relevance of test mining results to inform the decision-making process; and
- cases in which test mining does not have to be undertaken.

Many queries were raised by delegates, including on: the maximum quantity of nodules that can be removed from the ocean floor during test mining; which ISA organ should provide the test mining approval; the meaning of “in situ testing of the integrated system of all relevant equipment”; the linkages between test mining results and the protection of the marine environment; and ways to calculate potential gains from test mining to be paid to the environmental compensation fund. Most members concurred on the need for further discussions.

An observer stressed that while test mining can provide substantial data, its role is prognostic and its outcome open to interpretation, emphasizing that its importance is overestimated, both regarding its potential impact to the marine environment and its predictive capacity. He further noted that in practice, test mining is performed as part of the exploration contract, stressing this exercise generates net costs for the contractors. Another observer, supported by a member, stressed the need to consider submarine cables both during test mining and in the exploitation phase. Other observers highlighted that test mining has environmental impacts and should not be permitted until there is sufficient scientific evidence, and be subject to an EIA and monitoring to ensure effective protection of the marine environment.

Regarding the **mining closure plans** (regulations 59), **the final closure plan: cessation of production** (regulation 60) and **the post-closure monitoring** (regulation 61), the Russian Federation, on behalf of Fiji, presented the outcome of intersessional informal work. She drew attention to the informal group’s comprehensive submission and highlighted areas of focus: post-closure monitoring and potential rehabilitation; procedural and financial issues; and definitions and terminology.

The regulations under the sections on: **pollution control and management of waste** (regulations 49 and 50); **compliance with EMMPs and performance assessments** (regulations 51-53); and **the environmental compensation fund** (regulations 54-56) were not addressed during this session of the working group.

Facilitator Taga thanked delegates for their hard work, encouraged further work, including on streamlining and restructuring the section on EIAs, and closed the meeting of the working group.

On Friday, 21 July, Facilitator Taga reported to the Council on the group's progress. She encouraged delegates to engage in further intersessional work to resolve remaining issues, including on:

- the standardized stakeholder's consultation approach, to be led by the UK;
- coastal state obligations, to be led by Mexico;
- underwater cultural heritage, to be led by the Federated States of Micronesia;
- structure and streamline of the general obligations, to be led by Spain;
- development of environmental standards and guidelines, to be led by Germany;
- scoping and steps in the environmental impact assessment process, to be co-led by Norway and Germany;
- restructuring and reordering the new section on the environmental impact assessment process, to be led by the UK;
- test mining, to be co-led by Germany and Norway; and
- the closure plan, to be led by Fiji.

Facilitator Taga stressed a revised text will be available for the next Council session, and the focus will be on standards and guidelines. She invited delegations to identify in advance which elements of the regulations can be addressed under standards and urged delegates to provide written submissions before 15 September 2023.

The Council took note of the oral report.

Informal Working Group on Inspection, Compliance, and Enforcement (ICE): The Working Group, facilitated by Maureen Tamuno (Nigeria), met on Thursday and Friday, 13-14 July. On Thursday, Facilitator Tamuno welcomed delegates and drew attention to the third revised text ([ISBA/28/C/IWG/ICE/CRP.2](#)). She highlighted that informal intersessional work focused on identifying an optimal structural arrangement, and, together with Norway who facilitated the intersessional work, presented the main outcomes. They noted consensus on core principles, including that the ICE mechanism needs to: be consistent with UNCLOS; include decision-making bodies that operate independent of inappropriate influence; avoid duplication of work between the different ISA organs; be transparent; and attract the necessary expertise.

The intersessional group suggested a hybrid model, including a chief inspector for day-to-day management; the establishment of a compliance committee within the LTC (LTCCC); and a specific decision-making role for the Council. The group proposed focusing on: the relationship between the responsibilities of ISA organs; the utility of a chief inspector; the development of standards and procedures to ensure the LTC and LTCCC handle ICE issues with inclusiveness and transparency; and a review mechanism for ICE.

Delegates stressed the importance of a robust ICE mechanism and thanked the informal intersessional group for its contribution. They expressed divergent opinions on the suggestion to establish an LTCCC. Some delegates supported the informal group's proposal, stressing it is consistent with UNCLOS and noting the need to clearly distinguish between the roles of the LTC and the LTCCC. Others preferred a self-standing compliance committee, noting that the LTCCC approach is inconsistent with the principles

of effectiveness, independence, and impartiality. Some members highlighted that the compliance committee should be established as a subsidiary body of the Council.

On the chief inspector proposal, many delegates noted a potential operational role, with responsibility for the day-to-day management of inspections and for the inspectors' roster, would be useful. Many members also considered that a review mechanism would be beneficial, regardless of the specific ICE mechanism that will finally be agreed, in particular for future-proofing the ICE mechanism.

On **general provisions on inspections** (regulation 96), delegates discussed, among other issues: core elements of the inspection mechanism; suggestions to streamline the provisions; modalities for the development of a code of conduct for inspectors; inspections without prior notification, with some delegates cautioning against such provisions; and language clarifying that the LTC is an executive organ of the Council.

On Friday, on provisions related to **inspections, the inspection mechanism, and compliance committee** (regulation 96, alt, bis, and ter), a member expressed concern about potential inspections without prior notification. Other delegates asked to streamline and clarify the provisions to avoid duplication and overlapping functions of the compliance committee and other ISA subsidiary bodies.

Regarding **inspectors' appointment and supervision** (regulation 97), a delegate queried whether the process will be limited to applicants nominated by state parties or individuals can apply. A delegation underscored the importance of gender and geographical balance, and the non-discrimination principle. On **inspectors' powers** (regulation 98), delegates could not reach consensus on a provision noting inspectors can seize documents and remove representative samples for examination or analysis. Some delegates stressed that these functions are essential for the inspectors to fulfil their role. Others noted such issues should be resolved through cooperation, with the sponsoring state responsible for enforcement procedures, further noting that original documents should remain on the ship and inspectors may acquire copies, record evidence, and label them for further inspection. Most delegates expressed flexibility in finding appropriate wording to strengthen the powers of inspectors.

Divergent opinions also surfaced among delegations regarding a provision on a "do not disturb notice," to allow further inspection activities in connection with activities in the Area. An observer queried the meaning of a provision noting the inspector may "test" any machinery or equipment, with a delegate supporting its retention and providing clarifications. Another observer requested clarifying the "confidentiality provisions" that the inspector shall be bound by.

On **inspectors' power to issue instructions** (regulation 99), delegates discussed, without reaching consensus, whether instructions should be issued in cases of threats of "serious" harm to the environment, with a few members requesting deleting "serious," in line with UNCLOS. Further disagreements arose on: the inclusion of references to underwater cultural heritage, with one member suggesting replacing it with "human remains, and objects and sites of archaeological and historical nature"; and "adjacent coastal states." Many members noted these issues are cross-cutting across the draft regulations.

Delegates held different opinions on the introduction of a temporal scope to the inspector's instructions. Some members stressed focus should be on the instructions with no temporal

limitations. Members further discussed the inclusion of an instruction requiring a suspension in some or all activities for a specific period, without reaching agreement. Some delegates suggested all instructions be delivered in written form.

On **inspection reports** (regulation 100), delegates welcomed efforts to consolidate and streamline the provision to avoid overlaps. Several Council members supported retaining the **contractor compliance report** (regulation 100 bis). A regional group expressed full support for provisions on **complaints related to inspections** (regulation 101).

The **whistle-blowing procedures** (regulation 101 bis) received support from many Council members. Some delegations suggested considering it as an ISA policy. One delegation cautioned against whistle-blowing procedures as a “naming and shaming” mechanism.

On **vessel notification, electronic monitoring, and data reporting** (regulation 102), some delegates stressed that, although environmental data should be publicly available, they cannot always be provided in real time. An observer suggested clarifying the reference to adaptive management and proposed including reference to “unreported” mining activities.

Regarding **issuing a compliance notice, suspension, and termination of the exploitation contract** (regulation 103), some delegates stressed the need to decide whether the provision deals with a breach of terms of an exploitation contract or with a “risk of breach,” with some underlining that, if risk of breach is included, a definition should be developed. Some members noted the compliance committee should be responsible for issuing compliance notices. A delegate proposed establishing modalities for a dialogue between the ISA and the contractors. An observer noted different progressive actions are required for different types of breaches and urged the development of a compliance strategy.

On a provision noting the cost of **remedial action** represents a debt for the contractor and may be recovered from the environmental performance guarantee (regulation 104), some delegates suggested further discussions on the environmental performance guarantee before taking a decision. Other members suggested exploring other means to remedy actions, stressing the need to address cases where a debt due to the ISA cannot be recovered.

On **sponsoring states** (regulation 105), delegates made no comments. On the **periodic review of the inspection mechanism** (regulation 105 bis), some delegates suggested making the periodic review report publicly available, excluding private or confidential information. Some members proposed that the Council, every five years from the establishment of a compliance committee, “may” rather than “shall” commission an independent review. A couple of delegates suggested exploring the option of having a more frequent review initially, followed by five-year intervals once experience grows.

Facilitator Tamuno thanked all delegates for the hard work and progress, and the valuable submissions. She called for intersessional work and flexibility towards finding common ground, and closed the meeting of the Working Group.

On Friday, 21 July, President Mijares, on behalf of Facilitator Tamuno, presented on progress during deliberations in the informal Working Group on ICE. He highlighted conceptual discussions on the compliance mechanism that will continue intersessionally, and drew attention to crosscutting issues, such as underwater cultural heritage. Council members took note of the report.

Informal Working Group on Institutional Matters: The Working Group, co-facilitated by Georgina Guillén-Grillo (Costa Rica) and Salvador Vega Telias (Chile), met on Monday, Tuesday, and Wednesday 17-19 July.

On Monday, Facilitator Guillén-Grillo introduced the revised document ([ISBA/28/C/IWG/IM/CRP.1](#)). She gave a presentation on the concept of effective control, highlighting UNCLOS Article 153 (financial terms of contracts) and the International Tribunal for the Law of the Sea (ITLOS) advisory opinion on the responsibilities and obligations of states sponsoring persons and entities with respect to activities in the Area ([Case no.17, 1 February 2011](#)). She noted “effective control” is the relationship between the state and contractor throughout the contract and can be distinguished from the “responsibility to ensure,” which is an ongoing duty for the sponsoring state to exercise regulatory control over the contractor. She highlighted differing interpretations with potentially significant implications, inviting the Council to take a proactive decision. The Co-Facilitators proposed holding an intersessional webinar to discuss the issue in September 2023.

Many Council members highlighted the importance of provisions on effective control, welcoming the webinar suggestion. A delegate offered preliminary comments, emphasizing the national approach, which equates to effective regulatory control.

On the **certificate of sponsorship** (regulation 6), delegates discussed: streamlining the draft regulation for consistency with the exploration regulations; potentially including additional information in the certificate, such as a company registration number or legal entity identifier; potential joint sponsorships; and provisions on sponsoring states doing their due diligence, beyond developing relevant national legislation, to ensure that contractors meet their obligations.

On the **form of applications and information to accompany a plan of work** (regulation 7), Council members agreed to delete reference to “all stages of the process chain,” noting it falls outside the ISA’s mandate. Some delegations asked for further clarification on the reference to a maritime security plan and suggested deleting a provision noting applicants shall comply with the sponsoring states’ national laws, regulations, and administrative measures. Delegates engaged in a lengthy discussion on the binding nature of REMPs, including whether regulatory provisions should be “in line,” “in accordance,” or “consistent” with REMPs. In cases where the plan of work proposes two or more non-contiguous mining areas, a couple of members stressed that if the areas are separate, the contractor shall provide separate sets of documents.

