

## **TWENTY-THIRD ANNUAL SESSION OF THE INTERNATIONAL SEABED AUTHORITY: 8-18 AUGUST 2017**

The 23rd annual session of the International Seabed Authority (ISA) convenes at ISA headquarters in Kingston, Jamaica, with the Assembly opening on 8 August 2017 and continuing on 15-18 August, and the Council convening from 8-14 August. The Assembly will discuss, among other items, the report of the ISA Secretary-General and the final report on the periodic review of the ISA pursuant to Article 154 of the United Nations Convention on the Law of the Sea (UNCLOS). The Council will consider, among various issues, the draft regulations on the exploitation of marine minerals in the international seabed Area, as well as any other recommendations submitted by the Chair of the ISA Legal and Technical Commission (LTC), which will meet immediately prior to the Council (from 31 July - 9 August).

The LTC is to consider, *inter alia*: the review of the implementation of the Environmental Management Plan for the Clarion-Clipperton Fracture Zone in the Eastern Pacific Ocean and the development of environmental management plans for other zones in the Area; the review of the recommendations guiding contractors in assessing possible environmental impacts arising from exploration in the Area; the implementation of the ISA data management strategy; the selection of candidates for the contractors' training programmes; the review of contractors' annual reports; and applications for an exploration work plan or for extension of an exploration contract.

### **A BRIEF HISTORY OF THE INTERNATIONAL SEABED AUTHORITY**

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 mankind. 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. 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 22<sup>nd</sup> 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, which was later 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.

**22<sup>ND</sup> SESSION:** At its 22<sup>nd</sup> 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 Article 154 review. The Council, *inter alia*, welcomed the LTC’s work on the framework for 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 exploitation regulations and standard contractual terms; financial modelling for proposed financial terms and payment mechanism; data management strategy and plan; environmental management issues, including strategic environmental assessment, criteria/measures for the precautionary approach, establishment of regional environmental assessment process and regional environmental management plans, options for an environmental impact assessment (EIA) process, including public participation, and environmental impact statement template/draft statement guidelines; a working definition and guidelines to assist the ISA in deciding whether adaptive management is appropriate for deep sea mining; an expert study on defining “serious harm” (and related concepts) and on a definition and thresholds for “substantial

evidence”; and the establishment of a legal working group on responsibility and liability, and consideration of an environmental liability trust fund.

### **INTERSESSIONAL HIGHLIGHTS**

**ICP 18:** The 18th meeting of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea (ICP 18) convened from 15-19 May 2017 at UN Headquarters in New York to address climate change effects on oceans, including: environmental, social and economic implications; current action and opportunities for further enhancement of cooperation and coordination in addressing climate change effects on oceans; and inter-agency cooperation and coordination.

**UN OCEAN CONFERENCE:** The high-level UN Conference to Support the Implementation of Sustainable Development Goal 14 (SDG 14 – Conserve and sustainably use the oceans, seas and marine resources for sustainable development) was held from 5-9 June 2017, at UN Headquarters in New York, co-hosted by the Governments of Fiji and Sweden. The Conference contributed to the follow-up and review process of the 2030 Agenda for Sustainable Development (2030 Agenda), providing an input to the High-Level Political Forum on Sustainable Development (HLPF). The Conference was largely considered a success in building momentum for the implementation of SDG 14, as a component at the center of the 2030 Agenda. In the intergovernmentally-agreed Call for Action, the Conference called upon all stakeholders to, *inter alia*: strengthen cooperation, policy coherence and coordination among institutions at all levels, and promote effective and transparent multi-stakeholder partnerships, including public-private ones; dedicate greater resources to marine scientific research, as well as the collection and sharing of data and knowledge, including traditional knowledge; support the use of effective and appropriate area-based management tools (ABMTs), including marine protected areas (MPAs) and other approaches, such as marine spatial planning and integrated coastal zone management; and develop and implement effective adaptation and mitigation measures that contribute to increasing and supporting resilience to ocean and coastal acidification, sea-level rise, and increase in ocean temperatures, and to addressing the other harmful impacts of climate change on the ocean.

**BBNJ PREPCOM 4:** During the fourth session of the Preparatory Committee (PrepCom) on the elements of a draft text of an international legally binding instrument (ILBI) under UNCLOS on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction (BBNJ) (10-21 July 2017, New York), chaired by Carlos Sobral Duarte (Brazil), delegates agreed by consensus on: non-exclusive elements of a draft ILBI text that generated convergence among most delegations, and a list of main issues on which there is divergence of views, with the indication that both do not reflect consensus; and a recommendation to the UN General Assembly to take a decision, as soon as possible, on the convening of an intergovernmental conference (IGC). The draft elements concern, *inter alia*: marine genetic resources, including questions on benefit-sharing; measures such as EIAs and ABMTs, including MPAs; and capacity building and marine technology transfer. According to Resolution 69/292, the General Assembly can decide whether to convene an IGC to elaborate the text of the ILBI before the end of its seventy-second session.