

## Summary of the Twenty-eighth Annual Session of the International Seabed Authority (First Part): 16-31 March 2023

The International Seabed Authority (ISA) has been attracting increasing attention over the last few years from policymakers, the environmental community, media, and the public as the interest of the international community on ocean-related issues continues to grow. The debate over the commercial exploitation of mineral resources from the deep sea—the last largely unexplored frontier—is not new. And this debate is focused on the ISA, which is mandated to organize, regulate, and control all mineral-related activities in the Area, for “the benefit of mankind as a whole,” under the UN Convention on the Law of the Sea (UNCLOS). The Area is defined as the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.

Those in favor of mining point towards a sustainable supply of nickel, manganese, cobalt, or copper necessary for a worldwide energy transition. Those opposed to mining focus on the need to protect the ocean, which is already facing numerous challenges including pollution, biodiversity loss, and climate change, and to study these little-known deep-sea ecosystems, prior to authorizing potential extractive activities.

In an effort to expedite the development of the regulations and begin commercial exploitation, Nauru submitted to the ISA, in June 2021, its intention to apply for approval of a plan of work for exploitation, triggering the “two-year rule,” which stipulates that after such a request, the Council shall complete the adoption of the relevant rules, regulations, and procedures within two years of the submission.

The two-year deadline will expire on 9 July 2023, making the discussion on possible pathways and implications one of the most anticipated deliberations for this Council session.

The March meeting of the ISA Council aimed to: continue the negotiations on the draft exploitation regulations; address the possible scenarios and any other pertinent legal considerations in connection with section 1, paragraph 15, of the annex to the 1994 Implementing Agreement, the so call “two-year rule”; review and adopt the Legal and Technical Commission’s (LTC) report; further consider matters relating to the Enterprise; consider the status of contracts for exploration and related matters; and discuss the operationalization of the economic planning commission.

Throughout the meeting, participants engaged in constructive discussions and made progress on the draft exploitation regulations. Participants agreed on further intersessional work, including the

establishment of several informal groups. The Council agreed on deadlines for the submission of comments, namely 15 May 2023 on the revised draft text and 1 June 2023 on the outcomes from the intersessional working groups.

The Council adopted three decisions, including on:

- the establishment of the position of an interim director general of the Enterprise; and
- the understanding and application of section 1, paragraph 15, of the annex to the Agreement relating to the Implementation of Part XI of UNCLOS, on the two-year rule.

The ISA Council convened for the first part of its 28th session from 16-31 March 2023, in Kingston, Jamaica. More than 150 delegates and observers, including representatives from 30 of the 36 Council Member States, attended the meeting. The Council meeting was preceded by a meeting of the Legal and Technical Commission (LTC) from 7-15 March 2023.

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## A Brief History of the ISA

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 ocean, its resources, and the protection of the marine and coastal environment. UNCLOS established that the Area (the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction) and its resources are the common heritage of humankind.

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, principally in the Clarion-Clipperton Zone in the Pacific Ocean. They contain nickel, copper, cobalt, and manganese, among other metals. Other minerals have since 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.

The ISA is 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, was established 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 of 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 Legal and Technical Commission (LTC), and the Secretariat. The Assembly consists of all ISA members and has the power to:

- establish general policies;
- set the 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); and
- 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 to supervise and coordinate implementation of the Area regime.

The LTC is an organ of the Council and currently consists of 30 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 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 ISA has been developing a Mining Code, which is a 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 ISA is in the process of developing exploitation regulations.

### *Recent ISA Sessions*

**24th Session:** The 24th session of the ISA was held in two parts in March and July 2018. The first part consisted of a meeting of the Council, followed by a meeting of the LTC. The second part consisted of meetings of the Council and the Assembly, preceded by meetings of the LTC and the Finance Committee. The Council considered issues related to the draft exploitation regulations, including: models for a financial payment system; the role of the sponsoring state; the role and legal status of standards; the LTC's recommendations and guidelines; and broader environmental policy and regulations on exploitation. The Assembly adopted the Strategic Plan for 2019-2023, which consists of a mission statement, context and challenges, strategic directions, and expected outcomes.

The Council further addressed the possible operationalization of the Enterprise and contractors' non-compliance issues. The Enterprise, as envisioned under UNCLOS, is the commercial arm of the Authority, mandated to conduct its own mining, initially through

joint ventures with other entities. Until seabed mining becomes a commercial reality, the functions of the Enterprise are to be carried out by the Secretariat.

**25th Session:** The first part of the 25th Session of the ISA Council was held from 25 February to 1 March 2019, followed by a meeting of the LTC. The second part convened in July 2019 and included meetings of the Council and Assembly, preceded by meetings of the LTC and the Finance Committee. The Council made progress on the draft exploitation regulations, addressing, *inter alia*: standards, guidelines, and terms; decision-making; Regional Environmental Management Plans (REMPs); and the inspection mechanism. At the end of the second part, Council members requested more time to submit comments on the draft regulations in order to ensure a balance between commercial interests and environmental protection.

The Council further considered a report on matters relating to the Enterprise, deciding to extend and expand the mandate of the Special Representative of the Secretary-General of the ISA for the Enterprise for a limited time. At this meeting, which marked the ISA's 25th anniversary, the Assembly oversaw the operationalization of the Authority's first Strategic Plan, with delegates also deliberating on enhancing participation and transparency through the admission of observers.

**26th Session:** The Council met for two sessions (17-21 February 2020 and 6-10 December 2021). The Assembly met from 13-15 December 2021. The LTC convened from 24 February-6 March 2020 and the Finance Committee held its meeting from 12-14 July 2021.

The Council continued its work on the draft exploitation regulations, discussing, among others, a proposal for the development, approval and review of REMPs and a proposal for minimum requirements for such plans.

It further approved: the plan of work for exploration for polymetallic nodules submitted by Blue Minerals Jamaica Ltd.; and the application for extension of the contracts for exploration for polymetallic nodules by JSC Yuzhmorgeologiya, the Interoceanmetal Joint Organization, Deep Ocean Resources Development Co. Ltd., China Ocean Mineral Resources Research and Development Association, Institut français de recherche pour l'exploitation de la mer, the Federal Institute for Geosciences and Natural Resources of Germany, and the Government of the Republic of Korea.

The Assembly re-elected Michael Lodge as Secretary-General of the ISA for a four-year term (2021-2024), approved the budget for the period 2021-2022, and took other finance-related decisions, including appointing Ernst and Young as auditor for the financial period 2021-2022.

**27th Session:** The 27th session of the ISA was split into three parts. The first part, convened in March 2022, comprised of meetings of the LTC (14-18 March) and the Council (21 March-1 April). The second part included meetings of the LTC (4-15 July 2022), the Finance Committee (13-15 July), the Council (18-29 July), and the Assembly (1-5 August). The third part consisted of a Council meeting (31 October – 11 November). Throughout its sessions, the Council continued negotiations of the draft exploitation regulations.

