

## ISA-26 Part 1 Highlights: Wednesday, 19 February 2020

On Wednesday, the Council of the International Seabed Authority convened for the third day of the first part of its 26th session (ISA-26) in Kingston, Jamaica. Delegates discussed aspects related to the draft exploitation regulations, specifically proposals related to regional environmental management plans (REMPs). The Council also discussed issues regarding the election of members of the Legal and Technical Commission (LTC), both in an informal plenary session and behind closed doors, with discussions to be continued on Tuesday.

### Election of Officers

In the afternoon, ISA-26 Vice President Kathy-Ann Brown (Jamaica) took over from Council President Taaniela Kula (Tonga), who stepped down due to unexpected personal reasons. She explained that she had been designated as Acting President until the Asia Pacific region nominates another Council President.

### Issues Relating to the Election of LTC Members

Acting Council President Brown opened an informal plenary session to consider this issue. Council Vice-President Vladislav Kurbatskiy (Russian Federation), who served as facilitator for the closed-door informal discussions on the issue, reported the group's outcome. He indicated agreement that there should be 25 LTC members, and that the Secretary-General should seek the views of the LTC in regard to future areas of expertise required. He said the informal group could not agree on the issue of equitable geographical balance, indicating that some insisted on a fixed distribution while others preferred more flexibility. He expressed readiness to prepare a working paper to propose a possible mechanism going forward.

In the ensuing discussion, the representatives of two regional groups suggested putting aside all discussions on the draft exploitation regulation that relate to the work of the LTC. Acting Council President Brown said it would be difficult to distinguish which parts of the draft regulations relate to the LTC. She said the whole document might be related since the Commission reviews the work plan. Another participant sought to clarify that since the current LTC is properly constituted, with issues related to the LTC relevant only for its elections in 2021, ongoing disputes should not affect the current agenda. One of the regional representatives explained that his group was not comfortable with references to the LTC without knowledge about its future composition. Pointing out that the issue had already been postponed at past sessions of the

ISA Council, Acting Council President Brown recognized Council members' concerns and requested the Facilitator to resume informal discussions on how Council might proceed.

The meeting was then suspended to allow for informal consultations. Reconvening in plenary, Facilitator Kurbatskiy announced the group had suggested a way forward, noting he would develop a draft decision containing three parts for consideration by the Council on Thursday morning: the description of the overall composition, totaling 25; a request to the Secretary-General to seek the LTC's view on the current and future needs for expertise, during its meeting next week; and the development of a working paper on a mechanism for the geographic composition of the LTC, based on Basic Documents of the ISA and other relevant practices of UN bodies, which would enable the Council to work on this interessionally.

Delegates agreed to consider the draft decision in a formal session on Thursday, with Acting President Brown expressing hope this would enable the Council to move forward with its other work in an informal session for a "very full, intensive day of discussions."

### Draft Exploitation Regulations

**Working Method:** In the morning, Council President Kula reported on ongoing consultations within regional groups on nominating facilitators for three informal thematic working groups on aspects of the draft exploitation regulations, following a bureau meeting on Tuesday, 18 February.

**Protection and Preservation of the Marine Environment (Part IV):** Turning to a proposed additional paragraph on REMPs in Part IV, Council President Kula suggested that delegates simultaneously consider two proposals submitted by Germany and the Netherlands and co-sponsored by Costa Rica, on a procedure for the development, approval and review of REMPs (ISBA/26/C/6) and on a template with minimum requirements for REMPs (ISBA/26/C/7).

Introducing the proposals and describing REMPs as an essential pillar of the mining code, Germany explained that the two submissions are based on a REMPs workshop organized in November 2019. He said the proposed procedure and template: build on the ISA's work, while ensuring stewardship by the Council and the LTC; and are aligned with the LTC's requirements in mandating the establishment of small, non-permanent *ad hoc* groups of experts, to convene under clear terms of reference for limited periods of time to assist the LTC's work.

As co-proponent, the Netherlands explained that the proposals should be understood as part of the overarching environmental policy of the ISA and are aimed at strengthening existing guidance

prepared by the ISA Secretariat. As co-sponsor, Costa Rica noted a need for a standardized approach for all REMPs.

There was widespread agreement on the importance of REMPs. Many, but not all, delegates agreed with creating standardized processes for developing, approving, and reviewing REMPs. Some delegates pointed to the existing regulatory framework for establishing REMPs. One preferred to follow the current process taken by the ISA to develop REMPs through regional workshops led by the LTC. Some asked for clarification about how the proposals relate to ongoing work by the Secretariat on REMPs, raising concern that these proposals could prejudice the outcomes of other existing efforts. Several others suggested that the REMP proposals and the draft exploitation regulations needed to be considered jointly, particularly in light of unresolved questions about expertise and equitable geographical representation.

