

ISA-24 PART 1 HIGHLIGHTS: MONDAY, 5 MARCH 2018

On Monday, the Council of the International Seabed Authority (ISA) opened for the first part of the 24th annual session in Kingston, Jamaica. The main items discussed were:

- regional environmental management plans; and
- contractors' compliance with exploration workplans.

OPENING

Ariel Fernández (Argentina), Council President for the 23rd session, opened the meeting. A flag ceremony was performed by the Caribbean Maritime University. The Council adopted the provisional agenda (ISBA/24/C/L.1) with no amendments.

ELECTIONS: Canada nominated, and delegates elected by acclamation, Olav Myklebust (Norway) as Council President for 2018. President Myklebust, underscored that the “the world is now watching” the work of the ISA, and the Council will have to “deliver,” particularly with regard to the draft exploitation regulations. Ahmed Farouk (Egypt), was elected to the LTC, following the resignation of Mahound Samy (Egypt), to serve the remainder of his term.

Delegates elected as Council Vice-Presidents: Brazil, nominated by Brazil, on behalf of the Group of Latin American and Caribbean countries (GRULAC); Poland, nominated by the Russian Federation, on behalf of the Eastern European Group (EEG); Côte d'Ivoire, nominated by Algeria, on behalf of the AFRICAN GROUP; and India, nominated by Bangladesh, for ASIA-PACIFIC.

STATUS OF EXPLORATION CONTRACTS

ISA Secretary-General Michael Lodge (UK) reported on the status of contracts (ISBA/24/C/5). Cameroon emphasized: marine environment management; the continued need for scholarships to enhance the exploration and exploitation capacity of developing countries; and modalities for approving contract extensions, in view of the anticipated transition to the exploitation phase. The Council took note of the report.

REPORT OF THE SECRETARY-GENERAL

Secretary-General Lodge introduced documentation on the implementation of the 2017 Council decision relating to the LTC Chair's summary report (ISBA/24/C/6) and a preliminary strategy for the development of regional environmental management plans (REMPs) for the Area (ISBA/24/C/3). On the summary report, Lodge highlighted: 17 new training opportunities provided by six contractors since August 2017; ongoing efforts to enhance the role of women in marine scientific research (MSR); and progress regarding the ISA database, which is undergoing construction and testing.

On REMPs, Lodge underscored: the need to develop REMPs coherently, collaboratively and transparently; efforts to include high-quality data; the need for resources to support workshops, data collection and developing countries' participation; and a short-term strategy and recommendations for 2108, including convening an international workshop on a methodology for developing REMPs in all parts of the Area where there are contracts for exploring polymetallic sulfides. He also reported on efforts with China Ocean Mineral Resources Research and Development Association (COMRA) on developing a REMP for cobalt-rich ferromanganese crust zones in the Pacific Ocean, with a workshop scheduled from 26-29 May 2018 in Qingdao, China.

SINGAPORE stressed the importance of holding workshops for more informal and in-depth discussions, and the strategy to expand ISA's strategic partnerships. The NETHERLANDS suggested greater prioritization of liability and effective control, considering them vital for developing the exploitation regulations.

CHILE suggested that the Authority raise funds to produce its own reports on environmental impacts related to deep-sea mining and to develop the Mining Code, and host side-events that are accessible to all countries, noting financial limitations for developing countries' participation. He called attention to a resolution adopted by the European Parliament calling for ceasing licences for deep-seabed prospecting and mining. CHILE, supported by the DEEP SEA CONSERVATION COALITION (DSCC), added that, in the interest of transparency, all workshops should be reported on, in a side-event whenever possible. Noting online publication of the report of a recent London workshop, the UK agreed on the need for transparency and timely reporting from workshops. THE PEW CHARITABLE TRUSTS highlighted: the unprecedented task of developing exploitation regulations, including financial, environmental, and reporting issues; the importance of environmental protection, global governance and international cooperation; and a pledge of US\$100,000 to support developing countries' participation in ISA-sponsored and related workshops. JAPAN commended progress on the data management strategy, ensuring transparency based on scientific evidence, and requested inclusion of data and analysis from member countries into the ISA's reports.

REMPs: CHINA reiterated commitment, as a sponsoring state, to contribute towards developing REMPs to ensure the protection of the deep-sea environment. AUSTRALIA welcomed progress, increased transparency and forthcoming workshops, and stressed the importance of: developing REMPs based on the best available science; supported by the DSCC, making broad invitations to workshops, including to environmental NGOs; developing the ISA database; and, with INDIA, the initiative for training of women to conduct MSR. Focusing on the importance of REMPs and on the need to overcome practical difficulties in their development, JAMAICA underscored: the ISA's role in regional ocean

governance; the impacts of mining in the context of the “global ocean”; and the need to ensure consistency and common standards in developing robust REMPs. Brazil, on behalf of GRULAC, noted the need for regional consultations on REMPs.

Noting that REMPs are an important part of developing a commercial activity, NORWAY highlighted the need to collect experiences and identify knowledge gaps, connecting all relevant contributors and linking up with other processes and organizations. SINGAPORE and the REPUBLIC OF KOREA emphasized the progress in developing REMPs will help guide contractors that currently undertake exploration activities. CAMEROON stressed: transparency, reliability, and coherence in data and information management; and the coherent development and implementation of REMPs, supporting the organization of workshops on methodology.

Commenting on the preliminary strategy for developing REMPs, SOUTH AFRICA stressed the importance of conserving the marine environment and suggested establishing an environmental workstream under the ISA. Supported by the DSCC, SOUTH AFRICA also called for integrating REMPs in the exploitation regulations. FRANCE called for greater transparency in developing REMPs. The DSCC urged putting in place REMPs for each area before accepting any mining application.

