

## Summary of the Twenty-eighth Annual Session of the International Seabed Authority (Third Part): 30 October – 8 November 2023

Regulating the commercial exploitation of deep-sea minerals is no easy task. In addition to being a novel industry with all the uncertainties that this entails, the prospect of deep-sea mining has generated serious environmental and socio-economic concerns. The debate over deep-sea mining has intensified over the last few years as the controversy over the commercial exploitation of deep-sea minerals grew. The work of the International Seabed Authority (ISA) thus comes into the spotlight as managing the seabed falls under its mandate.

The arguments over the commercial exploitation of mineral resources from the deep-seabed have been well documented. Those in favor point towards a needed worldwide energy transition and the supply of nickel, manganese, cobalt, or copper from deep-sea resources to achieve a net-zero-emission world. Those opposed focus on the need to protect the ocean, which is already facing numerous challenges including overfishing, acidification, pollution, biodiversity loss, and climate change, and to study the unknown deep-sea ecosystems, prior to permanently destroying them. In that respect, 23 states to date have called for a moratorium or precautionary pause.

The third part of the 28th session of the ISA was largely devoted to the development of the draft exploitation regulations, following a new roadmap that was adopted at the July 2023 meeting of the Council ([ISBA/28/C/24](#)).

Negotiations of the exploitation regulations under the Council have been structured around four working groups and additional informal discussions:

- Informal Working Group on the protection and preservation of the marine environment.
- Informal Working Group on inspection, compliance, and enforcement (ICE).
- Open-ended Working Group on the financial terms of a contract.
- Informal Working Group on institutional matters.

Delegates noted progress in the development of the negotiations under all working groups during the third Council meeting in 2023.

The Working Group on the environment focused on general obligations, pollution control, restriction of mining discharges, environmental management and monitoring plans (EMMPs), the environmental compensation fund, closure and post-closure plans,

environmental monitoring, and management systems. The Working Group on ICE addressed the inspection mechanism and its periodic review, the compliance committee, enforcement, and penalties.

The Working Group on financial issues focused on the financial model for nodules, addressing royalties, applicable equalization measures, incentives, audits, monetary penalties, and the future review of the payment system. The Working Group on institutional matters discussed provisions on ensuring confidentiality, dispute settlement, and review of the regulations.

Work under the President's text, which includes all regulations not taken up by any of the working groups, addressed annexes on the application for approval of a plan of work, the mining workplan, the financing plan, and plans on emergency, safety, and security.

The ISA Council convened for the third part of its 28th session from 30 October – 8 November 2023, in Kingston, Jamaica, attracting more than 150 delegates and observers, including representatives from 31 of the 36 Council members.

### A Brief History of the ISA

The 1982 UN Convention on the Law of the Sea (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.

### In this Issue

A Brief History of the ISA .....	1
ISA-28 Council (Part III) Report .....	3
Organizational Matters .....	4
Operationalization of the EPC. ....	4
Decision relating to the Reports of the Chair of the LTC .....	4
Consideration with a View to Adoption, of the Draft Regulations on Exploitation .....	4
Closing of the 28th Session. ....	14
A Brief Analysis of the Meeting.....	15
Upcoming Meetings .....	16
Glossary.....	17

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 that may arise from mining activities in the Area.

The ISA organs include the Assembly, the Council, the Finance Committee, the Legal and Technical Commission (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 rules, regulations, and procedures 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 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

**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 Yuzhmorgeologiya, 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 (EPC). 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.

**28th Session (Second Part):** The second part of the 28th session in 2023 included meetings of the LTC (28 June-7 July), the Finance Committee (5-7 July), the Council (10-21 July), and the Assembly (24-28 July).

The Council continued the negotiations on the draft exploitation regulations, and reviewed and adopted the LTC and Finance Committee reports. It adopted decisions on: the understanding and application of 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 on the addition of two suggested supplementary agenda items: 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).

The Assembly decided to include the periodic review as an agenda item for its 29th session in 2024 and to extend the current Strategic Plan 2019-2023 by two years. 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.

### ISA-28 Council (Part III) Report

On Monday, 30 October, Council President Juan José González Mijares (Mexico) opened the third part of the Council's 28th session. He highlighted that the meeting would focus on the development of the draft exploitation regulations for deep-sea mining, noting that "the common denominator among delegations is the need to achieve a robust, comprehensive, sustainable, and workable set of regulations that ensures the protection of the marine environment, and fair and equitable benefit sharing." He further thanked all delegates and observers involved in intersessional work, encouraging further endeavors to find common ground.

In his welcoming remarks, Secretary-General Michael Lodge noted remarkable progress in the development of the draft exploitation regulations since the last Council meeting in July 2023, congratulating the various intersessional working groups for their hard work. He emphasized that this session is fully devoted to the draft exploitation regulations, acknowledging delegates' commitment, portrayed by their participation in the third Council meeting of 2023. He stressed the development of the draft regulations is a duty and not a matter of choice, according to the UNCLOS and the 1994 Implementing Agreement. He noted that "the regulations are within our grasp," and invited delegates to continue negotiations in a constructive and cordial atmosphere.

Spain, on behalf of the EU, expressed full solidarity with Ukraine and strongly condemned the Russian Federation's "unprovoked and unjust" war of aggression, reiterating that the EU will continue providing the necessary support for as long as necessary. The RUSSIAN FEDERATION cautioned against politicizing the debate, noting the ISA is not the right forum for such discussions. He reiterated the Russian Federation's position regarding: the North Atlantic Treaty Organization's (NATO) expansion causing security concerns; the need to defend the Russian-speaking population in Ukraine from unacceptable discrimination; and necessary steps to guarantee regional security according to the Minsk agreements.

The UK announced its support for a moratorium on the granting of exploitation licenses for deep-sea mining, stressing the need for sufficient scientific evidence on the impact of mining on deep-

sea ecosystems. He announced the development of a national, multi-disciplinary environmental expert network to lead on filling knowledge gaps on deep-sea mining.

### **Organizational Matters**

**Election to Fill a Vacancy on the LTC:** On Monday, 30 October, President Mijares introduced the relevant document ([ISBA/28/C/26](#)), noting following the resignation of Federico Gabriel Hirsch (Argentina), the Council has to elect a member from the same geographical region or area of interest for the remainder of the term. He announced that the Permanent Mission of Argentina to the ISA informed the Secretariat via a *note verbale* of the nomination of Juan Pablo Paniego, as a candidate to fill the vacant seat on the LTC, who was elected.

**Current Council Composition:** On Monday, 30 October, President Mijares reminded delegates that every year on a rotational basis, one regional group relinquishes a seat on the ISA Council, noting that it is the turn of the Western European and Others Group (WEOG). The UK, on behalf of WEOG, noted that the group will announce which state will relinquish its seat in the Council at a later stage.

**Credentials:** On Wednesday, 8 November, Secretary-General Lodge presented the credentials report, noting 29 states submitted formal credentials, and two states related information. The Council took note of the report.

### **Operationalization of the EPC**

On Wednesday, 8 November, Secretary-General Lodge introduced the report on the operationalization of the EPC ([ISBA/27/C/25](#)), noting while the document is dated 6 May 2022, it is still up to date. Ghana for the AFRICAN GROUP, TRINIDAD AND TOBAGO, MEXICO, BRAZIL, and CHINA highlighted the necessity to prioritize the operationalization of the EPC, noting the issue should remain on the agenda for formal discussions. Delegates emphasized that elections for membership in the EPC should be guided by the principle of equitable geographic representation, ensuring gender balance and representation of special interest groups. They also supported the establishment of an economic assistance fund, as recommended by the LTC and envisaged in the 1994 Agreement.

President Mijares thanked delegates for their comments, stressing that the operationalization of the EPC will remain on the agenda for the next session.

### **Decision relating to the Reports of the Chair of the LTC**

Discussions took place throughout the session in informal closed setting, led by Australia. On Wednesday, 8 November, Australia introduced the draft decision, which the Council adopted.

The DEEP SEA CONSERVATION COALITION, on behalf of GREENPEACE, the SUSTAINABLE OCEAN ALLIANCE, WWF, the ENVIRONMENTAL JUSTICE FOUNDATION, the DEEP OCEAN STEWARDSHIP INITIATIVE, and the INTERAMERICAN ASSOCIATION FOR ENVIRONMENTAL DEFENSE, underscored their opposition to observers being excluded from the informal consultations on the LTC decision. He urged the Council to instruct the LTC that the use of the silence procedure for substantive decisions is unacceptable.

**Final Decision:** In the final decision ([ISBA/28/C/27](#)), the Council recalls its request to the LTC to hold open meetings, where appropriate, and requests the LTC to:

- annually name those contractors that have responded insufficiently, incompletely, or failed to respond to issues of concern identified in relation to their contractual obligations;
- provide further clarifications on any issues for which the silence procedure may not be used and how the silence procedure is used consistently with its rules of procedure; and
- provide recommendations to the Council on how the procedures of the Commission could be further improved to provide for more transparency, while maintaining effective operation and ensuring data and information confidentiality.

The Council further requests the Secretary-General to continue to pursue dialogue with contractors who have not yet submitted public templates on their plans of work.

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

On Monday, 30 October, President Mijares drew attention to his [briefing note](#) on the proposed way forward on the development of the draft exploitation regulations. He encouraged delegates to focus on conceptual issues and avoid a paragraph-by-paragraph reading and editorial amendments. He noted a consolidated text will be prepared for consistency across the different parts of the regulations, currently under negotiation in several working groups. He added that, “at this critical juncture, smaller, informal, face-to-face meetings can advance the work even further.” He stressed that, on the last day of the meeting, a discussion on overall progress, the consolidated text, and the way forward will take place.