On the **area covered by an application** (regulation 8), discussions focused on whether to reference the World Geodetic System 84 or “the most recent applicable international standards used by the Authority.”

On Tuesday, delegates resumed discussions on regulation 8. Many members queried the clarity and accuracy of requesting “adequate and satisfactory” environmental baseline data. Council members decided to delete a provision stating the areas under application must be covered by a relevant REMP, noting it is already covered in other regulations. On a provision that the applicant shall provide a statement confirming whether the area under application “has received attention” under other organizations or treaties, delegates stressed the need to refine the language around “receiving attention,” noting its ambiguity. Some members highlighted a proper procedure should be put in place for information exchange between

the ISA and relevant bodies and processes, noting this should be the responsibility of the ISA and governments, rather than the applicant or contractor.

One member recalled its 2018 submission, providing an overview of existing measures, means, and actions related to the protection and preservation of the marine environment in areas beyond national jurisdiction, suggesting regular updating. Another delegate drew attention to UNCLOS Article 147 (accommodation of activities in the Area and in the marine environment), underscoring the need to operationalize the concept of “reasonable regard.” A couple of delegates noted the provision is unnecessary as it is covered in other parts of the regulations, while some emphasized the need to fully respect ISA’s mandate.

Regarding **receipt, acknowledgment, and safe custody of applications** (regulation 9), delegates discussed, without reaching consensus, whether the Secretary-General should communicate to ISA members “information of a general nature which is not confidential regarding the application,” or the entire “content of the application save for any confidential information.” Many members suggested further work on defining confidential information, with a delegate stressing confidentiality rules should not apply to Council members, given that they need to take fully-informed decisions.

A lengthy discussion took place on a provision regarding the LTC being able to defer consideration of an application for a plan of work to its next meeting if it considers the application to be overly complex. Many delegates suggesting placing the provision in a different part of the draft regulations with some emphasizing that “the LTC is master of its own procedures.” One member urged considering the situation where the LTC is not in a position to start considering a plan of work due to force majeure.

On the **preliminary review of application by the Secretary-General** (regulation 10), many delegations concurred that the Secretary-General should conduct the preliminary review for administrative purposes and the LTC should carry out the substantive review. Members expressed different views on whether the LTC or the Secretary-General should be responsible for determining preference and priority among applicants in cases of submission of more than one application for the same area and the same resource.

On the **publication and review of the environmental plans** (regulation 11), delegates addressed, among other things:

- whether the Secretary-General, while placing the environmental plans on the ISA’s website, should: do so for a specific period of time; include “any information necessary for their assessment as well as the non-confidential parts of the test mining study”; and address the “general public” in addition to ISA members, relevant adjacent coastal states, and stakeholders;
- the proper process for the LTC to provide its comments and recommendations on the environmental plans vis-à-vis the consultation process; and
- whether to establish an independent review team or proceed with the expertise within the LTC, with the Commission able to nominate additional independent experts, if required.

Members expressed divergent opinions on the establishment of an independent review team, with some underscoring the LTC’s mandate as the responsible organ for the review of plans of work and others emphasizing that additional expertise will often be required. Most delegates suggested removing the reference to the

general public and the mining test study. They further emphasized the issue of consultations with adjacent coastal states is cross-cutting.

Other members suggested taking into account the discussions on standardizing stakeholders’ consultations to streamline this regulation. Most delegates agreed on the need to give more than 30 days to the applicant to reply to comments received. Observers suggested the whole application be included in the public consultation process rather than merely the environmental plans, and strongly supported engaging external, independent experts.

On the consideration of applications by the LTC, under **general provisions** (regulation 12), most delegates suggested removing the 120-day deadline for the LTC to produce its comments and recommendations. They further queried a provision stating, in case of “overly complex” submissions, the LTC may delay its report, noting that the term is ambiguous.

On Wednesday, delegates resumed consideration of regulation 12. On a provision describing the principles, policies, and regulations the LTC should comply with while considering a proposed plan of work, a delegate noted that UNCLOS Article 165 (LTC) sets the criteria on which the LTC shall base its consideration. Opinions converged around simplified language noting the LTC, in considering a proposed plan of work, shall apply the ISA RRP in a uniform and non-discriminatory way.

On a provision that the LTC may seek advice and reports from competent independent experts on any matters considered to be relevant, many Council members suggested its deletion. Many supported a self-standing regulation on the LTC’s ability to seek advice from competent independent experts, if required, recognizing the ability of the LTC to seek external expertise is enshrined in UNCLOS, but expressing the desire to “flesh this out” in the regulations.

On the consideration of the proposed plan of work by the LTC, delegates further discussed:

- if the LTC “shall” or “may” take into account the listed elements;
- inclusion of a reference to consider any advice or reports received from any competent UN organ, or of its specialized agencies, or any international organizations with relevant competence;
- reference to adjacent coastal states;
- the previous operating record of the applicant, with some members supporting including references to the quality of annual reports and baseline data, and the results of test mining activities;
- whether to include the previous operating record of the sponsoring state, with many delegates suggesting deleting the provision; and
- inclusion of a reference to REMP, with delegates discussing its placement.

An observer cautioned against provisions that restrict the role of the general public in the decision-making process, particularly on the review and approval of a work plan. Another observer suggested providing for the Finance Committee’s role in reviewing the application for a plan of work for matters under its competence.

Some delegates suggested deleting provisions on **general obligations of contractors** (regulation 12 bis), noting they are covered in other parts of the regulations. On the **assessment of applicants** (regulation 13), many delegates suggested reordering the regulations, noting the assessment of applicants should come

before the assessment of applications. Some delegates suggested streamlining the provision.

Several members proposed broadening the stakeholder consultations to address the entire plan of work rather than just the environmental plan. Some delegates and observers drew attention to the need to ensure coordination between a contractor and a submarine cable operator at an early stage, with a few cautioning against imposing excessive obligations to the contractors. Some queried a provision that the LTC should review that the applicant has demonstrated a satisfactory record of past performance both within the Area and in other jurisdictions. A member pointed to the need to ensure the applicant satisfies requirements in relation to effective control. Another delegation noted that the commercial viability of a mining project cannot be demonstrated at the application stage.

On the protection of the marine environment, a member stressed that the LTC, upon reviewing a plan of work, should address at least five categories of requirements as operational prerequisites:

- those derived from UNCLOS Article 145 (protection of the marine environment);
- general goals and objectives included in relevant regulations;
- goals and measures of the relevant REMP;
- relevant standards, in particular on environmental thresholds; and
- the results of the environmental impact assessment.

The same delegate suggested, and Council members agreed to, further intersessional work. Observers suggested considering biocultural and cultural heritage, and the need to define “intense fishing activity.”

The regulations on amendments to the **proposed plan of work** (regulation 14), **LTC recommendation for the approval or disapproval of a plan of work** (regulation 15), and **consideration of an application by the Council** (regulation 16), as well as the **Part IX on information-gathering and handling** (regulations 89-92), **Part XII on settlement of disputes regulation** (regulation 106), and **Part XIII on the review of these regulations** (regulation 107) were not addressed during this session of the working group. Co-Facilitators Guillén-Grillo and Vega thanked delegations, encouraged written comments by 15 September 2023, and closed the working group meeting.

On Friday, 21 July, Co-Facilitators Guillén-Grillo and Vega presented to the Council on progress during the discussions. They highlighted discussions on effective control, underscoring that a relevant webinar will take place on 1 September 2023, focusing on legal aspects to determine effective control, and practical and regulatory implications. They noted further intersessional work on provisions about the links between the area under application and initiatives by other international organizations, and assessment of applicants.

MEXICO reiterated that provisions that receive no support during the deliberations should be promptly deleted to increase efficiency.

The Council took note of the oral report.

Informal Discussions on the President’s Text: The Council, facilitated by President Mijares, held informal discussions on the President’s Text, which includes all provisions of the exploitation regulations the working groups have not taken up, on Wednesday and Thursday 19-20 July.

On Wednesday, President Mijares outlined the revised document ([ISBA/28/C/WOW/CRP.1/Rev.1](#)). On the **preamble**, delegates expressed divergent preferences on two alternative formulations. Many delegates expressed flexibility in finding common ground

and supported referring to the principle of the common heritage of “humankind,” with some suggesting “recalling” rather than “reaffirming” the principle. Some delegates suggested reference to the 2030 Agenda for Sustainable Development and the SDGs, while others opposed, noting the SDGs are timebound. An observer suggested reference to the recognition of the rights of Indigenous Peoples and the principle of free, prior, and informed consent.

On **rights and exclusivity under an exploitation contract** (regulation 18), some delegates raised concerns about exploration activities carried out once an exploitation contract is in place, querying if an exploitation contract can include exploration activities. An observer highlighted the need to address cases when a contractor applies for exploitation for only a part of the exploration area. Another observer stressed that provisions on exploration, applicable under an exploitation contract, may only refer to environmental protection, baseline setting, and relevant LTC recommendations.

On **contractors’ obligations** (regulation 18 bis), many delegates stated the need to further discuss and identify all the contractor obligations throughout the text. An observer underscored the need to distinguish between “obligations” and “responsibilities.” A couple of delegates highlighted the need to further address liability issues. An observer emphasized the need to ensure a contractor can be held liable with clear, consistent, and enforceable regulations. A delegation proposed, and others supported, establishing an intersessional working group on the contractor’s obligations and liability. Some members suggested deleting a provision related to sponsoring states’ obligations.

On **term and renewal of exploitation contracts** (regulation 20), members expressed different opinions on the maximum duration of an exploitation contract. Some stressed the envisaged maximum 30-year initial term of an exploitation contract, which following the renewals may reach a maximum overall duration of 60 years, is too long and not in line with the precautionary principle. Delegates further discussed alternative formulations on the renewal of exploitation contracts, including whether the LTC “shall” or “may” recommend such renewal.

On **termination of sponsorship** (regulation 21), delegates suggested adding a provision for cases where there are two or more sponsoring states and one of them terminates the sponsorship, as well as discussing the need for timeframes for termination of sponsorship.

On **change of control** (regulation 24), a couple of delegates proposed deferring some responsibilities from the Secretary-General to the LTC and adding a provision on the prevention of monopolization. A member stressed the need to confirm the continuity of sponsorship after a change of control.

Regarding **documents to be submitted prior to production** (regulation 25), one delegation queried the need to provide the mining test results since they are included in the feasibility study, and another proposed reference to “the relevant standards and applicable guidelines.”

Delegates further addressed:

- the **exploitation contract** (regulation 17);
- **joint arrangements** (regulation 19), with a couple of members stressing the need to develop relevant binding standards providing for such joint arrangements and one delegate suggesting addressing them within the regulations;
- **use of the exploitation contract as security** (regulation 22); and

• the **environmental performance guarantee** (regulation 26), with delegates expressing doubts over a regional group's proposal to rename the provision "decommissioning bonds," to differentiate it from the environment compensation fund. An observer noted the use of environmental performance guarantees should not be restricted to decommissioning and post-closure monitoring activities and must further outlast the contract.

