

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

On Monday, the Council of the International Seabed Authority (ISA) convened for the first part of its 26th annual session (ISA-26) in Kingston, Jamaica. The main matter discussed for most of the day concerned issues related to the election of members of the Legal and Technical Commission (LTC), with delegates meeting in plenary and in an informal session to make headway on this issue.

Opening

Luis del Solar (Argentina), Acting Council President of ISA-25, opened the meeting. ISA Secretary-General Michael Lodge noted a “heavy agenda and limited time,” pointing to the need for progress on the mining code. Quoting former Assembly President Peter Thomson (Fiji), he described work since ISA-17 as “a new phase in the life” of the Authority, highlighting transparency and stakeholder engagement throughout the process, and calling on the Council to facilitate the adoption of the code. Lodge provided an update on the work of the LTC in the intersessional period and for the upcoming February 2020 meeting. He welcomed very recent contributions to the Voluntary Trust Fund.

Adoption of the Agenda and Election of Officers

The Council adopted the agenda (ISBA/26/C/L.1). Bangladesh, for the ASIA-PACIFIC GROUP, proposed, and delegates agreed, to elect Taaniela Kula (Tonga) as ISA-26 Council President. The Council also elected four Vice-Presidents: Nigeria, for the African Group; the Russian Federation, for the Eastern European Group; Jamaica, for the Latin American and Caribbean Group (GRULAC); and Canada, for the Western Europe and Others Group.

Issues Relating to the Election of LTC Members

The Council considered two proposals relating to the election of members of the LTC: the first (ISBA/25/C/L.2) proposed at ISA-25 by GRULAC and the African Group and tabled for this session, and the second (ISBA/26/C/L.2), proposed for this session by Australia, Canada, France, Germany, Italy, Norway, Spain, and the UK. Council President Kula urged delegates to take a decision at this session.

Brazil, for GRULAC, and Ghana, for the AFRICAN GROUP, spoke to the first proposal, noting the “delicate, complex discussions on LTC composition” and encouraging the Council to take action by consensus. The UK spoke to the second proposal, highlighting

the proposed amendments aimed to maintain the “structure and integrity” of the GRULAC/African Group proposal, while ensuring that geographical distribution is not elevated over other factors, including topical expertise, and that the criteria are in conformity with the UN Convention on the Law of the Sea (UNCLOS).

Delegates then discussed geographical representation, diversity in expertise, and the representation of special interests. JAMAICA, supported by ARGENTINA, outlined the past composition of the LTC, noting that despite an increase in the number of members, expertise had not become more diverse. Emphasizing that geographical representation is a guiding principle in the UN system, COSTA RICA underscored that geographical, along with gender considerations, do not compromise diversity in expertise.

BELGIUM recalled his country’s 2018 proposal on strengthening environmental and scientific expertise on the LTC (ISBA/25/C/22), and GERMANY noted that expertise related to oceanology and protection of the marine environment is underrepresented in the current LTC. Both expressed support for the second proposal, while NIGERIA opposed it, suggesting convening a small working group to discuss the issue.

INDIA, supported by CHINA, urged delegates to take a decision balancing geographical representation and expertise. Supported by the AFRICAN GROUP, Council President Kula suggested continuing in an informal session, to enable the Council to reach agreement. GRULAC added that their concerns regarding regional representation have to be taken seriously, in order to ensure confidence in the recommendations of the LTC.

TRINIDAD AND TOBAGO indicated that priority should be given to the optimal size of the LTC, taking into account expertise and the “universally accepted concept of geographical distribution.” CHINA suggested that the proposal be developed by the LTC before it comes to the Council, and stressed that it should be in line with the principle of cost effectiveness.

Council President Kula then opened informal discussions on the matter, after which delegates agreed to return to this issue in plenary, basing their deliberations on a new document to be circulated by the Secretariat outlining the differences between the two proposals, with the aim of concluding this issue by Wednesday, 19 February 2020.

Election to Fill the Vacancies on the LTC

Delegates elected Carsten Rühlemann (Germany) to replace Christian Jürgen Reichert (Germany) on the LTC (ISBA/26/C/5). Council President Kula thanked the latter for his service, including as LTC Chair.

Status of Contracts and Related Matters

Council President Kula introduced the document (ISBA/26/C/4), pointing to an annex on status of contracts for exploration. He drew delegates' attention to the draft recommendation, which they endorsed without amendment.

The Council took note of: the status of contracts for exploration; information on the periodic reviews of the implementation of approved plans of work; and proposed development of guidance for contractors on the content, format, and structure of periodic reports.