A 5.4 magnitude earthquake hit Jamaica on Monday morning, leading to the suspension of negotiations for the rest of the day.

On Tuesday, 31 October, Secretary-General Lodge provided [safety reassurances](#) following the earthquake. He highlighted the security plan and protocols, the survey of the building and surrounding infrastructure by Jamaica’s Urban Development Corporation, and ongoing communication and collaboration with the government of the host country. Jamaica, as the host country, provided [additional reassurances](#), stressing that safety and security are at the forefront of their concerns.

**Informal Working Group on Inspection, compliance, and enforcement (ICE):** The Working Group, facilitated by Maureen Tamuno (Nigeria), met on Tuesday, 31 October.

Facilitator Tamuno drew attention to the fourth revised text ([ISBA/28/C/IWG/ICE/CRP.2](#)). She highlighted informal intersessional work focused on identifying an optimal structural arrangement, and noted that many participants supported continuing discussions based on a suggested hybrid model. She proposed focusing on: clarifying the affiliation between the compliance committee and the different ISA organs; the respective functions of relevant organs; and the details of the compliance mechanism.

Norway, coordinator of the intersessional group, reported on work towards an optimal ICE mechanism. She reminded delegates that the hybrid model was suggested prior to the July 2023 Council meeting and includes a chief inspector for day-to-day management, the establishment of a compliance committee within the LTC, and a specific decision-making role for the Council. She noted the intersessional group held a fruitful meeting on 27 September 2023, furthering mutual understanding on remaining divergent opinions.

Delegates thanked Tamuno for her diligent work and Norway for leading intersessional work. Many stressed a rigorous inspection mechanism that guarantees uniform control of exploitation activities is key, in particular for environmental protection. They supported

an independent, efficient, responsive, operational, and expertise-based mechanism. Many delegates further underscored that a compliance mechanism must be in place before any plan of work for exploitation is approved.

Many stressed that the LTC should have a role in the process. However, several delegates highlighted the importance of separating the LTC's rule-making function from the inspection and compliance functions.

Some delegates, opposed by others, stressed that the compliance committee should not be established within the LTC, noting, among other things, the LTC lacks the necessary competency and technical expertise. Some proposed establishing the compliance committee under the Council, with the LTC's participation and contribution. Others supported the establishment of a stand-alone committee. One delegation tabled a "mixed model" proposal for a compliance committee under the Council, composed of Council members and complemented by LTC members.

Some delegates supported developing a compliance strategy. Many emphasized that any ICE mechanism adopted should be subject to periodic review. A few members reserved their positions, and some expressed the need for further discussion on the different alternatives.

Facilitator Tamuno then invited delegates to address the revised text section by section, starting with **Section 1 on inspections** (regulations 96-101 bis).

On the **inspection mechanism** (regulation 96), some delegations requested maintaining the mandate to establish the compliance committee in brackets until the mechanism is decided. One member questioned whether the Secretary-General has the needed expertise to appoint a qualified chief inspector, with others noting that this task should be performed under the guidance and approval of the Council.

Regarding the **compliance committee** (regulation 96 bis), delegates commented on the number of members of the committee, the need to include references to equitable geographical distribution and gender balance in the committee's composition, and concerns about potential duplication of functions. Observers noted the functions the compliance committee should undertake need to be better analyzed.

On **access to inspections** (regulation 96 ter), delegates expressed divergent opinions on a provision on conducting inspections without prior notification. Some highlighted the unique conditions in the high seas, noting unannounced inspections are not a reasonable practice, while others emphasized they should constitute an essential part of the regime, underscoring that jurisdictional issues need to be considered for such inspections.

On **request for inspections in the event of harm to the marine environment** (regulation 96 quarter), the use of the term "adjacent coastal States" was questioned by a few members, while others suggested its retention. Some delegates noted a uniform approach on coastal states and the notion of adjacency are required in the regulations, pointing to relevant proposals under the Working Group on the Protection and Preservation of the Marine Environment, including those drawing from the international legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ Agreement).

Regarding **inspectors' appointment and supervision** (regulation 97), members expressed different views on individual applications

being submitted directly, with some suggesting that only states should nominate inspectors for consideration. Others noted nomination by states can negatively affect inspectors' independence. On the principles guiding the inspectors' work, some suggested developing a code of conduct rather than including a long list of requirements in the regulations.

On **inspectors' powers** (regulation 98), a few delegates emphasized that original documents and samples must be on board for inspection purposes in accordance with international rules. A member requested clarifications on how old the documents, that inspectors request during inspections, can be. A regional group, stressing the relevance of having a robust inspection system, noted the language of the regulation has been softened.

On **inspectors' power to issue instructions** (regulation 99), delegates expressed divergent positions on whether one of the reasons for issuing an instruction as a result of an inspection should be the determination of a threat of "harm" or "serious harm" to the marine environment. A delegation suggested replacing underwater cultural heritage (UCH) with "archaeological and historical objects and human remains." Others noted the relevant informal working group on UCH is working towards a solution on the issue, to be applied consistently across the regulations. On the compliance committee's ability to "revise or set aside an instruction as soon as practicable," a delegation suggested establishing criteria for a transparent process.

On **inspection reports** (regulation 100), an observer suggested reinstating a provision requiring sponsoring states to provide details on any regulatory action resulting from an inspection report.

On **complaints relating to inspections** (regulation 101), a delegation stressed the need to define a timetable for the compliance committee to prepare an annual compliance report for each contractor. Observers called for a well-defined provision, including the identification of remediation pathways.

Many delegates suggested retaining a rule on **whistle-blowing procedures** (regulation 101 bis), further noting the issue should be dealt within a comprehensive whistle-blowing policy for the ISA.

On **Section 2 on monitoring, vessel notification, electronic monitoring, and data reporting** (regulation 102), a regional group drew attention to UCH, highlighting relevant work under the interessional working group on UCH, including on its tangible and intangible components. A delegate suggested clarifying the term "environmental data." An observer suggested moving discussions on this section under the Working Group on the Protection and Preservation of the Marine Environment.

On **Section 3 on enforcement and penalties**, on the **compliance notice, suspension, and termination of exploitation contract** (regulation 103), delegates focused on the compliance notice. A delegation noted that when the compliance committee has to inform the Council, it should also inform the sponsoring state(s). Another emphasized the need to clarify which ISA organ will undertake discussions with the contractors. A delegation stressed the need for proportionality and progressivity between the compliance notice actions and the severity of the violation. An observer added that a compliance notice should be neither the default disciplinary action nor the only regulatory tool available.

Regarding **power to take remedial action** (regulation 104), several members queried the applicability and practicality of ISA undertaking remediation measures, with some noting the Authority may only have a coordinating role in this regard. One observer

proposed that sponsoring states should also be notified about remedial action to be undertaken.

On **Section 4**, on the **periodic review of the inspection mechanism** (regulation 105 bis), a delegation noted the Council could commission the independent review rather than conducting it by itself. An observer proposed the Council should have the option to review more regularly than the suggested five-year period.

Norway reported on informal discussions during lunchtime on the appropriate mechanism's structure and functions. She highlighted that, for several delegations, the separation of powers between the rule-making body and the one that conducts ICE is relevant.

Facilitator Tamuno closed the meeting of the working group, thanking all delegates for their constructive contributions and encouraging further informal, intersessional discussions on the ICE mechanism.

**Informal Working Group on the Protection and Preservation of the Marine Environment:** The Working Group, facilitated by Rajjeli Taga (Fiji), met on Wednesday and Thursday, 1-2 November.

On Wednesday, Facilitator Taga opened the sixth meeting of the Working Group drawing attention to the fourth revised text ([ISBA/28/C/IWG/ENV/CRP.3/Rev.1](#)). She invited intersessional group coordinators to report on progress.

The UK reported on intersessional work on a standardized approach for stakeholders' consultations, aimed at ensuring a clear and consistent process that effectively consults all stakeholders in a transparent and open manner. She noted participants agreed on the need for different processes for stakeholders' consultations and engagement, with the following key elements under discussion: where, for how long, and how consultations will be conducted; how comments will be addressed; and who will be in charge of each part of the consultation process.

Denmark, on behalf of Portugal, presented a proposal envisaging targeted and proactive consultations at different stages of a plan of work with "adjacent coastal states and any other coastal states adjacent to the areas of a planned activity when they are potentially most affected states." The proposal includes provisions for determining the most affected coastal states that meet the consultation criteria, as well as provisions for activities involving resources across the limits of national jurisdictions.

Some delegates expressed appreciation for the proposal, noting it draws from the BBNJ Agreement. Some drew attention to UNCLOS Article 142 (rights and legitimate interests of coastal countries). Others requested further clarity on the distinction between "adjacent coastal states" and "adjacent most affected coastal states." Some members pointed to the work under the relevant intersessional working group on coastal states and the need for a consistent approach across the regulations.

Spain presented the outcome of intersessional work on streamlining general obligations, noting two options have been developed for further discussion.

The Federated States of Micronesia presented intersessional work on UCH. He highlighted an amendment to regulation 35 (human remains and objects and sites of an archaeological or historical nature) to request the ISA to take into account work by the UN Educational, Scientific and Cultural Organization (UNESCO) on UCH, including its Convention on the Protection of the UCH.

Delegates underscored the importance of UCH and supported its inclusion, both in tangible and intangible form. Some noted UCH should not be included in the definition of the marine environment.

Members expressed divergent positions on references to UNESCO, with some noting that not all ISA members are parties to the relevant UNESCO convention.

A delegation elaborated their proposal on the principles, approaches, and policies (regulation 2) regarding the conditions prior to the commencement of the exploitation activities, which will be discussed under the working group on institutional matters, including: a robust legal framework; adequate scientific evidence that the activities will not cause significant and harmful changes in the marine environment and to effectively protect and preserve it; and implementation in areas beyond national jurisdiction of the "30 by 30 target," aimed to designate 30% of Earth's land and ocean area as protected areas by 2030.

