

ISA-24 Part 2 Highlights: Thursday, 19 July 2018

On Thursday, 19 July, the Council of the International Seabed Authority (ISA) discussed:

- the report of the Legal and Technical Commission (LTC) for 2018, including contractors' compliance issues;
- a submission from the Netherlands on measures to protect the marine environment in areas beyond national jurisdiction; and
- the report of the Finance Committee, including a proposed budget for 2019-2020.

LTC Report

LTC Chair Walker introduced the LTC's reports for the first and second part of the 24th session (ISBA/24/C/9 and Add.1), noting, *inter alia*, that: the LTC could not agree on how to deal with offers of an equity interest in a joint venture arrangement; some contractors did not completely fulfill their contractual obligations, including by not providing digital data for the last year, and not advancing environmental objectives for two years in a row; and the LTC established new working groups on common heritage, protecting developing countries' economies, as well as on standards and guidelines.

Compliance: Several delegations expressed concern about the two contractors who have not advanced environmental objectives. AUSTRALIA stated that the LTC has to be equipped to deal effectively with these situations, recommending drawing on lessons learnt in the context of exploration in developing the draft exploitation regulations.

NORWAY stressed the importance of scrutinizing contractors' annual reports to identify shortcomings. NEW ZEALAND, supported by the AFRICAN GROUP, stressed that contractors' disregard for the LTC's feedback could lead to negative impacts on the marine environment. MOROCCO asked which actions were taken in cases of contractors' non-compliance with their environmental protection obligations. ARGENTINA urged the Council to adopt a concrete recommendation on non-compliance.

NEW ZEALAND underlined the need for appropriate expertise in the LTC, particularly on the environment. NORWAY, supported by AUSTRALIA, underlined the need for contractors to: comply with digital and specialized formats; follow requirements regarding access to and sharing of information; and provide data regardless of scientific publishing schedules. MEXICO, BRAZIL, and ARGENTINA stressed the guarantee of public access to contractors' information, while taking account of confidentiality issues. TONGA raised concerns about contractors' non-compliance, notably on environmental data. INDIA considered non-compliance a "gross violation of the ISA's regulations," raising the need to explore

options for a moratorium to address this problem. LTC Chair Walker clarified that the report points to potential cases of non-compliance of outlined plans of work.

CHILE suggested exploring possibilities for ending non-compliant contracts and for the application of sanctions. JAMAICA recommended written warnings to contractors. MEXICO suggested termination of the contract as an option.

IUCN considered non-compliance "not a good omen" for future exploitation contracts. PEW CHARITABLE TRUSTS and the DEEP SEA CONSERVATION COALITION (DSCC) inquired why the names of non-compliant contractors are not public, noting that transparency was called for at the 23rd session. The DEEP OCEAN STEWARDSHIP INITIATIVE (DOSI), supported by IUCN, pointed to the urgent need to collect baseline data on the mid-water environment, which is highly connected to the seafloor, and suggested coordination with the Deep Ocean Observing Strategy.

Future Work: The AFRICAN GROUP welcomed the LTC's plans to further work on: interlinkages with the process on marine biodiversity of areas beyond national jurisdiction (BBNJ); environmental liability; common heritage; and the need to protect developing countries from adverse economic effects of mining in the Area. Supported by the DSCC and IUCN, the AFRICAN GROUP urged the LTC to hold open meetings.

The NETHERLANDS requested the LTC deliver a report to the Council on the legal and policy-related aspects of the possible alignment of the ISA's regulations on prospecting and exploration with respect to the offer of an equity interest in a joint venture arrangement, noting that "this issue has been on the books for quite a while." CAMEROON stressed that criteria for a payment system and for equitable benefit-sharing were still missing. BANGLADESH proposed that progress of the ongoing LTC study on the Enterprise be presented to the Council.

CAMEROON proposed dedicated workshops and lamented the postponed creation of the Economic Planning Commission. LTC Chair Walker noted that during their first joint meeting, the LTC and the Finance Committee discussed the establishment of the Economic Planning Commission, but could not find agreement on the timing for this establishment. FIJI welcomed the working groups on environmental liability and the financial model. JAMAICA urged further work on both monopolization and the Enterprise. The COOK ISLANDS welcomed further work on regional environmental management plans (REMPs) and a financial model based on common heritage and benefit-sharing.

Workshops: NEW ZEALAND supported new workshops on REMPs, but proposed developing a strategic plan and timeline for workshops to ensure broad attendance and sufficient funding. FIJI,

NEW ZEALAND and TONGA recommended timely notification of workshops. BELGIUM suggested the LTC develop a priority list of guidelines, to help plan corresponding workshops.

Reviews: The DSCC highlighted the unclear timeframes of a number of ongoing and upcoming review procedures and called for, with the IUCN, an open, transparent and participatory consultation mechanism for substantively reviewing all applications for exploration, testing of equipment and exploitation, with input from scientists and stakeholders.

The Netherlands' Submission

The NETHERLANDS introduced an overview of existing measures related to environmental protection in areas beyond national jurisdiction from competent international organizations/arrangements (ISBA/24/C/15), inviting the Council to: take note of the overview; request the LTC to use the information, as appropriate, when considering an application for the approval for plans of work for exploration and future exploitation; and request the Secretariat to regularly update the overview, including, *inter alia*: regional fisheries management organizations' restrictions, specially protected areas under the Antarctic Treaty; ecologically or biologically significant marine areas (EBSAs) under the Convention on Biological Diversity (CBD), and voluntary and unilateral initiatives.