Implementation of the 2019 Council Decision Relating to the Reports of the LTC Chair

Council President Kula invited parties to take note of the report (ISBA/26/C/3), noting that the item would remain open, given that additional reports will be submitted during the second part of ISA-26.

AUSTRALIA noted the importance of transparency as the development of the draft exploitation regulations advances, and said it is critical to conclude the regulations and legally-binding standards as a package. JAMAICA noted an increased use of consultants in the development of standards and guidelines for activities in the Area, encouraging transparency in this regard.

GRULAC and INDIA commended the report's finding that no issues of alleged non-compliance by contractors had been identified.

The AFRICAN GROUP appealed to member states and international organizations that are able to contribute to the Voluntary Trust Fund to do so. BRAZIL announced the country could self-fund its Council member's participation at the next Council meeting.

INDIA identified an urgent need to develop a regional environmental management plans (REMPs) for the Indian Ocean.

Responding to an inquiry about the consideration of matters relating to the Enterprise by Eden Charles, the Secretary-General's Special Representative for the Enterprise, Secretary-General Lodge noted this item would be taken up at the second part of ISA-26.

THE PEW CHARITABLE TRUSTS commended the launch of the DeepData database, and called for improved processes for the working groups on standards and guidelines, noting time pressures and a lack of transparency in appointments.

The DEEP-OCEAN STEWARDSHIP INITIATIVE (DOSI) emphasized the need for a standardized mechanism to develop REMPs, and called for the adoption of best practices for interoperability and accessibility for DeepData.

The DEEP SEA CONSERVATION COALITION (DSCC) suggested recognizing that the 2020 target date for the completion of standards and guidelines is not viable, stressing the need for transparency and high quality outputs, and noting that REMPs take time to develop.

Secretary-General Lodge noted that, while the report was compiled in December 2019, work on standards and guidelines had progressed since then under the supervision of the LTC. He said the work would be reviewed by the LTC at its next meeting. He clarified that the work was being done in accordance with the process and timelines agreed at the last session of the Council (ISBA/25/C/19/Add.1). The Council took note of the report.

Draft Exploitation Regulations

Report of the Open-Ended Working Group (OEWG) on the Financial Model: Council President Kula introduced discussions on the draft exploitation regulations. He noted the OEWG report was currently available only in English (ISBA/25/C/8).

OEWG Chair Olav Myklebust (Norway) reported on the outcomes of the Group's third meeting, held from 13-14 February 2020, reminding the Council that the Group's second meeting had considered three payment mechanisms and had agreed to explore a fourth option, to be developed with support from the Massachusetts Institute of Technology (MIT). He outlined the four options: a fixed rate *ad valorem* only royalty mechanism; a two-stage *ad valorem* only royalty mechanism; a combined *ad valorem* royalty and profit-based system; and a progressive *ad valorem* royalty system.

Chair Myklebust highlighted the report's recommendations, including: to convene a fourth meeting of the Working Group, and to invite stakeholders to submit comments to the Secretariat to refine assumptions of the model. While he noted the Working Group had not fully endorsed or discarded any of the four options, the report's recommendations included a request to the Secretariat to further refine the two-stage *ad valorem* only royalty mechanism and the progressive *ad valorem* royalty system. He noted that the recommendations also requested the Secretariat to provide a comparative study of seabed mining and land-based mining. The Council will continue deliberations on this issue on Tuesday.

In the Breezeways

Delegates arrived in Jamaica for the first part ISA-26 anticipating difficult discussions on key issues. After a hesitant start, which saw the morning plenary suspended to allow for consultations on the nomination of the new Council President, delegates launched into substantive discussions. They began with an issue that has polarized the Council for years: the composition and size of the Legal and Technical Commission (LTC). As delegates did not find consensus in plenary, the Council moved into an informal discussion to consider how to ensure both expertise and geographical representation in the LTC. "The key issue here is trust," shared one delegate. "We have to trust that experts sitting at the LTC table are cognizant of regional issues, and fully represent them in the Commission."

Linked to these discussions was the issue of the status of the Voluntary Trust Fund to support developing country participation. In his statement, Secretary-General Lodge noted that were it not for recent contributions over the weekend, the Fund would have been in the red. This would have jeopardized both developing country participation and a quorum in next week's LTC meeting. "These issues are more sensitive than they seem," sighed one delegate, adding "we need to be mindful of the power dynamics as we try to reach agreement on this pressing matter."

Other delegates noted that the LTC discussion, if unduly extended, will leave less time for the discussions on the draft exploitation regulations. One participant commented that Tuesday, 18 February marks the anniversary of the first recovery of manganese nodules in 1873 as part of the Voyage of the H.M.S. Challenger, and expressed hope that this would inspire the Council as they launch into substantive discussions of the draft exploitation regulations.