Facilitator Taga invited delegates to address the text, regulation by regulation, focusing on those not discussed during the July meeting, beginning with **Section 3 on pollution control and management of waste**.

On **pollution control** (regulation 49), many delegations supported continuing work on the basis of an alternative formulation (regulation 49 alt), while some showed flexibility. Some delegates supported reference to all "necessary" measures to protect and preserve the marine environment, with a few supporting including a reference to "coastlines." Most delegates supported "harmful effects" rather than "serious harm" as the trigger to take measures to protect and preserve the marine environment. A couple of delegations raised concerns about these terms' legal and technical differences, asking for clarification and streamlining their use across the regulations.

Different views were expressed on the inclusion of reference to UNCLOS Article 145 (protection of the marine environment). A member stressed there is no need to mention Article 145 in all regulations, while another stated that including it in some regulations but not in others where it is also applicable may create confusion.

Many members supported a reference to "marine litter and underwater noise." A few opposed, arguing the term pollution already encompasses litter and noise. Some expressed flexibility, and others proposed moving the provision to the relevant standards and guidelines. A delegation suggested including a reference to light pollution. An observer asked for clarifications on a reference to "other hazards."

Several delegates supported broadening the title to "pollution prevention, reduction, and control." An observer emphasized that the terms "reduce" and "control" are too vague, suggesting focusing the regulation on pollution prevention. Several observers recommended the inclusion of references to greenhouse gas (GHG) emissions among the pollution forms that need to be addressed. A delegation underscored that the International Tribunal for the Law of the Sea is conducting an advisory opinion to clarify if GHG emissions qualify as a pollutant of the marine environment.

On **restriction of mining discharges** (regulation 50), many delegates supported a formulation including contractor remediation and follow-up obligations. Many suggested adding that disposal, dumping, or discharge constitutes a "notifiable event" under regulation 34 (notifiable events). Some objected to references to the London Protocol of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. Most delegates supported language that a contractor should update a register of discharges immediately after a discharge event rather than weekly

or monthly. Observers stressed “the ocean should not be a dumping ground,” noting this regulation offers a good example of the need to ensure no harm to the flora and fauna of the marine environment, and urging against undertaking harmful activities with sparse scientific understanding.

Delegates then focused on **Section 4 on compliance with EMMPs and performance assessments**. On **compliance with the EMMP** (regulation 51), many delegates requested streamlining all regulations dealing with monitoring, stressing the need to avoid duplication. A delegation cautioned that the “applicable standard on environmental monitoring” is not mentioned elsewhere in the regulations. Delegates expressed different opinions on a reference to monthly intervals for the submission of environmental monitoring data. A delegation reiterated the request to refer to “accessible, interoperable, and usable access to data.”

On the **review of the performance assessment of the EMMP** (regulation 52), some delegates suggested clarifying whether the contractor or an independent auditor shall conduct the performance assessment. Many supported providing an opportunity for stakeholder engagement. A delegate cautioned against the LTC considering and approving the performance assessment report following the consultation period, noting it may result in regulatory delays and increase the workload of the LTC and contractors. Another suggested clarifying that, in a two-step approach, the LTC should give the contractor the opportunity to address inadequacies, following which, additional documentation should be required. Some delegates noted that the content of the performance assessment of an EMMP could be moved under relevant standards and guidelines.

Regarding the **emergency response and contingency plan** (regulation 53), many delegates supported relocating the draft regulation under the section on pollution control and management of waste, noting such emergencies may refer to human safety and maritime security, in addition to environmental matters. On a requirement for the contractor to submit a detailed report on the adequacy of the emergency response and contingency plan following “an incident,” some members suggested broadening the scope and others to make the report publicly available.

On the **establishment of an environmental compensation fund** (regulation 54), Council members converged that the rules and procedures of the fund shall be established before the approval of the first exploitation plan of work. A delegate emphasized the need to define the Finance Committee’s participation in developing the fund’s rules and procedures. Delegates expressed divergent opinions on whether a list of minimum details that the fund’s rules should include should be covered in the regulations or under a relevant standard.

Delegates discussed two alternative formulations on the **purpose of the environmental compensation fund** (regulation 55). Many emphasized the fund should be used as a last resort, just in cases where contractors are unable to pay the environmental compensation they are liable for, and the sponsoring states are not liable. Some suggested periodically reviewing the fund’s scope to consider whether restoration is technically feasible and to future-proof the regulations. Many members noted that the polluter-pays principle rather than the precautionary principle should be referenced in the regulation. Observers stressed that it is impossible to quantify the value of ecosystems and ecosystem services, further pointing

to a lack of definition of effective control that would clarify responsibilities of contractors and sponsoring states.

On **funding of the environmental compensation fund** (regulation 56), a regional group suggested consulting the Working Group on financial matters. Several members requested improving and clarifying the provisions. A delegate stressed that the regulation addresses establishing the mechanism for the fund, but not determining relevant amounts and installments. Several members supported including reference to the polluter-pays principle. A couple of delegations supported moving the provisions for the establishment of rules, guidelines, and modalities for determining entities eligible to access the fund to a different part of the regulations.

Many delegations welcomed the revised draft regulation on **closure plans** (regulation 59) and expressed flexibility to move several details to a standard, highlighting the binding nature of the closure plan’s provisions. Several members noted the need to simplify the text. Regarding the return of the mined site to its natural state after closure, some delegates suggested adding “to the possible extent.” A member proposed “returning to its natural state through rehabilitation and restoration.” An observer highlighted that “restoration efforts in the deep ocean are challenging, and feasibility should be re-considered,” adding “the impacts caused by habitat removal can be considered irreversible.”

On the review of the closure plan, delegates discussed two alternative formulations, expressing divergent opinions. A delegate proposed specifying the closure plan’s frequency and other details under a standard.

Regarding the **final closure plan: cessation of production** (regulation 60), delegates discussed alternative time frames for different processes associated with the final closure plan, with many supporting longer time frames. An observer suggested drafting a separate part on contractors’ obligations during a temporary suspension.

On **post-closure monitoring** (regulation 61), some delegates noted that the exact period should be stated, allowing sufficient time for latent effects to materialize, further suggesting setting a minimum period for post-closure monitoring and retaining the necessary flexibility to adjust it as needed.

On Thursday, delegates focused on the annexes of the revised text, prior to returning to deliberations on the exploitation regulations. Offering general comments on the annexes, many members underscored that key, high-level provisions should remain in the annexes of the regulations, while detailed requirements should be moved under standards and guidelines. Some distinguished between binding obligations that should be placed under a standard and non-binding ones that should be assigned under a guideline. Others underscored that it is easier to amend the standards and guidelines if needed than the draft regulations, noting this built-in flexibility future proofs the exploitation regulations. A few delegates emphasized that standards and guidelines have received limited attention in the negotiations thus far.

On Annex IV (**environmental impact statement**), many delegations supported the proposal of moving the details to a standard. Some delegates cautioned against moving the provisions to guidelines given their binding nature. An intersessional working group, coordinated by the Netherlands and the UK, will work towards further streamlining the annex. Some members requested

adding a reference on potential impacts of mining activities in the Area on areas within national jurisdiction.

A delegation drew attention to environmental impact assessment (EIA) provisions contained in the BBNJ Agreement. He welcomed: the inclusion of references to UCH according to the relevant intersessional working group submission; the references to socio-cultural aspects; and the ocean's role in carbon sequestration and cycling. An observer highlighted the ocean's climate regulation role, and the need to maintain ecosystem functions.

Many delegates suggested the detailed content in Annex VII (**EMMP**) should be placed under a standard or guideline, while some underscored that placement under a guideline would not be appropriate, given that the template should be binding. Many members noted that they will be submitting draft textual suggestions intersessionally.

On Annex VIII (**closure plan**), some delegates noted that, given the closure plan will be submitted in the distant future, specific details on restoration and rehabilitation should be placed under a standard to allow updating while ensuring its binding nature. A member stressed that key issues around the mitigation hierarchy and what is possible in the deep-sea in terms of mitigation need to be discussed prior to finalizing the annex. Delegates further addressed the distinction between a closure plan for temporary cessation of activities and the final closure plan.

On Annex X ter (**design criteria for impact reference zones (IRZs) and preservation reference zones (PRZs)**), some delegates suggested moving the content under a relevant standard. Some emphasized the criteria should be included in the exploration regulations. They expressed divergent opinions on whether IRZs and PRZs should be placed within or beyond the limits of the contract area, and the potential establishment of joint IRZs and PRZs for different sub-regions or contractors. Many underscored that a provision noting that "post-mining monitoring shall continue until ecosystem function returns to the level of the pre-mining condition," is impossible to meet in human timescales.

Council members then addressed the schedule, use of terms, and scope. Some delegates underscored the need to add definitions for "impact" and "effect." Several suggested that the definition of "cumulative environmental effects," be reviewed in light of the one used in the BBNJ Agreement. A delegation cautioned that the BBNJ Agreement refers to "cumulative environmental impacts" rather than "cumulative environmental effects." A delegate suggested defining "impacted area" and "harm." An observer pointed out that "serious harm" had not been sufficiently discussed.

A member suggested reviewing the definition of "environmental management system" according to ISO 14.001 (Environmental management systems) of the International Organization for Standardization. Another suggested adding a definition of "best available scientific information." Some members supported the reintroduction of a definition on "intangible cultural heritage." A few stressed the need for consistently using "traditional knowledge" across the regulations. An observer suggested deleting the term "ecological balance of the marine environment" and references to "damage to the marine environment."

