

TWENTY-FOURTH ANNUAL SESSION OF THE INTERNATIONAL SEABED AUTHORITY (FIRST PART): 5-9 MARCH 2018

The first part of the 24th annual session of the International Seabed Authority (ISA) will consist of a meeting of the ISA Council convening from 5–9 March 2018 in Kingston, Jamaica, followed by a meeting of the ISA Legal and Technical Commission (LTC) from 12-23 March. This is the first time that the ISA annual session will be divided in two parts according to a revised meeting schedule that is expected to increase transparency and engender a mutually responsive dialogue between the LTC and the Council. The main item to be discussed at the Council meeting in March is the draft regulations on the exploitation of mineral resources in the deep seabed, including stakeholders' comments on the draft.

A BRIEF HISTORY 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, and contain nickel, copper, cobalt, and manganese, among other metals, principally in the Clarion-Clipperton Zone beneath the Pacific Ocean. 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. 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 Article 154 UNCLOS. 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; data management strategy and plan; environmental management issues, including strategic environmental assessment (SEAs), criteria/measures for the precautionary approach, establishment of regional environmental assessment processes and regional environmental management plans (EMPs), 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, among other items, the final report of the first period review of the ISA and adopted decisions addressing transparency and environmental issues. The Council considered, among other issues, the first report of the Secretary-General on the implementation of the Council’s decision adopted in 2016, and draft regulations on the exploitation of marine minerals in the international seabed Area, which were released by the Secretariat in the form submitted to the LTC, that 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.

INTERSESSIONAL HIGHLIGHTS

UNGA-72: At its seventy-second session, in September 2017, the UN General Assembly decided in its annual resolution on oceans and the law of the sea (resolution 72/249), to convene an intergovernmental conference (IGC) to elaborate the text of an international legally binding instrument under UNCLOS on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction, with a view to developing the instrument as soon as possible. In addition, the Assembly welcomed progress on the ISA’s draft exploitation regulations and encouraged the ISA to continue work on the regulations as a matter of priority, providing sufficient opportunities and time for substantive discussion of successive drafts, as well as making progress in developing environmental management plans where there are currently exploration contracts.

WORKSHOP ON THE DESIGN OF IMPACT REFERENCE ZONES (IRZs) AND PRESERVATION REFERENCE ZONES (PRZs):

This workshop (27-29 September 2017, Berlin, Germany) provided a forum for the ISA, contractors, and scientific and technical experts to discuss a reproducible and transparent procedure to design and monitor IRZs for assessing the effect of each contractor’s activities on the marine environment and PRZs, where there will be no mining activity, to assess any changes in the flora and fauna of the marine environment.

FIRST MEETING OF THE LEGAL WORKING GROUP

ON LIABILITY: The first meeting of the ISA legal working group on liability for environmental harm from activities in the Area (28-29 September 2017, London, UK) aimed to identify legal research needs concerning the development of liability rules, including on: the purpose, scope, and form of a liability regime; effective control; actionable damage; standards of liability; and compensation mechanisms.

CBD SBSTTA-21: The twenty-first meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) of the Convention on Biological Diversity (CBD) (11-14 December 2017, Montreal, Canada) requested the Secretariat to prepare a proposal for a long-term strategic approach to biodiversity mainstreaming in various sectors, and recommended as possible elements of a decision by the CBD Conference of the Parties (COP): recognizing that mining and other sectors have potential impacts on biodiversity, which may threaten the provision of ecosystem functions and services that are vital to humanity; underscoring that mainstreaming biodiversity into the mining and other sectors is essential for halting biodiversity loss and achieving the 2030 Agenda; and noting implementation gaps with respect to the application of biodiversity-inclusive impact assessments, in particular SEAs.

SECOND MEETING OF THE LEGAL WORKING GROUP

ON LIABILITY: The second meeting of the ISA legal working group on liability for environmental harm from activities in the Area (8-9 February 2018, London, UK) aimed to review draft legal papers with a view to contributing to the development of liability rules.