

ISA-26 Part 1 Highlights: Thursday, 20 February 2020

On Thursday, the Council of the International Seabed Authority convened for the penultimate day of the first part of its 26th session (ISA-26) in Kingston, Jamaica. Delegates met in an informal plenary session to discuss: a draft decision regarding the election of members of the Legal and Technical Commission (LTC); the working method to address the draft exploitation regulations; a draft decision on proposals related to regional environmental management plans (REMPs); and the draft exploitation regulations.

Credentials

Secretary-General Michael Lodge informed the Council that, as of 20 February 2020, formal credentials had been submitted by 28 states. He added that four countries, namely Argentina, Cameroon, India and Nigeria, had communicated information concerning the appointment of their representatives.

Issues Relating to the Election of LTC Members

In the morning, Acting Council President Kathy-Ann Brown invited delegates to review a draft Council decision relating to the 2021 election of LTC members (ISBA/26/C/CRP.3) and a Facilitator's "working paper" on the same. After regional consultations on the two documents, Facilitator Vladislav Kurbatskiy (Russian Federation) noted his proposal that detailed work be carried out intersessionally in accordance with the working paper, towards a common understanding on the issue by the second part of ISA-26.

Two regional groups proposed two amendments to the working paper, namely: referring to equitable geographical "distribution" instead of "balance," with the groups noting that "distribution" is in line with the UN Convention on the Law of the Sea (UNCLOS) and other documents; and referring to "adopting a decision on the mechanism to govern the election," instead of "the next election," with the groups noting the mechanism should not apply only to the 2021 election.

They also requested timelines for actions to be undertaken by the Facilitator regarding: delivery of the first draft of the mechanism; a deadline for written comments and proposals; and the distribution of an amended draft.

The two regional groups further stressed the need for the working paper to be an integral part of the decision, calling for it to be included as an annex to the decision.

On the Facilitator's working paper, noting provisions in UNCLOS Article 163 (4) on the election of members of the Commissions as

well as ISA Rules of Procedure, three delegations underscored the need to include "representation of special interests" in the provision on equitable geographical distribution. One suggested that if reaching consensus on a more permanent solution proved challenging, a provisional agreement for the 2021 election would be acceptable.

Facilitator Kurbatskiy said he would amend the documents as proposed to include language on special interests, and to delete the word "next" so as to encompass elections beyond 2021. On timelines for providing a draft mechanism for the election of LTC members for consideration intersessionally, Facilitator Kurbatskiy explained that he could only specify a timeline once there was agreement on the number of experts to be included in the Commission, and noted that he expected this to be possible by the end of March 2020.

Delegates then agreed to the revised draft decision and working paper, incorporating the requested changes. The annexed working paper refers to equitable geographical distribution, and includes language on the representation of special interests. The working paper also sets out that the Facilitator shall provide a first draft of the proposed mechanism by the end of March 2020 to enable intersessional work through written comments, after which the Facilitator will amend the draft.

Draft Exploitation Regulations

Working Method: In the morning, recalling the process adopted to draft UNCLOS through working groups with clear mandates and procedures, Acting Council President Brown proposed a similar process for further negotiations on the draft exploitation regulations. She announced that ISA-26 Vice-President Kenneth Wong (Canada) would facilitate an informal, open working group on the Working Method over lunch.

In the afternoon, Facilitator Wong presented a draft document on the issue, which proposed the establishment of informal working groups on three thematic areas, noting that these would convene sequentially during Council sessions. He underscored the need for facilitators to proactively build consensus in these groups. In discussions, two delegates called for specifying the Enterprise as separate from other observers participating in the informal working group proceedings.

Regional groups volunteered to facilitate informal working groups, as follows: the African Group on inspection, compliance, and enforcement; GRULAC on institutional matters; and the Asia-Pacific Group on the protection and preservation of the marine environment. The Eastern European Group deferred its decision. The Council will consider a draft decision, based on the draft document, on Friday.

Protection and Preservation of the Marine Environment

(Part IV): In the morning, GERMANY, one of the proponents of the **draft REMPs proposals**, said a draft decision (ISBA/26/C/CRP.4) on further work on the issue had been circulated. Noting broad support for the proposals, one regional group, supported by many, requested deleting the reference to “as appropriate,” with regard to the LTC taking into account the proposals in further developing REMPs guidance. Some other delegates asked to retain “as appropriate” to give the LTC more discretion on how to consider the proposals. Another delegate proposed clarifying that the various elements listed in the provision are to be taken into account by the LTC in developing a standardized approach. One observer urged that the LTC base its discussions on these proposals which received broad support, and that these discussions be held in an open session. Some delegations indicated they required further instructions from capitals. Delegates will resume discussions on this issue on Friday.