At its first meeting, the Council agreed to consider a draft to operationalize the Enterprise at the next Council sessions. At its second meeting, the Council: approved a memorandum of

understanding between the ISA and the African Union; and adopted a decision on the mechanism of the election of LTC members for 2023-2027, among others. At its third meeting, the Council adopted decisions related to: the reports of the Chair of the LTC; the commissioning by the Secretariat of a study on the internalization of environmental costs of exploitation activities in the Area; the development of binding environmental threshold values; and the possible scenarios and any other pertinent legal considerations in connection with section 1, paragraph 15, of the annex to the 1994 Implementing Agreement.

During the Assembly, Member States adopted, among others, decisions on: the approval of the budget for the financial period 2023-2024 in the amount of USD 22,256,000, as proposed by the Secretary-General; the election to fill the vacancies on the Council; and the implementation of a programmatic approach to capacity development.

### ISA-28 (Part I) Report

On Thursday, 16 March, Tomasz Abramowski (Poland), Council President for the 27th session, opened the meeting, welcoming delegates and observers.

ISA Secretary-General Michael Lodge drew attention to three important global conferences held in the previous months: the 15th meeting of the Conference of the Parties (COP) of the Convention on Biological Diversity (CBD) and the adoption of the Global Biodiversity Framework (GBF); the fifth UN Conference on the Least Developed Countries (LDC5); and, most importantly, the agreement on an international legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ Agreement). Highlighting the Authority's commitment to contribute towards the goals and targets of these meetings and agreements, he stressed that "pressure is now on the ISA Council to deliver," noting that work on the Mining Code is well advanced and is expected to further progress during the six weeks of negotiations envisaged for the Council during its 28th session.

In opening remarks, Spain for the EU, and AUSTRALIA, also for Canada, New Zealand, and Norway, and the US, condemned the "unprovoked and immoral" war of aggression by the Russian Federation against Ukraine, noting it violates international law, including the UN Charter, and expressing their support for Ukraine's independence, sovereignty, and territorial integrity.

The RUSSIAN FEDERATION requested not to politicize the debate, noting that the international community ignored for many years the uncontrolled expansion of the North Atlantic Treaty Organization (NATO) to the East, including military infrastructure as well as the violation of the Minsk Agreements and the rights of Russian-speaking minorities in Ukraine.

In further opening remarks, many delegates stressed that there can be no exploitation without regulations that ensure high environmental standards and other safeguards.

Ghana, for the AFRICAN GROUP, reaffirmed UNCLOS as the legal framework for addressing all matters related to the Area. He called for a robust mining code that ensures the protection of the marine environment and further stressed the need to work towards the operationalization of the Enterprise.

BELGIUM highlighted the need to uphold UNCLOS Article 145 (protection of the marine environment), stressing that "the precautionary principle should guide our work at all times."



Cautioning against imposing “artificial deadlines,” he noted that two of the three working groups addressing different parts of the draft exploitation regulations have not made sufficient progress and that many issues are “still far from being considered with a view to adoption.” He further drew attention to the two-year rule, highlighting the intersessional dialogue facilitated by Belgium and Singapore, and warning this will be the last time the Council meets prior to the deadline of 9 July 2023.

CANADA underscored its national position on deep sea mining as expressed at the fifth International Marine Protected Areas Congress (IMPAC5), held in February 2023 in Vancouver, Canada. He stressed that deep seabed mining “should only take place if protection of the marine environment is ensured,” including applying the precautionary approach.

GERMANY noted that the international community cannot “really assess the impacts of deep sea activities,” reiterating the call for a “precautionary pause” to allow for fully taking into account the precautionary principle and for filling existing knowledge gaps. He further called for a legal dialogue on the scenario that the regulations will not be ready upon the two-year deadline, stressing that, without a mining code, the LTC “can neither recommend nor reject a mining application for legal reasons,” but rather provide a report on the suggested activity.

CHILE agreed that no exploitation activities in the Area should start before adequate regulations and standards are in place, calling for the effective protection of the marine environment, invoking the precautionary principle, and supporting a precautionary pause.

The UK updated the Council that Loke Marine Minerals, a Norwegian company, acquired deep sea mining firm UK Seabed Resources from Lockheed Martin. He noted that the UK will not sponsor any exploitation licenses until there is sufficient evidence on the impacts on the marine environment, and strong exploitation regulations and guidelines in place as part of the Mining Code.

TOGO highlighted the interests of developing countries concerning ISA’s work.

PORTUGAL stressed the need to ensure that, in line with the precautionary principle, deep sea mineral exploitation activities should not take place before appropriate regulations are in place.

ARGENTINA emphasized that a robust framework is required prior to exploitation activities, which will protect the marine environment, respect the principle of the common heritage of humankind, and include a payment mechanism for benefit-sharing.

SWITZERLAND underscored that exploitation should not start before regulations and institutional arrangements have been finalized and approved, and the protection of the marine environment ensured.

The FEDERATED STATES OF MICRONESIA (FSM), as a member of the alliance of countries calling for a deep seabed mining moratorium, stressed the need to respect the ecosystem approach, the polluter pays principle, and the precautionary principle. He highlighted the need for rigorous environmental impact assessments (EIAs) that also address social, cultural, and economic risks of deep seabed mining, and called for public participation in decision making.

POLAND expressed commitment to develop exploitation regulations and fulfil the related UNCLOS obligation, underscoring the need for transparent regulations with strong environmental protection and benefit-sharing provisions, in accordance with the principles of the Convention.

JAMAICA noted the advances in the discussions during the 27th session and highlighted the principle of the common heritage of humankind, and the need to ensure effective protection of the marine environment.

The REPUBLIC OF KOREA said that this Council session is very important towards finalizing the exploitation regulations, expressing commitment to continue working in this direction.

FIJI urged moving with caution, gaining more knowledge and better understanding of the ocean, and stressed the paramount importance of having relevant safeguards in place prior to any commercial exploitation of deep sea mineral resources.

TONGA expressed commitment to complete robust exploitation regulations with all necessary safeguards as inscribed in UNCLOS.

NAURU announced an in-kind contribution of AUD 5,000 to the Endowment Fund for the participation of qualified individuals in marine scientific research programmes, and emphasized that a robust regulatory framework for the ocean is at the forefront of the country’s priorities. She stressed that the country does not plan to support any plan of work for exploitation prior to the July 2023 Council meeting, and looks forward to completing the regulations efficiently.

BRAZIL called for further work on the Enterprise, environment policies, stakeholder engagement and responsibilities, and institutional capacities and accountability, including an independent mechanism of inspection and compliance. She further called for an independent scientific body to inform decision making and ensure the harmonization of national legislation.