GERMANY, BELGIUM, SOUTH AFRICA, NORWAY, JAMAICA, ARGENTINA, MOROCCO, CAMEROON, INDIA, the UK, AUSTRALIA, CHILE, MONACO, and NEW ZEALAND supported the paper. On an annexed list of measures, the UK, supported by AUSTRALIA and NEW ZEALAND, queried the inclusion of measures under the Antarctic Treaty. FIJI, supported by AUSTRALIA and NEW ZEALAND, stressed the linkages between the ISA and the BBNJ process. ARGENTINA asked for more information on a European Union/Spain unilateral closure of bottom fishing in the South-west Atlantic. INDIA stressed that the annexed list was not exhaustive.

The DSCC reported on the closure of five benthic protected areas under the Southern Indian Ocean Fisheries Agreement, lamenting that long-line fishing is still permitted. He noted exploration contracts in that area, underlining the need for cooperation and coordination to address cumulative effects. The CBD drew attention to its instruments that can inform the ISA's work: operational guidance on the ecosystem approach; guidelines for the consideration of biodiversity in environmental impact assessments and strategic environmental assessments, which were annotated specifically for marine and coastal areas, including issues related to areas beyond national jurisdiction; and a workplan on biodiversity in cold-water areas. The Council adopted the recommendations.

Finance Committee's Report

Finance Committee Chair Andrzej Przybycin (Poland) introduced the report of the Finance Committee (ISBA/24/C/19), highlighting, *inter alia*, a proposed budget for 2019-2020 of around US\$18 million and agreement to establish an informal inter-sessional group on benefit-sharing rules, regulations and procedures. He noted with concern 52 member states in arrears for more than two years and a shortfall in both the Endowment Fund for marine scientific research and the Voluntary Trust Fund to support participation of LTC members from developing countries. He encouraged payments of assessed contributions and voluntary contributions. TONGA stressed the importance of the Voluntary Trust Fund for developing countries' participation, especially in the context of the implementation of the common heritage principle.

NORWAY announced a US\$60,000 contribution to the Voluntary Trust Fund and an intended US\$500,000 contribution to support the ISA's voluntary commitment on Africa's blue economy.

Budget: BANGLADESH welcomed the proposed budget. CAMEROON supported the proposed budget in light of the increase in the ISA's activities related to the development of the

exploitation regulations. PEW CHARITABLE TRUSTS supported the budget increase for work on REMPs and the protection of the marine environment. JAPAN, GERMANY, AUSTRALIA and BRAZIL recommended further work on cost-cutting measures. SINGAPORE expressed concern about the negative balance of the Voluntary Trust Fund and supported the creation of four additional posts at the ISA.

Voluntary Trust Fund: On remedying the recurrent shortfall in the Voluntary Trust Fund, President Myklebust outlined four options: continuing with voluntary contributions from member states; introducing a mandatory contribution from contractors; introducing an optional contribution from contractors; or a transfer of US\$100,000 in the form of a reimbursable advance from the accumulated surplus of the ISA's administrative budget.

SINGAPORE, supported by JAPAN and BELGIUM, favored the optional contribution from contractors. BRAZIL, supported by CAMEROON, stressed that, if the LTC work was reduced due to lack of resources, contractors would feel the consequences. CAMEROON suggested taking into account the returns on investment on the mid- and long-term. INDIA recalled contractors' significant investments and urged caution in expenses, noting the decision to increase the number of LTC members. Delegates eventually agreed on introducing an optional contribution from contractors.

Contractors' Overhead Charges: THE UK and CHINA cautioned against excessive increases in overhead charges for contractors related to the administration and supervision of exploration contracts. The REPUBLIC OF KOREA, INDIA, the UK, CHINA, the RUSSIAN FEDERATION and SINGAPORE supported postponing until 2020 a proposed increase in contractors' overhead payments from US\$47,000 to US\$60,000. BRAZIL and ARGENTINA stressed that the increase would have consequences on the discussion of the budget. INDIA opposed the increase. After President Myklebust recalled that the Finance Committee recommended the proposal by consensus, INDIA indicated the need to consult with capital and delegates decided to defer the decision until Friday.

In the Corridors

On the penultimate day of the Council, contractors' non-compliance took the lion's share of attention. While many interventions focused on the ISA's capacity to deal with these instances, a civil society representative asked, "Why this veil of secrecy?," referring to the non-disclosure of the names of those contractors in breach of their obligations. A long-standing observer added, "Although contractors take significant risks and make huge investments, what example does this set for future exploitation?," noting that informal conversations indicate that some contractors will be ready for commercial exploitation by 2023.

Others, however, preferred to focus on the swift adoption of the recommendations proposed by the Netherlands, setting a baseline of international protection-related measures and initiatives that should be taken into account in the work of the ISA. While it is too soon to predict the extent to which the recommendations will actually affect the approval of plans of work, as an expert commented, they send the signal that the ISA is not isolated from other international initiatives, such as CBD EBSAs, which the Council at the previous session seemed reluctant to engage with.

Yet others expressed satisfaction about the tangible change in the atmosphere at the Council, with broader and more engaged participation by ISA member states and the introduction of live-streaming. "Things are moving in a good direction," opined a delegate, "but we still have to set a clear course for the significant amount of work that remains to be done."