Delegates began discussing **Section 3 on obligations relating to the marine environment**. On **general obligations** (regulation 44), many members welcomed the alternative proposal by the intersessional working group coordinated by Spain. Many members expressed concerns about a provision requesting states, including

flag states, to take measures to ensure the protection of the marine environment, stressing the regulations only apply to ISA members. Some delegations suggested adding a reference requesting contractors to register their vessels with flag states that are ISA members, while others noted this may not be legally feasible. Some suggested replacing reference to "robots" with "autonomous underwater vessels or vehicles." A couple of delegations suggested replacing "prevention of risk" with "avoidance of risk." A few suggested reinstating references to the mitigation hierarchy and integrating traditional knowledge in decision making. A regional group emphasized if any of the obligations are moved to a standard, the standard must be considered and approved before considering any plan of work.

Many delegates suggested reinstating the original formulation on **REMPs** (regulation 44 bis), noting the LTC shall only consider an application for a plan of work if a REMP has been adopted by the Council for the particular area and type of resource. A delegate noted the legal status of REMP remains unclear. Another suggested in the event of an application for a plan of work where no REMP exists, that REMP should be prioritized and developed without undue delay in a period not exceeding one year. Others emphasized placing temporal deadlines on the development of a REMP is not appropriate.

On the **development of environmental standards and guidelines** (regulation 45), delegates discussed a provision noting the ISA shall not approve any exploitation contract unless the environmental standards and guidelines have been adopted. Some highlighted the Council decision for the development of standards and guidelines in stages, including those that are recommendatory in nature. Members further expressed divergent opinions on a reference to new contributions from Indigenous Peoples and local communities regarding the regular review of standards and guidelines. Observers requested including GHG emissions to the list of thresholds to be developed.

On **environmental management systems** (regulation 46), delegates expressed different views regarding the periodicity of the audits. Some members proposed retaining the need to conduct the audit and move the specific details to a standard. Some stressed the need for an annual audit, while others preferred a periodic one without setting a particular frequency.

Some members opposed the inclusion of "the results of the audit in the Contractor's annual reports." Several delegations opposed conducting the audits of environmental management plans according to "other relevant international law" in addition to the regulations, UNCLOS, and the 1994 Implementing Agreement. Others suggested deleting the reference to "internationally recognized standards" in a provision on contractors developing, implementing, and maintaining an environmental management system. A delegation queried if the "Authority's environmental objectives" indicated in the regulation are being developed. Others pointed out duplications and asked for streamlining.

Several members and a regional group supported merging the regulations on **environmental monitoring** (regulation 46 bis) and the **EMMP** (regulation 46 ter), noting both address monitoring mechanisms. Many underlined lack of clarity about each mechanism's purpose and duration, and the links between them. A delegation proposed making explicit that the environmental monitoring plan is in addition to the EMMP. Many members asked for streamlining both regulations and reordering the provisions.



Some delegations supported having the EMMP complemented with independent monitoring for the first few years. Several noted the importance of maintaining the reference to independent experts. Others pointed out the need to harmonize the reference to coastal adjacent states, with a delegation stressing the difference between coastal states and adjacent coastal states.

Regarding details contained in regulation 46 ter, several delegates proposed to move them to a standard or guideline. In contrast, others underscored the details as high-level enough to be retained in the regulations. An observer highlighted that today's technology allows provision of environmental data and information in real time.

On the **EIA process** (regulation 47), many delegates welcomed the intersessional work. Members expressed divergent opinions on the need for an independent scientific assessment prior to the submission of the environmental impact statement. A few delegates further suggested adding reference to synergistic effects, and discussed references to UCH, with some noting that actively searching for such heritage falls outside the scope of contractors' obligations.

Facilitator Taga thanked all delegates, invited written submissions, and closed the working group meeting.

**Open-ended Working Group on the Financial Terms of a Contract:** The Working Group, chaired by Olav Myklebust (Norway), met on Friday and Monday, 3 and 6 November.

On Friday, Chair Myklebust opened the session, drawing attention to the further revised text ([ISBA/28/C/OEWG/CRP.6](#)) and the intersessional work.

Canada presented intersessional work on transfer of rights, noting broad agreement on the necessity of a transfer profit share mechanism applying to both exploration and exploitation contracts. A regional group stressed when contractors profit through selling of licenses, revenue for the ISA needs to be ensured.

Australia presented intersessional work on the equalization measure, noting broad support for such a measure, and underscoring the development of a hybrid model combining elements of equalization models already under consideration.

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 and addressed the concept of "fairness," noting contractors should be subject to the same overall tax burden, equivalent to land-based mining, using an effective tax rate.

Based on the assumption that not all contractors will pay the same sponsor state corporate income tax, he outlined advantages and disadvantages in terms of simplicity and quality of outcome of the four approaches for equalization measures as discussed by the informal group:

- additional fixed rate royalty;
- additional profit share;
- top-up profit share; and
- a newly developed hybrid model where external auditors certify contractors are meeting a 25% corporate income tax rate using the Global Anti-Base Erosion Model Rules (GloBE Rules) of the Organisation for Economic Co-operation and Development (OECD), either directly or through additional payments, and if not, contractors must pay the full additional royalty system payment.

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

- the need for further analysis of the proposed options for the financial model. Several delegates expressed their preference for option four, with some showing flexibility regarding the third option;
- the relevance of including the environmental costs and externalities to the analysis before deciding on any fair and predictable financial model;
- incentives and subsidies when discussing ways to implement a system of revenues, including distribution mechanisms;
- potential inconsistency of the proposed models with the international economic law regime;
- the operationalization of the principle of the common heritage of humankind, with some delegations highlighting the benefits must accrue to humanity as a whole and not just for contractors and the ISA;
- the application of equalization measures to the enterprise and joint ventures;
- the allocation of time to discuss the "[Report on the Value of Ecosystem Services and Natural Capital of the Area](#)";
- the MIT model and approaches are theoretical and lack operational concrete measures for deep-sea mining; and
- different ways of understanding the concept of fairness across the contractors and the measures to ensure that all contractors are treated equally and fairly.

A delegation proposed developing a practical approach regarding the incorporation of environmental costs in the financial system under analysis to be presented at the next Council meeting.

Professor Roth addressed delegates' concerns, noting, among other things, that issues like environmental externalities or distribution of revenues fall outside the current financial model's remit, expressing willingness to contribute to such discussions. He highlighted that the financial models are based on data from the Clarion Clipperton Zone, noting calculations may be different for other regions, and stressing the equalization measure is not designed to address unequal circumstances, such as different ore composition, cost structure, or nodule abundance.

He further emphasized that issues of incentives and subsidies are not explicitly addressed the same as distribution of revenues, stressing the model ends upon ISA receiving the royalties. He added that the suggestion to use OECD's GloBE Rules does not imply forcing accounting standards or profit-reporting systems to contractors, underscoring a common standard will be used to determine if a contractor is subject to the additional royalty.

In the afternoon, Chair Myklebust invited delegates to initiate work on the further revised draft text. Jo Feldman and Lisa Koch, Norton Rose Fulbright Australia, outlined the document's structure.

On the **determination of a royalty liability** (Appendix IV), delegates discussed the future role of the EPC when it is operationalized; whether the regulations apply only to polymetallic nodules; and the need for a definition of commercial production.

Under the relevant standard, members discussed the period when commercial production commences, with a delegate, opposed by others, suggesting increasing the suggested five-year period to 10 years. Delegates decided to retain the five-year period and delete a reference to a "third period of commercial production," noting it is not applicable. On the determination of the applicable royalty rate, delegates agreed the numerical values of rates included in the document are placeholders at this stage of the negotiations, further suggesting addressing inflationary increases. Some delegates

noted that using a determination of “60% of the capacity for 90 consecutive days” for commercial production needs to be further addressed, stressing that conditions in the ocean substantially differ from those in land-based mines. Members further addressed the methodology for the review of payment rates, with some stressing the need for a consistent process, to avoid uncertainty due to fluctuating royalty rates.

Delegates addressed **Section 2 (liability for and determination of royalty)**. On the **determination of the applicable equalization measure** (regulation 64 bis), several delegations supported streamlining the regulation and moving the details to a standard. Some members called for further analysis. A delegate proposed developing a definition and clarifying when equalization payments are envisaged, and further stated each contractor should not be responsible for paying for the equalization measure audit. Other members queried if the provision would apply in the same way if the contractors are not private entities but states or the Enterprise.

On **equality of treatment** (regulation 62), many delegates opposed a reference to countering “any disparity arising out of any grossly incomparable concentration of given resources,” noting that the aim of the regulation is to ensure equality of financial treatment and comparable financial obligations for contractors.

Delegates discussed a Chair’s proposal on **incentives** (regulation 63), aiming to streamline existing alternative options. Discussions focused on: the need to provide for a clear role for the EPC; incentives to promote joint ventures with the Enterprise versus incentives for other purposes; whether incentives should be provided to contractors simply for fulfilling their contractual obligations; and financial incentives *vis-à-vis* subsidies and consistency with the Convention. A couple of delegates emphasized the need to avoid creating an artificial competitive advantage for any contractor by the introduction of incentives, including deep-sea mining gaining an advantage over land-based mining. A member noted that incentives should only address going beyond contractual obligations and UNCLOS provisions, such as using zero carbon fuels.

On the **contract area** (regulation 68), delegates discussed whether a contractor shall lodge a royalty return for each mining area or for each contract area, with some delegates noting a contract area may include many mining areas regulated by individual plans of work.

On Monday, Chair Myklebust invited delegates to resume discussions on **equality of treatment** (regulation 62). A delegation reiterated the request “to counter any disparity arising out of any grossly incomparable concentration of given resources,” given that the concentration of nodules varies across the ocean, and reserved its position until members decide on the financial model.

