

## ISA-27 Assembly Highlights: Wednesday, 3 August 2022

On a busy day, the 27th session of the Assembly of the International Seabed Authority (ISA-27) finalized various items on its agenda, including the capacity development strategy and financial matters. A proposal by Belgium to amend the rules of procedure generated an interesting discussion in the afternoon.

### Report of the Secretary-General

TRINIDAD AND TOBAGO stressed that robust regulations must be in place to ensure the effective protection and conservation of the marine environment before mining activities can commence in the deep seabed, cautioning against “speed taking precedence over quality.”

Using Pope Francis quotes, the HOLY SEE underscored the need for additional investments to fully understand the functioning of ecosystems; the interconnectedness of environmental challenges; and the need to leave no one behind.

OCEANCARE cautioned that the creation of four new areas of particular environmental interest in the Clarion-Clipperton Zone (CCZ) does not solve the problem as these areas are exposed to pressures from adjacent areas, further stressing that “by determining what percentage to protect, we also determine what percentage to destroy.” She noted that major companies in the battery industry move away from using metals found in deep seabed minerals such as nickel and cobalt.

Stressing that all decision making must be based on robust science, the DEEP OCEAN STEWARDSHIP INITIATIVE (DOSI), emphasized that, despite progress, a lot of work is still needed to advance marine scientific knowledge. She invited ISA to engage in a global conversation and break down silos, acknowledging the interrelationship between the ocean, climate, and biodiversity.

The INTERAMERICAN ASSOCIATION FOR ENVIRONMENTAL DEFENSE (AIDA) noted that lack of rigorous case studies creates uncertainty that threatens marine ecosystems with irreversible consequences and supported a cautionary pause if a moratorium is not feasible.

EARTHWORKS highlighted lack of scientific data, particularly on connectivity, and politicization of available science, querying whether a legal route exists to defer the exploitation regulations and have a moratorium. He called for a global youth consultation process, supported by the OCEAN FOUNDATION.

Stressing that the effective protection of the marine environment cannot be ensured with deep seabed mining, OCEAN NORTH, *inter alia*: highlighted that Tuvalu rescinded its sponsorship of Circular Metals Ltd. and the report should be amended to reflect that; and emphasized the need to complete the negotiations on biodiversity beyond national jurisdiction (BBNJ) and give precedence to BBNJ on biodiversity-related matters.

The OCEAN FOUNDATION called for recognizing the interconnectedness of our natural world and strengthening stakeholder engagement in line with the Sustainable Development Goals (SDGs). She further emphasized the need to protect underwater cultural heritage, and focus on equity and intergenerational human rights.

Noting that this was the longest debate on his annual report and that the comments were overwhelmingly positive, ISA Secretary-General Michael Lodge said the Secretariat would use all statements to guide future work. He welcomed contributions to various trust funds and urged further support for the Sustainable Seabed Knowledge Initiative (SSKI). He assured delegates that the ISA follows UN standards of conduct for civil servants and stands ready to support BBNJ negotiations, noting that, at this stage of the negotiations, statements of international organizations

are limited. He agreed with the African Group on issues of under-representation and expressed readiness to jointly look for solutions; and reported on preparations for the Women in Law of the Sea Conference to take place 26-28 September, in New York City, US.

Acting President Myklebust tabled the recommendations of the implementation of the Action Plan of the ISA (ISBA/27/A/4). Delegates approved them without amendments and took note of the annual report of the Secretary-General.

### Financial Matters

Acting President Myklebust opened discussions on financial matters. He tabled the report of the Finance Committee (ISBA/27/A/8 and ISBA/27/C/36) and the proposed ISA budget (ISBA/27/A/3/Add.1/Rev.1 and ISBA/27/C/22/Add.1/Rev.1), along with the Council decision on financial and budgetary matters (ISBA/27/C/40), referring especially to its recommendations to the Assembly.

Regarding the Authority’s budget and the adoption of the scale of assessment for the contributions to the budget, Acting President Myklebust invited the Assembly to consider the relevant draft decision (ISBA/27/A/L.2).

CHILE requested the Assembly decide to appoint the UN Board of Auditors to undertake auditing for future financial periods, noting that whilst the UN Board will entail higher costs than commercial auditors, it would be preferable and would respond to the transparency requirements called for by taxpayers.

