

ISA-23 HIGHLIGHTS: THURSDAY, 10 AUGUST 2017

On Thursday, 10 August, the Council of the International Seabed Authority (ISA) met throughout the day to address: Poland's application for approval of a work plan for polymetallic sulphides exploration; India's application for extending the contract for polymetallic nodules exploration; proposed amendments to the ISA staff regulations; the report of the Finance Committee; and a mechanism for future elections of the Legal and Technical Commission (LTC) members.

COUNCIL

POLAND'S APPLICATION: President Fernández introduced the LTC report and recommendations on Poland's application for approval of a work plan for polymetallic sulphides exploration (ISBA/23/C/11) and a draft decision on this matter by the Council (ISBA/23/C/L.3). UGANDA supported the submission, calling for a more detailed introduction to the relevant documents. Noting that the LTC recommendations on this application will form a substantial part of his report, which is included in the Council's agenda for Friday, 11 August, LTC Chair Christian Reichert (Germany) indicated that the area concerned is 10,000 square kilometers in size and lies within the limits of two large segments of the Mid-Atlantic Ridge, located between the Hayes, Atlantis and Kane transforms faults/fracture zones. He emphasized that Poland gave a presentation and responded to questions by the LTC, which formed three working groups on the legal, financial, geological, technological, environmental and training aspects of the application. He concluded that, following oral and written responses from Poland to additional questions by the LTC, the LTC recommendation is positive.

WWF pointed out that the proposal concerns an area that has already been described as an Ecologically or Biologically Significant Marine Area (EBSA) under the Convention on Biological Diversity (CBD), underscoring the urgency of formulating environmental management plans, in order to identify the need to discuss similar descriptions in the future.

The Council approved the application, inviting the Secretary-General to take the necessary steps to sign the contract, making Poland the seventh contractor for polymetallic sulphides. POLAND underscored: the country's long tradition in mining and metallurgy, especially related to lead, zinc, copper and rare elements; the backing of the proposal by industry and the opportunity for Polish scientists to become acquainted with the Mid-Atlantic Ridge,

obtaining data that will be shared in the spirit of collaboration characterizing the common heritage regime; and full awareness of the responsibility to minimize adverse effects.

INDIA'S APPLICATION: President Fernández introduced India's application for extending the contract for polymetallic nodules exploration (ISBA/23/C/9) and a draft decision on the application (ISBA/23/C/L.4). LTC Chair Reichert reported that the LTC, having requested additional data, considered India's application from February to August 2017 and found the information provided to be in line with the ISA's exploration work plan extension criteria, which were approved in 2015. The Council approved the extension with no discussion.

INDIA thanked the Council, LTC and Secretariat for their support in fast-tracking the application, and underscored: the need to review the LTC composition and size, in light of an increase in applications; and concerns, including the development of the requisite technology, that need to be taken into account to respond to the Council's invitation, contained in the decision, for India to be ready to proceed to exploitation at the end of the five-year extension period. BRAZIL and AUSTRALIA stressed the need for the LTC to continue to adhere to the 2015 procedure and criteria for extending exploration work plans.

STAFF REGULATIONS: Legal Counsel Ascencio-Herrera introduced a document on proposed amendments to the ISA staff regulations (ISBA/23/C/4), indicating that the Council is invited to adopt and apply provisionally, pending approval by the Assembly, changes in the new compensation package of the UN common system concerning salary and dependency allowances, education grant as a dependency benefit, relocation, and mobility and hardship. He also noted that the Finance Committee's report, yet to be discussed, indicates that these amendments have no financial implications. Following a request from BRAZIL to have more time to review the document, the Council adopted the decision (ISBA/23/C/L.2).

REPORT OF THE FINANCE COMMITTEE: President Fernández introduced the report of the Finance Committee, including its recommendations (ISBA/23/A/8). Finance Committee Chair Andrzej Przybycin (Poland) summarized the Committee's discussions, noting, *inter alia*: the status of overhead charges for the administration and supervision of exploration contracts; outstanding contributions from member states in arrears for two or more years; and the need to introduce strategies to counter the depletion of funds and to promote the long-term sustainability of the Voluntary Trust Fund, by urging member states to make contributions as soon

as possible, and by revising the criteria for the use of the Fund, with specific terms and conditions for these revisions contained in an annex to the report.

Voluntary Trust Fund: The AFRICAN GROUP proposed that the Voluntary Trust Fund “also serve to defray the cost of participation of one representative of each developing country member of the Council, when the organ meets more than once a year.”

JAPAN questioned the nature of “other appropriate measures” to be undertaken by the Secretariat in considering all applications received, if the balance of the Voluntary Trust Fund is insufficient to finance all requests. JAMAICA suggested adding reference to other appropriate measures “to prioritize the disbursement of available funds.” Secretary-General Lodge noted that as of 2007, the Voluntary Trust Fund had ceased borrowing from the Endowment Fund, as the Finance Committee had deemed this practice unsustainable.

