

## ISA-25 Part 1 Highlights: Wednesday, 27 February 2019

On Wednesday, the Council of the International Seabed Authority (ISA) continued its deliberations, addressing cooperation with other relevant international organizations and further focusing on components of the draft exploitation regulations, including independent review of environmental plans and performance assessments, as well as the inspection mechanism.

ISA Secretary-General Lodge, announced Monaco's allocation of USD 25,000 for the second edition of the Secretary-General's Award for Excellence in Deep-Sea Research, calling for applications.

### Draft Exploitation Regulations

**Independent review of environmental plans and performance assessments:** The Secretariat introduced document ISBA/25/C/10, which considers a mechanism and process for the independent review of environmental plans and performance assessments under the regulations on exploitation of mineral resources in the Area.

Algeria, for the AFRICAN GROUP, emphasized that contractors and sponsoring states should not participate in the selection of independent experts, given potential conflicts of interest. GERMANY supported the proposed requirement for a licensed and successfully-performed test mining as a legal prerequisite for any application for exploitation under draft regulation 11. He further explained this should be a mandatory requirement for approval of a plan of work and included as provisions in the exploitation regulations. He also recommended an independent and legally-binding, scientific monitoring strategy, partly or completely conducted by third parties, to validate the environmental impact of such activities.

CHINA highlighted that independent experts must complement and support existing UN Convention on the Law of the Sea (UNCLOS) provisions and views of the Legal and Technical Commission (LTC). He underscored, supported by many, the need for transparency and balanced geographical representation, as well as, supported by the UK and others, consideration of appropriate legal frameworks to avoid conflicts of interest.

The REPUBLIC OF KOREA requested clarifications on the timing and frequency of reviews. JAPAN supported maintaining a roster of experts nominated by parties and objected to entrusting approval of plans of work to an external independent body, preferring to retain such authority within the LTC.

TONGA queried: whether the review should be a mandatory requirement or be triggered by ISA members; which is the most cost-effective manner to conduct these reviews; and how the reviews

would impact exploitation-related costs in the Area. JAMAICA expressed that seeking external advice of independent experts should not be seen as lack of confidence to existing expertise within the ISA. She highlighted that, while external advice should not be binding *per se*, the requirement for such advice should be explicitly addressed in the draft regulations. The FEDERATED STATES OF MICRONESIA (FSM) highlighted the complementary role of experts from the Pacific Small Island Developing States and the need to incorporate traditional knowledge, in line with practices of other international organizations. Brazil, on behalf of GRULAC, stressed that ISA should have its own roster of experts, calling for further reflection on the legal status of related decisions.

BELGIUM stressed the principles of expertise, independence, and transparency, supported by the AFRICAN GROUP and others, noting that evaluations must be easily accessible. The AFRICAN GROUP elaborated on the idea of having three external evaluations carried out automatically, separately, and simultaneously, observing that the Council and LTC could each designate an expert.

ITALY emphasized that independent experts must provide added value. FRANCE drew attention to the need to evaluate costs involved in contracting independent experts. The NETHERLANDS said the independent review is part of the evolutionary process of the Authority. NORWAY supported involving independent experts, but requested clarifications on how the formalized system would impact LTC's autonomy.

AUSTRALIA opposed the creation of a new scientific body. INDIA questioned the need to create a roster of external experts at this time, emphasizing challenges associated with avoiding bias and ensuring geographical representation, given capacity limitations of developing countries. ARGENTINA recalled that the LTC is already a group of experts supposed to act independently. He supported the adoption of non-binding guidelines, allowing the LTC to seek the opinion of external experts.

PEW CHARITABLE TRUSTS proposed a survey to draft a small number of practical options, offering financial support to conduct it. DEEP SEA CONSERVATION COALITION (DSSC) underscored the need for: clear and measurable goals and objectives for any review process; open and well-documented evaluation procedures for LTC decisions; and reviews to be completed before the environmental impact assessment and public comment period. DEEP OCEAN STEWARDSHIP INITIATIVE (DOSI) emphasized: excluding contractors from the review process due to conflicts of interest; utilizing existing rosters; and ensuring adequacy of environmental baseline data.

INTERRIDGE supported increased involvement of scientists in the process, emphasizing the need for diversity of views to inform deliberations and reach consensus decisions. FISH REEF PROJECT said deficits to nature from deep seabed mining will need to be repaid, outlining his project's efforts to improve ocean health and address food shortages. The INTERNATIONAL UNION FOR CONSERVATION OF NATURE (IUCN) commented that: the LTC's workload will increase once regulations are adopted; most international environmental processes have access to an independent advisory scientific body; and the deep sea may require special expertise. JAPAN AGENCY FOR MARINE-EARTH SCIENCE AND TECHNOLOGY noted limited resources to conduct research in the complex deep sea environment, calling for additional relevant capacity building.