On Thursday, delegates addressed **maintaining commercial production** (regulation 28). Some members queried the reference to market conditions and agreed to contractors notifying the Secretary-General and the sponsoring states about failures to comply or adhere to the plan of work. On **reducing or suspending production due to market conditions** (regulation 29), members focused, among other things, on: the timetable to notify a temporary reduction or suspension; written notification of suspensions; the potential role of the economic and planning commission; and suspension under force majeure.

On **safety, labor, and health standards** (regulation 30), delegations discussed whether to refer to the Maritime Labour Convention or broadly to maritime labour conditions. An observer noticed lack of reference to the safety plan and maritime security plan, and suggested addressing cases where ships that depart and return to the same port are classed as conducting domestic voyages, and thus evade coverage by international convention rules.

On **reasonable regard for other activities and infrastructure in the marine environment** (regulation 31), many delegates requested references to UNCLOS Articles 87 (freedom of the high seas) and 147 (accommodation of activities in the Area and in the marine environment), with a couple of members suggesting redrafting the provision to be consistent with Article 147. Many members supported reference to REMPs, while some opposed stating that REMPs are not legally binding, while others offered compromise solutions, such as "taking into account the REMP."

Many delegates supported including the term "infrastructure." Some delegates suggested reference to the plan of work and the EMMP, as well as to both standards and guidelines, while others preferred only mentioning standards. Some delegates highlighted the need for early-stage coordination between the contractors and the proponents of the other activities in the marine environment, emphasizing ISA's facilitating role in that respect. One delegate supported a broader consideration of other activities in the marine environment, including those not mentioned, but also not prohibited, by UNCLOS, with an observer suggesting considering scientific research.

On **risk of incidents** (regulation 32) and **preventing and responding to incidents** (regulation 33), a few delegates stressed these regulations need to interact with the regulations on ICE, suggesting cross-references. Regarding a provision on the contractor notifying its sponsoring state "immediately" in case of an incident, some delegates suggested "at the earliest opportunity" or "the moment the contractor becomes aware" of such an incident. A delegate said serious incidents should be reported more promptly.

Many delegates supported a provision that the contractor shall provide an incident report, following resolution of an incident, with some members suggesting the contractor explain the measures to prevent, minimize, or reduce the risk of a similar incident taking place in the future. A couple of delegates supported reference to adjacent coastal states and suggested that the Secretary-General be

responsible for notifying them in case of incidents, with one further proposing their participation in the development of emergency and contingency plans. An observer stressed as unacceptable the provision noting that "a contractor shall reduce the risk of incidents as much as reasonably practicable, to the point where the cost of further risk reduction would be grossly disproportionate to the benefits of such reduction," emphasizing the environment should be effectively protected without cost considerations.

On **insurance obligations** (regulation 36), some members noted issuing compliance orders and consenting on the termination of an insurance policy should not be the responsibility of the Secretary-General but of the compliance committee and the Council, respectively. A few delegates highlighted the importance of retaining a provision noting "contractors shall include the ISA as an additional assured, providing that the underwriters waive any rights of recourse, including subrogation rights against the ISA," to ensure that the ISA is appropriately protected. A delegate recalled an ISA study on the requirements for insurance and market availability, proposing updating the regulation based on its content. An observer stressed the need to specify the duration and scope of the insurance.

On the **training plan** (regulation 37), some members suggested deleting provisions on the content and scope of training plans as prescriptive, while others proposed redrafting them or including them under a standard.

Council members also addressed:

- **notifiable events** (regulation 34);
- **human remains and objects and sites of an archaeological or historical nature** (regulation 35), with delegates noting ongoing discussions under the informal intersessional group on underwater cultural heritage;
- **prevention of corruption** (regulation 40);
- **other resource categories** (regulation 41);
- **restrictions on advertisements, prospectuses and other notices** (regulation 42);
- **compliance with other laws and regulations** (regulation 43); and
- **notice and general procedures** (regulation 93).

Regarding **adoption of standards** (regulation 94), a delegation highlighted that the Council should consider and adopt standards, to be approved by the Assembly. A regional group and some delegates emphasized: that standards shall describe how the ISA and contractors shall implement regulations; the need for a transition period; compliance to standards as a fundamental part of any contract; and the prevalence of the regulations over standards, in case of conflict.

The **issue of guidelines** (regulation 95), as well as: Annex I on the application for approval of a plan of work to obtain an exploitation contract; Annex II on the mining workplan; Annex III on the financing plan; Annex V on the emergency response and contingency plan; Annex VI on the health and safety plan, and maritime security plan; Annex IX on the exploitation contract and schedules; the schedules (to the exploitation contract); Annex X on standard clauses for exploitation contract; Appendix I on notifiable events; and the schedule: use of terms and scope, as contained in the President's revised text, were not addressed during this session.

President Mijares thanked delegates, encouraged written comments by 15 September 2023, and closed the working group meeting.

On Friday, 21 July, President Mijares presented on deliberations on the President's text. He drew attention to two options for the preamble, noting flexibility to find common ground, and highlighted progress under various regulations stressing that a further revised text will be developed for consideration at the next Council session.

The Council took note of the oral report.

Discussions on the Two-Year Rule: The two-year rule was discussed in plenary on 14 and 21 July, and in informal consultations throughout the second week.

The two-year rule refers to a provision in the 1994 Implementing Agreement. The provision notes that if the ISA Council has not completed the elaboration of the regulations relating to exploitation within two years following the request of a state who intends to apply for approval of an exploitation plan, then the Council "shall nonetheless consider and provisionally approve such plan of work" based on the provisions of the Convention and any rules that the Council may have adopted provisionally. In 2021, Nauru submitted such a request, in connection with its contractor NORI, triggering the deadline, which elapsed on 9 July 2023.

On Friday, 14 July, President Mijares invited delegates to consider the outcome of the intersessional dialogue on the two-year rule and the briefing note of the co-facilitators, with a view to adopting a Council decision.

Belgium and Singapore, co-facilitators of the intersessional dialogue, reported on the main conclusions of their briefing note, including: the different views on the legal basis for postponing the consideration and/or provisional approval of a pending application for a plan of work; and the guidelines or directives the Council may give to the LTC, for the purpose of reviewing a plan of work.

Council members appreciated the intersessional work that enabled better understanding of mutual positions, while noting that divergent positions remain. Many delegates stressed that no application for a plan of work should be approved prior to finalizing the draft exploitation regulations, including the relevant standards and guidelines. Some lamented the slow pace of negotiations, requesting developing the regulations as a matter of top priority under a specific timeframe for their timely finalization.

BRAZIL and CANADA announced their support for a precautionary pause and a moratorium, respectively, on commercial deep-sea mining, noting the lack of adequate scientific information and of a robust regulatory framework ensuring effective environmental protection, and requested ISA members to refrain from submitting plans of work prematurely. They joined the recent calls for a precautionary pause by Ireland, Finland, Portugal, and Sweden, and the call for a moratorium by Switzerland, bringing the total number of states calling for either a precautionary state or a moratorium to 21.

NAURU said they will not sponsor an application for an exploitation contract prior to the conclusion of this July session. She stressed they are not withdrawing their decision to submit a plan of work soon, calling for the timely development of a robust regulatory framework for safe, environmentally sound deep-sea mining.

Delegates expressed divergent opinions on the legal basis for addressing the two-year rule and members decided to continue the intersessional dialogue over the following week with a view to reaching consensus on a Council decision.

COSTA RICA, on behalf of 14 like-minded states, emphasized that exploitation activities cannot start before the ISA adopts robust, environmentally sound RRP. She urged using the precautionary

principle/approach to guide the way forward, highlighting the necessity of sufficient scientific evidence to deliver plans of work for exploitation.

Ghana, for the AFRICAN GROUP, highlighted concerns, including regarding insufficient scientific knowledge for informed decision making, and the operationalization of the Enterprise and the economic planning commission. She called for a consolidated text signaling the Council's commitment to continue the negotiating process to ensure deep-sea mining is governed by a robust set of regulations, ensuring environmental protection and benefits for all humankind.

Brazil, for the LATIN AMERICAN AND CARIBBEAN GROUP, noted seabed mining activities should not start before the RRP are in place, reaffirming the group's commitment to continue working constructively towards their completion, ensuring effective environmental protection, and a fair and equitable benefit-sharing regime on a non-discriminatory basis. She stressed that promoting and achieving legal certainty is fundamental for the ISA to discharge its mandate.

SPAIN highlighted that any controversy over the decision over a plan of work application should be submitted to the dispute settlement procedure of the UNCLOS. He shared concerns on the Council's responsibilities in ensuring effective protection of the marine environment in the absence of proper RRP.

The NETHERLANDS advocated strict application of the precautionary principle and supported further scientific research on the effects of exploitation on the deep sea, and its climate and ecosystem functions. He emphasized the need to provide legal clarity on the two-year rule and address concerns on potentially approving exploitation activities without the RRP in place, underscoring the need to continue working on the draft exploitation regulations.

MONACO, supported by FRANCE, stressed that any plan of work for exploitation in the seabed must be carried out only under a robust regulatory framework, recognizing the precautionary principle, and guaranteeing the health of the marine environment as a whole. He noted that, despite significant progress, "our ignorance of the environment of the Area and its resources is still great," calling for strengthening scientific and technological endeavors. FRANCE reiterated its position on a ban on deep-sea mining and announced that Hervé Berville, Minister of State for Marine Affairs, will attend the ISA Assembly to present and further explain the French vision on the seabed.

GERMANY reiterated its position that no plans of work for exploitation should be approved until the deep-sea ecosystems are sufficiently researched and regulations that effectively implement the precautionary approach are in place. He expressed readiness to work constructively towards a decision on the two-year rule. BELGIUM stressed the need to find a way forward on the two-year rule, noting there are points of convergence and divergence among delegations, and accepted a co-facilitating role in the informal discussions together with Singapore.

PORTUGAL stated that, in the absence of RRP and adequate scientific knowledge, they advocate for a precautionary pause until such conditions are met, highlighting work plans should not be approved before the appropriate regulatory framework is agreed. FINLAND stated that exploitation should not commence before the RRP are finalized. He noticed focused efforts are required to reduce legal uncertainty. He underscored that on the scientific

understanding of the ocean, “We know more today than the UNCLOS negotiators, but it is still insufficient.”

SWITZERLAND highlighted growing scientific evidence on the irreversible impacts of mining on deep-sea ecosystems and the need to proceed based on the precautionary approach. She stressed that “we cannot afford the amplification of the triple environmental crisis” and reaffirmed Switzerland’s position in favor of a moratorium on the commercial exploitation of the Area.

The UK highlighted its decision not to sponsor deep-sea mining activities unless sufficient scientific evidence is in place. He noted good faith in the development of negotiations, and called for adoption of “commercially viable” regulations. NORWAY emphasized that the best way to avoid a situation where a plan of work for exploitation is submitted without the RRP in place is to “redouble our efforts towards finalizing the regulations,” calling for a new timeline with a realistic target for the development of the regulations.

The RUSSIAN FEDERATION said finalizing the exploitation regulations is the main priority as their approval is a necessary prerequisite for exploitation of mineral resources in the Area. She noted the need to protect the marine environment and the principle of non-discrimination can be used as legal grounds if a plan of work is submitted under the two-year rule before the finalization of the RRP. She added that the Council may issue guidance or directives to the LTC only regarding the procedures and criteria for considering an application.

CHILE reaffirmed the need for more scientific certainty and a robust and rigorous regulatory framework that considers the precautionary approach and ecosystem principle before any exploitation plan of work is approved. COSTA RICA stressed the need for a precautionary pause and underscored three elements that should be in place to evaluate a plan of work: a specific, robust, and robust legal framework; sufficient evidence-based scientific information on the marine environment; and appropriate institutional arrangements that ensure transparency in ISA processes.