JAMAICA, TONGA, BRAZIL, and others highlighted the conclusion of the BBNJ Agreement, pointing to potential synergies.

The DEEP SEA CONSERVATION COALITION (DSCC) underscored that deep sea mining will destroy living ecosystems and marine biodiversity, and stressed that the narrative that we need metals from the deep sea for the energy transition is debatable.

The THYSSEN-BORNEMISZA ART CONTEMPORARY called for a ban on commercial mining, urging to make the year 2023 key for a thriving blue planet rather than opening a new frontier for extraction. She pointed to the BBNJ Agreement as a priceless governance tool.

GREENPEACE INTERNATIONAL noted that the international community stands at a historic crossroads, stressing that a moratorium is the only feasible option, and cautioning against “opening Pandora’s box.”

On Monday, 27 March, several Member States delivered further general statements.

TRINIDAD AND TOBAGO noted the importance of finding solutions on the way forward, including on the two-year rule, and highlighted the role of the Enterprise and the need to include Indigenous Peoples’ perspectives in the negotiations.

VANUATU expressed concern about additional impacts on the ocean, joining calls for a precautionary pause or a moratorium. He underscored gaps in relevant scientific knowledge and the probability of irreversible harm to the marine environment as a result of deep sea mining, noting that the draft exploitation regulations must not be adopted until appropriate guarantees are in place.

COSTA RICA highlighted the principle of the common heritage of humankind governing the Area, relevant ISA responsibilities, and the obligation to protect the marine environment stemming from UNCLOS. She called for: a specific legal framework containing all

provisions ensuring environmental protection; adequate scientific information for fact-based assessment of any plan of work; and developing the necessary institutional arrangements within the ISA, guaranteeing transparency and accountability.

The RUSSIAN FEDERATION noted that moving to exploitation would be premature without the prior adoption of regulations and standards. He highlighted the fulfilment of national obligations as a sponsoring state as well as the provision of baseline environmental data and training opportunities by contractors.

Acknowledging the countries that have already joined the Partnership for the Deep Sea, FRANCE underscored that no mining exploitation should commence before the complete set of regulations is in place, including a robust inspection mechanism. He highlighted: the impossibility of adequately assessing the potential effects of mining on the marine environment due to the lack of scientific evidence and baselines; the absence of a regulatory framework in line with UNCLOS Article 145; the need to conserve ocean biodiversity, and the ocean's role in mitigating the effects of climate change.

GERMANY noted it joined the Partnership for the Deep Sea during the last Our Ocean Conference in Panama in March 2023, inviting, with SPAIN, more countries to join. SPAIN highlighted that: the two-year deadline cannot force the Council to deliver inappropriate regulations; the ability of the Council to provide directives and guidance to the LTC; and the need to apply a precautionary pause, at least until the Council approves all the needed regulations, norms, rules, and procedures.

AUSTRALIA underscored that a strong ocean governance regime is critical and celebrated the BBNJ and GBF adoption. She highlighted Indigenous Peoples' role and stressed the need for a robust set of rules, including solid environmental measures, before any provisional approval.

POLAND stated the need to exhaust efforts to ensure that the exploitation regulations will be robust, including rules and regulations on the protection of the marine environment.

BRAZIL highlighted that the current level of knowledge and baseline information are not enough to commence exploitation activities, and the need for regulations with sound environmental and compliance provisions as well as robust deep sea mining standards. She emphasized that a precautionary pause could be in line with the Rio Declaration and the BBNJ objectives.

The NETHERLANDS stressed the need for sufficient scientific knowledge on deep sea marine ecosystems, calling for strict application of the precautionary principle. He noted that only when enshrining such requirements in the draft regulations, the ISA will be in a position to address exploitation applications. He supported further discussions on the two-year rule, including continuing the intersessional dialogue.

CHINA stressed that deep sea environmental protection is in line with the national philosophy of ecological civilization, noting that protecting the deep sea environment is the inherent requirement of deep sea mining. She underscored the need to make exploitation reasonable, orderly, and sustainable, adding that deep sea activities are instrumental to generating scientific data, enhancing our understanding of the ocean. She highlighted that the development of the exploitation regulations remains "our utmost task at present," adding that if they cannot be concluded in a timely manner, clear arrangements are needed to be able to advance in good faith.

The REPUBLIC OF KOREA noted that commercial mining shall be addressed in line with UNCLOS and the 1994 Implementing Agreement under regulations that need to be finalized as soon as possible to guarantee the protection and preservation of the marine environment and equitable benefit-sharing.

CHILE reiterated its position on the need for a precautionary pause on exploitation activities to develop the required scientific knowledge and agree on regulatory and institutional frameworks in line with UNCLOS without time pressure. Highlighting the need to establish a common vision for the future of the ocean, he stressed the need for coherence with relevant international agreements.

Highlighting his approach as both precautionary and conditional, the UK stressed the need to adopt a regulatory framework comprehensively, safely, and without interference, ensuring the highest level of environmental protection.

Noting his country's participation in the Partnership for the Deep Sea, the DOMINICAN REPUBLIC stressed that following a precautionary approach is key, and emphasized the need for rigorous scientific research and the development of a regulatory framework that guarantees the effective protection of deep sea ecosystems and the marine environment.

INDIA underscored the need to think out of the box to find the necessary balance for the sustainable use of deep sea resources, noting his country has pioneered investment as a responsible exploration contractor for the past three decades.

The FSM called others to join the Partnership for the Deep Sea, stressing Pacific small island developing states' deep connections with the ocean. He highlighted the need to incorporate relevant traditional knowledge of Indigenous Peoples and local communities, ensuring their effective and meaningful participation in the discussions.

PORTUGAL highlighted that no plan of work for exploitation can be approved prior to agreement on a robust framework and transparent procedures, including an inspection mechanism.

SWITZERLAND underscored the precautionary approach as a guiding principle, stressing the need for consistency and coherence with other relevant international processes, and the need for further discussion on the two-year rule to avoid legal uncertainty.

NORWAY agreed that no commercial mining should occur until the understanding of the potential effects on the environment and that more scientific information is needed. He encouraged delegates to continue discussions for the timely adoption of the regulations in line with the principle of the common heritage of humankind and taking into account the precautionary approach.

The COOK ISLANDS supported a strong regulatory framework before any exploitation, in line with the precautionary approach. She questioned the calls for a moratorium and highlighted that in order to make informed decisions, more research should be encouraged.

The DSCC reminded delegates that thousands of people around the world had signed calls to stop deep sea mining, and highlighted the need to allocate enough time to understand the environmental processes and make the right decisions, not only for humankind but rather for any kind.

The PEW CHARITABLE TRUSTS drew attention to some remaining gaps in the regulations, including on: ISA environmental policy, environmental thresholds, liabilities, dispute settlement mechanism, access and benefit-sharing, and the operationalization of the Enterprise.