Chair Myklebust presented a revised proposal on **incentives** (regulation 63) based on Friday’s comments. Delegates welcomed it and requested further time to analyze it. Some delegations requested retaining the reference to standards and guidelines.

Several delegates raised concerns about financial incentives, stressing that contractors are required to comply with all environmental requirements without additional incentives. A delegation proposed defining the concept of financial incentives in the ISA context. Some suggested having a guideline defining clear criteria on incentives and relevant mechanisms, including which categories of incentives should be considered to be “financial incentives.”

A delegation pointed out the incentive-related provisions in UNCLOS, stressing that not all financial incentives or subsidies are prohibited. An observer pointed to provisions on subsidization in the 1994 Agreement, which explicitly notes there shall be no subsidization of activities in the Area except as may be permitted under the agreements. He stressed introducing a system that rewards better environmental practices may be open to abuse, reducing financial benefits for humankind in return for the protection of the marine environment.

Chair Myklebust acknowledged these concerns and proposed deleting a reference on incentivizing “contractors to go beyond their existing contractual obligations and good industry practice, in particular in the context of environmental performances.” Delegates agreed to continue discussions on the basis of the revised Chair’s proposal during the intersessional period.

On the **payment of royalty shown by royalty return** (regulation 70), discussions focused on the time the royalty payment is due, the potential for advance payments, and conditions under *force majeure* for payments by instalments. Many delegates requested clarifications on the special circumstances that would necessitate advance payments, suggesting distinguishing between royalty payments and compensation for impacts to the marine environment. A delegate noted that an advance payment mechanism could be useful in instances where there are impacts on ecosystem services and the natural capital. Another proposed specifying the criteria and referencing relevant UNCLOS articles that justify such a mechanism. Following discussions, delegates deleted the provision on advance payments.

Members expressed divergent opinions on whether payments by instalments should be allowed in cases of “special and extenuating circumstances of *force majeure*.” Some delegates stressed the need to retain the possibility for instalments, noting further work is required to agree on the special circumstances. A regional group said that referring to “special and extenuating circumstances waters down the provision,” while a delegate noted that “circumstances of *force majeure*” is a high threshold that should be reconsidered. Members expressed divergent opinions about whether the contract should declare the currency to be used upon the completion of the contract or the commencement of commercial production. Chair Myklebust encouraged informal discussions among interested delegations.

Following informal consultations at lunchtime, delegates agreed the Council may approve payment by way of instalments of any royalty where it determines that any circumstances of *force majeure* exist that justify such payments, with the precise language to be discussed. On the currency, delegates agreed that it should be declared in the contract, with the contractor able to change the currency at any time, if approved by the Council, or on the anniversary of the fifth year of commercial production and any fifth year thereafter without Council approval.

On **information to be submitted** (regulation 71), some delegations requested further clarification on use of terms, emphasizing the need to harmonize terminology across the regulations. A member suggested moving the details to a standard. Following Chair’s Myklebust suggestion, delegates agreed for each royalty period, the contractor shall include “details of all contracts and amendments to contracts and sale or exchange agreements relating to the mineral-bearing ore sold or removed without sale from the contract area.” An observer expressed support for a

provision aiming to ensure the ISA is informed of sales beyond the contract area as a means of due diligence regarding the entire value chain.

On **overpayment of royalties** (regulation 73), several members opposed the Secretary-General authorizing refunds as an exceptional measure for a limited number of times per contractor. The provision was deleted. A delegation pointed out that a provision on a potential contractor's "request to reduce the royalty" should be reviewed as the regulation deals with overpayment. Others expressed preference for either one, three, or five years as a timeframe for such requests to reduce royalties. Jo Feldman, Norton Rose Fulbright Australia, underscored that contractors should be able to identify any overpayment within six months to one year, according to their accounting books. Chair Myklebust suggested, and delegates agreed, to retain a bracketed option of one year for such requests.

A delegate suggested, on **underpayment of royalties** (regulation 73 bis), that if a contractor underpays or does not pay a royalty in due time, the ICE-related regulations should apply.

Delegates agreed to remove a provision on the contractors providing "details of any sales, shipments, transfers, exchanges, and other disposals of any minerals, to the degree available" on the regulation on **proper books and records to be kept** (regulation 74). They further decided a contractor shall maintain all records for the duration of the contract and for a period of 10 years following the completion of the closure plan, and make such records available for audit.

On **audit by the ISA** (regulation 75), some delegates emphasized audits and inspections are two different functions, requiring different expertise. They agreed the Council, on its own initiative or upon request by the Secretary-General or the LTC may request an audit of the contractors' records and all subcontractors' records associated with the exploitation activities in the Area. Members also agreed that, during the audits, sponsoring states and ISA members shall cooperate and assist the auditor and the relevant ISA organ. A provision on cooperation between the relevant auditors and inspectors remained bracketed.

On **assessment by the Authority** (regulation 76), some delegations welcomed the additional paragraph outlining the process in cases when the contractor is not satisfied with the Secretary-General's assessment. A member suggested a provision for the Council to approve the Secretary-General's reviewed assessment. Another delegate suggested reviewing and cross-referencing with other relevant provisions.

On the **general anti-avoidance rule** (regulation 77), delegates agreed to continue discussions on the process for a contractor to request a review of the decision related to avoiding, postponing, or reducing liability for any payment. A delegation underscored that the Council, LTC, and Finance Committee should have a role in the determination of liability, further highlighting the Council's role in approving the Secretary-General's reviewed determination. Another welcomed the provisions, noting, in their absence, the only available mechanism would be dispute settlement, which is time- and resource-consuming. An observer noted other ISA organs should be more involved in issues of royalties.

Regarding the threshold to trigger non-compliance of any payment obligations, some delegates preferred "gross and persistent breach" and others "serious, persistent, and willful violation." A delegate emphasized that proving willfulness is not always possible, with another adding "intentional or not, non-compliance remains

the same." An observer pointed out "gross and persistent breach" is derived from UNCLOS Article 185 (suspension of exercise of rights and privileges of membership), which refers to states in a different context.

On the measures triggered by the threshold, a delegate underscored they should be similar to the environment-related non-compliance measures, underscoring the need for further discussion on whether punishment should be directed to the person, or the company involved. Other members suggested relocating the provision to deal with overall issues of non-compliance. The paragraph was kept in brackets.

On **arm's-length adjustments** (regulation 78), members decided to delete a paragraph on the Finance Committee's and LTC's role regarding the adjustment of the value of costs, prices, and revenues to reflect an arm's-length value. "Arm's-length" in this context refers to the contracts and transactions that are entered into freely and independently by parties that are not related parties and without one party influencing another, and arm's-length value refers to "the value that a willing buyer and willing seller, who are not related parties, would agree to in a competitive environment."

Under **Section 6 on interest and penalties**, several delegates agreed the **interest on unpaid royalty** (regulation 79) should increase according to the non-payment period. Delegations raised several questions on: when a delay becomes a reason for annulling or suspending the contract; whether the regulation's purpose is to compensate the ISA, punish the contractors, or both; whether, in cases where a license is sold with debt, the new owner will be accountable; and when or how a sponsoring state should be responsible for enforcing the contractor's compliance.

A delegation proposed as the incremental rate of interest on unpaid royalty: 5% for one month's delay, 10% for up to three months delay, and 15% interest rate for up to six months' delay, suggesting further delays may lead to the suspension or termination of the exploitation contract. The next revised text will include a draft proposal with time intervals and associated interest rates.

On **monetary penalties** (regulation 80), some delegates suggested moving the details to regulation 103 (compliance notice, suspension, and termination of exploitation contract), and simply stating that, subject, or without prejudice, to regulation 103 and according to the relevant standards, the Council may impose a monetary penalty, proportionate to the seriousness of the violation.

On the **review of the system of payments** (regulation 81), delegates agreed it shall be reviewed by the Council five years after the first date of commencement of commercial production in the Area and at intervals thereafter, as determined by the Council, taking into account the level of maturity and development of exploitation activities in the Area in accordance with relevant standards.

Chair Myklebust thanked delegates for a productive session, highlighted intersessional work on transfer of rights and equalization measures, and closed the working group meeting.

**Informal Working Group on Institutional Matters:** This Working Group, co-facilitated by Georgina Guillén-Grillo (Costa Rica) and Salvador Vega Telias (Chile), met on Tuesday, 7 November, and discussed the further revised text ([ISBA/28/C/IWG/IM/CRP.2](#)), addressing regulations that had yet to go through a first reading.

On **procedures to ensure confidentiality** (regulation 90), many delegations opposed "good cause," as a reason for exceptions to release confidential information, without reaching consensus.

Regarding contractors' consent for such release, a member pointed out that information may have to be disclosed without such consent in several potential situations. A delegate proposed to replace "good cause" with "lawful cause." Several members expressed flexibility. The term "good cause" was kept in brackets.

A delegate suggested defining a confidentiality-related time limit and the kind of information that may be disclosed. Others proposed moving details to a standard. A member proposed establishing a confidentiality committee to address these matters. Several delegations stressed that regulation 90 deals with the procedures to guarantee confidentiality, and if any exceptions are included, they should be placed in regulation 89 (confidentiality of information).

A delegate expressed concerns on the Secretary-General having the discretion to share confidential information. Another proposed that the Council, rather than the Secretary-General, should establish the procedure to ensure confidentiality.

On non-disclosure of confidential information, a delegate suggested including reference to those who "gain access to confidential information by reason of their duties for the ISA." On ISA recourse against its employees in case of breach of obligations relating to confidential information, some suggested spelling out the conditions for such recourse as well as relevant disciplinary measures. A delegate proposed clarifying that the ISA shall take action "upon becoming aware of the breach."