MEXICO stressed the importance of having a consolidated text of the exploitation regulations at the end of the 28th session, allowing for a comprehensive analysis and necessary streamlining of provisions. He called for an outcome-based approach, avoiding overregulation, and considering technical elements under relevant standards and guidelines. He noted incorrect application of the two-year rule runs the risk that the Council acts as reviewer, cautioning that the outcome “could be legally weak and challengeable, although politically convenient.” ARGENTINA highlighted the need to address all financial, environmental and technical aspects of the regulations, including a clear benefit-sharing mechanism and the operationalization of the Enterprise before exploiting resources that are humankind’s common heritage.

JAMAICA welcomed progress on the exploitation regulations, noting they should be accompanied by the relevant standards and guidelines, a benefit-sharing mechanism, and the relevant institutional framework, including the Enterprise. TRINIDAD AND TOBAGO and TONGA underscored the need to protect the marine environment and operationalize the principle of the common heritage of humankind. TONGA drew attention to remaining work on the exploitation regulations, including on standards and guidelines.

VANUATU and AUSTRALIA emphasized that no plans of work for exploitation should be approved without robust scientific information that will allow for a comprehensive understanding of deep-sea ecosystems and the impacts of deep-sea mining. AUSTRALIA further highlighted the need for a precautionary approach due to lack of knowledge and a robust regulatory framework and institutional arrangements to ensure the common heritage of humankind is exploited safely, sustainably, and for the benefit of humankind as a whole. VANUATU suggested the Council provide guidance to the LTC on how to proceed in cases of a potential application for a plan of work for exploitation in the absence of RRP.

NEW ZEALAND reiterated its position on a conditional moratorium until a legal framework that ensures the effective protection of the marine environment is agreed. She noted that the Council may issue a directive or guidance to the LTC if a plan of work of exploitation is submitted before the RRP are finalized, stressing a common understanding on the two-year rule will be beneficial for the ISA, the contractors, and all stakeholders.

The COOK ISLANDS suggested further guidance on the timeline for the completion of the RRP and the timely development of a consolidated text. She called for cooperation, good-faith negotiations, and commitment to uphold UNCLOS in its entirety for finalizing the exploitation regulations.

CHINA stressed that delegates have different opinions on the interpretation of the two-year rule, suggesting further discussions. He noted some progress on the negotiations on the exploitation regulations and proposed informal discussions on the way forward.

The REPUBLIC OF KOREA emphasized the timely development of the exploitation regulations is the best solution for the protection of the marine environment in the Area, noting great progress since 2021. JAPAN noted a potential provisional approval does not guarantee the commencement of exploitation and highlighted work towards finalizing the exploitation regulations as an issue of top priority. BANGLADESH queried the granting of provisional approval for a plan of work for exploitation without the RRP in place.

SINGAPORE noted deep-sea exploitation should not commence without the relevant RRP and accepted co-facilitating the informal consultations, noting “there is scope for a common way forward.” INDIA underscored concerns over sufficient scientific data suggesting strengthening exploration activities to fill knowledge gaps. He stressed that sustainable harnessing of mineral resources of the ocean while ensuring environmental protection is in the best interest of humankind. He noted that UNCLOS and the 1994 Implementing Agreement provide mechanisms for amicable settlement of disputes related to the interpretation of the Convention, suggesting “thinking out of the box” regarding the two-year rule.

The US suggested that the Council remain focused on developing a regulatory framework. He highlighted that, in the absence of RRP, UNCLOS Article 145 (protection of the marine environment) is an impediment to provisional approval of an application, adding that granting provisional approval does not mean that mining can commence.

GREENPEACE INTERNATIONAL invited Council members to do their utmost to reach a political solution to avoid facing legal uncertainty and the need to reach a credible decision, cautioning against initiating unregulated deep-sea mining exploitation. DSCC

recognized the ever-growing momentum for a pause on deep-sea mining and reiterated their call for a longer-term suspension of deep-sea mining activities.

The PEW CHARITABLE TRUSTS underscored that, if an application for exploitation is submitted in the current circumstances, the LTC would be required to review it in the absence of regulations or evaluation criteria, putting the Commission in an impossible place, both practically and legally. She emphasized the Council must take control and ensure the Council's March decision not to allow exploitation in the absence of RRP is implemented in practice.

President Mijares stressed an updated roadmap for the development of the exploitation regulations will be presented for Council members' consideration.

On Friday, 21 July, following further informal discussions throughout the week, President Mijares introduced the draft decision, which was adopted as a package with the decision on the timeline.

Final Decision: In the final decision ([ISBA/28/C/25](#)), the ISA Council reiterates its request to the Secretary-General to inform Council members within three business days of the receipt of an application for a plan of work for exploitation in the absence of exploitation RRP. The Council decides to further consider actions it may take if an application were to be submitted before the Council has completed the exploitation RRP. The Council also decides, if such an application for a plan of work is submitted, to continue the consideration of the understanding and application of the two-year rule as a matter of priority and accordingly reach a decision, including the possible issuance of guidelines or directives, prior to the LTC finalizing its review of the plan of work, without prejudice to the LTC's mandate.

Discussion on the Timeline following the Expiration of the Two-Year Period: Discussions on the timeline for the development of the exploitation regulations took place informally on 18, 20, and 21 July, facilitated by President Mijares. On Friday, President Mijares introduced the draft decision to plenary.

On the draft decision, CHINA and NAURU expressed concerns over lack of clear commitment towards finalizing the exploitation regulations. COSTA RICA, SPAIN, IRELAND, BRAZIL, CHILE, FRANCE, and GERMANY called for flexibility, pointing to mutual compromises to reach a delicate balance. NORWAY and MEXICO called for adopting the decision together with the one on the two-year rule as a compromise package.

The Council adopted the decision as a package with the decision on the two-year rule.

Final Decision: In the final decision ([ISBA/28/C/24](#)), the Council expresses its intention to continue the elaboration of RRP with a view to their adoption during the 30th ISA session in 2025. The Council requests the Secretariat to convene Council meetings in November 2023 as well as in March and July 2024. It decides that if the exploitation RRP are not completed by the end of the July 2024 meeting, the Council will assess remaining work and consider another roadmap to that end. The Council further decides that if an application for a plan of work for exploitation is submitted before the adoption of the exploitation RRP, the Council will address the understanding and application of the two-year rule as a matter of priority with a view to reaching a decision at its first subsequent meeting.

Annexed to the decision is the roadmap for continued work in developing the exploitation regulations during the third part of the 28th session in November 2023, and the first and second parts of the 29th session of the Council in 2024.

Closure of the Session

On Friday, 21 July, in closing remarks, POLAND stressed the need to continue the efforts for developing the exploitation regulations in good faith, taking into account the precautionary approach and improving the knowledge of the marine environment. The delegate from BELGIUM said farewell to the ISA, thanking everyone for the collaboration and stating, "This is a fascinating topic so difficult to leave behind."

DSCC stressed that the adopted roadmap does not reflect the rapidly growing concern and opposition to deep-sea mining, querying how states can intend to continue the elaboration of the exploitation regulations with a view to their adoption in the absence of sufficient scientific knowledge and understanding. She further highlighted that, under the two-year rule, there is nothing to prevent an application from being submitted in the absence of RRP, underscoring the urgent need for a moratorium.

President Mijares thanked all involved for their hard work, commitment, and support and closed the second part of the 28th session of the ISA Council at 8:32 pm.

ISA-28 Assembly Report

On Monday, 24 July, Raymond Mohammed (Fiji) on behalf of Satyendra Prasad, Assembly President for the 27th session, opened the 28th Assembly meeting. Secretary-General Michael Lodge welcomed delegates, and acknowledged progress made by the Council during the previous two weeks and its commitment to continue advancing work on the exploitation regulations.

Organizational Matters

Election of President and Vice-Presidents: On Monday, 24 July, Ghana, for the AFRICAN GROUP, nominated Fanday Turay, Permanent Representative of Sierra Leone to the UN, as Assembly President for the 28th session. Belgium, Singapore, and Trinidad and Tobago were nominated as Vice-Presidents. All nominees were elected by acclamation.

Adoption of the Agenda: On Monday, 24 July, President Turay introduced the provisional agenda, and the two supplementary agenda items ([ISBA/27/A/L.1](#), [ISBA/28/A/INF/8](#), and [ISBA/28/A/INF/8/Corr.1](#)), drawing attention to proposals for additional agenda items on:

- the establishment of a general policy by the Assembly related to the conservation of the marine environment, including in consideration of the effects of the two-year rule, proposed by Chile, Costa Rica, France, Palau, and Vanuatu; and
- terms of reference for the periodic review of the international regime of the Area pursuant to UNCLOS Article 154 (periodic review), put forth by Germany.

CHINA, NAURU, and MEXICO opposed the inclusion of the additional agenda items, noting that any Assembly decision on a matter where the Council has competence can only be taken following a Council recommendation.

CHILE, GERMANY, SWITZERLAND, BRAZIL, IRELAND, SPAIN, BELGIUM, FRANCE, VANUATU, PORTUGAL, COSTA RICA, and MONACO stressed the proposals for the supplementary

agenda items were made according to the rules of procedure and should be discussed. They underscored the need to adopt the agenda as a whole, according to rule 18 (adoption of the agenda) of the Assembly's rules of procedure.

FRANCE emphasized that general policies are adopted by the Assembly in cooperation with the Council and do not need a Council recommendation, underscoring that the ISA will benefit from the debate in an inclusive format and that what is at stake is the good functioning of the Authority and multilateralism. VANUATU underscored that the direction the ISA will take has "enormous implications for present and future generations" and should be discussed by the Assembly. COSTA RICA and CHILE highlighted UNCLOS Articles 160 (powers and functions of the Assembly) and 162 (powers and functions of the Council). GERMANY stressed that deciding against discussing the issues, will send "an unfortunate signal on the willingness of the Assembly to fulfill its obligations under international law."

President Turay noted divergent views among delegates and invited Bureau members to further discuss the issue. Following Bureau discussions and informal consultations, consensus was still elusive. President Turay suggested, and delegates agreed, to continue work on the basis of the provisional agenda.

Bureau deliberations and informal consultations continued throughout the week.

On Thursday, 27 July, CANADA and the UK suggested further informal consultations open to all delegates.

CHINA stressed that all members had ample opportunity to express themselves through general statements. She noted that, following informal discussions, her delegation withdrew its reservation on the proposal on the periodic review submitted by Germany, but insisted that the proposal on a general policy for the protection of the marine environment, submitted by a group of countries, is problematic procedure-wise. She called for unity to reach consensus, emphasizing that, according to the rules of procedure, the provisional agenda can be adopted without the supplementary item.

PALAU, on behalf of CHILE, COSTA RICA, FRANCE, and VANUATU stressed the proposal was submitted on time and according to the regulations, emphasizing that the Assembly, as the supreme ISA organ, has a role to play in debating the consequences of deep-sea mining on the marine environment.

President Turay suggested further informal consultations.

On Friday, 28 July, Nigeria, for the AFRICAN GROUP, highlighted the implications of closing the session without formally adopting the agenda. She called for the adoption of the provisional agenda separately, in line with precedence in other UN processes. She supported: discussing the supplementary item on the protection of the marine environment under the Secretary-General's annual report or other matters; and including the item of the periodic review on the agenda. GHANA, CAMEROON, SOUTH AFRICA, and ZIMBABWE reinforced the implications of failing to reach consensus.