Linking deep sea mining with the recently adopted GBF, and Sustainable Development Goals 12 (sustainable consumption and production patterns) and 14 (life below water), WWF INTERNATIONAL called for the imperative establishment of a circular mining economy. She underlined that the transition from fossil fuels to clean energy does not need minerals from the deep seabed.

GREENPEACE INTERNATIONAL urged delegations to stand strong against a commercially-imposed ultimatum and reminded Council members of their responsibility on this politically-significant decision, rather than inappropriately ceding decision-making power to the LTC.

### **Organizational Matters**

**Election of Officers:** Brazil, on behalf of the LATIN AMERICAN AND CARIBBEAN GROUP (GRULAC), nominated Juan José González Mijares, Ambassador of Mexico to Jamaica and Bahamas, and Permanent Representative to the ISA, as President for the 28th session. Ambassador Mijares was elected by acclamation.

In his opening remarks, President Mijares highlighted the BBNJ Agreement as a milestone and triumph of multilateralism, and an opportunity to show the ISA's contribution to the development of the agreement. Noting that exploitation regulations are an integral part of UNCLOS, he stressed the need to achieve a robust, comprehensive, and workable set of rules. He said technical issues under negotiation will require informed decisions, including on standards and guidelines that will complement the regulations. He drew attention to intersessional work on the submission of a plan of work for exploitation and the relevant two-year deadline.

The following Vice-Presidents were elected by acclamation:

- Ghana for the African Group;
- Republic of Korea for the Asia-Pacific Group; and
- Canada for the Western European and Others Group.

A nomination is pending by the Eastern European Group.

**Adoption of the Agenda:** Delegates adopted the provisional agenda of the Council for its 28th session ([ISBA/28/C/L.1](#)) without comments.

**Organization of Work:** President Mijares introduced the indicative programme of work, based on the Council's provisional agenda and the roadmap for the 28th session ([ISBA/27/C/21/Add.2](#)). He noted the programme is heavy and structured around formal and informal meetings of the Council's three working groups.

Many delegates congratulated the President on his election. CANADA, the REPUBLIC OF KOREA, GERMANY, the NETHERLANDS, and COSTA RICA emphasized that the time allotted to discuss the intersessional deliberations on the two-year rule is not sufficient, requesting additional time.

President Mijares said he will consult with the working groups' facilitators with a view to devoting more time to the intersessional deliberations on the two-year deadline, noting that, the intersessional dialogue will probably continue intersessionally after the current Council meeting.

**Credentials:** On Monday, 27 March, Secretary-General Lodge presented the report, noting that 30 states have submitted or communicated their credentials. The Council took note of the report.

### **Consideration with a View to Adoption, of the Draft Regulations on Exploitation**

**Working Group on the Financial Terms of a Contract:** The working group, facilitated by Olav Myklebust (Norway), met on Thursday and Friday, 16-17 March. On Thursday, Myklebust noted that the group covered a lot of ground towards completing its "daunting task" during its six previous meetings. He highlighted the goal to provide the best possible recommendations to the Council towards the adoption of a fair and balanced system for the financial terms of a contract, emphasizing that larger, policy questions should be left for the Council to discuss. He outlined the organization of work for the working group, including technical presentations of the financial model and potential payment regimes, and textual negotiations on the Chair's revised text ([ISBA/28/C/OEWG/CRP.2](#)). He further stressed the need to address two larger conceptual issues: an additional royalty or levy for compensation in cases an entity is liable to lower domestic tax; and a possible levy or tax to be paid through the ISA in cases of transfer of rights.

Alexandra Readhead and Thomas Lassourd, representatives of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) offered a detailed [presentation](#) of IGF's report on the proposed payment regimes for deep sea mining.

They presented the IGF financial model, which includes updated prices and cost assumptions, and addressed, among others:

- the four payment options as suggested in ISA negotiations, including the interaction between these options and sponsoring state taxes;
- the "government take" as a basis for selecting an appropriate regime;
- the principles for designing a mining fiscal regime;
- the concept of progressivity of profit-based taxes;
- average effective tax rate, noting it should be between 40-60% to be comparable to land-based mining;
- different equalization methods, where additional taxes for the ISA would be imposed when insufficient taxes are paid to sponsoring states, including an additional royalty or a profit share; and
- taxation of transfer of rights or assets.

The four payment options include: a fixed ad valorem rate; a two-stage ad valorem system, with a low rate for the initial years of low profitability and a higher rate subsequently; a profit-based system; and a variable ad valorem system that is progressive regarding price shifts but not costs.

Readhead and Lassourd noted that the third of the four payment options under consideration responds to changes in profitability and thus performs better vis-à-vis the average effective tax rate. They emphasized it is also the most progressive regarding the sensitivity analysis on how the system respond to changes in prices and costs.

In the ensuing discussion, delegates focused on: how reviewing the rates would affect progressivity; advantages and disadvantages of different equalization measures and the importance of including such a measure; differences of the payment options under consideration; and non-profit-based entities' considerations.

Richard Roth, Massachusetts Institute of Technology (MIT), presented an updated [model](#) for financial payments for polymetallic nodules. He focused on, among others:

- reviewing previous royalty rates, with a view to reaching a 45% effective tax rate;



- providing updates to the model and suggestions from parties' submissions;
- discussing the technical complexity surrounding manganese calculations;
- addressing concerns about cases where companies pay lower corporate income tax and relevant suggested equalization measures;
- discussing price changes and related projections, and the need for a system that is progressive with regard to these changes; and
- addressing revised metals' prices and related costs.

Roth underscored that many of the conclusions are similar to the IGF model, noting that much of MIT's work focuses on the fourth payment option under consideration, which incorporates the notion of progressivity without the complexity of profit calculation. He added that this option is quite effective at dealing with metals' price fluctuation. He clarified that the model can be adjusted to address any option since all of them are still on the table.

A delegate noted that economic considerations should not be analyzed in isolation from environmental ones, using as an example incentivizing environmentally-friendly technology, which may affect financial calculations and modelling.

On Friday, the working group engaged in a further dialogue on the MIT presentation. Delegates and observers discussed, among others:

- the need for an equalization measure, largely agreeing, in principle, on such a need;
- profit sharing regarding direct and indirect transfer of rights;
- environmental externalities, ways to internalize such costs and links with underlying uncertainties;
- fair distribution of revenues;
- potential differences regarding price volatility associated with deep sea mining vis-à-vis land-based mining;
- difficulties associated with the calculation of nodules' commercial value based on metallurgical processes;
- reaching the necessary balance between the financial terms applicable to land-based mining as compared to deep sea mining;
- whether minerals from the deep sea are required or not for the energy transition;
- ways to account for intrinsic, social, and cultural values in addition to financial considerations; and
- whether the potential generated revenue will suffice to meet ISA's UNCLOS-related obligations.

