

Twenty-fifth Annual Session of the International Seabed Authority (Second Part): Wednesday, 17 July 2019

On Wednesday, the Council of the International Seabed Authority (ISA) continued its deliberations on the draft regulations for exploitation of mineral resources in the Area in the morning, focusing on the protection and preservation of the marine environment as well as on rights and obligations of the contractors. In the afternoon, Council members exchanged opinions on the reports of the Chairs of the Legal and Technical Commission (LTC) and the Finance Committee.

Draft Regulations for Exploitation of Mineral Resources in the Area

Rights and obligations of contractors: Rights and exclusivity: GERMANY suggested clarifying that marine scientific research is not limited by exclusivity rights. COSTA RICA cautioned that eliminating text on the modifications of Plans of Work runs counter to the ability to analyze environmental damage. CHILE suggested, *inter alia*, replacing “exclusive rights” with “preferential rights.”

The REPUBLIC OF KOREA and CHINA cautioned against payments’ overlap, which may create a double burden for contractors.

BRAZIL emphasized the need to separate exploration and exploitation activities, stressing the importance of exploration as a prerequisite to the issuing of an exploitation contract. JAPAN called for exploitation guidelines before the finalization of the draft regulations. AUSTRALIA suggested guidelines indicating when the exploration regulations shall continue to apply.

Joint arrangements: Eden Charles, Special Representative for the Enterprise noted that joint arrangements through the Enterprise shall have the same protection as contracts with the ISA “provided that in situations outlined in Section 2 paragraphs 2 and 5 of the 1994 Agreement, in relation to the Enterprise, such arrangements shall be by way of joint ventures only,” supported by the AFRICAN GROUP, JAMAICA, NORWAY, and others.

Term of exploitation contracts: MEXICO suggested, supported by CHINA, concrete ways to incentivize the participation of developing countries, including increasing the maximum initial term of an exploitation contract.

GERMANY proposed including a requirement that “the cumulative environmental impact does not exceed the thresholds set by pertinent REMPs and enables the achievement of strategic and local environmental objectives.”

COSTA RICA, supported by DEEP SEA CONSERVATION COALITION (DSCC) and Institute of Advanced Sustainability Studies (IASS), expressed concern regarding setting maximum initial terms of 30 years for exploitation contracts, preferring 15 years in line with the 1994 Agreement. She noted, supported by the UK and DSCC, that renewals of contracts should not be automatic or determined by the contractor, but rather considered by the Council, suggesting, with JAMAICA and DSCC, performing an environmental impact assessment (EIA) prior to renewal.

CHILE cautioned that, in cases of submission of a revised Plan of Work containing material changes, the LTC would not have adequate information on the contractor’s activities. AUSTRALIA stressed that the entire Plan of Work should be reviewed at the point of renewal.

Termination of sponsorship: GERMANY requested clarification on the deletion of language related to the continuous responsibility of the contractor in the performance of its obligations. CHINA requested clarification around the 12-month termination notice period. JAMAICA queried the impact of termination to the sponsoring state, seeking to delineate legal rights and obligations. AUSTRALIA, with NORWAY, suggested a written notice to the Secretary-General for sponsorship termination.

Transfer of rights and obligations: The AFRICAN GROUP suggested that the potentially substantial profit to be gained from transfer of rights be taxed.

Change of control: CANADA questioned the merit of interfering with a “commercial decision,” which requires a new contractor to meet obligations of the previous one. CHINA, supported by JAMAICA, COSTA RICA, and DSCC, noted the challenge of uniformly interpreting a change “in 50% ownership,” calling for further review. AUSTRALIA stressed that the Secretary-General should be notified in advance in cases of change of control.

BRAZIL noted that national laws and regulations on change of control differ. CHINA expressed preference to reference “effective control.”