Secretary-General Lodge noted that, under the financial regulations, an internationally recognized auditor is to be appointed by the Assembly on the recommendation of the Finance Committee, and that Ernst and Young was appointed for 2021-2022 (ISBA/26/A/33) following a competitive process of appointment. He added that the Finance Committee will take into consideration the views expressed by delegates in the Council and Assembly meetings when recommending an auditor for the next period.

CHILE requested further information about the regulatory powers and inspection mechanism of the Compliance Assurance and Regulatory Management Unit (CARMU), noting the need for clarification of which powers lie with the Council, as well as its potential future compliance committee, to avoid a duplication of functions.

Secretary-General Lodge responded that CARMU relates to functions that the ISA is required to undertake under the exploration regime and does not “in any way overlap with, or run risk of overlapping with” the future inspectorate for the exploitation regime, “which is clearly some time away.”

CHILE drew attention to the removal of the Enterprise from the budget, emphasizing that removing the item should not get in the way of starting work on it. Andrzej Przybycin, Poland, Chair of the Finance Committee, stated that the Enterprise was discussed during the meeting of the Finance Committee and that it was suggested to exclude it from the budget, considering the many new tasks which should be financed, suggesting that the matter be discussed by the Assembly and that the Finance Committee would thereafter consider and prepare something in that regard.

The Assembly adopted the decision relating to financial and budgetary matters with no further comments.

### Capacity Development Strategy

Secretary-General Lodge presented the capacity development strategy (ISBA/27/A/5). He described the strategy as the “missing link” in the set of ISA policy guidance documents, and emphasized capacity development as “one of the most important aspects of the Authority’s mandate.” He referred to an international workshop held in 2020 on capacity development, with the objective to understand the priorities and needs of

developing states as well as a public consultation held on the draft development strategy. He noted that the strategy does not necessarily develop new areas, but tries to provide a more coherent policy framework for the Authority's ongoing activities. Secretary-General Lodge informed that updates on the implementation of the strategy will be provided through annual reports to the Assembly and that a five-year period for reviewing the strategy is realistic.

The Capacity Development Strategy sets out high-level objectives for capacity development and identifies five key result areas with relevant outputs:

- ensuring that capacity development programmes and activities are meaningful, tangible, efficient, effective, and targeted at the needs of developing States as identified by them;
- establishing and furthering strategic partnerships in support of capacity development;
- strengthening institutional capacities through technology transfer and technical assistance;
- advancing women's empowerment and leadership in deep sea-related disciplines through targeted capacity development activities; and
- improving deep-sea literacy through better awareness and understanding of the legal regime of the Area and the role and mandate of the Authority.

Many delegates welcomed the strategy. MONACO noted that "capacity development is an obligation for the Authority, not a choice," highlighting the importance of training programmes and capacity building. FRANCE, BANGLADESH, and the RUSSIAN FEDERATION highlighted that the strategy takes into account the needs of developing states in an inclusive way, noting that it will guide ISA's future work.

The RUSSIAN FEDERATION drew attention to past, current, and future training opportunities provided by its contractors. BAHAMAS noted they will be identifying areas where capacity building with the Authority's assistance will be key.

JAMAICA noted that building strategic partnerships will be critical, looking forward to working with Member States to bring these critical ideas on capacity development to the implementation stage. SENEGAL stressed that developing countries need ISA's expertise on legal, socioeconomic, and environmental issues in order to achieve the SDGs, especially SDG14 (life below water).

INDIA said mechanisms are necessary to monitor the long-term effectiveness of training programmes and called for broad stakeholder consultation. Urging international cooperation, CHINA thanked the Authority for ISA-China Joint Training and Research Centre (JTRC), and reported on the first training provided, inviting especially developing countries to participate in future training programmes.

As a frequent recipient of capacity building, TONGA expressed appreciation for the development of the strategy and thanked donors. INDONESIA welcomed the efforts to ensure a better capacity development programme through tailor-made initiatives, ensuring especially that women experts can participate.

Welcoming South-South exchanges and knowledge transfer, SINGAPORE said they have been providing capacity building to other developing countries, including through internships and higher education related to deep sea mining.

Delegates adopted the draft decision without amendment.

### **Proposal by Chile on the Two-Year Timeline**

CHILE stated that holding a secret vote, as the rules of procedure would permit in the situation, would go against the spirit of consensus aspired to by the Assembly, and asked the Acting President instead to place the item under "other matters."

Acting President Myklebust thanked Chile for the flexibility and confirmed that he would accept statements from Member States under "other matters." The Assembly adopted the provisional agenda.