**On information to be submitted upon termination of an exploitation contract** (regulation 91), delegates agreed that the contractor shall transfer to the ISA all data and information required upon termination of an exploitation contract. Members agreed to delete that such information should be submitted "to the extent feasible," and expressed divergent positions on whether 90 or 180 days should be the period for the submission.

Members agreed to delete provisions on: the contractor seeking advice from the LTC regarding required data and information, noting the relevant information will be included in the standards and guidelines; and the contractor and the Secretary-General consulting and specifying the data and information to be submitted to the ISA.

Delegates expressed different preferences on the **seabed mining register** (regulation 92), on which specific details should be maintained on the information that the register shall contain. A delegation suggested including a reference to a timeframe for the publication of the information.

Delegates and observers proposed including in the information that the register shall contain: copies of the royalty returns submitted in accordance with regulation 71 (information to be submitted); the decisions related to the extension, suspension, and termination of a contract alongside the Council's decisions to award a contract; and the results of the environmental performance assessment and of any substantial modification of the plans of work.

A delegation, opposed by others, proposed deleting subparagraphs related to: category of mineral resources of each area and contract; annual reports; amount of mineral resources mined; details of any incidents; notifiable events; compliance notices or other compliance-related interventions taken by the Authority; results of monitoring and test mining projects; and inspection reports. A delegate stated that the register is meant to inform the public.

A group of countries stressed the need to ensure that all relevant documents, including those required by the exploitation regulations and ISA reports, recommendations, and decisions, for the entire cycle of operations, are uploaded to the register permanently.

They further suggested the Secretary-General shall publish all environmental data and information relating to a contract area on a publicly accessible central data repository in accordance with the rules of the ISA and relevant standards and guidelines. Members welcomed the suggested additions. Some queried whether submitting that information prior to the submission of a plan of work would be applicable. Delegates further discussed a provision on publishing any new environmental data and information at regular intervals, as defined in the standards. An observer called for defining environmental data and applying the FAIR (findable, accessible, interoperable, and reusable) principle on data submission.

**On settlement of disputes** (regulation 106), several delegates agreed that UNCLOS provisions suffice, suggesting streamlining the regulation accordingly. Several members supported deleting references to ISA rules and rules of procedure adopted by the International Tribunal for the Law of the Sea. A delegate drew attention to potential cases where a contractor may use this regulation as a basis for non-compliance, suggesting language in that respect.

Many delegations opposed a suggestion to develop an administrative review mechanism, arguing the dispute settlement procedures provided in UNCLOS are so comprehensive that there is no need for establishing an additional one, and cautioning against creating legal uncertainty. Others expressed flexibility to further discuss an administrative review mechanism, with an observer suggesting, in addition to the dispute resolution mechanism under UNCLOS, a less onerous mechanism allowing contractors and other stakeholders to raise points of contention.

Many delegates converged on the need to clearly distinguish between the mandatory **review of regulations** (regulation 107) after five years of approving the regulations and the Council's discretion to conduct a review any time thereafter. Delegates engaged in a lengthy discussion on whether any state party, the LTC, any contractor through its sponsoring state, and/or any stakeholder may request the Council to review the regulations and stakeholders' participation and involvement in the review process. A regional group requested the inclusion of the Enterprise among the entities that may request such revision. A delegation proposed replacing "improved knowledge" with "best available scientific evidence."

A delegate, supported by some but opposed by others, suggested simplifying the regulation stating "every five years, after the approval of these regulations by the Assembly, the Council shall adopt a decision on whether to undertake a review of the regulations, in accordance with UNCLOS and the 1994 Agreement."

Another delegate suggested, attracting mixed reactions, deleting the entire regulation, underscoring that UNCLOS already sets the regulatory framework. Some supported the proposal, noting that UNLCOS Article 162 (powers and functions of the Council) provides that the Council can review its rules, regulations, and procedures whenever it so wishes, thus covering the issues this regulation is addressing. Others emphasized a specific process for the review of the regulations needs to be included.

On retroactivity, some pointed to the Vienna Convention on the Law of Treaties ensuring that any amendments to the regulations adopted by the Council and the Assembly, shall not be applied retroactively. Others stressed the retroactivity provision in the Vienna Convention focuses on a different situation addressing actions that took place before the change of rules. They underscored

that amending the regulations will apply to future actions by the contractors and they will need thus to conform to any changes.

Delegates then initiated a second review of the revised document starting from the beginning. On **use of terms and scope** (regulation 1) in the introductory part, a delegate proposed, and others supported, reordering a provision to clarify the “terms and phrases used in these regulations are defined for the purposes of these regulations and the standards and guidelines in the schedule.”

Facilitators Guillén-Grillo and Vega Telias acknowledged the group had concluded the first reading of all regulations under its purview, thanked delegates for the hard work and support, and closed the session.

**Informal Discussions on the President’s Text:** Informal discussions on the President’s text, which contains all draft exploitation regulations not taken up by any of the working groups, took place on the morning of Wednesday, 8 November.

President Mijares introduced the further revised text ([ISBA/28/C/WOW/CRP.2](#)), inviting comments on the annexes.

On the **application for approval of a plan of work to obtain an exploitation contract** (Annex I), a delegation drew attention to possible ways to manage the information changes concerning the applicant. A delegate suggested, and others supported, replacing “damage caused by pollution” with “harmful effects.” Some asked for further streamlining the annex.

A delegation suggested including the environmental performance results, on a reference requiring the applicant to demonstrate satisfactory record of past operational performance and compliance. A few delegations queried how the contractor can prove previous experience when deep-sea mining is a new industry. Some members proposed solving this by adding “if any,” stressing contractors will gain experience once the activities commence.

On **mining workplans** (Annex II), delegates discussed the content of the mining workplan, focusing on whether to include:

- details of subcontractors and suppliers of goods and services to be used for exploitation activities together with information about their compliance records, with some delegates noting reference to compliance records is too broad and vague;
- details relating to onshore processing of mineral resources, if applicable, with members expressing divergent views on whether onshore processing details fall under ISA’s mandate; and
- details of the equipment, methods, and technology expected to be used, including the results of test mining, with members noting test mining is still under discussion.

On the **financing plan** (Annex III), a delegate suggested deleting reference to the “Equator Principles or the International Finance Corporation performance standards, or equivalent.” An observer noted a submission on ISA’s due diligence to examine credentials of key personnel.

Members addressed the **emergency response and contingency plan**, contained in Annex V, focusing on:

- references to coastal states, with some delegates stressing that the plan should include coastal states that may be affected when it comes to responding to emergencies;
- existing treaties that set legally binding obligations on emergencies regarding vessels and crew at sea;
- reorganizing the provisions to prioritize those pertaining to the protection and preservation of the marine environment;
- potentially deleting some provisions that are already covered by the environment-related regulations;

- whether provisions on gender-responsiveness and vulnerable groups should be included; and
- further streamlining the annex, noting details could be moved to standards and guidelines with the appropriate cross references.

On the **health and safety plan and maritime security plan** (Annex VI), delegates addressed: which elements of the plan should remain confidential; the placement of cyber risks, with some suggesting placing it under the maritime security plan; minimum age for participation in deep-sea mining activities; and periodic revision of the plan, with a delegate suggesting that similar provisions on revision should be included in the other plans as well.

A delegate stressed responsibilities under the health and safety plan fall under the flag state that should ensure that the vessel under its control complies with relevant rules. An observer noted that flag states’ responsibility covers the normal operations of the vessel and crew and not mining operations, noting they will submit a written proposal to address this gap.

On **standard clauses for exploitation contracts** in Annex X, delegates suggested clarifying a provision stating “the contractor will obtain title to and property over the minerals upon recovery from the seabed onto the contractor’s mining vessel or installation and receipt by the ISA of the requirement payment.” They further focused on: ensuring compliance with relevant standards; the need for written warning to justify suspensions following a violation, as well as whether the violation should be characterized as “persistent and wilful”; distinguishing between cases of suspension, expiration, termination, or surrender of a contract; definitional issues regarding “unlawful acts and omissions”; and a provision noting any impacts from activities in the Area carried out under an exploitation contract must be strictly limited to the contract area. Observers cautioned that multi-decadal commitments on commercial deep-sea mining will bring forth unacceptable environmental burdens for future generations.

President Mijares thanked delegates for a productive session and closed the informal discussions on the President’s text.

**Review of progress:** On Wednesday, 8 November, President Mijares turned Council members’ attention to current progress and future steps in the development of the draft exploitation regulations. He invited the facilitators of the working groups to report back on progress.

Facilitator Guillén-Grillo highlighted progress in the Working Group on institutional matters on several regulations and the conclusion of the first reading of all of them. She welcomed the African Group’s offer to coordinate intersessional work to improve and streamline the provisions on the review of regulations (regulation 107). She announced that another intersessional workshop on effective control will take place.

Facilitator Taga noted progress during the two days of deliberations of the Working Group on the protection and preservation of the marine environment. She underlined that rules, regulations, and procedures must be in place before the approval of the first plan of work; the need to apply the polluter pays principle; and that the LTC should only consider an application for a plan of work if the relevant REMP has been adopted. She pointed out priority areas to focus on, including: the environmental compensation fund, the EIA and the environmental impact statement, closure plans, stakeholder consultation, UCH, and coastal states. She highlighted intersessional work on: coastal states led by Mexico; UCH led by Micronesia; general obligations led by Spain;

test mining led by Germany; and closure plans led by Fiji. She asked for submissions on content and placement of standards and guidelines before 1 December 2023.

The RUSSIAN FEDERATION requested extending the deadline for submissions to at least 15 December 2023.

