

Twenty-sixth Annual Session of the International Seabed Authority (First Part): 17-21 February 2020

The first part of the 26th session of the International Seabed Authority (ISA) convenes in Kingston, Jamaica, and will include meetings of the: ISA Council (17-21 February); and Legal and Technical Commission (LTC) (24 February - 6 March 2020). The Council meeting is preceded by the Open-Ended *Ad Hoc* Working Group (13-14 February 2020).

Expectations for the Meeting

The ISA Council is expected to continue to address the draft exploitation regulations on deep-seabed mining. At the last meeting in July 2019, delegates agreed to submit to the Secretariat comments and suggestions on a note on the draft exploitation regulations developed by the LTC. At this session, they will continue to consider the LTC note, alongside the submissions received during the intersessional period. They will also consider a proposal on a standardized approach for minimum standards related to regional environmental management plans (REMPs).

Other items on the agenda of the ISA Council for this session include:

- the status of contracts for exploration and related matters, including information on the periodic review of the implementation of approved exploration plans of work;
- the report of the Secretary-General on the implementation of the decision of the Council in 2019 relating to the reports of the LTC Chair; and
- issues relating to the election in 2021 of members of the Legal and Technical Commission.

Origins of the International Seabed Authority

The 1982 United Nations 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 oceans, their resources, and the protection of the marine and coastal environment. UNCLOS established that “the Area” and its resources are the common heritage of humankind. “The Area” is defined as the seabed and subsoil beyond the limits of national jurisdiction, and its “resources” as all solid, liquid, or gaseous mineral resources *in situ* in the Area at or beneath the seabed, including polymetallic nodules. 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 beneath 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 and 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 Agreement relating to the implementation of UNCLOS Part XI (the Area) 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 of UNCLOS.

The ISA was established as 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, came into existence 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 for the marine environment from harmful effects, which may arise from mining activities in the Area.

The ISA organs include the Assembly, the Council, the Finance Committee, the LTC, and the Secretariat. The Assembly consists of all ISA members and has the power to: establish general policies; set the budgets of the Authority; approve the 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 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); as well as 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 supervise and coordinate implementation of the Area regime.

The LTC is an organ of the Council and consists of 30 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 the “Mining Code,” which is the 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

23rd Session: At its 23rd session (8-15 August 2017), the Assembly discussed the final report of the first period review of the ISA and adopted decisions addressing transparency and environmental issues. The Council considered the first report of the Secretary-General on the implementation of the Council’s decision adopted in 2016, and draft exploitation regulations. The draft exploitation regulations were open for stakeholder comment on the basis of a series of general and specific questions proposed by the Secretariat. The Council also adopted a decision on a revised meeting schedule to engender a mutually responsive dialogue between the Commission and the Council on the draft exploitation regulations.

24th Session: The 24th session of the ISA was held in two parts. The first part consisted of a meeting of the Council (5-9 March 2018), followed by a meeting of the LTC (12-23 March). The second part consisted of meetings for the Council (16-20 July 2018) and the Assembly (23-26 July), preceded by meetings of the LTC (2-13 July) and of the Finance Committee (9-12 July). The Council considered issues related to the draft exploitation regulations, including: models for a financial payment system; the role of the sponsoring state; the role and legal status of standards; the LTC’s recommendations and guidelines; and broader environmental policy and regulations on exploitation. The Council further addressed the possible operationalization of the Enterprise and contractors’ non-compliance issues. The Assembly adopted the Strategic Plan for 2019-2023, which consists of a mission statement, context and challenges, strategic directions, and expected outcomes.

25th Session: The 25th session was held in two parts. The first part of the 25th Session of the ISA Council was held from 25 February to 1 March 2019, followed by a meeting of the LTC (4-

15 March). The second part included meetings of the Authority’s Council and Assembly (15-26 July 2019), preceded by meetings of the LTC (1-12 July) and the Finance Committee (8-10 July). The Council made progress on the draft exploitation regulations, addressing, *inter alia*: standards, guidelines, and terms; decision-making; REMPs; and the inspection mechanism. At the end of the second part, Council members requested more time to submit comments on the draft regulations in order to ensure a balance between commercial interests and environmental protections. The Council further considered the report on matters relating to the Enterprise, deciding to extend and expand the mandate of the Special Representative for the Enterprise for a limited time. At this meeting, which marked the ISA’s 25th anniversary, the Assembly oversaw the operationalization of the Authority’s maiden Strategic Plan, with delegates also deliberating on enhancing participation and transparency through the admission of observers.

Intersessional Highlights

BBNJ IGC-3: The third session of the Intergovernmental Conference (IGC-3) on an international legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ) took place at UN Headquarters in New York from 19-30 August 2019.

For the first time, delegates discussed treaty text on the basis of a “zero draft” prepared by IGC President Rena Lee (Singapore). The draft was structured along the lines of the package agreed in 2011 on: marine genetic resources, including questions on benefit-sharing; environmental impact assessments; area-based management tools, including marine protected areas, and capacity building and marine technology transfer. Delegates at IGC-3 worked diligently in open informal plenary sessions as well as closed informal sessions, making progress on all the elements of the 2011 package, but acknowledging the need for more work to resolve long standing issues.

ISA Workshop on the Regional Environmental Management Plan for the Area of the Northern Mid-Atlantic Ridge (MAR): This workshop was held in Evora, Portugal, from 2-29 November 2019, convened by the ISA, in collaboration with the Atlantic REMP Project (funded by the European Union) and the Government of Portugal. Participants met to review and analyze seafloor and water column ecosystem data from the northern MAR, and synthesize, among others, environmental data, faunal distribution, dispersal capabilities, and distances, genetic connectivity, community structure, and ecosystem function along and across the northern MAR. They also reviewed current exploration activity within contract areas and distribution of polymetallic sulfides along the northern MAR, and, *inter alia*, discussed potential spots within the Area that could be preserved from exploitation in order to protect the marine environment, including through the designation of areas of particular environmental interest.

International Workshop on Capacity Development, Resources and Needs Assessment: Organized by the ISA Secretariat, this workshop in Kingston, Jamaica, from 10-12 February 2020, addresses the capacity-building needs of developing states that are party to UNCLOS and members of the ISA. Agenda items include how to improve the Authority’s capacity-building initiatives and programmes to ensure their effectiveness and impact. The workshop’s outputs will inform the Authority’s development of a dedicated strategy intended to shift the organization from individual training to enhancing in-country capacity.