Documents to be submitted prior to production: BRAZIL proposed that feasibility studies become mandatory documents. The CENTER FOR POLAR AND DEEP OCEAN DEVELOPMENT highlighted uncertainties on requirements for feasibility studies. GERMANY noted that revisions should be considered by the LTC and approved by the Council, with IASS calling for additionally involving independent experts and stakeholders. IASS stressed that a feasibility study should require an *in situ* mining operation test at full scale.

Environmental Performance Guarantee: JAMAICA flagged the need for further discussion on objectives and a closure plan. CHILE noted that the calculation of the Environmental Performance Guarantee should be approved by the Authority. CHINA proposed that the Finance Committee be tasked with calculating the Guarantee amount, and submit this to the Council.

JAPAN noted that the approval of the Council should only be required in cases of a material change to the Environmental Plans. AUSTRALIA and the UK called for further consideration of the issue.

Reduction or suspensions in production due to market conditions: The AFRICAN GROUP reiterated the need to operationalize the Economic Planning Commission. CHINA noted that in cases where production is suspended, royalty payments should be reduced.

Reasonable regard for other activities: FRANCE called for directives to be put in place to address cases in which submarine cables are set to be laid after an exploitation contract has been granted. AUSTRALIA emphasized that national laws

and regulations should be considered in addition to applicable standards for the protection of submarine cables, also calling for relevant liability clauses. She further highlighted, supported by the INTERNATIONAL CABLE PROTECTION COMMITTEE, the role of coastal and flag states.

Preventing and responding to incidents: CHINA, supported by COSTA RICA, called for notifications of incidents to be made “no more than 24 hours of the contractors’ awareness of the incident.”

Insurance: CHINA noted that as the relevant insurance mechanism is yet to be developed, the Council could conduct a periodic review of this issue once the regulations come into effect.

Books, records, and samples: COSTA RICA and the INTERNATIONAL MARINE MINERALS SOCIETY highlighted the need for the samples to be transferred to a research institution for further study at the end of the contract, and not discarded. AUSTRALIA cautioned against watering down the requirement for contractors to keep samples.

Protection and preservation of the marine environment:

General obligations: FSM reiterated that a definition of “best environmental practices” should include traditional knowledge. GERMANY emphasized that accountability and transparency should be ensured, rather than promoted. INTERNATIONAL MARINE MINERALS SOCIETY noted that differentiated obligations for the Authority, the sponsoring state, and the contractor should be defined and implemented.

Development of environmental standards: FSM emphasized the need for the Authority to develop legally binding standards as soon as possible and, with GERMANY, called for inclusion of listings of standards. DOSI stressed the need for binding standards for, *inter alia*, risk assessments, EIAs, and monitoring.

Environmental management system: SINGAPORE proposed the development of REMP guidelines to be used by contractors. FRANCE called for clarification on the distinct concepts of environment management systems and REMPs.

Environmental impact statement: ITALY stressed that the regulation should reflect the entire EIA process, including public consultation. SPAIN suggested rewording the draft regulation to keep environment impact statements relevant with existing REMPs.

AUSTRALIA appreciated the increasing importance of data requirement for EIAs from the LTC, which can ensure the protection of marine environment, allow transparency, and promote public confidence. JAPAN queried the meaning of “quality objectives” related to the biodiversity status in the Area, noting lack of relevant data.

The AFRICAN GROUP requested that inputs of stakeholders be reinserted into the scoping phase. GERMANY recommended legally binding monitoring strategies conducted by third parties to evaluate impact. He cautioned against finalizing the regulations ahead of the adoption of relative standards, posing a threat to future legitimacy of licenses.

The CONVENTION ON BIOLOGICAL DIVERSITY (CBD) encouraged reference to existing voluntary guidelines and relevant work by the CBD. DSCC called for further clarity on who will carry out relevant assessments.

Environmental management and monitoring plan (EMMP): GERMANY called for a fixed period of monitoring and harmonization with applicable standards, urging for inclusion of adaptive management strategies.

