

Twenty-fourth Annual Session of the International Seabed Authority (Second Part): 16-27 July 2018

The second part of the 24th Session of the International Seabed Authority (ISA) will be held from 16-20 July 2018 for the Council, and from 23-27 July for the Assembly in Kingston, Jamaica. These meetings will be preceded by a meeting of the Legal and Technical Commission (LTC) (2-13 July) and of the Finance Committee (9-12 July).

Expectations for the Meeting

The ISA Council is expected to consider:

- draft regulations on deep-seabed mining;
- the 2018 report of the LTC;
- the proposed budget for 2019-2020; and
- the report of the Finance Committee.

The main items on the agenda of the Assembly are:

- the ISA strategic plan for 2019-2023;
- the annual report of the Secretary-General;
- the proposed budget for 2019-2020; and
- the recommendations of the Finance Committee, including on benefit-sharing rules, regulations and procedures.

Origins of the International Seabed Authority

The 1982 United Nations Convention on the Law of the Sea (UNCLOS), which entered into force on 16 November 1994, sets forth the rights and obligations of states regarding the use of the oceans, their resources, and the protection of the marine and coastal environment. UNCLOS established that “the Area” and its resources are the common heritage of humankind. “The Area” is defined as the seabed and subsoil beyond the limits of national jurisdiction, and its “resources” as all solid, liquid, or gaseous mineral resources *in situ* in the Area at or beneath the seabed, including polymetallic nodules. Polymetallic nodules were detected for the first time on the deep seabed by the HMS Challenger expedition in 1873. They are distributed on the surface or half-buried across the seabed, principally in the Clarion-Clipperton Zone beneath the Pacific Ocean. They contain nickel, copper, cobalt, and manganese, among other metals. Other minerals have since then been discovered in the Area: cobalt-rich ferromanganese crusts, which are mineral accumulations on seamounts and contain cobalt, nickel, copper, molybdenum and rare earth elements; and polymetallic sulphides, which are formed through chemical reactions around hydrothermal vent sites, and contain copper, zinc, lead, silver, and gold.

Under the common heritage regime, UNCLOS provides that: no state can claim or exercise sovereignty or sovereign rights over any part of the Area or its resources; activities in the Area must be carried out for the benefit of humankind as a whole, irrespective of the geographical location of states, taking into particular consideration developing states’ interests and needs; the Area and its resources are open to use exclusively for peaceful purposes by all states, whether coastal or land-locked, without discrimination; and financial and other economic benefits derived from activities in the Area must be equitably shared, on a non-discriminatory basis.

To address certain difficulties raised by developed countries with the UNCLOS regime for the Area, the Agreement relating to the implementation of UNCLOS Part XI (the Area) was adopted on 28 July 1994 and entered into force on 28 July 1996. The Agreement addresses fiscal arrangements and costs to state parties, institutional arrangements, the ISA decision-making mechanisms, and future amendments of UNCLOS.

The ISA was established as an autonomous institution under UNCLOS Part XI and the 1994 Implementing Agreement to organize and control activities in the Area, particularly with a view to administering the resources of the Area. The Authority, based in Kingston, Jamaica, came into existence on 16 November 1994 and became fully operational in 1996. Among other things, the ISA is mandated to provide for the necessary measures to ensure the effective protection for the marine environment from harmful effects, which may arise from mining activities in the Area.

The ISA organs include the Assembly, the Council, the Finance Committee, the LTC and the Secretariat. The Assembly consists of all ISA members and has the power to: establish general policies; set the two-year budgets of the Authority; approve the rules, regulations and procedures governing prospecting, exploration and exploitation in the Area, following their adoption by the Council; and examine annual reports by the Secretary-General on the work of the Authority, which provides an opportunity for members to comment and make relevant proposals.

The Council consists of 36 members elected by the Assembly representing: state parties that are consumers or net importers of the commodities produced from the categories of minerals to be derived from the Area (Group A); state parties that made the largest investments in preparation for and in the conduct of activities in the Area, either directly or through their nationals (Group B); state parties that are major net exporters of the categories of minerals to be derived from the Area, including at least two developing states whose exports of such minerals have a substantial bearing upon

their economies (Group C); developing state parties, representing special interests (Group D); as well as members elected according to the principle of equitable geographical distribution in the Council as a whole (Group E). The Council is mandated to establish specific policies in conformity with UNCLOS and the general policies set by the Assembly, and supervise and coordinate implementation of the Area regime.

The LTC is an organ of the Council and originally consisted of 24 members elected by the Council on the basis of personal qualifications relevant to the exploration, exploitation, and processing of mineral resources, oceanography, and economic and/or legal matters relating to ocean mining. The LTC was expanded to 30 Members at the 22nd session in 2016. The LTC reviews applications for plans of work, supervises exploration or mining activities, assesses the environmental impact of such activities, and provides advice to the Assembly and Council on all matters relating to exploration and exploitation. The reports of the LTC to the Council are discussed during the annual sessions of the Authority.