Facilitator Myklebust noted that the mandate of the working group is to address the financial terms of a contract, noting that benefit-sharing modalities are still to be discussed. He added that MIT had not been requested to address either benefit-sharing or externalities.

Roth noted that: most seem to agree in principle on the need for an equalization measure; differences between the payment options portray the necessary trade-off between progressivity and simplicity; internalizing external costs is important and the results of financial modelling should be considered together with the environmental externalities study commissioned by the Authority; price volatility can differ for deep sea minerals compared to land-based ones and will need to be taken into account; benefit distribution has not been considered, since it is beyond the scope of the study; and the absence of an ISA profit monitoring framework, which can make profit calculations difficult, compared with relevant national frameworks.

Delegates then addressed the draft text for the payment system, including revised draft regulations on exploitation of mineral resources in the Area. Lisa Koch, Norton Rose Fulbright, Australia, presented the structure of the document.

On **equality of treatment** (regulation 62), some delegates supported the regulation, which notes that the Council, based on the recommendations of the LTC, shall apply the provisions of this part in a uniform and non-discriminatory manner, ensuring equality of financial treatment and comparable financial obligations for contractors. Others noted that equality of treatment should be a general regulation and that the Finance Committee should be included along with the LTC. ISA Legal Counsel Mariana Durney clarified the scope of responsibility of the Finance Committee, noting it has no role on establishing financial terms and conditions under which mining is conducted, which is the responsibility of the LTC.

On **incentives** (regulation 63), a regional group underscored that the ISA "may or may not" provide incentives, suggesting amending the draft regulation to attest that the Council may provide incentives to contractors to further the engagement of the Enterprise, technology transfer, and the training of nationals from developing states. Other delegations opined that financial incentives should not be excluded, calling for a relevant definition to avoid misunderstandings. A delegate suggested adding a reference to transparency and another to incorporating the role of the economic and planning commission. Further concerns raised included creating a level-playing field for deep sea mining in relation to land-based mining and convoluted language referring to incentives.

On the section on liability for and determination of royalty, delegates addressed the **obligation by the contractor to pay royalty** (regulation 64). A regional group noted their suggestion for an additional royalty and other equalization measures should be considered in this part of the document. A few called for a definition on the "commencement of commercial production." Some delegates underscored the need for a more transparent notification than a note from the contractor to the Secretariat on the commencement of commercial production. A delegate emphasized that it is important to clarify that these principles regulate the entire system. Delegates agreed to delete a provision related to the **Secretary-General potentially issuing guidelines** (regulation 65).

On the section on royalty returns and payment of royalty, delegates agreed on provisions related to the **form of royalty returns** (regulation 66); the **royalty return period** (regulation 67); **lodging of royalty returns** (regulation 68); **error or mistake in royalty return** (regulation 69); and the **ISA requesting additional information** (regulation 72).

Regarding **payment of royalty shown by royalty return** (regulation 70), delegates disagreed on whether the Council may approve the payment of any royalty due by way of instalment where special circumstances exist. A regional group suggested deleting the provision, noting that no instalments should be included in the regulation. Others opined that under exceptional circumstances instalments should be considered, suggesting including examples of such special circumstances. A delegate suggested declaring the currency to be used in the payment of royalties for a period of time to avoid additional transaction costs for the ISA. Facilitator Myklebust suggested informal consultations between interested delegations to reach consensus on instalments.

On **information to be submitted** (regulation 71), discussions focused on whether both wet and dry mineral weights should be reported, with some supporting both and a delegation stressing the advantages of using dry weight of nodules. A delegate called for defining the terms “suitably qualified person” and “certified laboratory.”

On **overpayment of royalty** (regulation 73), two delegates noted that a five-year period for any request to reduce a royalty-related amount payable by a contractor after the day the relevant royalty return was lodged with the Authority is too long. They suggested instead “before the date that the applicable annual financial report is submitted.”

On the section on records, inspection, and audit, regarding **proper books and records to be kept** (regulation 74), delegates agreed to report on individual minerals rather than on aggregate. On **audit and inspection by the Authority** (regulation 75), they agreed to include that a sub-contractor’s record may also be audited, and that the contractor should undertake the cost of the audit instead of the Authority.

On **assessment by the ISA** (regulation 76), no new comments were made. Regarding a **general anti-avoidance rule** (regulation 77), one delegation suggested the introduction of a new provision in which the Council shall suspend or rescind the contract if the contractor fails to comply with the payment of a royalty.

On the section on anti-avoidance measures regarding the **arm’s-length adjustments** (regulation 78), one delegation proposed, and the Council agreed, to delete “is fair under the circumstances” when referring to the agreement on the arm’s-length value by willing buyers and sellers. On the calculation of amounts, many delegations underscored that the Council should be taking the relevant decisions. Facilitator Myklebust concluded that alternative language noting that “the Secretary-General may make recommendations to the LTC” on the adjustment of the value of relevant costs, prices, and revenues will be deleted in the next revised draft.

On the section on interest and penalties regarding the interest on **unpaid royalty** (regulation 79), delegates discussed the cases where a royalty remains unpaid after the due time, in which a contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding, with different preferences raised on the amount of the interest.

On **monetary penalties and suspension or termination of an exploitation contract** (regulation 80), some delegates suggested including criteria on the seriousness of a potential breach. A delegate suggested that the Council may impose a monetary penalty in response to a violation under this part and may suspend or terminate the exploitation contract, considering the seriousness and recurrence of the breach to impose the penalty. He further proposed changing the title of the regulation to “monetary and other penalties.” Facilitator Myklebust suggested, and delegates agreed to, intersessional consultations among interested delegations.

On the **review of system of payments** (regulation 81), some delegates suggested retaining a reference on consultation with the contractors on revision of the system of payments, which was agreed. Some stressed the need to ensure that such revision is consistent with parts of the 1994 UNCLOS Implementing Agreement relating to the implementation of Part XI (the Area). Following a relevant proposal, delegates agreed to remove a

reference to UNCLOS Articles 154 (periodic review), 160 (powers and functions of the Assembly), and 162 (powers and functions of the Council).

On the **review of rates of payments** (regulation 82), a delegate suggested considering additional parameters of economic viability, including market conditions and taxation rates. Some delegates proposed deleting language that any adjustment to the rates of payments may only apply to existing exploitation contracts, and underscored the need to ensure that the review of rates takes place every five years and to consider the role of third-party experts, the LTC, the economic and planning commission, and contractors in the review process. A couple of delegates suggested retaining a provision on consultation with the contractors.

On the section on payments to the Authority, regarding **recording in the Seabed Mining Register** (regulation 83), delegates agreed that all payment figures made by the contractor to the ISA under this part are publicly available.

