

ISA-25 Part 1 Highlights: Monday, 25 February 2019

On Monday, the Council of the International Seabed Authority (ISA) opened the first part of the 25th annual session in Kingston, Jamaica. The main items discussed were the financial model and the standards, guidelines, and key terms related to the draft exploitation regulations.

Opening

Olav Myklebust (Norway), Council President for the 24th session, opened the meeting. ISA Secretary-General Michael Lodge (UK), welcomed participants and noted the nomination of Jihyun Lee (Republic of Korea) as the new director of the Office of Environmental Management and Mineral Resources. The Council adopted the provisional agenda (ISBA/25/C/L.1) with no amendments.

Elections

The AFRICAN GROUP nominated, and delegates elected by acclamation, Lumka Yengeni (South Africa) as Council President for 2019. Emphasizing the ISA Council's role in reinforcing UNCLOS principles, Council President Yengeni highlighted the importance of balancing various interests around exploration and exploitation in the Area, and the urgency to protect marine biodiversity from potential harms.

Delegates elected as Council Vice-Presidents: Argentina, nominated by Brazil on behalf of the Group of Latin American and Caribbean countries (GRULAC); Germany, nominated by the UK, for Western European and Others Group (WEOG); Poland, nominated by the Russian Federation on behalf of the Eastern European Group (EEG); and Tonga, nominated by the Republic of Korea, for ASIA-PACIFIC.

Michael Gikuhi (Kenya), was elected to the Legal and Technical Commission (LTC), following the resignation of Dorca Auma Achapa (Kenya) to serve the remainder of his term.

Status of contracts and related matters

Council President Yengeni introduced document ISBA/25/C/9, noting it includes information on the status of exploration contracts, updates on the periodic review of the implementation of approved plans of work for exploration, and recommendations for future actions.

BRAZIL reiterated that, following his country's submission to the UN General Assembly on the limits of the continental shelf beyond 200 nautical miles, all necessary actions and measures relevant to ISA, should be taken into account.

The Council took note of the report.

Report of the Secretary-General on the implementation of the 2018 Council decision relating to the reports of the Chair of the Legal and Technical Commission

ISA Secretary-General Lodge presented the documents on the implementation of the 2018 Council decision relating to the reports of the LTC Chair (ISBA/25/C/12) and the report on the

implementation of the Authority's strategy for the development of regional environmental management plans (REMPs) for the Area (ISBA/25/C/13). Regarding the LTC Chair report, Secretary-General Lodge highlighted, *inter alia*: work accomplished in relation to the draft regulations; activities of contractors; the training programme; issues of non-compliance, noting there were none; workshops organized in 2017 and 2018; and the public launch of the database, which is expected to take place after the LTC meeting in March 2019.

Regarding implementation of the strategy for REMPs development, Secretary-General Lodge underscored: two workshops held in 2018; and support by an *ad hoc* advisory committee to develop a work programme for the period 2019–2020, including defining goals and establishing a standardized process for each regional workshop.

The AFRICAN GROUP announced a submission pertaining to ISA training programmes for developing countries. The UK underlined that the REMPs workshops should have broad participation. AUSTRALIA noted the importance of transparency of contracts. The Deep Sea Conservation Coalition (DSCC) highlighted the lack of participation of all stakeholders in the development of the Warsaw statement, annexed to document ISBA/25/C/12.

The Council took note of both reports.

Draft Exploitation Regulations

Financial model: Olav Myklebust, Chair of the open-ended working group established to discuss the financial model reported on its outcomes (ISBA/25/C/CRP.1/Rev.1). He highlighted, *inter alia*: the group's focus on the best payment mechanism and payment terms related to polymetallic nodules; general acceptance of incorporating a ramp-up period into the model; and an expectation that an environmental levy would include a liability trust fund. On financial terms, he noted general preference for a two-tiered payment rate.

Many expressed their appreciation for the successful meeting of the working group, calling for further debate and broader participation. The AFRICAN GROUP expressed concern that late scheduling limited attendance by developing countries. He highlighted the potential for the payment mechanism to result in lower taxation for deep seabed mining compared to traditional mining; and a preference for a combined royalty and profit-sharing approach. He further requested that the recent statement by Peter Thomson, Special Envoy of the UN Secretary-General for the Ocean, calling for a 10-year moratorium on seabed mining, be part of the official meeting's record.

CHINA underscored that: benefit sharing is an important manifestation of the common heritage principle and should be reflected in the regulations; further study models that combine royalties and profit-sharing should be analyzed; the financial models should reflect the principle of fair treatment, supported by JAPAN and SINGAPORE; and due consideration should be given to land-based mining and relevant payment rates, supported by JAPAN, TONGA, and the REPUBLIC OF KOREA.

The REPUBLIC OF KOREA drew attention to potential future price changes of minerals in question. JAPAN called for balancing sound commercial principles with common heritage considerations, stressing that the financial regime should reflect the total cost for contractors. He further called for systematizing all relevant payments and fees for the contractors in a comprehensive list.

INDIA reminded delegates of relevant submissions, including on the computation of annual rates. The UK suggested developing a range of options to facilitate decision making, including a varying royalty option. TONGA underscored the need for: the transitional scheme to be as simple as possible and reviewed over time; common accounting and cost-recovery rules; and taking into account intergenerational equity. He further emphasized, supported by JAMAICA, the need to “factor in externalities of environmental costs,” expressing concern, with the PEW CHARITABLE TRUSTS and the DSCC, regarding the way the 1% levy for environmental funds, envisaged in the current model, had been calculated.