CHILE, BRAZIL, and PANAMA noted the agenda cannot be adopted as things stand. BRAZIL, opposed by CHINA, noted since the supplementary items have been presented according to the rules of procedure, they are automatically included in the agenda and a majority of Assembly members present and voting will be required to remove them.

The UK and AUSTRALIA expressed flexibility on including the supplementary items, and stressed, with CANADA, INDIA, INDONESIA, and the RUSSIAN FEDERATION, that, according to the rules of procedure, the provisional agenda can be adopted separately from the supplementary list. CANADA, INDONESIA, and others requested advice from the ISA Legal Counsel.

CHINA stressed that if the meeting fails to adopt the provisional agenda, "everyone will know who is responsible." She underscored that the Assembly meeting provided ample room for discussions and opposed including agenda items against the rules of procedure.

FRANCE emphasized the core issue is not the agenda itself but the proper functioning of multilateralism, and underscored compromise proposals submitted during the informal discussions. He regretted the ongoing situation, adding that those "who blame others are the ones responsible for this situation" and "if there is a responsibility, it is not ours; we have made concessions."

CHILE stressed several concessions made during the negotiations and underscored that the objecting country failed to either accept the compromise proposals or submit appropriate counterproposals. He highlighted the Assembly as the "supreme organ" of ISA, stressing the need to discuss this topic under its agenda.

ISA Legal Counsel Mariana Durney presented her legal interpretation on the issue, stressing the provisional agenda and the supplementary items could be adopted separately.

CHILE suggested a compromise could be including the supplementary item on the protection of the marine environment on next year's agenda and proceeding with adopting the provisional agenda.

CHILE and BRAZIL noted the issue of approving the provisional agenda and the supplementary items separately or as a whole is open to interpretation. Many members stressed that the timely adoption of the agenda is essential, and suggested avoiding similar situations at future sessions. CHILE reiterated its compromise. CHINA suggested focusing on the unconditional adoption of the provisional agenda given the limited time left.

Following the last round of informal consultations, delegates approved the provisional agenda. They decided to include the periodic review as an agenda item for the 29th session of the Assembly in 2024 with a view to adopt a decision and requested the Finance Committee to consider budgetary implications pertaining to the undertaking of the periodic review. The proposal on a general policy on the protection of the marine environment will be resubmitted by the proponents, to be considered for inclusion at the 29th session.

CHINA, CHILE, and Nigeria, on behalf of the AFRICAN GROUP, highlighted the difficult compromise. CHINA stressed the need to further consider the intersessional method of work for reviewing and considering supplementary agenda items. CHILE regretted the group proposal on environmental protection was sidelined and urged reflecting on the ISA procedures dealing with proposals for supplementary agenda items, stressing that multilateralism is based on good faith and solidarity. He reserved the right to resubmit the proposal for the next Assembly session.

Credentials Committee: On Monday, 24 July, delegates approved the following ISA members to the Credentials Committee: China, the Dominican Republic, Germany, Japan, the Netherlands, South Africa, Trinidad and Tobago, and Zimbabwe.

On Thursday, 27 July, Germany presented the report of the Credentials Committee ([ISBA/28/A/10](#)), noting that 58 ISA members submitted their credentials for the Assembly, and six states appointed representatives. The Assembly approved the report.

Elections to Fill the Vacancy in the Finance Committee:

On Monday, 24 July, President Turay introduced the document ([ISBA/28/A/9](#)). Assembly members elected Xing Chaohong to fill the vacancy in the Finance Committee, following a nomination by China.

Consideration of Requests for Observer Status:

On Monday, 24 July, delegates considered and approved requests for observer status by the China Biodiversity Conservation and Green Development Foundation ([ISBA/28/A/INF/1](#)), Te Ipukarea Society ([ISBA/28/A/INF/2](#)), Norwegian Forum for Marine Minerals ([ISBA/28/A/INF/3](#)), Arayara International Institute ([ISBA/28/A/INF/4](#)), Minderoo Foundation ([ISBA/28/A/INF/5](#)), Sustainable Ocean Alliance ([ISBA/28/A/INF/6](#)), International Council on Mining and Metals ([ISBA/28/A/INF/7](#)), and the Environmental Justice Foundation ([ISBA/28/A/INF/9](#)).

Proposed amendments to the Statute of the International Civil Service Commission: On Monday, 24 July, ISA Legal Counsel Mariana Durney presented the report on proposed amendments to the statute of the International Civil Service Commission ([ISBA/28/A/5 - ISBA/28/C/14](#)).

The Assembly approved the amendments and requested the Secretary-General to take the necessary steps.

Statement of the Council President on the Work of the Council

On Monday, 24 July, Council President Mijares presented the work of the Council during the second part of the 28th session ([ISBA/28/C/11/Add.1](#)). NIGERIA, CHILE, TONGA, JAPAN, NAURU, and others thanked President Mijares for his leadership, progress, and outcomes of the Council. They stressed, among other things:

- the need to develop a compliance strategy for ISA;
- the Council's progress and remaining gaps on the development of the draft exploitation regulations;
- progress on the operationalization of the Enterprise; and
- the need to continue engaging in good faith negotiations for the present and future generations.

The Assembly took note of the report.

Report and Recommendations of the Finance Committee

On Monday, 24 July, Finance Committee member Kajal Bhat (India), on behalf of Chair Khurshed Alam (Bangladesh), presented the report and recommendations of the Finance Committee ([ISBA/28/A/4-ISBA/28/C/13](#)). She drew attention to the recommendation to approve the supplementary budget to cover costs associated with the establishment of the position of interim director general for the Enterprise.

Assembly members congratulated the Finance Committee for its work. CHILE, COSTA RICA, BRAZIL, and TONGA stressed the need to analyze additional mechanisms for distribution of benefits, including direct distribution of revenues from mining to states, and highlighted the extraordinary circumstances that justified this supplementary budget. CANADA expressed concern over arrears and late payments, and supported work on the establishment of a common heritage fund.

The Assembly adopted the decision on the supplementary budget. **Final Decision:** In the final decision ([ISBA/28/A/L.2](#)), the Assembly approves a supplementary budget for the financial period 2023-2024 in an amount not exceeding USD 456,940, as proposed by the Secretary-General.

The Assembly further: authorizes the Secretary-General to adjust the assessed contributions for 2024; appeals to members of the Authority to pay outstanding contributions as soon as possible; and appoints Calvert Gordon Associates as the independent auditor for the Authority for the financial period 2023-2024.

Announcement of the 2023 Secretary-General's Award for Excellence in Deep Sea Research

On Monday, 24 July, Rima Browne (Cook Islands) received the 2023 Secretary-General's Award for Excellence in Deep Sea Research. She stressed that her work on the seabed geomorphology map will contribute to informed decision making on the use of the ocean's valuable resources.

Members congratulated Browne, underscoring the importance of marine scientific research.

Annual Report of the Secretary-General

This item was discussed on 25, 26, and 28 July. On Tuesday, 25 July, Secretary-General Lodge presented: his annual report ([ISBA/28/A/2](#)); the report on the implementation of the Strategic Plan 2019-2023 by the Council ([ISBA/28/A/6](#)) and the Assembly ([ISBA/28/A/11](#)); and the report on the implementation of the action plan of the ISA in support of the UN Decade of Ocean Science for Sustainable Development, 2021-2030 ([ISBA/28/A/8](#)).

He welcomed: Rwanda as the newest ISA member; the submissions of information on the outer limits of national jurisdiction by 13 ISA members; and the payment of arrears by several members. He reiterated the appeal for further contributions to the voluntary trust funds, in particular for supporting the Council's work.

Secretary-General Lodge drew attention to the published illustrated version of the 2023 annual report, which contains additional information. He highlighted a summary of activities, including strategic partnerships established, and focused on the implementation of the ISA Strategic Plan 2019-2023 and its nine strategic directions. He highlighted, among other issues:

- wider engagement with members, and partnerships with relevant global and regional organizations;
- promotion of marine scientific research in the Area, including: collaboration with the UN Division for Ocean Affairs and the Law of the Sea to support the third world ocean assessment; the first workshop on the development of a REMP for the Indian Ocean; the launch of the Sustainable Seabed Knowledge Initiative; the development of a technology roadmap to better implement UNCLOS provisions on technology transfer; and improvements on the DeepData database; and
- initiatives on capacity building, including under the contractors' training programme, the Africa's Deep Seabed Resources Project, and the launch of the DeepDive platform, the first e-learning platform on the regime of the Area.

Secretary-General Lodge highlighted the Secretariat staff's commitment, and emphasized that environmental data collected by exploration contractors, in line with LTC recommendations, are the major source of scientific information on the geological,

geomorphological, and environmental characteristics of the deep-sea environment. He concluded that “rather than focusing on doom and gloom scenarios, we should celebrate that today we know more on the ocean than any other time in human history,” stressing that we have the knowledge to ensure that we can sustainably use deep-sea resources under the common heritage of humankind regime while protecting the marine environment.

Delegates commended the Secretary-General for a comprehensive overview of the extensive work done. They highlighted progress towards the implementation of ISA’s Strategic Plan 2019-2023; contributions to the UN Ocean Decade of Ocean Science for Sustainable Development; and commitment towards achieving the SDGs and the 2030 Agenda for Sustainable Development.

Assembly members, among other issues:

- welcomed Rwanda as the newest ISA member;
- highlighted the importance of capacity building, technology transfer, and marine scientific research;
- stressed general consensus that deep-sea mining exploitation activities must not take place in the absence of a robust, strong, and adequate regulatory framework, including a mechanism for fair and equitable benefit-sharing;
- emphasized the need to strike the required balance between exploitation activities and environmental protection;
- underscored the development of a fair and equitable benefit-sharing mechanism as a critical element of the exploitation regulations;
- stressed the essential role of a mechanism on ICE as well as transparency to guarantee the effective implementation of the exploitation regulations;
- highlighted specific capacity-building efforts, including empowering women in science and leadership in ocean affairs; and
- reiterated their commitment to working cooperatively and in good faith on the development of the exploitation regulations, bearing in mind the need to protect the marine environment and operationalize the common heritage of humankind principle.

JAMAICA called for balancing resource extraction and environmental preservation, noting the 1994 Implementing Agreement and the exploration regulations “serve as testament to our collective dedication towards that goal.”

The COOK ISLANDS, on behalf of AUSTRALIA, FIJI, KIRIBATI, the FEDERATED STATES OF MICRONESIA, NAURU, NEW ZEALAND, PALAU, TONGA, and VANUATU, highlighted the 2050 Strategy for the Blue Pacific Continent. They underscored the importance of environmentally sound RRP, as well as marine scientific research, and capacity building and the transfer of marine technology.

Ghana, for the AFRICAN GROUP, highlighted progress in all strategic directions of the Strategic Plan 2019-2023 and ISA contributions towards 12 of the 17 SDGs, in particular SDG 14 (life under water). She commended the Council’s progress towards finalizing the exploitation regulations, while noting outstanding issues that require further consideration. She welcomed: the establishment of the position of the interim director general for the Enterprise; efforts towards building capacities in developing countries; and Africa’s Deep Sea Resources Project.

