

## ISA-23 HIGHLIGHTS: WEDNESDAY, 9 AUGUST 2017

Following a morning meeting of the Legal and Technical Commission (LTC), the Council of the International Seabed Authority (ISA) convened on Wednesday afternoon to address: the status of exploration contracts and related matters; the status of laws, regulations and administrative measures adopted by sponsoring states and other ISA members with respect to activities in the Area; the implementation of the decision of the Council in 2016 relating to the summary report of the LTC Chair, including on the development of draft regulations on exploitation, data management, and environmental management plans; and a mechanism for future elections of LTC members.

### COUNCIL

The Western European and Others Group (WEOG) appointed the Netherlands for the remaining position of Vice-President. The Council endorsed this nomination, together with Algeria, Singapore and Poland nominated on Tuesday, 8 August.

**STATUS OF CONTRACTS:** President Ariel Fernández (Argentina) presented a report on the status of contracts for exploration and related matters (ISBA/23/C/7), highlighting: three new contracts signed since the 22nd session, and an additional one expected to be signed before the end of 2017; four agreements signed for a five-year extension of exploration contracts, with two more expected to be signed by the end of the present session; and the status of consultations regarding the establishment of an annual overhead charge of US\$47,000 to cover the costs incurred by the Authority in administering and supervising contracts. Following a query from BRAZIL, ISA Secretary-General Michael Lodge (UK) clarified that the implementation of the annual overhead charge will be examined as part of the report of the Finance Committee. The Council took note of the report.

**STATUS OF LEGISLATION:** Alfonso Ascencio-Herrera, ISA Legal Counsel and Deputy to the Secretary-General, presented a report on laws, regulations and administrative measures adopted by sponsoring states and other members with respect to the activities in the Area (ISBA/23/C/6), in response to a decision of the Council in 2011. He reported that: France, Kiribati and Nauru submitted the texts of their national legislation, and Georgia its relevant

information from February to May 2017; the Netherlands submitted a note verbale with relevant information; and that the Secretariat will continue to update the online database on national legislation as it receives new information.

Emphasizing the critical importance of national legislation regarding activities in the Area for the balance of rights and obligations of sponsoring states, contractors and the Authority, CHINA drew attention to national legislation on exploration and exploitation, as well as related legal mechanisms and regulations. The REPUBLIC OF KOREA reported that his national law is expected to be addressed by the national parliament before the end of 2017. FIJI highlighted that the annual update of laws, regulations and administrative measures provides an indication of member states' commitment.

In addition to ensuring contractors' compliance, ARGENTINA drew attention to the responsibility of sponsoring states to adopt necessary laws and regulations, pointing to the 2011 Advisory Opinion of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea (ITLOS). The COOK ISLANDS provided information on national legislation referring to both national and ISA obligations, including the 2015 exploration regulations that take into account local communities and provide for outreach activities.

**Model law:** INDONESIA, supported by the NETHERLANDS and TONGA, suggested that the Council request the LTC to draft a model law, to strengthen the role of the Authority as a regulatory body. The NETHERLANDS opined that building blocks or legal principles will assist parties in developing the necessary legislation to implement the Convention. TONGA noted the need to strengthen the LTC's human resources to this end. CANADA and the UK supported the proposal in principle, noting that priority should be given to the development of exploitation regulations. The COOK ISLANDS noted that, in his region, a model ISA law already exists. President Fernández noted that it is up to the LTC to determine whether, in addition to the priority to draft the exploitation regulations, it can also take on board this proposal.

Secretary-General Lodge considered the proposal interesting, indicating that a number of sources for model legislation already exist and that "it is not always easy to provide a one-size-fits-all model." He also recalled that the Council had requested the

Secretariat to develop a comparative study of existing national legislation and derive common elements, noting that it could prove a useful first step towards developing a model law, reporting that the Secretariat had been unable to carry out the study yet due to limited resources and expressing hope that it could be done in the next biennium. He also pointed to the collection of 27 pieces of national legislation as a good starting point for the study. The Council took note of the report.