On **beneficial ownership** (regulation 83bis), some supported the new formulation, noting it conforms with the highest standards of transparency.

Under the part on rights and obligations of contractors, regarding the **transfer of rights and obligations under an exploitation contract** (regulation 23), a regional group noted that if a profit share is envisaged on the transfer of rights, the text of the regulation will need to be amended. On a provision noting that the contractor may transfer its rights and obligations with the prior consent of the Council and with notification to the sponsoring state, some stressed that the sponsoring state needs to give consent rather than just be notified. A delegate suggested that, upon recommending the approval of a transfer, the LTC shall ensure that the transferee submit ownership information to the beneficiary ownership registry. He also proposed that the term “monopolize” should be defined, with another underscoring related difficulties, and that a time horizon should be added regarding when the Council should inform the contractor. An observer emphasized that a transfer should not create a new contract but rather duplicate the original contract. Another observer stressed that any change of control should be treated as a transfer of rights and obligations.

On the **commencement of production** (regulation 27), some delegates suggested replacing reference to “close proximity” with “coastal states adjacent to the mining area,” noting this is a cross-cutting issue. Another suggested using “proximity.” A delegate proposed discussing how to encourage the contractors to start production as planned in cases they fail to do so. An observer stressed the need for objective criteria regarding when commercial production is reached, and for independent verification of the production levels.

On **annual reports** (regulation 38), some delegates suggested replacing references to the quality of resources with “dry metal content” and replacing reference to volume of minerals with “tonnage.” Another proposed including environmental, social, and governance indicators in the report. An observer suggested including reference to sample batch identifiers.

On **books, records, and samples** (regulation 39), a delegate noted that relevant guidelines on the sampling and storage of biological samples will need to be developed. One delegate highlighted the need to consider digital data, with another noting the need for appropriate storage as digital technology changes. Delegates and observers further agreed that a contractor shall keep,



in good condition, a representative portion of samples or cores. Some supported the closure plan as the end point for record keeping rather than the termination of the contract.

Facilitator Myklebust invited written submissions on all the regulations by 15 May 2023 for further consideration at the second part of the Council's 28th session to be held in July 2023. Delegates agreed to intersessional work on two larger conceptual issues. One informal group led by South Africa and Australia will focus on an equalization measure to compensate for cases where a contractor does not pay adequate domestic tax via an additional royalty. A second group, facilitated by Canada and the IGF, will address the issue of transfer of rights related to contracts.

**Working Group on the Protection and Preservation of the Marine Environment:** The working group, facilitated by Raijeli Taga (Fiji), met from Monday to Wednesday, 20-22 March.

On Monday, Facilitator Taga introduced the revised text ([ISBA/28/C/IWG/ENV/CRP.1](#)), thanking delegates and observers for their verbal and written contributions during the previous sessions and intersessional exchanges, which were incorporated in the draft text. She highlighted items that need further attention, noting that, on some of them, intersessional work may be required.

A delegate presented on the outcome of the intersessional discussions on **stakeholder consultation**. He noted that a group of countries worked towards a standardized approach with the overarching objective of ensuring a clear process that provides open and effective stakeholder consultation. He highlighted, as a general principle, that the applicant or contractor should be the one doing the consultation-related legwork, with the Secretariat playing a facilitating role. He drew attention to the [relevant non-paper](#) that includes the outcome of the intersessional work, underscored issues that require further discussion, and invited all interested delegates and observers to further work on the margins of the current Council meeting.

Many delegates applauded the work. Observer groups welcomed the initiative on standardizing stakeholder consultation, stressing the need to extend such involvement to public participation, and drawing attention to Rio Declaration Principle 15 (precautionary approach) as well as to the relevant pillars of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. They called for meaningful participation in the work of all the Authority's bodies as well as systemic involvement of independent advisors, Indigenous Peoples, coastal communities, women, youth, and other groups.

Observers further called for distinguishing ISA responsibilities from those of contractors regarding consultations, and for developing a relevant standard with modalities for stakeholder participation. They also noted that "engagement" may be a better-suited term than "participation," adding that such stakeholder engagement should be guided by human rights principles.

Two Indigenous representatives of Pacific communities offered remarks on the cultural and spiritual perspective of Indigenous Peoples towards the ocean. "We come from the deepest depths of the sea. The ocean is our life. We want to ensure that you are not leaving out a conversation we would have with you if our history was different... We refuse to destroy the depths of the ocean, sacrificing the future of our children for the benefit of a few individuals." They urged promoting a ban on deep sea mining with immediate effect.

Facilitator Taga invited delegates to start discussions on the revised draft text. Delegates addressed in a lengthy discussion, **general obligations** (regulation 44). This regulation addresses the measures for ensuring effective protection of the marine environment from harmful effects, including a number of considerations the Authority should take into account when adopting and keeping under periodic review rules, regulations, and procedures, as well as standards and guidelines.

Some delegates called for a simpler, streamlined formulation of the regulation, noting that the language is too broad. They deliberated, among others, on:

- the need to explicitly reflect in the text relevant provisions of UNCLOS and the 1994 Implementing Agreement as well as relevant international law;
- reflecting the need to ensure effective protection of all forms of marine life, "including rare and fragile ecosystems and the habitats of depleted, threatened, or endangered species," with some suggesting deleting the reference to all forms of marine life;
- whether references to "transportation of minerals to inland facilities, which may include inland processing" fall outside ISA's mandate;
- standardizing references to mitigation;
- whether to include a provision that REMPs should be adopted before the acceptance of a plan of work;
- whether risks can be "prevented" entirely or should be "assessed and managed";
- the relationship between standards and guidelines, with a delegation noting that binding rules should not be covered by guidelines;
- reference to the precautionary principle vis-à-vis the precautionary approach;
- reference to rare or fragile ecosystems, including a potential definition;
- reference to underwater cultural heritage and whether it should be included in the definition of the marine environment;
- reference to "offsetting" harm to the marine environment, with some suggesting deletion and others qualifying such offsetting as a last resort; and
- whether reference to indirect harmful effects resulting from exploitation in the Area should be included.

Some delegates requested a consolidated version of the draft exploitation regulations to evaluate consistency and coherence among the different parts. A couple of delegations pointed to the recently concluded BBNJ Agreement, urging for ensuring coherence and consistency. A delegation noted it would suggest procedural safeguards towards ensuring that the Mining Code is agreed upon before considering any plans of work.

Facilitator Taga suggested intersessional discussions on the issue of underwater cultural heritage and on the precautionary principle/approach.

On **REMPs** (regulation 44 bis), delegates discussed a revised, streamlined draft regulation noting that the LTC shall only consider an application for a plan of work if a REMP has been adopted by the Council for the area concerned. A delegate suggested that the LTC shall only consider an application for a plan of work if, under the area-based management tools (ABMTs) of the BBNJ Agreement, 30% of areas beyond national jurisdiction are under protection, which will require further discussion.