The ISA has been developing the “Mining Code,” which is the set of rules, regulations, and procedures to regulate prospecting, exploration, and exploitation of marine minerals in the Area. To date, the Authority has issued Regulations on Prospecting and Exploration for Polymetallic Nodules (adopted on 13 July 2000, updated on 25 July 2013); Regulations on Prospecting and Exploration for Polymetallic Sulphides (adopted on 7 May 2010), and Regulations on Prospecting and Exploration for Cobalt-Rich Ferromanganese Crusts (adopted on 27 July 2012). The regulations include the forms necessary to apply for exploration rights, as well as standard terms of exploration contracts; and are complemented by the LTC recommendations for the guidance of contractors on assessing the environmental impacts of exploration. The ISA is in the process of developing exploitation regulations.

22nd Session: At its 22nd session (11-22 July 2016), the Assembly, *inter alia*, elected Michael Lodge (United Kingdom) as Secretary-General, and called for a further round of written observations by parties, observers and stakeholders on the interim report of the first periodic review of the ISA pursuant to UNCLOS Article 154. The Council, *inter alia*, welcomed the LTC’s work on the framework of the exploitation regulations, requested the LTC to continue this work as a matter of priority, and endorsed the LTC’s list of priority deliverables, including: a zero draft of the exploitation regulations and standard contractual terms; financial modelling for proposed financial terms and a payment mechanism; a data management strategy and plan; environmental management issues, including strategic environmental assessments (SEAs), criteria/measures for the precautionary approach, establishment of regional environmental assessment processes and regional environmental management plans (REMPs), options for an environmental impact assessment (EIA) process, including public participation; and the establishment of a legal working group on responsibility and liability.

23rd Session: At its 23rd session (8-15 August 2017), the Assembly discussed the final report of the first period review of the ISA and adopted decisions addressing transparency and environmental issues. The Council considered the first report of the Secretary-General on the implementation of the Council’s decision adopted in 2016, and draft exploitation regulations, which were released by the Secretariat in the form submitted to the LTC, which had convened from 31 July – 9 August 2017. The draft exploitation

regulations were open for stakeholder comment on the basis of a series of general and specific questions proposed by the Secretariat. The Council also adopted a decision on a revised meeting schedule to engender a mutually responsive dialogue between the Commission and the Council on the draft exploitation regulations.

24th Session (Part I): The first part of the 24th annual session of the ISA consisted of a meeting of the ISA Council (5-9 March 2018), followed by a meeting of the LTC (12-23 March). The draft exploitation regulations were addressed in an informal format in the Council, with a view to conveying non-binding guidance to the LTC, as a Council President’s statement. Delegates exchanged views on: understanding the pathway to exploitation and beyond; the payment mechanism; the role of the sponsoring state (which has the responsibility to ensure, within its legal system, that a contractor carries out activities in the Area in conformity with the terms of its contract and UNCLOS obligations); the role and legal status of standards, LTC’s recommendations and guidelines; broader environmental policy and regulations on exploitation; and the roles of the Council, Secretary-General, and the LTC in the regulations. Participants focused their attention on a payment mechanism, and the need to strengthen the draft regulations with regard to the implementation of the common heritage of humankind and the protection of the marine environment.

Intersessional Highlights

BBNJ IGC Organizational Meeting: The organizational meeting for the Intergovernmental Conference (IGC) on an international legally binding instrument (ILBI) under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ) took place at UN Headquarters in New York from 16-18 April 2018. Delegates agreed to: focus IGC-1 on substantive discussions based on the elements of the package (marine genetic resources, including questions on benefit-sharing; measures such as EIAs and area-based management tools, including marine protected areas (MPAs); and capacity building and marine technology transfer); take consensus-based decisions on the preparation process of a zero draft; and mandate the president to prepare a concise document identifying areas for further discussion and not containing treaty text, which would not constitute the zero draft.

ICP 19: The nineteenth meeting of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea (ICP-19) (18-22 June 2018, New York) on the topic of anthropogenic underwater noise focused on: potential management approaches, including area-based management tools and EIAs; and the characterization of anthropogenic underwater noise as a form of transboundary pollution to be mitigated.

CBD SBSTTA-22: The twenty-second meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) of the Convention on Biological Diversity (CBD) was held on 2-7 July 2018 in Montreal, Canada. SBSTTA-22 addressed, *inter alia*, protected areas, marine and coastal biodiversity, and biodiversity and climate change. On ecologically or biologically significant marine areas (EBSAs), agreement was found on the modalities for modifying EBSAs in areas beyond national jurisdiction, but views diverged over: calling for information sharing regarding the use of scientific information related to EBSAs in the application of relevant area-based management tools; and highlighting that modifications of EBSAs in areas beyond national jurisdiction should be made without prejudice to developments in the BBNJ process.