Recognizing progress made in the development of the financial model, AUSTRALIA, supported by JAMAICA, suggested further questions be explored, including the administration cost of the proposed models. GERMANY, SINGAPORE, ITALY, and others called for another inclusive meeting of the open-ended working group before the next Council session in July. BRAZIL stressed that few government representatives attended the working group meeting, underscoring the importance of addressing this in future meetings. CANADA expressed disappointment that Massachusetts Institute of Technology (MIT) representatives were not present in the session to respond to questions.

POLAND suggested the incorporation of some topics related to risk assessment, including available technology options for processing and mining, time needed for the commencing of full-scale production, and sensitivity analysis for different scenarios. SINGAPORE suggested not discarding the profit-based option, while underscoring the importance of balance between the maximization of revenues for the common heritage and commercial viability. SPAIN emphasized the need for procedures to ensure efficiency and legal certainty.

Secretary-General Lodge outlined follow-up work by the Secretariat to include: conclusion of the MIT report; development of options for payment mechanisms; developing cost estimates to administer various proposed schemes; preparation by the Finance Committee of a formula for equitable benefit sharing; a study on impact of deep seabed mining on land-based producers; and extending the open-ended working group, including possible use of the Voluntary Trust Fund to ensure full participation.

Delegates approved the report’s recommendations on convening a second meeting of the working group and requested the Secretariat to prepare two or three options regarding the payment mechanism based on the discussions of the working group, including proposed regulatory text.

Standards, guidelines, and key terms: The Secretariat introduced two documents on standards and guidelines for activities in the Area (ISBA/25/C/3) and key terms (ISBA/25/C/11). He drew attention to the list of standards and guidelines to be considered as critical in terms of priority for development.

On standards and guidelines, the AFRICAN GROUP recommended that compliance must be mandatory and that standards should play a key role in performance monitoring. GERMANY stressed that all guidelines should be in accordance with the principles of Part XI of UNCLOS and the Sustainable Development Goals (SDGs). He emphasized, supported by the DSCC, that the Authority should not approve any exploitation activity without reaching conclusion on the standards and guidelines.

CHINA called for transparency, stakeholder inclusiveness, and the evaluation of best practices. JAPAN highlighted the flexible character of guidelines, typically non-binding documents,

and proposed consideration of financial incentives to enhance compliance with guidelines, and the use of current applicable exploration regulations on environmental and safety standards as models.

ITALY suggested the oil and gas industry as a source of inspiration for determining best practices and called for establishing technical working groups to further address the issue of standards and guidelines. SPAIN emphasized the need to specify the legal nature of all guidelines and to avoid excessive regulations. NORWAY supported looking at regional and national standards that enjoy wide adoption, and emphasized that guidelines and practices should be elaborated as “floors and not ceilings” so industry and other stakeholders can continue to improve.

TONGA supported drawing on content and process guidelines from parallel industries, and keeping overarching benchmarks for environmental performance in the regulations. NAURU supported developing a roadmap for establishing environmental standards. SINGAPORE said the regulatory framework should have an appropriate balance between certainty and flexibility to allow practices to keep pace with expanding knowledge.

AUSTRALIA and the UK, supported by the PEW CHARITABLE TRUSTS, suggested the Authority could play a greater role in standards development, given the nascent nature of the industry. The UK highlighted the need to clarify how an environmental performance guarantee would interact with an environmental trust fund. On performance standards, the HOLY SEE suggested taking advantage of expertise within the Authority, with input from the Office of Legal Affairs, to initiate recommendations and solicit input from the public.

The PEW CHARITABLE TRUSTS and DSCC stressed that standards and guidelines should be susceptible to readjustments. DSCC further emphasized the need for: clear and binding standards; separate treatment for standards and guidelines; and clarity on which guidelines are legally binding. The DEEP OCEAN STEWARDSHIP INITIATIVE (DOSI) stressed that the process should be driven by states and supported by all stakeholders, calling for fully implemented REMPs before exploitation contracts are issued.

On key terms, the AFRICAN GROUP suggested drawing inspiration from current legal instruments, such as the Commission for the Conservation of Antarctic Marine Living Resources resolution dealing with “best available science” (resolution 32/XXVIII).

In the Breezeways

The first day of the 25th session of the ISA Council 2019 kicked off with noteworthy news. In his welcoming remarks, Secretary-General Lodge highlighted the unprecedented number of participants in the room. Announcing the creation of a new communications unit within the Secretariat, he remarked on ISA’s efforts to enhance transparency and availability of environmental data. Some gender balance to the ISA was achieved with the newly-elected Council President Lumka Yengeni and the addition of Jihyun Lee, Director of the Office of Environmental Management and Mineral Resources, as the first woman to join the senior management team.

In the morning, many delegates exchanged impressions about the two-day working group on the puzzling financial model options, which took place prior to the Council’s opening. Throughout the day, delegates shared an overall feeling of progress related to the tricky question of “who gets what” from the future market. However, many did not miss the opportunity to question the 1% levy for environmental damage and liability, which they considered arbitrary and low.

As a seasoned delegated noted exiting plenary, the Council “will have its plate full over the next few days to lay the groundwork to proceed to the next stage of the development of draft exploitation regulations in good faith.”