Facilitator Tamuno noted progress in the Working Group on ICE and highlighted ongoing work to identify the most appropriate mechanisms for inspectors and the general agreement that any compliance committee must be established before exploitation commences. She drew attention to the mixed model for a compliance committee to be placed under the Council, proposed by Germany. She noted Norway's offer to continue coordinating intersessional work.

Chair Myklebust noted progress in narrowing alternatives and streamlining the text during the two days of deliberations of the Open-ended Working Group on the financial terms of a contract. He also commented on the outcomes of intersessional work. He drew attention to the document recently uploaded to ISA webpage "Guidance on the economic valuation of ecosystem services and natural capital of the Area," underscoring Germany's offer to report back on the development of a practical approach regarding the incorporation of environmental cost in the financial system options at the March meeting. He highlighted intersessional work on the review of the system of payments (regulation 81) and on the determination of the applicable equalization measure (regulation 64 bis) to be led by Canada.

COSTA RICA, supported by Brazil and Germany, highlighted that, at the July meeting, several delegations requested inviting the authors of the "Report on the value of ecosystem services and natural capital in the Area," to clarify externality-related questions. CHINA suggested discussing any invitation at the next Council session.

WWF drew attention to a recently published study titled: "To engage in deep-sea mining or not to engage: what do full net cost analyses tell us?" which notes among its conclusions: "We find that while deep-sea mining may generate short-term profits for private mining companies, prospects for long-term benefits are minimal for multiple reasons, including business model and litigation risks, public opposition, and competition from land-based mining."

President Mijares thanked the facilitators, and noted that, following the Council decision in July 2023 on the expiration of the two-year period, a consolidated text will be prepared as an outcome of the 28th session. He pointed out that the consolidated text will aim to harmonize and streamline the regulations. Underscoring that "nothing is agreed until everything is agreed," he invited delegates to submit written submissions before 10 December 2023.

Delegates expressed appreciation and thanked President Mijares and the facilitators of the working groups for their hard work and dedication that allowed considerable progress in the development of the draft exploitation regulations. Many stressed commercial deep-sea mining should not proceed without a robust set of rules, regulations, and procedures in place, ensuring environmental protection and benefit-sharing. Ghana for the AFRICAN GROUP, NORWAY, FIJI, INDIA, SPAIN, CHINA, ITALY, NAURU, the RUSSIAN FEDERATION, and BANGLADESH supported the development of a single consolidated text as the basis for further negotiations, stressing it will allow: harmonizing the text and addressing cross-cutting issues; identifying key outstanding questions; and detecting contradictions and inconsistencies.

On modalities for future work, many supported continuing work in "informal informals." IRELAND, GERMANY, and others suggested that observers be allowed to participate and that the results be shared in a transparent manner. CHINA, POLAND, and the RUSSIAN FEDERATION supported that a single person should be responsible for facilitating the discussions on the consolidated document, potentially assisted by facilitators for informal informals. BRAZIL and the RUSSIAN FEDERATION stressed the significance of intersessional working groups towards progress. IRELAND, GERMANY, COSTA RICA, DENMARK, and FRANCE supported continuing in the working group format, stressing that some important issues have not yet been addressed. CHILE expressed commitment to continue working in accordance with the agreed roadmap, stressing the need to move transparently and without pressure.

GREENPEACE, on behalf of the ENVIRONMENTAL JUSTICE FOUNDATION, WWF, the SUSTAINABLE OCEAN ALLIANCE, and DEEP SEA CONSERVATION COALITION, stressed that trying to rush the negotiations under the threat of unregulated mining is a fundamentally wrong approach. Underscoring that the deep-sea and the services it provides are largely unknown, he called for an inclusive process. He reiterated the call for a moratorium or precautionary pause, stressing the need to rethink the impacts of the mining industry on the most intact and vulnerable ecosystems on the planet.

The OCEAN FOUNDATION emphasized that, as currently drafted, the exploitation regulations do not protect either the contractors, or the sponsoring states, the ISA, civil society, and humankind. She highlighted existing gaps, noting additional time is required for discussions, and stressed that a heavy calendar of meetings may constitute a barrier for participation for certain delegations.

The INTERAMERICAN ASSOCIATION FOR ENVIRONMENTAL DEFENSE emphasized there is no real indicator of progress for assessing if the timeline agreed in July 2023 is "in line with reality or wishful thinking." He highlighted key unresolved issues, including on effective control, the inspection mechanism, and environmental externalities. He drew attention to other activities, such as overfishing and shipping emissions, that continue to be destructive despite regulatory framework in place. He called for a balanced process with adequate time for discussion, lamenting the current timetable causes disproportionate competition between mandates designed to coexist.

The PEW CHARITABLE TRUSTS noted that negotiations under the working groups should be held publicly, open to observers and stakeholders, and not in parallel, and cautioned against dismantling the current working groups without ensuring these principles. He reiterated that the consolidated text will be open for further submissions and discussions, and the call for a moratorium or precautionary pause, underscoring that a moratorium "is well in the Council's legal right, indeed it is bound by its legal responsibility to do so."

### ***Closing of the 28th Session***

On Wednesday afternoon, 8 November, host country Jamaica expressed appreciation to all delegates for their dedication, engagement, and constructive contributions. She highlighted progress in the development of the exploitation regulations as reflected in the reports of the facilitators and reiterated Jamaica's commitment to facilitating and advancing ISA's work.

President Mijares summarized next steps on the development of the draft exploitation regulations. He noted that delegations agree overall with the development of a consolidated text, stressing its role is to better harmonize and streamline the text based on the discussions so far. He said work will take place under the leadership of a new president, clarifying that informal informals may be held for specific thematic issues.

He underscored the Council's responsibility to achieve a robust, comprehensive, and workable set of exploitation regulations to ensure effective environmental protection and benefit-sharing. He noted everyone agrees that no exploitation should take place without the regulations in place, further noting that the future of seabed mining will be determined by other forces, such as markets and technology. He thanked all delegates and participants for their constructive work, engagement, and support, and gavelled the 28th annual ISA session to a close at 6:43 pm.

### **A Brief Analysis of the Meeting**

Negotiating a regulatory framework for deep-sea mining is both highly complex and controversial.

The controversy lies in the understanding that essentially two perspectives exist in the debate; those who support 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) and those who call for a moratorium or precautionary pause to generate the necessary scientific knowledge to ensure the effective protection of the marine environment prior to deciding on exploitation rules.

The complexity is related to the multi-dimensional character of the negotiations. Deliberations on the draft exploitation regulations need to address, among other issues, all three pillars of sustainable development as they focus on environmental, economic, and socio-cultural concerns.

The International Seabed Authority (ISA) lies at the heart of these complex and controversial negotiations as it is 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." Balancing divergent, often competing interests, has proven to be challenging.

This brief analysis will focus on the main outcomes of the third ISA Council meeting for 2023, which concluded the 28th annual session of the Authority.

### ***Deep-sea Ecosystems and the Need for Environmental Protection***

*"Deep-sea mining introduces light in darkness; noise in silence; toxic heavy metals in nearly untouched waters; it removes habitats and smothers organisms."*

*Statement by the Environmental Justice Foundation*

Despite a variety of interests and views regarding the deep-sea, all states agree on the obligation to fulfill UNCLOS Article 145, which stipulates necessary measures to ensure effective protection for the marine environment from harmful activities in the Area, with particular attention to be paid to, among other things, the harmful effects of drilling, dredging, excavation, and the prevention of harm to marine flora and fauna. Council members strive to strike a multi-layer balance among production and conservation, revenues and

benefit-sharing, private interests and humankind, common heritage, and financial incentives.

During its last meeting for 2023, the ISA Council reviewed many draft regulations with a direct impact on environmental issues. In some areas they made progress, even when they simply agreed on the need to streamline the text and further analyze pending issues. At least five intersessional working groups will continue to improve environmental provisions in the regulations.

Many participants stressed that the momentum is still there. Last March, the Agreement on biodiversity in areas beyond national jurisdiction (BBNJ Agreement) was adopted, attracting 83 signatories to date and a growing number of references in ISA's work. The efforts to implement the Kunming-Montreal Global Biodiversity Framework, adopted in December 2023 under the Convention on Biological Diversity, are timidly drawn into the ISA. A member proposed including among the preconditions to conduct deep-sea mining, alongside the robust framework and adequate scientific evidence, an obligation to be well on track in implementing the "30 by 30 target," which calls for the designation of 30% of the Earth's land and ocean area as protected areas by 2030, including areas beyond national jurisdiction.

These developments, according to many participants, signal efforts towards a comprehensive understanding and governance of the ocean. Even if these efforts are welcomed, proposals still need to be discussed in detail and a holistic framework needs to be put in place. As an observer pointed out, "States must harmonize the understanding and application of provisions of different agreements with an impact on the ocean. At the end of the day, they are all regulating the same unique ocean."

On the one hand, environmental concerns are well documented and increasingly known: scientific evidence gaps, feasibility of post-closure restoration, and monitoring issues, among others, were the main matters raised during this meeting. Independent scientists, environmental non-governmental organizations, and some states strive to broaden the understanding of risks associated with disturbing such unknown parts of the planet.

On the other hand, proponents of deep-sea mining are confident in the research conducted under exploration contractors' schemes, pointing out that states scarce in resources and technical and scientific expertise rely on and trust its findings. As a delegate noted, for many in favor of deep-sea mining, "the solution to climate change challenges awaits in the deepest ocean." Developing a robust set of rules, regulations, and procedures, and finding a balance between diverse interests, is considered by those interested in commercial deep-sea mining as the best way to address all concerns.

As the environmental part of the regulations progresses, many point towards the need for a conceptual discussion on what constitutes "effective protection" of a mainly unknown underwater world and how the regulations can ensure this.