Several expressed support for the rationale behind the two proposals as presented, stressing the importance of adopting a standardized approach to REMPs. Some supported their adoption as part of the Authority's environmental policy rather than only of the exploitation regulations. Some others further suggested annexing the template to the exploitation regulations.

Others supported the proposals in principle, but had questions and suggestions on specific provisions, including on minimum requirements. Many called for REMPs to be mandatory, legally-binding, and several said they should be in place before granting exploitation contracts.

Delegates noted that a standardized process is key to ensuring a replicable, transparent, and inclusive pathway for designing REMPs, and for good governance and transparency in the protection of the marine environment. Suggestions from delegates included that the REMPs include: area-based management tools; provisions to catalogue for species in a region to develop adequate baselines; and mandates that mining be managed to prevent biodiversity loss.

Some stressed that the operationalization of the Enterprise and the Economic Planning Commission should be prioritized. Several spoke about a reference to the establishment of expert committees on REMPs. One noted that this proposal raises legal questions about their status, creation, and accountability. Some preferred language referring to "informal groups" or "working groups" of experts, and one other called into question the need for "additional bureaucracy" in the development of the mining code.

One advised that any costs for the Secretariat associated with these plans would need to be considered by the Finance Committee. Others pointed to the additional cost implications related to the establishment of an expert committee.

On the template, one called for further operationalizing and quantifying the overarching goals listed in the document. Another stressed connectivity of marine ecosystems and species of cultural significance to indigenous peoples and local communities. One other lauded the inclusion of language on carrying capacity in the proposal, noting this should be added to the Annex of the template.

Some noted that efforts on REMPs under the ISA should be developed in accordance and collaboration with the ongoing negotiations on a legally binding instrument on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ). One highlighted, in particular, the role of regional fisheries management organizations and cumulative impacts in environmental impact assessments.

Some delegations enquired about transition arrangements for existing REMPs, if the new procedure and template were to apply to all REMPs. Other delegations suggested the Council "take note" of

the proposals, and continue discussions in a future Council session. On the proposed regulation of REMPs, some delegates said they would submit written suggestions.

On general obligations on the protection and preservation of the marine environment as contained in the draft exploitation regulations, a few delegations drew attention to the importance of restoration and rehabilitation, noting that restoration may not be viable in a human timescale, with one suggesting recognizing the benefits of coastal zone enhancement for food security and blue economies in developing countries. One proposed a requirement to prevent biodiversity loss, degradation, and resilience.

Calling REMPs an essential pillar to take into account regional specificities and carrying capacities, one delegate urged that no exploitation take place until REMPs are in place and suggested that a research plan could help address the questions raised.

In response to questions, Secretary-General Michael Lodge said the LTC is developing the process for working on REMPs, and added that delegates could consider questions of Council oversight.

The Council designated a small group, led by Germany, to work on this matter with a view to return to this in plenary by Friday. Some Council members noted that the discussions may not be concluded at this session.

### *In the Breezeways*

Having reached the midpoint of the Council session, on Wednesday morning, delegates got into the "nitty gritty" of their work, addressing regional environmental management plans, REMPs. While proposals on a common procedure and template for REMPs were generally well received, some worried that the *ad hoc* expert committees proposed to support the LTC's work on REMPs, no matter how impermanent, would create an extra layer of bureaucracy and require additional finances. "We support the spirit of the proposals, but have some concerns," shared one delegate, conveying the feeling among many delegates in both the informal plenary session and in the breezeways.

One hopeful delegate shared, "whatever the outcome of these initial talks, the one thing we know is that effective, credible environmental management is now deeply enshrined in the work of the Authority," highlighting that many had not thought this would be possible "even three years ago." Another seasoned observer seemed less optimistic, opining that discussions did not yet prioritize the environment, and suggesting that "the starting point in the regulations should be considering how much biodiversity we are prepared to lose rather than how much of it we are willing to protect."

In the afternoon, as winds picked up on Kingston's waterfront, darker clouds moved into plenary, with the informal consultations on the LTC election failing to reach agreement. After two regional groups who felt like their concerns on regional representation were being sidelined suggested halting deliberations on the draft exploitation regulations until a solution was reached, others were heard muttering that the negotiations of the draft regulations were being "held hostage." So, reluctantly, all the relevant parties rejoined the closed-door negotiations to work on what might result in a compromise. Despite breaking in time for some to take a sunset walk on the beach, delegates seemed unenthused about the early end to the day's meeting. Several expressed hope that a draft decision, to be considered on Thursday morning, might chart a path forward for resolving this long-standing impasse on the composition of the LTC, enabling negotiators to focus on the significant work still ahead on the draft exploitation regulations.