NIGERIA highlighted progress during Council’s discussions on the exploitation regulations, and expressed concerns over arrears and

the status of voluntary trust funds. SENEGAL cautioned against a small group of technologically advanced countries taking advantage of the deep-sea mineral resources. He focused on international cooperation and the development of robust exploitation RRP, calling for a clear roadmap towards their finalization.

KENYA welcomed the roadmap for the development of the exploitation regulations; called for deferring any approval of exploitation plans of work until the regulations are finalized; and stressed the need for a periodic review of the international regime of the Area. GHANA highlighted the ongoing process for developing RRP, ensuring the effective protection of the marine environment and called for, with others, equitable geographical representation in the Secretariat.

SOUTH AFRICA called for the timely operationalization of the economic planning commission and strongly supported a comprehensive set of RRP, including provisions for protecting the marine environment. SIERRA LEONE highlighted knowledge generation initiatives that harness marine scientific research and the ISA capacity-building strategy. He drew attention to the need for coordination with the BBNJ Agreement, and pointed towards the need for a fair and equitable benefit-sharing mechanism.

ZIMBABWE stated exploitation must not commence before RRP are in place, highlighting the benefit-sharing mechanism as a critical component of the regulations. TOGO emphasized the need for further knowledge generation to preserve and protect the ocean, including the water columns, seabed, and subsoil, stressing that its success relies on capacity-building policies.

KENYA, GHANA, CAMEROON, SIERRA LEONE, SOUTH AFRICA, TRINIDAD AND TOBAGO, and others highlighted the decision to establish the position of an interim director general of the Enterprise as an important step in its operationalization, noting the need to operationalize in due course the economic planning commission.

INDONESIA, the PHILIPPINES, NIGERIA, TONGA, ANTIGUA AND BARBUDA, the COOK ISLANDS, VIET NAM, CAMEROON, BANGLADESH, and others emphasized the importance of capacity building, technology transfer, and marine scientific research.

CHINA stressed the need for fair and reasonable exploitation regulations, balancing states’ interests and responsibilities. He requested the Secretary-General to issue a detailed report on his communications with the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR) Commission.

JAPAN highlighted its role in generating scientific knowledge and protecting the marine environment through its exploration activities during the last decades. He drew attention to the hosting of the next REMP workshop for the North-West Pacific Ocean in 2024. The REPUBLIC OF KOREA highlighted a memorandum of understanding of their Ministry of Oceans and Fisheries with the ISA, aimed to strengthen scientific capacity, including for women. He announced hosting a workshop to enhance biological data sharing in October 2023.

VIET NAM stressed that knowledge on the seabed and its ecosystems remains nascent, pointing to knowledge and capacity gaps. SINGAPORE drew attention to work by the Finance Committee towards a mechanism for fair and equitable benefit

sharing, including the establishment of a common heritage fund, and highlighted interlinkages with the BBNJ Agreement.

ANTIGUA AND BARBUDA highlighted initiatives for small island developing states and contributions to the Partnership Fund. CUBA stressed the need to strengthen international cooperation on the management and protection of biodiversity. He drew attention to the ongoing embargo that hinders Cuban experts' participation in capacity-building and technology-transfer activities.

The DOMINICAN REPUBLIC acknowledged the growing demand for minerals, suggesting seeking alternatives based on new technologies, recycling, and the promotion of circular economy. He emphasized deep-sea exploitation can jeopardize unique species and ecosystems, and supported a precautionary pause. TRINIDAD AND TOBAGO expressed gratitude for contributions to the trust fund allowing representatives from developing countries to participate in ISA meetings.

TONGA highlighted the new strategic partnerships and women's empowerment, and drew attention to the conclusions of the High-Level Panel for responsible and sustainable management responsible of seabed minerals of the Blue Pacific. VANUATU, reiterating their support for a precautionary pause, expressed deep concerns about the introduction of additional pressures on the ocean from other anthropogenic activities. He stressed deep-sea mining is not a sustainable solution for today's challenges if it comes at the cost of nature and biodiversity, and called for increased leadership and political efforts to conserve and protect the ocean.

Stressing that technology is at the core of ISA and contractors, NAURU welcomed new alliances with research organizations, the technology roadmap, the DeepDive initiative, and investment in women's ocean-related empowerment. COOK ISLANDS stressed that all delegations agree on the need for a robust regulatory framework that ensures environmental protection before exploitation activities commence, in line with the precautionary principle.

FIJI and KIRIBATI underscored new strategic partnerships between the ISA and scientific organizations, particularly from developing states, and efforts to promote marine scientific research and advance deep-sea literacy. KIRIBATI drew attention to work on effective control, and rights and obligations of sponsoring states.

BRAZIL emphasized more knowledge and expertise on the impact of seabed mining on marine ecosystems are required for a comprehensive legal regime in the Area. She drew attention to work by the Finance Committee on the establishment of a common heritage fund, encouraging further discussions. She reiterated support for a precautionary pause on deep-sea mining for a minimum period of 10 years, without prejudice to ongoing negotiations. ECUADOR supported discussing the need to guarantee the effective protection of the marine environment based on adequate scientific evidence within the Assembly, before any exploitation occurs.

CHILE called for "acting responsibly and not promoting the interests of a few," supporting a precautionary pause to generate adequate scientific knowledge. He stressed the need to guarantee, through the RRP, high environmental standards and a fair system for benefit-sharing. COSTA RICA called for acquiring sufficient scientific information to enable establishing baselines for evaluating exploitation plans of work. She noted progress in the RRP but highlighted that much work remains to be done. She called for a precautionary pause and urged taking advantage of the UN Decade

of Ocean Science for Sustainable Development to stimulate knowledge generation.

MEXICO stressed that conclusion and adoption of the RRP is the best path to guarantee the fulfillment of members' obligations under UNCLOS, including on environmental protection. He stressed environmental protection and equitable benefit-sharing are prerequisites for deep-sea mining, noting multilateralism as the best way to find solutions to global problems. ARGENTINA cautioned against accepting measures in other international fora that may undermine ISA's mandate and requested the Secretary-General to inform the Assembly on such matters during the next session.

INDIA applauded capacity-building initiatives and cooperation through developing strategic partnerships, highlighting the first workshop on the development of a REMP for the Indian Ocean, which took place in Chennai, India in May 2023. BANGLADESH called for adapting the strategic plan 2024-2028 to the changing policy landscape, including taking into account the BBNJ Agreement. PAKISTAN pointed out two core expectations of the legal regime: its universal character and giving due consideration to developing countries.

The RUSSIAN FEDERATION highlighted ISA's capacity-building strategy and contractors' training programmes. He underscored progress on the development of the exploitation regulations, stressing there is still a lot of work to ensure the effective protection of the marine environment. He pointed to further work, in particular regarding knowledge generation on deep-sea ecosystems and the development of environmentally-friendly technologies.

CANADA suggested extending the current strategic plan until the next periodic review under Article 154 (periodic review) of UNCLOS is undertaken. Emphasizing the national position supporting a commercial deep-sea mining moratorium, he highlighted, with AUSTRALIA, NEW ZEALAND, PORTUGAL, and others, the Council's decision on ISA not approving any application for an exploitation plan of work in the absence of the appropriate RRP.

AUSTRALIA noted exploitation regulations must have robust provisions for protecting the marine environment, highlighting the need to apply the precautionary approach due to lack of evidence on the long-term effects of exploitation activities.

The UK stressed they will not support any mining exploitation contract until there is sufficient scientific evidence and enough knowledge for effective management. She drew attention to the deep-sea mining independent evidence review report, commissioned by the UK, to inform its policy on deep-sea mining.

MONACO opposed approving any plan of work for exploitation without a regulatory framework based on reliable and irrefutable scientific data to guarantee the protection of the marine environment. SPAIN emphasized its strong national position on a precautionary pause, suggesting slowing down the pace towards mining exploitation, while ISA members continue working on developing the RRP.

NORWAY noted ISA's role in advancing women's empowerment in marine-related research and science, and applauded the 2022 Women in the Law of the Sea Conference hosted by the ISA. MALTA welcomed the partnerships with scientific institutions, especially from developing countries. She stressed that ISA's work should be guided by data and science for the planet and humanity's best interest, including for future generations.

GERMANY stressed that it is not currently possible to fully assess the impacts of deep-sea mining activities. He pointed out that “even though we will never know everything,” making decisions based on best scientific knowledge is essential. BELGIUM underscored that three conditions should be fulfilled before commercial exploitation begins: adoption of robust RRP, including the highest level of protection of the marine environment, based on the precautionary principle; more scientific independent research to enable setting of sound environment baselines; and fulfillment of the commitment under the CBD to protect 30% of the ocean.

ITALY noted the need to advance our understanding of the deep sea, which remains largely unexplored. He stressed seabed mining should be based on the ecosystem approach and the precautionary principle, stating they will not support any exploitation plan of work before establishing a robust regulatory framework. PORTUGAL noted progress towards the development of the exploitation regulations but emphasized important work on the development of environmental thresholds, RREPs, and standards and guidelines. She highlighted ISA’s action plan on marine scientific research and the development of strategic alliances for science and technology.

SWITZERLAND reiterated its position in favor of a moratorium on commercial exploitation of the Area, stressing the need for more scientific knowledge that guarantees the effective protection of the marine environment, and underscoring the precautionary approach. The NETHERLANDS stated any future deep sea mining activities can only take place “if clearly demonstrated to be strictly within the capacity of the marine ecosystem, ensuring the continued health and resilience of the oceans and their biodiversity,” including the strict application of the precautionary principle.

IUCN emphasized that much work remains to be done on the exploitation regulations, pointing towards provisions on compliance and enforcement, the benefit-sharing mechanism, the development of standards and guidelines, and work on environmental thresholds. He underscored the links with the BBNJ Agreement, and called for further efforts on marine scientific research, improvement of land-based mining practices, and innovation.

DOSI stressed understanding the functions of deep-sea ecosystems is vital for informed decision making, emphasizing that current data are insufficient. He underscored that deep-sea mining is not in line with the principles and objectives of the blue economy and noted “we just began to understand the oceanographic data,” urging for adequate time to generate the necessary scientific findings.

WWF underscored that recent research shows that deep-sea mining as necessary for the green energy transition argument is misleading, pointing to the notion of circular economy and emphasizing a healthy, functioning ocean is the best tool to address climate change and biodiversity loss.

DSCC, on behalf of OCEANS NORTH, OCEAN CARE, the OCEAN FOUNDATION, WWF, the ENVIRONMENTAL JUSTICE FOUNDATION, GREENPEACE, and the SUSTAINABLE OCEAN ALLIANCE expressed concerns over attempts to fast-track the development of the exploitation regulations, noting impacts on the deep sea could be severe, large-scale, and irreversible. She emphasized the Assembly needs to consider issues of transparency, equity, sustainability, and environmental justice, and called for “pushing the breaks on deep-sea mining before it is too late.”

The ENVIRONMENTAL JUSTICE FOUNDATION and GREENPEACE INTERNATIONAL called for inclusion of Indigenous voices and traditional knowledge alongside scientific evidence for informed decision making. The PEW CHARITABLE TRUSTS raised concerns about ISA governance to ensure proper accountability, make legitimate decisions, and generate the general public’s trust and confidence.

The OCEAN FOUNDATION stressed the need to exclude deep-sea mining from the sustainable blue economy framework, underscoring it is not a climate solution. The ENVIRONMENTAL JUSTICE FOUNDATION warned that “after fishing pressures, pollution, and incoming climate change pressures, seabed mining may be one impact too many on the ocean.”