Restriction on mining discharges: SPAIN and the INTERNATIONAL MARINE MINERALS SOCIETY suggested reference to the London Convention and the 1996 Protocol. FSM suggested assessments and mitigation measures.

Performance assessments of the EMMP: SOUTH AFRICA, supported by AUSTRALIA, FSM, DSCC, and others, called for an annual performance assessment. The UK highlighted the need to ensure compliance with the EMMP in the annual report. DSCC stressed that the performance assessment should be independent of the contractor.

Report of the Chair of the Finance Committee

Andrzej Przybycyn (Poland), Chair of the Finance Committee, presented his report (ISBA/25/A/10- ISBA/25/C/31). He

highlighted, *inter alia*, the implementation of the budget for 2017-2018 and the status of the working capital fund, and made recommendations to the Council. ISA Secretary-General Michael Lodge underscored the need for member states to pay outstanding contributions and called for further contributions to the Voluntary Trust Fund (VTF).

On the VTF, CHINA noted their contribution of USD 70,000, with USD 20,000 earmarked for developing country participation. The UK reflected that while attendance has increased, active participation could be improved. The UK and SINGAPORE preferred 2020 meeting scenarios, which could be served within existing resources.

On cost-saving measures, CHINA and CHILE preferred onsite interpretation, while SINGAPORE and NORWAY supported remote interpretation.

On the development of rules, regulations, and procedures for equitable benefit sharing, TONGA pointed to their non-paper on this issue. ARGENTINA called for the Council to consider this topic at both its meetings in 2020.

The Council will return to this issue later in the week.

Report of the LTC Chair on the Work of the Commission at the Second Part of its 25th Session

LTC Chair Michelle Walker (Jamaica) presented her report from the 25th session of the Commission, which was held in two parts in March and July 2019 (ISBA/25/C/19 and ISBA/25/C/19/Add.1). She highlighted, *inter alia*: activities of the contractors; regulatory activities of the Authority; review and development of REMPs; implementation of the data management strategy; and issues relating to the Enterprise.

GERMANY, BRAZIL, CHILE, FSM, COSTA RICA, and ITALY, stressed the thorough examination of the Mining Code as a priority over “self-imposed” deadlines.

On the adoption of a set of guidelines and standards, GERMANY emphasized that their objectives are too crucial to leave to the charge of the Secretariat, preferring they be discussed by the Council and the LTC. CHILE underscored that standards and guidelines should be binding.

The AFRICAN GROUP posed questions regarding: when open meetings of the LTC will commence; and implications for non-compliant contractors. TONGA and ITALY supported the recommendation for the Secretary-General to follow up immediately with those contractors, along with their respective sponsoring states. NORWAY expressed concerns over a few contractors repeatedly performing inadequately against an approved plan of work.

ITALY reiterated that exploration contracts should be a mandatory prerequisite to exploitation. COSTA RICA called for involving independent experts in the development of guidelines and standards.

In the Breezeways

Delegates arrived on a hazy, humid Wednesday morning to continue consideration of the draft exploitation regulations, with many acknowledging the limited time to review a large section of the text. “At this stage of negotiations, it is a delicate balancing act,” confided one participant. In this regard, some were worried about what they viewed as the deafening voice of contractors throughout the draft regulations. “We acknowledge their role in the process, but their considerations seem to be stifling environmental concerns,” one delegate observed, highlighting, however, that “so many interventions during this meeting, related to ensuring environmental precautions, are inserted into the existing text.” One member opined that while “net zero loss to the environment” is unrealistic with any mining activities, “we still have a great responsibility to avoid and minimize impacts to reduce the loss of biodiversity.”

Whether or not the LTC will reconvene to reopen discussions on the draft regulations in light of the Council discussions remains to be seen, with some Council members opining that “the LTC has concluded its work on the draft regulations, which need to be finalized by 2020.” This opinion was met by a chorus of Council members in plenary asserting that “the quality of the Mining Code is more important than any self-imposed deadline.”