### ***Economic Considerations and the Common Heritage of Humankind***

*"The Area and its resources are the common heritage of mankind."*

*"Activities in the Area shall be carried out in such a manner as to foster healthy development of the world economy and balanced growth of international trade, and to promote international cooperation for the overall development of all countries, especially developing States."*

*UNCLOS Articles 136 and 150*

As the mineral resources in the Area are the common heritage of humankind, a suitable system of compensation for these resources needs to be negotiated. Currently, negotiations focus on a financial payment system for deep-sea mining of polymetallic nodules, assisted by expert advice over the years. As many participants noted, although benefit-sharing is often invoked during the negotiations, discussions so far focus on revenues paid by future commercial contractors in the form of royalties to the ISA, with some stressing the need to further consider what happens with these resources.

Discussions at the current stage of negotiations focus on the concept of fairness, trying to provide a level-playing field for contractors in the sense that they should be subject to the same overall tax burden, equivalent to land-based mining, using an effective tax rate. Delegates discussed different approaches for equalization measures, aiming to address cases where contractors pay different sponsor state corporate income tax. With the approaches presenting inherent advantages and disadvantages in terms of quality of results and simplicity, negotiations often get technical.

Some delegates stressed the need for an overall estimate on profits that will accrue in a benefit-sharing mechanism. Others added that, in order to produce such an estimate, cost-related considerations, including those associated with much broader ISA operations during commercial exploitation and environmental externalities, need to enter the equation. A delegate stressed that as discussions start to include specific estimates of long-term revenues from commercial exploitation, it may eventually be possible to determine whether the system can provide enough to meet everyone's interests and needs. Registering serious concerns, an observer noted that, as designed, the system "will benefit a few for a short period of time, while it will negatively affect everyone, forever."

### ***Socio-cultural and other Concerns***

*"Activities in the Area shall be carried out for the benefit of mankind as a whole."*

*"All objects of an archaeological and historical nature found in the Area shall be preserved or disposed of for the benefit of mankind as a whole."*

*UNCLOS Articles 140 and 149*

Although few UNCLOS provisions address socio-cultural issues, such considerations have attracted considerable attention in the decades that followed the Convention's adoption. These include issues of traditional and Indigenous knowledge, with representatives from Indigenous Peoples, in particular from the Pacific, often (but not at this session) attending the proceedings. Indigenous Peoples often highlight their profound spiritual links with the ocean that need to be considered, as well as accumulated knowledge over generations that should inform decision making.

Such discussions are often reflected in the negotiations on underwater cultural heritage, in particular when distinguishing between its tangible and non-tangible dimensions. While some delegates often underscore relevant UNCLOS provisions, including Article 149, as the framework for obligations, others point to the need to address underwater cultural heritage more holistically. In this respect, they emphasize the need for a greater active role for Indigenous Peoples in the negotiations.

The ever-present need for transparency was also highlighted during this session. As Council members discussed and agreed on a decision relating to the reports of the Chair of the Legal and Technical Commission (LTC), participants commented on transparency issues both positively and negatively. On the one hand, many pointed to the decision, including the request to the LTC to name those contractors who fail to comply with their contractual obligations. They further highlighted the request to the LTC to hold open meetings, where applicable, and improve other transparency-related procedures.

On the other hand, many pointed out the irony that a decision relating to transparency was negotiated behind closed doors. While some justified the closed setting as an efficient way to reach consensus, noting that many disagreements had to be addressed, others, in particular observers, expressed their disappointment, stressing that "transparency requires open doors."

### ***The Path Ahead***

As President Mijares gavelled the 28th annual ISA session to a close, there were more questions than certainties among delegates and participants on what the future will bring. At its July 2023 meeting, the Council agreed on a roadmap on the development of the regulations, with a view to their adoption during the 30th ISA session in 2025. However, as observers noted, "There is no real indicator of progress for assessing if the timeline is in line with reality or wishful thinking."

Delegates repeatedly stressed in their interventions that everyone agrees that no exploitation should take place without the full set of rules, regulations, and procedures in place. In that respect, some cautioned against rushing the negotiations under the threat of unregulated mining, and called for an inclusive, transparent approach.

Developing a consolidated text on the exploitation regulations attracted mixed reactions. Some stress that a single text will allow increased consistency and promote efficiency in the negotiations. Others point towards the conceptual and high-level issues under negotiation that still attract divergent views, emphasizing that deliberations under the current format of working groups have been productive.

Closing the 28th session, President Mijares emphasized that other forces, such as markets, policy, and technology, will eventually determine the future of seabed mining. Leaving the Jamaica Conference Center behind, a participant suggested "It is up to everyone participating in the negotiations to ensure that market and technological forces will not lead humanity to a socially unfair, environmentally destructive, pathway."

### **Upcoming Meetings**

**Convention on Biological Diversity (CBD) WG8j-12 and WG DSI-1:** The 12th meeting of the *Ad Hoc* Open-ended Working Group on Article 8(j) will address: implementation of the priority tasks of the multi-year programme of work on Article 8(j) and related provisions; the knowledge management component of the Global Biodiversity Framework; the joint programme of work on the links between biological and cultural diversity; and the recommendations of the UN Permanent Forum on Indigenous Issues. The first meeting of the *Ad Hoc* Open-ended Working Group on Benefit-sharing from the Use of Digital Sequence Information (DSI) on Genetic Resources will focus on further developing and operationalizing the



multilateral mechanism for benefit-sharing from the use of DSI on genetic resources. **dates:** 12-18 November 2023 **location:** Geneva, Switzerland **www:** [cbd.int/conferences/geneva-2023](http://cbd.int/conferences/geneva-2023)

**Plastic Pollution INC-3:** The third meeting of the Intergovernmental Negotiating Committee (INC) to develop an international legally binding instrument on plastic, including in the marine environment, will start negotiations on a “zero draft” of the instrument. **dates:** 13-19 November 2023 **location:** Nairobi, Kenya **www:** [unep.org/inc-plastic-pollution/session-3](http://unep.org/inc-plastic-pollution/session-3)

**2023 UN Climate Change Conference:** The Conference comprises: the 28th meeting of the Conference of the Parties (COP 28) to the UN Framework Convention on Climate Change (UNFCCC); the fifth meeting of the COP serving as the Meeting of the Parties (MOP) to the Paris Agreement (CMA 5); the 18th meeting of the COP serving as the MOP to the Kyoto Protocol (CMP 18); and the 59th meetings of the Subsidiary Body for Implementation (SBI 59) and Subsidiary Body for Scientific and Technological Advice (SBSTA 59). Among other things, COP 28 will conclude the first Global Stocktake of the implementation of the Paris Agreement. **dates:** 30 November - 12 December 2023 **location:** Dubai, United Arab Emirates **www:** [unfccc.int/cop28](http://unfccc.int/cop28)

**Barcelona Convention COP23:** The Barcelona Convention entered into force in 1978 with the main objectives the control of marine pollution, the sustainable management of seas and coasts, the integration of environmental issues into social and economic development, and the protection of natural and cultural heritage in the Mediterranean Sea. **dates:** 4-8 December 2023 **location:** Portoroz, Slovenia **www:** [unep.org/unepmap/who-we-are/barcelona-convention-and-protocols](http://unep.org/unepmap/who-we-are/barcelona-convention-and-protocols)

**OEWG-2 on a Science-Policy Panel to Contribute Further to the Sound Management of Chemicals and Waste and to Prevent Pollution:** The second session of the Open-ended Working Group will continue the group’s work to prepare proposals for the science-policy panel. **dates:** 11-15 December 2023 **location:** Nairobi, Kenya **www:** [unep.org/oewg-spp-chemicals-waste-pollution](http://unep.org/oewg-spp-chemicals-waste-pollution)

**14th meeting of the Conference of the Parties to the Convention on the Conservation of Migratory Species of Wild Animals (CMS):** CMS COP 14 will convene to review the implementation of the Convention. CMS, also known as the Bonn Convention, recognizes that states must be the protectors of migratory species that live within or pass through their national jurisdictions and aims to conserve terrestrial, marine, and avian migratory species throughout their ranges. This meeting will, among others, discuss the proposed inclusion of species, including the Peruvian Pelican and the Sand Tiger Shark, in the Convention’s appendices. **dates:** 12-17 February 2024 **location:** Samarkand, Uzbekistan **www:** [cms.int/en/meeting/fourteenth-meeting-conference-parties-cms](http://cms.int/en/meeting/fourteenth-meeting-conference-parties-cms)

**Sixth meeting of the UN Environment Assembly (UNEA6):** UNEA-6 convenes under the theme “Effective, inclusive and sustainable multilateral actions to tackle climate change, biodiversity loss, and pollution.” It will be preceded by the sixth meeting of the Open-ended Committee of Permanent Representatives, which will take place from 19-23 February 2024. **dates:** 26 February –1 March 2024 **location:** Nairobi, Kenya **www:** [unep.org/environmentassembly/unea6](http://unep.org/environmentassembly/unea6)

**First Part of the 29th 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. It will be preceded by the LTC meeting, which will take place from 4-15 March 2024. **dates:** 18-29 March 2024 **location:** Kingston, Jamaica **www:** [isa.org.jm/sessions/29th-session-2024](http://isa.org.jm/sessions/29th-session-2024)

For additional upcoming events, see [sdg.iisd.org](http://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
EIAs	Environmental impact assessment
EMMP	Environmental management and monitoring plan
EPC	Economic Planning Commission
GHG	Greenhouse gas
ICE	Inspection, compliance, and enforcement
ISA	International Seabed Authority
LTC	Legal and Technical Commission
REMPs	Regional environmental management plans
UCH	Underwater cultural heritage
UNCLOS	UN Convention on the Law of the Sea