

ISA-24 Part 2 Highlights: Friday, 20 July 2018

On Friday, 20 July, the Council of the International Seabed Authority (ISA) discussed:

- the operationalization of the Enterprise;
- the way forward on the development of the payment system and the draft exploitation regulations;
- a German submission on facilitating the work of the ISA; and
- an outstanding issue in the proposed budget for 2019-2020.

The Enterprise

Polish Proposal: Secretary-General Lodge outlined considerations relating to a proposal by Poland for a possible joint-venture operation with the Enterprise (ISBA/24/C/12), which invites the Council to reflect on the legal, technical and financial implications of the proposal in the context of the UN Convention on the Law of the Sea (UNCLOS), the 1994 Agreement and the regulations. He recalled that: terms of reference for a study on the operationalization of the Enterprise had been prepared in 2014; the Legal and Technical Commission (LTC) did not take them forward at that time; and that a study is now under way. He anticipated that the Council would consider in 2019 a full proposal for operationalizing the Enterprise and decide whether to issue a directive for the functioning of the Enterprise independently from the Secretariat, including through interim governance arrangements, on the basis of sound commercial principles. He indicated that the Enterprise will be treated like any other contractor. He noted that Poland's proposal did not provide indications in relation to sound commercial principles; and that the African Group's proposal for an interim arrangement "at arm's length" from the Secretariat was based on a proposal put forward in 2014 by the previous Secretary-General.

POLAND highlighted a growing number of countries supporting the operationalization of the Enterprise and recommended entering into negotiations on this matter. JAMAICA, the AFRICAN GROUP, BRAZIL, BANGLADESH, and CHINA welcomed Poland's proposal, with CAMEROON emphasizing the urgency of establishing the Enterprise before 2019. CHILE supported establishing the Enterprise, but called for careful consideration of issues around contractors and privilege. JAMAICA urged the Council to "live up to its duties" under the 1994 Implementing Agreement to take up the functioning of the Enterprise and appoint an interim director-general. INDIA supported appointing an interim director-general. BANGLADESH urged the LTC to expedite consideration of the study on the Enterprise. Secretary-General Lodge indicated that he could not confirm the exact timeline for

the study, but he expected that the Council will have information to make a decision by March 2019. MEXICO requested that the study on the Enterprise be circulated before the next Council session. Delegates took note of the Polish proposal.

African Group's Non-paper: The AFRICAN GROUP introduced a proposal for operationalizing the Enterprise, highlighting: concern with the lack of current progress towards establishing the Enterprise as an independent organ of the ISA; the crucial role of the Enterprise for realizing the core principles of UNCLOS Part XI (the Area); and a request to the Council to operationalize the Enterprise, noting that the 1994 Implementing Agreement provides for appointing an interim director-general from the ISA staff. He called upon the Council to authorize the interim director-general to appoint a special representative independent of the Secretariat. JAMAICA recognized that a special representative could help address concerns about conflict of interest. BRAZIL and MEXICO suggested prioritizing the appointment of an interim director-general, with BRAZIL noting the need to inject independent thinking into the Council about the structure of the Enterprise and its specificities as an ISA organ reporting to the Council and having a board of directors formed by elected member states. CHINA welcomed progress on the study, underlining that the Enterprise is the channel through which developing countries participate in the exploitation of the Area.

The UK, supported by FRANCE, cautioned against the financial implications of the suggested appointment. FRANCE noted the complexity of operationalizing the Enterprise, indicating the need to carefully examine the Secretariat's study and the LTC report. INDIA favored a cautious approach comprised of the Finance Committee examining the study before the Council makes a decision and the development of rules regarding the appointment of the interim director-general.

The AFRICAN GROUP clarified that his proposal has nearly no financial implications, with the interim director-general being an existing staff member of the ISA and the special representative needing no salary. He added that the decision on the Enterprise is a political and urgent one to ensure that the Enterprise has an opportunity to provide views on the draft exploitation regulations. SOUTH AFRICA urged action, pointing to: superficial references to the Enterprise in the draft regulations; likely need for changes in the regulations if they are finalized before operationalizing the Enterprise; and differences between the Enterprise and contractors. MOROCCO stated that financial matters should not act as a barrier for the Enterprise's establishment. Recalling that "no one should be left behind," CAMEROON pointed to the urgency in advancing the exploitation regulations, reinforcing the Secretariat and establishing the Enterprise.

Secretary-General Lodge clarified that the requested study will be refined by the LTC and then made available for the Council's consideration. He considered it feasible to make progress in a "balanced" and cost-effective manner, without negative impacts on the programs foreseen under the budget. The AFRICAN GROUP and BRAZIL supported the Secretary-General's guidance, with the AFRICAN GROUP recalling the Secretary-General's powers to appoint an interim director-general to the future Enterprise. JAMAICA thanked Secretary-General Lodge for fulfilling his mandate in accordance with the 1994 Implementing Agreement. POLAND reiterated the need for the Enterprise to function independently as soon as possible. President Myklebust proposed, and delegates agreed, that the Council does not take a formal decision on the Enterprise at this meeting.