### **Proposal by Belgium to Amend Rule 82 of the Rules of Procedure**

The Assembly discussed a proposal by Belgium relating to proposed amendments to Rule 82 of the rules of procedure of the Assembly (ISBA/27/A/6), which stipulates who may participate as observers in the Assembly of the ISA. BELGIUM suggested allowing "representatives of entities having obtained a contract with the Authority" as well as the Enterprise to obtain observer status at the ISA, giving "industry, including the Enterprise, the same rights as non-governmental organizations (NGOs) and civil society."

CANADA and NAURU supported the proposal. CANADA noted that rules could be adopted to avoid conflicts of interest and that rules of discipline could be agreed to deal with the large number of observers. The RUSSIAN FEDERATION supported

the Belgian proposal, preferring inviting "entities having obtained a contract with the Authority" rather than their representatives.

AUSTRALIA, ARGENTINA, ITALY, and others expressed concerns over potential conflicts of interest. ARGENTINA noted that the interests of contractors are already represented.

AUSTRALIA, supported by the NETHERLANDS and CHILE, proposed amending the suggestion to allow for the Enterprise as well as for "industry bodies representing entities having obtained a contract from the ISA," rather than individual contractors, apply for observer status so that "any conflict of interest would be diffused in the representative body rather than concentrated in a single voice." The NETHERLANDS queried whether such an arrangement would require an amendment in the rules of procedure.

PAKISTAN said that the mode of interaction of contractors needs to be well defined so they cannot influence decision making. The PHILIPPINES stressed the need to study the implications of contractors' participation.

TONGA, PAKISTAN, CHILE, ITALY, and the PHILIPPINES requested additional time for consultations.

The DEEP SEA CONSERVATION COALITION (DSCC), with the OCEAN FOUNDATION, noted that industry interests are already well represented, pointing to 10 industry associations that already have observer status. The DSCC stressed that "this is not about transparency, it is about the role of contractors in the ISA." He emphasized that contractors "should be the regulated, not the regulators" and "should be controlled by sponsoring states, not the other way around." He cautioned that the proposal has extraordinary implications for conflict of interest, effective control, and liability.

GREENPEACE INTERNATIONAL noted that such practice would be highly unusual and, together with OCEAN CARE, urged against accepting the proposal.

DOSI, with the OCEAN FOUNDATION, noted that granting single contractors observer status could constitute a conflict of interest. DOSI urged the Secretariat to instead invite diverse voices to the conversation, including youth and Indigenous Peoples.

BELGIUM suggested that NGOs could also form associations under their proposal, opposed by GREENPEACE INTERNATIONAL, who noted that it "represents the voices of millions of citizens across the world while a contractor only represents itself." BELGIUM welcomed constructive proposals for amendment and suggested querying whether there was any opposition to their proposal going to a committee as envisaged in Rule 97 of the rules of procedure.

The UK queried whether, procedurally, a decision to establish a committee would have to be taken first or if a committee is to be created and then a decision would be considered there.

Acting President Myklebust said he saw some in favor, some against, and some requiring further time, and suggested that a written proposal might be required to set up a committee, which could be small and work intersessionally. The issue will be revisited on Thursday.

### **Credentials Committee**

Credentials Committee Chair Amanda Fraser, Trinidad and Tobago, presented the report of the credentials committee. Delegates adopted a decision on credentials without amendments (ISBA/27/A/12).

### **Finance Committee**

Acting President Myklebust invited delegates to consider 15 nominations for the seats on the Finance Committee for the next five-year period (ISBA/27/A/7 and ISBA/27/A/Add.1). Delegates agreed to elect all 15 candidates nominated.

### **In the Corridors**

Wednesday was a very efficient day for the Assembly, storming through agenda items and concluding a significant part of its work. The capacity development strategy attracted positive comments, discussion on financial matters was brief and focused, and a way forward was found on the Chilean proposal to discuss the two-year timeline without jeopardizing the spirit of cooperation and consensus among delegates through a secret vote.

Despite these achievements and contrary to Kingston's balmy weather, not everything was peachy in the Assembly's meeting rooms. A proposal by Belgium to amend the rules of procedure, especially the part on potentially allowing observer status to ISA's work to individual contractors, generated controversy. Some delegates supported the idea, pointing to increased transparency and inclusivity. Others cautioned over possible conflicts of interest. Yet others, requested more time. The basement, where observers are stationed, erupted, with environmental organizations unapologetically urging against such decision, pointing to its severe implications. An interesting discussion is expected on Thursday.