On the **development of environmental standards and guidelines** (regulation 45), a regional group stressed that all standards and guidelines to be developed should be SMART (specific, measurable, achievable, relevant, and time-bound) and FAIR (findable, accessible, interoperable, and reusable) so that contractors can comply, and regulators assess compliance. Some delegates highlighted a provision that the ISA shall not approve any exploitation activities unless environmental standards have been adopted. Others suggested distinguishing between standards and guidelines, with standards reflecting binding measures, offering to organize intersessional work in this direction. Some further proposed updating environmental standards, emphasizing they will be developed under limited information and knowledge. A delegate stressed the need for indicators and quantitative thresholds to assess the fulfillment of environmental objectives.

On the **environmental management system** (regulation 46), which shall be developed, implemented, and maintained by the contractor, delegates suggested streamlining the text and avoiding duplication. They discussed, among others: timeframes for periodic review of the system; challenges related to third-party certification; and the need to carefully delineate the environmental management system from environmental management monitoring plans.

On **EIAs** (regulation 46 bis), some delegates underscored that consultations should take place with any states, including coastal states, that may be potentially affected by an activity in the Area. A delegate called for distinguishing between impacts and effects. A regional group suggested that the scoping report shall include binding requirements for the conduct of an EIA. Other proposals included: merging the draft regulations on EIAs and the environmental impact statement; establishing impact reference zones (IRZs) and preservation reference zones (PPZs); and retaining an analysis of alternatives, including the no action alternative, as important parts of the EIA process.

On Tuesday, the working group revisited the provisions on **EIAs** (regulation 46 bis). On the periodic review of EIAs, discussions focused on reference to cumulative and synergistic impacts of activities. Some delegates queried the term “synergistic,” requesting deletion and noting that concerns are covered by cumulative impacts. A delegation and an observer emphasized that synergistic impacts recognize that individual effects can interact, producing a greater effect compared to adding individual effects.

On conducting consultations during the EIA process, many suggested waiting for the conclusion of the work of the informal working group addressing the standardization of the consultation process and further proposed streamlining and restructuring the draft regulation.

Some delegates suggested recording and addressing “substantive and relevant” stakeholder comments received rather than all comments. Others noted that all comments should be made publicly available, while responding to substantive ones, with a delegate cautioning that this requirement should not exclude procedural comments. A couple of delegates noted that consultation should be a requirement during the development of the scoping report and the environmental impact statement.

Some suggested that affected coastal states should be consulted in addition to stakeholders, noting that adjacent coastal states’ rights are a crosscutting issue. Others proposed drawing inspiration from

the BBNJ Agreement. Several delegates emphasized that conducting EIAs is the responsibility of contractors. An informal working group will focus on restructuring the draft regulation on EIAs.

On **EIA scoping** (regulation 46 bis alt), many noted that scoping is a stage of the overall EIA process and not an alternative to it. Some delegations stressed that the regulation is too detailed and suggested reflecting details in related standards and guidelines. A few delegations highlighted the need to restructure the regulation and others pointed towards overlaps and inconsistencies that need to be further addressed. Many delegates expressed willingness to work intersessionally under the informal working group on the restructuring of EIA-related regulations.

Regarding **environmental monitoring** (regulation 46 ter), many delegates expressed preference for using environmental thresholds rather than metrics when referring to the effects arising from exploitation. Many queried the need and rationale for having a monitoring programme for at least the first seven years of exploitation conducted by independent experts. Others supported its inclusion, suggesting clarifying that it refers to an additional programme contained in the environmental management and monitoring plan (EMMP) conducted by the contractor throughout the mining exploitation. One delegation highlighted the relevance of considering cumulative impacts in EMMPs. On the implementation report and the results of the EMMP, many highlighted that the provision should clarify between data that need to be reported in real time or annually.

On the **environmental impact statement** (regulation 47), some delegates suggested deleting language on contractors commissioning the preparation of such statements, noting it is redundant. Many noted the need to streamline the text, possibly incorporating it in the EIA section. Some delegations noted that an environmental impact statement should refer to the proposed plan of work as well as to amendments thereto. Others noted that reference to stakeholder consultation is redundant as is already covered in other draft regulations. Observers called for full public participation, and underscored the need for free, prior, and informed consent of Indigenous Peoples and local communities, calling for halting deep sea mining. A delegate noted that provisions on consultation should be addressed separately to those on analysis of alternatives.

Delegates further addressed references to underwater cultural heritage with some expressing concern that the draft regulation implies that the contractor will need to purposefully investigate whether such heritage exists, and suggesting developing a relevant guideline. Observers noted that cultural heritage includes intangible connections that should be covered. An informal group will work on this issue intersessionally.

Some delegates emphasized that all environmental plans approved by the ISA should be permanently posted on the Authority’s website. On the timeframe for commenting on environmental impact statements, some suggested increasing the period from 60 to 90 days. On competent independent experts reviewing predictive models used to inform EIAs, opinions diverged with some delegates noting this is under the purview of the LTC, while others underscoring that additional expertise may be needed to complement the role of the LTC.

On the **EMMP** (regulation 48), delegates welcomed the restructuring of the provision. Some requested clarifying references to thresholds, with a delegate noting that general thresholds should

be adopted as standards and may be complemented by regional thresholds to be contemplated in REMPs.

Discussions revisited the need for a supplementary monitoring programme conducted by independent experts for at least the first seven years of exploitation. Some delegates stressed the need for further discussions. One delegation underscored potential confidentiality issues. Another questioned the need for additional monitoring. Observers stressed that seven years are not an adequate timeframe.

Some delegates welcomed references to PPZs and IRZs, noting that the issue of such zones should be addressed throughout the draft regulations. Others noted that the contractor should conduct monitoring for the entire duration of exploitation, including during the post-closure period. Observers expressed concerns that the contractors are responsible for preparing the EMMP.

On **test mining** (regulation 48 bis), delegates addressed two options. The first suggests that a contractor shall conduct a test mining study as a part of an exploration or exploitation contract before the commencement of commercial production. The second notes that an applicant shall conduct a test mining project prior to submitting an application for a plan of work for exploitation.

Many delegates supported the second option as a starting point for further work, noting it is better structured. Some underscored the need to ensure that any test mining should be effectively regulated and subject to an EIA itself, having an environmental impact statement, and a long-term monitoring before the approval or rejection of a plan of work, further emphasizing that it should be a step towards effectively determining whether a proposed activity should proceed.

A delegate suggested that a test mining study conducted at the exploration stage should be considered even if the exploration and exploitation stages do not coincide. Another cautioned against additional obligatory elements at the exploration stage, suggesting providing a choice to contractors to either carry out test mining within an exploration contract or prior to commercialization. Some delegates called for provisions to publicize the outcome of the test mining study and allow public consultation.