FINANCIAL MODEL: On the Secretariat’s engagement of the Massachusetts Institute of Technology (MIT) to develop an independent financial model, Algeria, for the AFRICAN GROUP, questioned whether attention was drawn to relevant submissions, including by the African Group, regarding the payment regime. CAMEROON stated that the independent financial model, to be developed by the MIT, will have to fully take into account the common heritage of humankind. The NETHERLANDS enquired how the Finance Committee will relate to the independent financial model being developed by the MIT. Secretary-General Lodge clarified that: the financial model is “work in progress”; the MIT will make a presentation not only to the LTC, but also to the Council this week; and the Finance Committee is responsible for determining the equitable sharing criteria.

COMPLIANCE

Secretary-General Lodge introduced information relating to compliance by contractors with plans of work for exploration (ISBA/24/C/4). Noting the complexity of the subject, he emphasized the need for distinguishing failure or refusal to comply from inadequate or incomplete reporting performance, and reference in the draft regulations to an exploitation contract as a public document, except for confidential information. Lodge noted that the Council is invited to: consider requesting contractors to provide more information on the reasons for delays in implementing plans of work; take note of ISA organs’ respective responsibilities; request the Secretary-General to provide an annual report to the Council, identifying instances of alleged non-compliance and relevant regulatory actions, as well as to include in his reports on the status of contracts greater detail on the periodic review of implementation of plans of work; request sponsoring states to provide details of any measures taken to ensure compliance; and request the Secretary-General to explore with contractors the possibility of making exploration contracts and associated programmes of activities publicly available, taking into account confidentiality obligations.

The AFRICAN GROUP and GRULAC requested time for regional consultations. SINGAPORE suggested that, when the annual reports or the periodic reviews indicate potential cases of non-compliance, feedback could be provided to the respective sponsoring state by the ISA, and a dialogue may be initiated to plan further action. THE REPUBLIC OF KOREA pointed to data-sharing to ensure transparency in managing mining activities in the Area, as long as contractors’ rights are protected and activities are not unnecessarily constrained.

MANDATES AND RESPONSIBILITIES: JAMAICA drew attention to the ISA’s economic planning commission, which is yet to be established, noting it could help better define the LTC’s

role. SINGAPORE emphasized the respective responsibilities of the ISA organs and the distinction between non-compliance and incomplete performance. The DSCC pointed to a lack of enforcement action to date, recalling that the Council had already indicated that it cannot discharge its duties without information on non-compliance. He called for holding open LTC meetings; providing more detailed reporting from the LTC on issues of non-compliance; and requesting sponsoring states to ensure compliance with regulations. Secretary-General Lodge recalled that: sponsoring states have an obligation to ensure compliance by sponsored contractors, noting that their measures may differ.

PENALTIES: ARGENTINA requested an explanation of the criteria for applying penalties against contractors. INDIA, supported by the REPUBLIC OF KOREA, voiced concerns regarding penalties for non-compliance, calling for leniency in light of technological challenges, taking into consideration that during the exploration phase commercial benefits are not accrued. CHINA explained that Chinese contractors are doing their best to meet compliance obligations, cautioning against a simplistic approach to compliance, which was supported by the REPUBLIC OF KOREA.

CONFIDENTIALITY: NORWAY and CAMEROON highlighted the need to balance confidentiality and transparency. The UK suggested reflecting on the experience of extractive industries on making contracts publicly available. The DSCC called for widely sharing non-confidential information on the marine environment and making publicly available contractors’ annual reports. Noting that different understandings of what confidentiality entails exist, ARGENTINA suggested examining the different positions, bringing the contractors into the discussions. Chair Myklebust suggested reverting to this agenda item later in the week for further deliberations.

COOPERATION WITH OTHER INTERNATIONAL ORGANIZATIONS

Alfonso Ascencio-Herrera, ISA Legal Counsel and Deputy to the Secretary-General, introduced the relevant documentation (ISBA/24/C/7), containing a draft memorandum of understanding (MoU) between the Asian-African Legal Consultative Organization and the ISA, which was supported by the AFRICAN GROUP, CHINA, and JAPAN. CHILE queried whether the MoU is part of a broader strategy, noting cooperation opportunities with the Permanent Commission for the South Pacific. Ascencio-Herrera recalled that similar forms of cooperation are envisaged under UNCLOS Article 169 (consultation and cooperation with international and non-governmental organizations). The MoU was approved.

IN THE BREEZEWAYS

“The world is watching us!” was the opening line of the newly-elected Council President, as Monday plenary swiftly tackled other agenda items, to leave as much of the next four days to discussions on the draft regulations on deep-seabed mining – or “exploitation regs,” for the habitués. “No wonder today’s lunchtime side-event is so popular,” a seasoned delegate chimed, surveying a packed room of participants interested in hearing about an informal workshop organized by the UK in February to make progress on this topic. One observer noted with interest the resulting suggestion that the ISA should develop a “scientific roadmap” to prioritize research and funding opportunities on areas of greatest uncertainty, and create an independent scientific advisory group to provide additional expertise to the LTC. Another participant was intrigued by the workshop discussions on “future-proofing” the exploitation regs to retain flexibility in the face of evolving technologies. Others, however, were searching for references, in the workshop report, on how to value the common heritage of humankind, and on the workability of a profit-sharing or royalty-based scheme. “We will be all ears when the MIT makes its presentation to the Council on the financial model, later this week,” predicted a participant.