In an informal afternoon plenary session, Acting Council President Brown opened discussions on sections of the draft regulations pertaining to the protection and preservation of the marine environment, specifically on obligations relating to the marine environment, and preparation of the Environmental Impact Statement (EIS) and the Environmental Management and Monitoring Plan (EMMP). She invited delegates to explain the rationale for their proposals and other issues raised with regards to the text.

On a paragraph on the **development of environmental standards**, a number of delegates supported an indicative list proposing to include the term “*inter alia*,” noting that new technologies and scientific knowledge might expand options for environmental standards. One stressed that the ISA should not approve new exploitation activities unless environmental standards are adopted.

On a paragraph on the **environmental management system (EMS)**, one participant recommended clarifying and defining: the components of an EMS; who would establish such a system; and who would be entrusted with independent auditing. Another advised that the Authority be tasked with developing a document specifying minimum standards for an EMS, and said contractors would then be mandated to implement and maintain an EMS in compliance with those standards.

On a paragraph on the **EIS**, participants’ views diverged on whether to specify EIS or environmental impact assessment (EIA) processes. One group called for: standards and guidelines for EIAs to be prepared as a matter of priority; clear EIA timelines; and inclusion in EIAs of independent scientific assessment and open hearing processes. Calling for conceptual clarity between the EIA and an EIA decision, delegates asked to clarify the roles of the contractor and the ISA as the regulator. One advised that text be added to acknowledge that not all environmental impacts can be mitigated, and that EIAs “identify residual effects.” Two delegations underscored the need to specify that an EIA or EIS have measures that comply with the REMP.

Raising concern about the insufficient definitions, one delegate encouraged the inclusion of an annex with clear explanations of screening, scoping, and other terms and processes. One underlined that EIAs must be mandatory for all exploitation activities in the Area, and another urged coordination between the draft regulations in the ISA and ongoing negotiations on an international legally binding instrument on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

(BBNJ). One delegate asked to distinguish between the different phases of the EIA process and noted that additional assessments could be required at later times or for different sites. A number of observers called to redesign the steps in the EIA process.

On a paragraph on the **EMMP**, one delegate suggested referring to “legally-binding” standards and guidelines. Another suggested that the regulations specify contractor responsibilities for expenses related to EMMPs. He also proposed incorporating mechanisms for review and control, to ensure the improvement of these plans over time, in keeping with mechanisms for environmental monitoring.

Delegates exchanged several views on a proposed additional paragraph on the EMMP relating to **test mining**. A number of delegations stressed that test mining is still mining, and should be fully regulated under the draft exploitation regulations, whereas some others indicated that it should be considered as part of exploration. While recognizing potential information gained prior to engaging in a commercial activity, a delegate said that engaging in early stage test mining should not obviate the need for an EIA. Delegates suggested various ways to define test mining, such as: duration or scale of operations, including whether operations are sustained; quantity of materials extracted; size of the area or distance at which operations take place; or disturbance caused to an area. One delegate suggested requiring an EIA prior to obtaining an exploitation license. Another pointed to the ISA’s prospecting and exploration regulations which refer to “testing of collecting systems and processing operations.” One participant indicated that the operational tests under the EIA should be sufficient to meet requirements and that test mining could be expensive, bureaucratic and cause delays. Discussions will continue on Friday.

In the Breezeways

After three days of halting progress, delegates seemed resigned as they arrived at the venue on Thursday. Much of the work on Thursday happened behind closed doors and in huddles around the venue, as a few facilitators led work on the margins of the meeting to reconcile differences and on draft decisions. Several voiced their disappointment that meaningful progress on the mining code would not be made at this meeting. “We were expecting things to move slowly this week, but this is on a whole other level,” sighed one frustrated observer.

Others, however, were buoyed by the time that has been spent trying to resolve “long-standing issues,” with one expressing hope that this session “will set us on track to tackle issues of substance in a more streamlined manner.” Another delegate explained the importance of the LTC election issue, sharing that LTC recommendations “carry a lot of weight, and it’s very difficult to overturn them,” alluding to the ISA provision that Council votes to overturn an LTC decision require a two-thirds majority.

While a few delegates said that they did not have “crystal ball” to predict the final outcome of ISA-26, several welcomed the decision to set a path to develop a mechanism for LTC elections. In the late afternoon, several delegations were taken by surprise as the Council returned to a substantive consideration of the draft exploitation regulations. As the Council broke for the day, Acting President Brown seemed optimistic, reflecting that “we might have started slow, but we are definitely building pace,” adding that “Success breeds success, and we are moving to success.”

The *Earth Negotiations Bulletin* summary and analysis of ISA-26 Part 1 will be available on Monday, 24 February 2020, at <https://enb.iisd.org/oceans/isa/2020-1/>