Way Forward

Payment System: Indicating that the financial model for the payment system requires more work to "giving the fullest effect" to the common heritage principle, GERMANY proposed that the Council task the Massachusetts Institute of Technology (MIT) to: compare the MIT payment models with other options discussed formally and informally in the Council, including a 2016 German study on the economic benefits of commercial deep-seabed mining operations, the African Group's 2018 non-paper on the payment regime and other financial matters, and an economic model presented at a 2018 side-event by the China Ocean Mineral Resources Research and Development Association (COMRA); and synthesize all these studies and distil the pros and cons of the *ad-valorem*, profit-based and combined models, duly taking into account divergent assumptions of the various models. He further proposed tasking MIT to make the revised models available for public comment and incorporate comments in a consolidated document to be shared with member states and observers by the end of December 2018. He also proposed that the Council establish an open-ended working group for ISA member states, LTC and Finance Committee members, contractors and observers, to discuss the consolidated study and report to the Council at its March 2019 meeting. Delegates agreed to the proposal, with FRANCE, supported by CANADA, emphasizing the inclusion of external experts.

Draft Exploitation Regulations: The NETHERLANDS and JAMAICA inquired about the future work of the Council, considering that the LTC is not scheduled to meet until after the next meeting of the Council in March 2019. Secretary-General Lodge noted that the LTC has limited capacity to work intersessionally. President Myklebust stated that he did not expect a further revised draft of the regulations to be ready for the next Council meeting, suggesting that the Council's agenda focus, instead, on the remainder of the draft regulations, to be discussed part by part, as well as the synthesis on the payment system.

Election of the LTC Members

The Council took note of the report of the Secretary-General (ISBA/24/C/14), with BELGIUM stressing the need for increasing the LTC's environmental expertise, with experts coming from each regional group and endorsed by the Council. The AFRICAN GROUP recalled his joint submission with GRULAC at the 23rd Session related to criteria for the election of LTC members. President Myklebust stressed this matter will be discussed at the next Council meeting.

Germany's Submission on Facilitating the ISA's Work

GERMANY outlined, supported by many, suggestions for facilitating the ISA's work (ISBA/24/C/18), focusing on: circulating early annotated agendas; clarifying timelines and milestones for intersessional work; and supporting the LTC. The NETHERLANDS

and MOROCCO stressed the importance of timely submission of documents. SINGAPORE recommended harmonizing documentation. The UK supported timely circulation of workshop reports, and, with NEW ZEALAND, timely notification of workshops' schedules and venues. On the need for external expertise, JAMAICA insisted on a balanced process and MEXICO required further examination. The NETHERLANDS proposed translating only the amendments to the draft regulations for budget-saving purposes. The Council took note of the submission.

Council Decision

AUSTRALIA introduced a draft Council decision on the LTC report (ISBA/24/C/CRP.2), noting that the Council requests the LTC to consider, as appropriate, the submissions of: the African Group on operationalizing the Enterprise and on the payment regime; Belgium on strengthening the ISA's environmental scientific capacity; and Germany on facilitating the work of the ISA. BANGLADESH objected that this is not in accordance with the rules of procedure, as these submissions were discussed in an informal context. Delegates eventually agreed to follow a flexible approach on the issue.

GRULAC suggested, and delegates agreed to, adding that the Secretary-General communicate issues with contractors' annual reports to respective sponsoring states, in addition to respective contractors. Delegates adopted the decision with another amendment to reference an upcoming workshop jointly hosted by the ISA Secretariat and the International Cable Protection Committee in Bangkok, Thailand, on 29-30 October 2018.

Dates of the Next Council Meeting

President Myklebust announced that the next Council meeting, for Part I of the 25th Session, will be held from 25 February – 1 March 2019. ALGERIA recommended avoiding clashes with the BBNJ process.

Budget

INDIA indicated that it could join consensus on the budget if the proposed increase in contractors' overhead payments was postponed until 2020, which was supported by the RUSSIAN FEDERATION, the REPUBLIC of KOREA, JAPAN and CHINA. The UK and ARGENTINA favored an increase in 2019. Supported by CAMEROON, CANADA clarified that the proposed budget reflects the idea contractors, and not member states, should bear costs' increase. Secretary-General Lodge proposed, and delegates agreed, accepting the budget as proposed, with the Secretariat being flexible with contractors' payments timelines.

President Myklebust thanked delegates for the constructive atmosphere in both parts of the Council and drew the meeting to a close at 5:50pm.

In the Corridors

Energized by a reception hosted by the UK on Thursday evening, delegates worked constructively throughout the last day of the Council. The proponents of the urgent operationalization of the Enterprise seemed confident that the Secretary-General will work on appointing an interim director-general for this future body and an independent special representative, who are expected to emphasize developing countries' perspectives into the negotiations of the draft regulations. Others were pleased with a German proposal giving clear direction to the further development of the financial payment system, requesting to take into account different analyses in addition to the model prepared by MIT and divergent assumptions, as well as opening up this work to inputs from the public. Even civil society were content with the reference in the Council decision to holding more open meetings of the LTC, heading in good spirits to the traditional weekend workshop in Ocho Rios.