#### **IMPLEMENTATION OF 2016 COUNCIL DECISIONS:**

Secretary-General Lodge introduced an update on the implementation of the decision of the Council in 2016 relating to the summary report of the LTC Chair (ISBA/23/C/8), noting that this was the first report of its kind. He highlighted: the recruitment of a training officer, which was welcomed by the AFRICAN GROUP and BANGLADESH; and challenges in advancing work on environmental management plans in regions other than the Clarion-Clipperton Zone, due to budgetary constraints in the current biennium, noting preliminary discussions with the China Ocean Mineral Resources Research and Development Association on pursuing a cooperative effort with other contractors to develop an environmental management plan for the cobalt-rich ferromanganese crust zones in the Pacific Ocean. He also reported good progress in implementing the data management strategy, noting that: separate briefings of the LTC and of contractors were held on technical aspects of the database; the informal meeting with contractors helped ironing out technical difficulties in submitting information and in addressing gaps in data coverage; and environmental data from contractors are set to be made publicly available online. Several delegations expressed appreciation for the report.

SINGAPORE emphasized the need to monitor and mitigate deep-seabed mining impacts on the marine environment, commending the LTC's attention to environmental management. The AFRICAN GROUP recommended that the Secretariat brief all new LTC members on the procedures on confidential data and information.

**Exploitation regulations:** AUSTRALIA: supported by DEEP SEA CONSERVATION COALITION, underscored the need for transparency in developing draft exploitation regulations; expressed concern that only few member states provided inputs into the revised working draft circulated in 2016; and urged member states to provide inputs and the Secretariat to allow sufficient time for submissions. The AFRICAN GROUP expressed concern about the low level of interaction of member states on the draft, querying the adequacy of communication on the consultation process. Secretary-General Lodge indicated that the consultation had been open for several months and extended for an additional month due to limited responses from member states, and committed to circulate information on future consultations as widely as possible. SINGAPORE favored developing a roadmap and timeline for regulatory development.

**Data management:** AUSTRALIA welcomed increased transparency in environmental data. SINGAPORE underscored the need to protect the integrity of collected data, supported by the UK; noted that some information is commercially sensitive; and

welcomed the technical discussions held with contractors, calling for continued consultation with contractors and other stakeholders to develop a "well-considered and secure" data management system. DEEP SEA CONSERVATION COALITION welcomed progress on the data management strategy and on making publicly available environmental data provided by contractors. BRAZIL highlighted the need for updates on progress in data management.

**Environmental management plans:** The UK looked forward to further progress on the environmental management plans for the Clarion-Clipperton Zone and for other areas. DEEP SEA CONSERVATION COALITION highlighted the need to move forward with environmental management plans in regions where exploration licenses have been provided; and expressed appreciation for the Secretariat taking note of external initiatives to develop a scientific basis for an environmental management plan in the Atlantic Ocean, and the intention to hold discussions with relevant stakeholders on how the outcomes of such initiatives may help to advance the work of the Authority.

The Council took note of the report.

#### **MECHANISM FOR FUTURE ELECTIONS OF LTC**

**MEMBERS:** Secretary-General Lodge introduced the document on a mechanism for future elections of LTC members (ISBA/23/C/2), recalling that this was a controversial issue in 2016, which resulted in a request to identify the ideal size of the LTC and to propose a mechanism to ensure that future elections will be undertaken so as to better take into account equitable geographical representation, appropriate qualifications, and the representation of special interests. He also underscored that: some aspects of that request are beyond the Secretariat's remit and are a matter for the Council to decide; the report was prepared in late 2016, and therefore does not reflect the experience of the enlarged LTC in 2017; the timetable and process for nomination of candidates have worked well in the past; there are imbalances in the composition of the LTC both in terms of geographical representation and balance of expertise; and a tentative suggestion is included to provide details of required areas of expertise in the Secretary-General's letter calling for nominations.

#### **IN THE BREEZEWAYS**

While the Council discussions started to address progress on sharing environmental data and developing environmental management plans, some participants pondered on the scientific information shared at a lunchtime side-event on the environmental effect of heavy metal release from sampling seafloor massive sulfide minerals. A policy expert commented that, "these findings indicate that phytoplankton are especially sensitive to copper, with the most sensitive of all apparently being those responsible for a large percentage of the production of oxygen in the ocean."

Meanwhile, as delegates headed for an evening reception at the UK High Commission, the draft exploitation regulations were posted online, with the indication that in the interests of transparency, they were being made publicly available as the draft prepared by the Secretariat for the Commission, with "no attempt to reflect the views of the LTC on the draft, which remains a work in progress."