Regarding the provisional terms and conditions for the use of the Voluntary Trust Fund, JAMAICA, supported by SOUTH AFRICA, questioned language requesting states to indicate “why the costs of participation cannot be met.” BRAZIL further suggested adding contractors in the list of entities that may contribute to the Fund.

Administrative fees: GRULAC stressed, supported by the AFRICAN GROUP and INDIA, that the increasing cost of the administration of contracts should not be borne by member states, but by contractors, adding that any additional funds could be transferred to the Voluntary Trust Fund.

Noting that the administrative fees should be revised to reflect current economic realities, UGANDA stressed that running a vessel in the high seas costs US\$70,000 per day, underscoring, with SOUTH AFRICA, the efficiency gains derived from ensuring that contracts are considered expeditiously.

Functions of the Finance Committee: GRULAC emphasized that the examination of issues related to the draft exploitation regulations should be addressed by an economic planning committee, yet to be created. Secretary-General Lodge stated that there is no overlap between the Finance Committee’s work on rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the future economic planning commission.

Cost-saving measures: Underscoring the principle of cost-effectiveness in all financial reforms, CHINA highlighted that quality needs to be ensured. Drawing attention to the new budget format and structure, INDIA stressed that long-term data need to be studied before making further cost-reduction recommendations.

Delegates agreed to incorporate proposed amendments into the draft decision on financial and budgetary matters (ISBA/23/C/L.5), for consideration on Friday, 11 August.

MECHANISM FOR FUTURE ELECTIONS OF LTC

MEMBERS: Cautioning against expanding the LTC to over 30 members, CHINA suggested: better regulating the process for nominations of candidates; adjusting the composition of the LTC as and when the Council’s functions and priorities evolve; and increasing expertise on, *inter alia*, exploration, environmental protection and the economics of mining. The AFRICAN GROUP underscored that equitable geographical distribution should guide the process of electing LTC members, regardless of whether the election takes place by consensus or following a vote, arguing that regional groups should accommodate their members’ special interests. UGANDA added that regions should be responsible for deciding the experts they nominate. SOUTH AFRICA suggested that the Secretariat advise on the work to be undertaken by the LTC before elections.

GRULAC recommended: clarifying in the election criteria that late candidacies will be rejected; consulting states about which specialists should be included in the LTC and to what extent; and establishing regional quotas the year before every election. BANGLADESH, supported by NEW ZEALAND, underscored that under UNCLOS Article 163 (Organs of the Council), the Council may decide to increase the size of the Commission, having due regard for economy and efficiency, but also taking into account equitable geographical distribution and the representation of special interests; stressed the need to balance these interests; and called for greater scientific expertise on the LTC. AUSTRALIA noted that UNCLOS Article 165 (the LTC) also sets out expertise requirements.

JAPAN underscored the need to consider the workload of the Commission, suggesting that LTC members also be Council members. The UK suggested that the Council decide on the size of the LTC so that states can nominate suitable candidates; with NEW ZEALAND, called for a supplementary report on the cost-benefit ratio for a larger LTC; and stressed that a strict geographical representation quota should not be imposed, so that all experts can be considered.

FRANCE preferred a 24-member LTC as a basis for discussion, calling for a membership limit, and proposed the integration of non-Council members into the LTC membership. UGANDA considered that regional quotas are needed to ensure a limit to LTC membership. NEW ZEALAND called for member states to consider expertise gaps when nominating experts. President Fernández proposed further discussions based on regional group consultations on Friday, 11 August.

IN THE BREEZEWAYS

The introduction in the Council of the first application for an exploration work plan including an area that has already been described as an Ecologically or Biologically Significant Marine Area (EBSA) under the Convention on Biological Diversity (CBD) was characterized by an awkward silence, with a civil society representative sounding the alarm about environmental protection oversights arising from the absence of environmental management plans in the Area. Following the Council’s approval of the application without discussion, some observers wondered why the LTC did not take up the EBSA issue when examining the application, with a seasoned observer arguing that the discussion on the future elections of LTC members should have focused more on ensuring the necessary balance of expertise than on fulfilling geographical representation quotas. An insider, however, opined that the LTC did discuss the necessary environmental cautions, which basically addressed the same concerns underpinning the description of the specific EBSA at stake, underscoring the possibility of addressing more detailed environmental considerations in the ensuing contractual negotiations between the ISA and the contractor.

“This instance is evidence of the need for more specific guidance on the content of applications,” another participant chipped in, drawing attention to the slim section in the application assessing the feasibility of the exploration area chosen due to the absence of marine protected areas, essential navigation lanes or areas of intense fishing activity. “It’s curious that there are references to relevant treaties under the International Maritime Organization, but no mention of CBD obligations,” quipped one keen observer. Yet another delegate pondered whether one of the recommendations arising from the first periodic review of the ISA, which will be discussed separately by the Assembly, will provide an answer, by suggesting the creation of a subsidiary scientific body.