The SUSTAINABLE OCEAN ALLIANCE reinforced that independent studies have shown “deep sea mining is not needed, is not worth the risk, and cannot happen in isolation without disrupting the entire ecosystem on which our lives rely.” The OCEAN FOUNDATION underscored given the ocean vertical connection, it is not possible to protect the ocean while destroying the seabed. TE IPUKAREA SOCIETY supported a moratorium to ensure robust, independent research on the deep sea to support management decisions, expressing concerns over mining companies conducting most of the current research.

On Wednesday, in high-level interventions, Russ Joseph Kun, President of Nauru, expressed disappointment that the ISA is not adopting the RREPs for deep-sea mining within the two-year deadline. He welcomed last week’s Council decisions, highlighting strong political commitment to fulfill its obligations and adopt the regulations during the 30th session of the ISA in 2025.

Mark Brown, Prime Minister of the Cook Islands, underscored that RREPs must be in place before any decision on a plan of work for exploitation. Highlighting the need for seabed minerals to enable the green transition, he stressed that best available science and the precautionary approach are needed to inform decision making.

Hervé Berville, Minister of State for Marine Affairs of France, strengthened France’s call for a ban on deep-sea mining. He stressed that we “must not and cannot embark on a new industrial activity without measuring the consequences and taking the risk of irreversible damage.” Drawing attention to the CBD’s Kunming-Montreal Global Biodiversity Framework and the recently adopted BBNJ Agreement, he highlighted the need to strengthen multilateralism and find ways to preserve humanity’s common heritage.

On Friday, following the agenda’s adoption, FRANCE reinforced its support for a deep-sea mining ban, highlighting the impact of climate change effects on marine biodiversity loss, sea level rise, and temperature increase, especially for the most vulnerable countries.

Recognizing the unique vulnerabilities faced by small island developing states, SEYCHELLES stressed the necessity of establishing sound RREPs that balance economic aspirations and ecological preservation. Advocating for gender equality and youth engagement at all decision-making levels, resource management, and science, she called upon ISA to prioritize capacity-building initiatives.

Emphasizing the protection of the marine environment requires further discussion, NEW ZEALAND underscored that the Assembly, as the supreme organ of the Authority, can establish general policies.

DSCC, on behalf of OCEANS NORTH, WWF, the ENVIRONMENTAL JUSTICE FOUNDATION, the SUSTAINABLE OCEAN ALLIANCE, the OCEAN FOUNDATION, and OCEANCARE, stressed that ISA's choices on the common heritage of humankind will affect everyone in our interconnected world and called for the Assembly to start using its powers, including by establishing general policies. Stressing the rapidly growing movement for a moratorium or precautionary pause on deep-sea mining, she highlighted the need to recognize and discuss it at the Assembly.

GREENPEACE INTERNATIONAL offered an Indigenous voice, urging delegates to seriously consider deep-sea mining impacts on people, and calling the Assembly to act to defend "our moana, our ocean." He underlined that "violating our oceans without the proper consultation of Indigenous Peoples is a breach of Article 19 of the UN Declaration on the Rights of Indigenous Peoples."

Secretary-General Lodge thanked all delegates for their active participation in the discussions; took note of the suggestions; and expressed appreciation for the support for the Secretariat's work.

The Assembly took note of the report.

Consideration and Adoption of the ISA Draft Strategic Plan 2024-2028

On Thursday, 27 July, Secretary-General Lodge presented the draft strategic plan for the period 2024-2028 ([ISBA/28/A/7](#)), highlighting that it is based on the 1994 Implementing Agreement provisions, which outline the functions of the Authority in the period before the approval of the first plan of work for exploitation, fully reflecting the evolutionary approach. He stressed there had been a consultation period on the first draft, and the draft presented for the consideration of the Assembly includes the text suggestions and comments received in due time.

Delegates appreciated the Secretariat's hard work in developing the draft strategic plan. GERMANY, SWITZERLAND, PORTUGAL, BRAZIL, and BELGIUM emphasized that the adoption of the new strategic plan is premature and should be postponed. They stressed: the Council should be given the opportunity to discuss the draft strategic plan, according to the 1994 Agreement; members had insufficient time to assess the strategic plan's political and budgetary implications, with the UK; and a periodic review should be conducted before the new strategic plan's adoption to inform its development, as was the case with the Strategic Plan 2019-2023.

The UK noted insufficient time for coordination at the national level and expressed flexibility on postponing the new strategic plan's adoption. GERMANY underscored the need to develop procedures for protecting vulnerable marine ecosystems in the exploration regulations, and, with SWITZERLAND, COSTA RICA, and others, encouraged comprehensive alignment with the BBNJ Agreement and better reflecting the precautionary principle or approach. COSTA RICA called for developing a joint and focused strategy for marine scientific research.

FIJI, also on behalf of the COOK ISLANDS, KIRIBATI, NAURU, and TONGA, supported the plan and its strategic directions, highlighting its aims to: strengthen the regulation framework in the Area; protect the marine environment; promote and encourage marine scientific research; develop and integrate the participation of developing countries; and develop the equitable sharing of financial and other benefits.

ARGENTINA supported the draft strategic plan, emphasizing that plans of this nature are essential for the ISA to fulfill its mandate. MEXICO called for developing, as a strategic priority, a mechanism to collect, evaluate, and manage environmental data.

DSCC, on behalf of many environmental non-governmental organizations, supported postponing the adoption of the new strategic plan, suggesting broader consultations to: recognize the entire range of opinions, including those calling for a ban/moratorium/precautionary pause; and include Indigenous leaders, the fishing industry, and other stakeholders.

Secretary-General Lodge took note of the comments and suggested, with President Turay, to suspend further considerations until the discussions on the agenda are finalized.

On Friday, 28 July, as part of the compromise decision on the agenda, the Assembly decided to postpone adoption of the new strategic plan, by extending the current Strategic Plan 2019-2023 by two years. It further requested the Secretariat to review the High-Level Action Plan for 2019-2023 with a view to extending it in line with the strategic plan's extension and to report thereon in 2024.

Fostering International and Regional Cooperation

On Wednesday, 28 July, Secretary-General Lodge presented two draft memoranda of understanding (MoUs). The first, between ISA and the International Relations Institute of Cameroon ([ISBA/28/A/12](#)), concerns the establishment of a curriculum on the law of the sea and UNCLOS Part XI (the Area). The objective is to support the development of enhanced knowledge and expertise in African countries through tailor-made programmes according to regional needs. The second, between the ISA and the National Institute of Oceanography and Fisheries of Egypt ([ISBA/28/A/13](#)), addresses the establishment of a joint regional training and research center and will also provide a platform for the development of capacity-building opportunities.

Ghana, for the AFRICAN GROUP, stressed the importance of the MoUs in raising awareness and enhancing knowledge and expertise to enable the effective participation of African states in ISA activities in the Area.

The Assembly approved the two MoUs. CAMEROON expressed gratitude for the decision that will benefit African countries to acquire and consolidate knowledge to conduct marine scientific research and protect the marine environment.

Dates of the Next Assembly Session and Other Matters

On Thursday, 27 July, President Turay, suggested, and Assembly members approved, the dates for the 29th Council and Assembly sessions. The Council will meet in three parts in March, July, and November 2024, while the Assembly will hold its annual session from 29 July-2 August 2024.

Closure of the Meeting

On Friday, 28 July, in closing remarks, JAMAICA expressed appreciation for delegates' dedication, active engagement, valuable contributions, and flexibility. She acknowledged progress throughout the session and stressed that consensus reached on the agenda is an excellent example of multilateralism.

Secretary-General Lodge thanked all delegates for their hard work, underscoring that "it has been difficult, but these difficult discussions make the organization stronger." He thanked host country Jamaica and congratulated all participants for a successful meeting.

President Turay thanked the host country for all the support and expressed appreciation for the hard work of delegates and observers. He gavelled the meeting to a close at 5:38 pm.

A Brief Analysis of the Meetings

“Rather than focusing on doom and gloom scenarios, we should celebrate that today we know more on the ocean than any other time in human history.” ISA Secretary-General Michael Lodge

“Knowledge on the seabed and its ecosystems remains nascent. More knowledge and expertise are required for a comprehensive legal regime.” Combined statements from Viet Nam, Brazil, Chile, Costa Rica, Switzerland, and other ISA members

While the statements above can simultaneously be true, they can also lead to differing interpretations, which are at the heart of the controversy around deep-sea mining, and consequently the International Seabed Authority’s (ISA) work. As an observer noted, it is easily conceivable that we may “now know more than ever but still very little,” on deep-sea ecosystems. Another participant observed, “This is not a question of semantics.”

Whether we know enough to address the potential impacts of deep-sea mining has important policy implications and has led to increased polarization among ISA members. On the one hand, the proponents of commercial exploitation of mineral resources from the seabed in the Area (the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction) push for the completion of the exploitation regulations as soon as possible, noting that we know enough to proceed with relative certainty. On the other hand, an increasing number of countries are calling for a precautionary approach, ranging from a deep-sea mining ban to a moratorium or a precautionary pause. They argue, among other things, that this will allow time for generating the necessary scientific knowledge for informed decision making.

Mandated, under the UN Convention on the Law of the Sea (UNCLOS) and the 1994 Agreement, to “organize, regulate, and control” all mineral-resource related activities in the Area “for the benefit of humankind as a whole” and “ensure effective protection for the marine environment from harmful effects,” the ISA needs to address the concerns of all ISA members, and balance their divergent, and often competing interests. This frequently proves to be challenging.

The ISA is currently conducting negotiations on developing exploitation regulations for deep-sea mining, which, together with the existing exploitation regulations, will form the Mining Code, the legal basis for all recovery and extraction activities on the seabed. This work was put under time pressure recently through the so called “two-year rule.” Nauru submitted that it intends to apply for approval of a plan of work for exploitation on behalf of its contractor Nauru Ocean Resources Inc. (NORI) in 2021, triggering the two-year period to complete the adoption of the relevant rules, regulations, and procedures (RRPs), which expired on 9 July 2023, increasing the significance of this year’s Council and Assembly meetings.

This brief analysis will address both meetings following a photographic “zoom in/out” approach to discuss both the technical part of the deliberations and the overall developments in the work of the Authority.

Zooming In

The Council’s agenda, dominated by discussions on exploitation regulations, offers a good opportunity to dive into the complex work of the ISA. The exploitation regulations are being discussed in different working groups, revealing the exercise’s complexity and the wide range of required disciplines.

Some delegates noted progress on various parts of the draft regulations, including a better understanding of the different financial models and the basis for a compliance mechanism. Many, however, emphasized that much work remains. They stressed that for a robust regulatory framework to be complete, RRP’s need to contain, at a minimum: the regulations; standards and guidelines, including for setting environmental thresholds, baselines, and environmental impact assessments; a mechanism for fair and equitable benefit-sharing; and operationalization of the Enterprise.

Through its three substantive decisions taken during this second part of its annual session, the Council contributed to these elements. The decision on the establishment of the position of an interim director general for the Enterprise was hailed by delegates, who underscored the importance of operationalizing the Enterprise, the commercial arm of the ISA, in line with the evolutionary approach inscribed in UNCLOS.

The other two decisions were more contentious and generated lengthy debates. As expected by many delegates, the Council was not able to finalize the regulations under the two-year rule, and the relevant deadline expired. This led to concerns that an exploitation plan of work may be submitted prematurely and potentially lead to unregulated deep-sea mining. Through its decision on the two-year rule, the Council reiterated that commercial exploitation of mineral resources in the Area should not be carried out in the absence of RRP’s relating to exploitation. This stance was repeatedly underscored by Council members throughout the meeting, and, as a participant noted, “now seems deeply rooted” in delegates’ minds.