**Inspection mechanism:** The Secretariat introduced document ISBA/25/C/5 on implementing an inspection mechanism for activities in the Area, highlighting the need for the Council's input on its function to ensure accountability and transparency.

The AFRICAN GROUP endorsed the possible approach to an inspection mechanism, noting the economic efficiency and independent functioning of an inspectorate as key elements. He further supported, with the NETHERLANDS, NORWAY, and others, considering as a model the mechanisms adopted under the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR). INDIA underlined the need to assess ores at sea to avoid information gaps and, while supporting the use of CCAMLR as a general model, noted that seabed mining would not involve harvesting in a restricted way. TONGA supported drawing on the CCAMLR model in principle, emphasizing the need for a focus on seabed mining, including on interactions with sponsoring states' mechanisms.

Highlighting the need to ensure the highest quality standards, ITALY emphasized the contribution of satellites in inspection processes and suggested including observers on vessels in remote areas. The UK supported remote monitoring, and emphasized independence of the inspections and appropriate rules to ensure safety of inspectors, including freedom from harassment.

GERMANY, supported by AUSTRALIA, highlighted the necessity for an independent, robust, and transparent inspection regime, without interlinked commercial interests to guarantee a level playing field for all exploitation activities in the Area. He further welcomed advancing cooperation with the International Maritime Organization in terms of jurisdiction and cooperation. CANADA highlighted the need for: inspection contracts as a first step; ensuring separation between the legislator, the receiver of benefits, and the inspector; and full access by the Authority to raw data feeds from any remote real-time monitoring. AUSTRALIA emphasized the importance of technological developments. BANGLADESH agreed, adding the necessity of a relevant baseline study. BELGIUM proposed using an industry-standard definition for remote monitoring and recommended inspections be independent from the sponsoring state. FRANCE noted that the use of remote monitoring technology should be prioritized.

CHINA drew attention to the responsibilities of the Authority, sponsoring states, and flag states, mentioning there is no need for frequent spot inspections. The REPUBLIC OF KOREA underlined the need to address: powers given to inspectors; criteria for triggering inspections; and requirements for regular inspections, suggesting use of benchmarks from other industrial sectors. JAPAN stressed it is not clear who will decide whether and when inspections will be conducted, suggesting the LTC and Council be able to make decisions electronically, in case of urgent circumstances.

AUSTRALIA highlighted the inspection systems of the Organization for the Prohibition of Chemical Weapons and of the International Atomic Energy Agency as additional potential models, as well as the need to consider a system of inspectors via national authorities to increase efficiency. He added that risk assessment would be helpful to provide guidance on which activities should be inspected and their relevant scope. NAURU, through the contractor DeepGreen, focused on the need to address climate change and electrify the world's transportation fleet. He stressed that marine metals will allow the transition away from fossil fuels, noting that their production is less energy- and carbon-intensive. He added that, notwithstanding the risks, collecting metals from polymetallic nodules will help build the necessary stock for future recycling and pave the way towards the realization of a circular economy. BELGIUM, via the contractor Dredging, Environmental, and Marine Engineering Group (DEME-Group), shared experiences in deep sea mining. He shared his company's vision for the future, providing details on efforts for the development of environmental regulations in the Area, urging the Council to complete its work on the draft exploitation regulations by 2020.

ARGENTINA suggested looking at inspection costs in concert with other control and monitoring costs to avoid duplication, calling for support and assistance from sponsoring states. GUYANA recommended further attention to measures that promote compliance. SRI LANKA supported a rule-based order for activities in the Area based on the Sustainable Development Goals, encouraging wide public participation.

PEW CHARITABLE TRUSTS supported the creation of a geographically-representative panel of experts, offering financial support for such activity. Observing the trends in global metal needs, DSCC stated that deep sea mining at scale may not compensate for the potential marine biodiversity degradation, urging the Council not to confuse economic viability with social necessity.

### ***Cooperation with other international organizations***

The Secretariat informed delegates that the Memorandum of Understanding between the ISA and the Asian-African Legal Consultative Organization was signed on 9 October 2018. INDIA shared relevant information on training programmes at the national level. CHINA highlighted that the Secretariat is in a position to play an important role in capacity building.

### ***In the Breezeways***

On the third day of ISA-25, delegates exchanged friendly views on the merits of establishing a mechanism and process for the independent review of environmental plans and assessments. While there was agreement that any such process should be structured to avoid conflicts of interest and ensure impartiality and transparency, delegates differed on whether the ISA needs to create a new external body for this purpose, now or at all. Along with numerous references to environmental advisory bodies in other international processes, one observer considered the creation of such a body a "paramount" condition for trust building.

In the afternoon, conflicts of interest, geographical representation, and transparency dominated the agenda, while delegates considered a potential inspection mechanism for activities in the Area. A statement that deep seabed mining could help address climate change did not go unchallenged, prompting an observation that the global demand for some metals expected to come from the deep sea is, in fact, declining.