However, deep-sea mining advocates, including those who triggered the two-year rule in an effort to expedite negotiations, pushed for a decision on the way forward, including a commitment towards finalizing the regulations. This “commitment” generated vivid discussions, with the final decision only noting that the Council “intends” to continue the elaboration of RRP’s, with a view to their adoption during the 30th session in 2025. Delegates further agreed on a roadmap to guide forthcoming Council meetings, including the development of a consolidated draft text of the regulations.

Zooming Out

Deliberations during the annual session of the ISA Assembly, the supreme organ of the Authority where all members are represented, offered an opportunity to focus on the bigger picture, in line with the Assembly’s mandate on governing general policies. The adoption of the agenda is often a procedural item in multilateral environmental negotiations, with the notable exception of some recent climate change negotiations. In the case of the 28th session of the Assembly, the adoption of the agenda was more than eventful, with some delegates arguing that “the agenda items not discussed attracted more attention than those that were.”

Among the discussed items, the report of the Secretary-General on the Authority’s annual activities revealed a wide range of initiatives, commended by delegates. Secretary-General Michael Lodge highlighted, and delegates addressed, contributions to the

UN Decade of Ocean Science for Sustainable Development (2021-2030) as well as to the 2030 Agenda for Sustainable Development. Delegations also underscored knowledge and data generation as well as capacity-building initiatives and progress on gender equality in ocean-related affairs, simultaneously embodied in the agreement for two new memoranda of understanding between the Authority and institutes in Egypt and Cameroon.

However, two supplementary agenda items proposed to be included in the agenda led to controversy. One of them, a proposal by Germany to discuss the periodic review of the international regime of the Area, was resolved rather amicably, with the objecting members eventually withdrawing their reservations. Delegates decided to include the periodic review as an item in next year's Assembly, and, as a result, the adoption of the new ISA strategic plan was postponed by two years, extending the current Strategic Plan 2019-2023 until 2025. This will allow the periodic review's outcomes to inform the development of the new strategic plan.

The second suggestion was more controversial. A proposal by a group of countries (Chile, Costa Rica, France, Palau, and Vanuatu) to consider the establishment of a general policy related to the conservation of the marine environment, including consideration of the effects of the two-year rule, was met with procedural concerns by three parties during the opening plenary. Informal consultations to reach common ground lasted the entire week, leading to a showdown during the closing plenary, largely between Chile and China. Chile insisted that the Assembly should address this critical issue in terms of setting a general policy; China cited procedural concerns, noting the Council, not the Assembly, is responsible for such discussions. The only agreement that could be reached was that interested parties would resubmit the item for discussion in next year's session. The final outcome is uncertain, especially taking into account that similar suggestions failed both at both this year's and last year's sessions.

The drama over the adoption of the agenda and the lengthy informal negotiations allowed ample space for discussions "in the corridors." Some participants pointed to the unwillingness to discuss a fundamental issue that could threaten the beginning of commercial exploitation. Others drew attention to a tug of war for power between the different ISA organs, in particular between the Council and Assembly. An observer joked that "whatever the outcome, the Legal and Technical Commission (LTC) will remain the most powerful body when it comes to decision making," using bittersweet humor to query the division of powers. Other delegates and observers pointed to the Assembly being the supreme organ, including the need to review decision-making modalities in the future. Some pointed to the need for the Assembly to increase participation to at least achieve the minimum quorum to legitimize decision making on behalf of humanity. With less than half of the ISA members present at the Assembly, some queried whether there is sufficient involvement for inclusive decision making on a complex policy issue. Others highlighted increased observer participation through approval of several applications, noting it will improve inclusivity and transparency in the negotiations.

A delegate drew attention to the fact that, without diminishing the importance of different interpretations of the rules of procedure for agenda setting, these disagreements are all rooted in the obvious dichotomy on views around deep-sea mining: "We need to find some common ground in our overall perspectives," he offered, expressing his concern that this "will be anything but easy."

The Sea Elephant in the Room

It is difficult to deny that establishing a moratorium on deep-sea mining and starting activities as soon as possible are not mutually compatible positions. Currently, 21 countries have formally called for some sort of pause to deep-sea mining and the number is growing. Nauru has already expressed its intention to sponsor a contract for commercial mining soon and more countries are expected to follow suit once the RRP's are complete. Where does that leave the ISA?

A delegate stressed that emphasizing the general positions on the importance of protecting the marine environment, the commitment to UNCLOS, and the willingness to proceed with the development of the exploitation regulations in a spirit of compromise "may not be good enough, as the discussions become increasingly polarized." She noted that, whether one likes it or not, ISA members will eventually have to express their national positions. She further added that, at the end of the day, "reaching consensus on such a unique and complex topic may only be possible at the highest political level."

An observer pointed to other high-level conceptual issues for which a common understanding needs to be developed. Underscoring the principle of the common heritage of humankind, he highlighted differing interpretations, with some limiting the discussion on benefit-sharing modalities, while others offering a wider, intergenerational perspective. In that respect, he noted that, regarding future generations and given the current state of global biodiversity loss, climate change, and pollution, and the importance of the ocean, "maybe the one and only administrative measure in the Area should be the prohibition of carrying out human activities."

While prohibiting human activities may seem a distant possibility, the need for the Authority to adapt in a changing policy context is imminent. Many expect the recently adopted agreement on biodiversity in areas beyond national jurisdiction (BBNJ Agreement) will be a game changer in ocean governance upon its entry into force. While some delegates are quick to point out the distinct mandates of the two bodies, with the ISA being responsible for the seabed, a veteran was quick to stress that "urgent collaboration is required as ecosystems neither recognize nor respect mandates," pointing to the interconnection between the water column and benthic ecosystems.

As the work of the Authority and the debate on deep-sea mining are expected to intensify in the coming months and years, many participants drew attention to two central questions that will need to be addressed for strategic planning: whether we know enough to initiate commercial exploitation of deep-sea mineral resources, and whether the benefits to humankind are sufficient to proceed with activities.

On the first question, differing understandings exist. A delegate pointed to the need to resolve disagreements on whether we have enough knowledge to start deep-sea mining while ensuring environmental protection. He stressed that an independent review of existing knowledge and gaps, commissioned by the ISA, could help develop a common understanding on the matter. On benefits, with discussions entangled in complex equations calculating royalties and tax regimes, most delegates are unclear as to what benefits will accrue to humanity as a whole, either through direct contributions to members or through the establishment of a fund, now suggested to be called a "common heritage fund." Leaving the recently renovated ISA headquarters under the hot Jamaican sun,

a delegate commented, “It is often easier to agree on names than on modalities.” One thing most agree is that numerous obstacles remain for developing a robust and comprehensive set of RRP for deep-sea mining that guarantee the effective protection of the marine environment and operationalize the principle of the common heritage of humankind.

Upcoming Meetings

7th Meeting of the Global Environment Facility (GEF)

Assembly: The 7th Global Environment Fund Assembly will take stock of 2030 goals to end pollution and nature loss, combat climate change, and propel inclusive, locally-led conservation, as well as launch the Global Biodiversity Framework Fund. **dates:** 22-26 August 2023 **location:** Vancouver, Canada **www:** thegef.org/events/seventh-gef-assembly

Tenth Session of the Plenary of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES-10)

This event is set to approve the summary for policymakers of the thematic assessment of invasive alien species, among others. **dates:** 28 August - 2 September 2023 **location:** Bonn, Germany **www:** ipbes.net/events/ipbes-10-plenary

Global Intergovernmental meeting on Mining and Minerals

The UN Environment Programme (UNEP) will convene the Global Intergovernmental Meeting on Minerals and Metals, which will highlight key findings from regional consultations focused on stocktaking existing actions to enhance the environmental sustainability of minerals and metals and consider the implementation of the UN Environment Assembly’s (UNEA) resolution on mineral resource governance. **dates:** 7-8 September 2023 **location:** Geneva, Switzerland **www:** unep.org/events/unep-event/global-intergovernmental-meeting-minerals-and-metals

SDG Summit: The Summit is the quadrennial meeting of the High-level Political Forum on Sustainable Development (HLPF) under the auspices of the UN General Assembly (UNGA). The 2023 Summit will be the second since the adoption of the SDGs and will take place at the midpoint of the implementation of the 2030 Agenda. **dates:** 18-19 September 2023 **location:** UN Headquarters, New York **www:** un.org/en/conferences/SDGSummit2023

Climate Ambition Summit: This event is being organized by the UN Secretary-General during the High-level week of the UNGA. It is an opportunity for “First Movers and Doers” to report how they are responding to the Secretary-General’s call to accelerate climate action. **date:** 20 September 2023 **location:** UN Headquarters, New York **www:** un.org/en/climatechange/climate-ambition-summit

BBNJ Agreement Signing Ceremony: The BBNJ Agreement will open for signature on 20 September 2023, at the seat of the interim Secretariat at UN Headquarters in New York, and shall remain open for signature until 20 September 2025. The Agreement will enter into force after the deposit of the 60th instrument of ratification. **date:** 20 September 2023 **location:** UN Headquarters, New York **www:** un.org/bbnj

CBD SBSTTA-25: The twenty-fifth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice of the Convention on Biological Diversity (CBD) will address, among other issues: ways to facilitate the implementation of the Kunming-Montreal Global Biodiversity Framework and the monitoring of its progress; invasive alien species; sustainable wildlife management; biodiversity and climate change; and findings of IPBES and the

Intergovernmental Panel on Climate Change (IPCC) and their implications for the work undertaken under the CBD. **dates:** 16-20 October 2023 **location:** Nairobi, Kenya **www:** cbd.int/meetings/SBSTTA-25

Tanzania Mining & Investment Forum 2023: Under the theme “Unlocking Tanzania’s Future Mining Potential,” the Forum aims to connect the Tanzanian, African, and global mining community with global ministers, CEOs, policymakers and industry leaders and discuss cooperation strategies to unlock and advance the opportunities for development in this sector. **dates:** 25-26 October 2023 **location:** Dar es Salaam, Tanzania **www:** tanzaniamininginvestmentforum.com

Third Part of the 28th Session of the ISA Council: The ISA Council will convene to continue discussions on the draft exploitation regulations following the roadmap decided upon during the second part of the 28th Session of the ISA Council. **dates:** 30 October – 8 November 2023 **location:** Kingston, Jamaica **www:** isa.org.jm/sessions/28th-session-2023

For additional upcoming events, see sdg.iisd.org

Glossary

1994 Implementing Agreement	1994 Agreement Relating to the Implementation of UNCLOS Part XI (the Area)
Area	Seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction
BBNJ Agreement	International legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
CBD	Convention on Biological Diversity
DOSI	Deep Ocean Stewardship Initiative
DSCC	Deep Sea Conservation Coalition
EIAs	Environmental impact assessment
EMMP	Environmental management and monitoring plan
ICE	Inspection, compliance, and enforcement
ISA	International Seabed Authority
IUCN	International Union for Conservation of Nature
LTC	Legal and Technical Commission
REMPs	Regional environmental management plans
RFMOs	Regional fisheries management organizations
RRPs	Rules, regulations, and procedures
SDGs	Sustainable Development Goals
UNCLOS	UN Convention on the Law of the Sea