Some noted that if mining methods are standardized in the future, test mining may not be required in every case, with others expressing concerns with such a provision. A few delegates noted that the scale for test mining should be further discussed and emphasized the need to strike the appropriate balance between provisions in the exploration and exploitation regulations. An informal group will further address test mining intersessionally.

Many delegations highlighted the importance of the draft regulation on **pollution control** (regulation 49), with different views on whether explicit references to marine litter and underwater noise should be included. Further discussion will be needed on the **restriction of mining discharges** (regulation 50), with some delegations requesting the reintroduction of reference to the London Convention and Protocol on the Prevention of Marine Pollution by Dumping Wastes and Other Matters.

Regarding **compliance with the environmental management and monitoring plan** (regulation 51), many delegations supported monitoring continuously in accordance with the applicable standard, releasing monitoring data publicly in an accessible format consistent with best scientific practice, on a monthly basis or in real-time, with a few noting that data processing can be time-consuming. Several delegations supported the proposal for an *ad*

*hoc* performance assessment by the Council within the **review of the performance assessments of the environmental and monitoring plan** (regulation 52), in response to a third party or whistle-blower information.

On the **emergency response and contingency plan** (regulation 53), some delegates suggested including an obligation that contractors shall prepare such a plan in accordance with standards annexed to the draft regulations. Delegates also discussed broadening the scope of the provision.

On the **establishment of an environmental compensation fund** (regulation 54), a few delegates suggested that the Finance Committee should consider the preparation of rules and procedures for the fund for the next Council meeting. Others requested clarifying the type of damages, purposes, and entities eligible for claims against the fund. A delegate stressed that a functioning fund must be in place prior to the approval of any exploitation plan of work. An observer underscored the need for rules on responsibility and liability, noting that otherwise the fund will be ineffective.

On the **purpose of the environmental compensation fund** (regulation 55), many delegates stressed that in the event of environmental damage, in accordance with the polluter pays principle, the contractor shall be liable for compensation. They added that, as a last resort, if the contractor is unable to meet the liability, the fund must be called upon. Some proposed further discussions on liability for economic damage to third parties.

Queries were raised on the **funding of the environmental compensation fund** (regulation 56), particularly on the prescribed contributions paid by sponsoring states, which will need to be further discussed. An additional informal group was established to simplify the general obligations.

On Wednesday, the working group began with the **closure plan** (regulation 59), on the inclusion of a reference to restoration or rehabilitation commitments, delegates and observers stressed that, at present, these are not scientifically possible in the deep sea, suggesting adding that in the future those measures can be applicable if they become feasible. Some delegations asked for further clarification on the periodicity for updating the closure plan. Others queried the term “closure process,” and the closure requirement. One delegation proposed adding a paragraph to address cases where an exploitation contract is renewed.

Regarding the **final closure plan: cessation of production** (regulation 60), many delegations supported that the LTC report and the Council’s final closure plan decision should be publicly available. A few delegations and one observer called for developing provisions for cases in which a contractor does not submit the final plan and does not modify it with the received recommendations if it is not approved and/or not implemented.

On **post-closure monitoring** (regulation 61), some delegations suggested including an interim step on the implementation of the closure plan, where the LTC recommendations would be put before the contractor prior to the Council taking a decision on the closure plan. A delegate suggested further addressing provisions on data submissions and called for a separate regulation on environmental performance guarantees. Another delegation proposed developing a registry of qualified, competent, independent, and reputed auditors. Some suggested specifying the time period for the closure and some urged for more discussions on the exact procedure for the environmental performance guarantee. Further deliberations will



be necessary on provisions regarding cases where the contractor is unable to meet the closure plan requirements. An informal working group will address the closure plan interessionally.

Delegates drew their attention to relevant annexes. On the **environmental impact statement** (Annex IV), following a relevant suggestion by Facilitator Taga, many delegates agreed that some of the technical details should be addressed under relevant standards and guidelines, noting that further discussions will be needed. A delegate noted that all legally binding provisions requiring updating should be covered under standards. A delegation queried whether Council members can give directions to the LTC, which considers the relevant standards and guidelines. A delegate insisted that all details should remain in the main text until decided otherwise. An intersessional working group was formed.

On the content of an environmental impact statement, many delegations supported including reference to residual impacts, the expected recovery rate of the marine environment impacted, and anticipated and cumulative impacts, including sociocultural ones.

Different views were expressed on references to ecologically and/or biologically significant areas (EBSAs) and ABMTs. Some delegations welcomed their inclusion, while others stressed the differences in their legal status and nature, with some highlighting that EBSAs do not have associated management measures. One observer reminded delegates that “this annex cannot be developed properly as there is simply not enough scientific information to do so” and that “we are many years or even decades away from even being in a position to establish the environmental baseline.”

On the description of the proposed project, a delegation suggested the environmental impact statement be accompanied by a report, including digital data, referring to applicable baseline data. Several delegates noted that some of the content on baselines could be addressed under relevant standards. The group further addressed: means to ensure ecological connectivity paths; whether to refer to geochemical or oceanographic characteristics; spatial limits and sampling frequency; whether to refer to impacts on the sociocultural environment in addition to the socioeconomic one; including in the project area information on relevant coastal states and states that may be affected by mining activities; a potential feasibility study; and energy requirements of relevant machinery.

On a section on the description of the existing physiochemical and geological oceanography, many delegates highlighted the need for reference to a standard for this section. Others underscored that the study should cover the mining contract area and the impacted area.

Several delegates and observers supported including a reference to underwater cultural heritage, including intangible cultural heritage. Many queried the deletion of a reference to climate change in the chemical oceanographic setting and asked for its reintroduction. One observer stated that the difficulty in obtaining some data is no reason or excuse to delete it as part of the EIA template. One delegation proposed to merge this description-oriented section with the corresponding impact-assessment-oriented section. Many expressed interest in the proposal.

On the description of the existing biological environment, a delegate suggested providing a detailed account of knowledge on the biological environment, its ecosystem functions and services, its fauna and flora as well as community composition and structure. Delegates further addressed eight ocean vertical zones, structured by depth ranges. Some suggested simplifying this part referring to

surface, midwater, and benthic zones. Others noted that limiting considerations to three depth levels may be insufficient to capture variability. Some further suggested dealing with detailed provisions under relevant standards.

On a section on existing human activities, some delegates and observers supported reflecting sociocultural elements, querying whether the title on human activities is inclusive of intangible cultural connections. A delegate noted the need to ensure the length of an environmental impact statement does not place unreasonable burden on the contractors. Opinions diverged over a reference to potential impacts to sites of paleontological significance. An observer suggested two distinct provisions, one on the impacts on other users and the other on socioeconomic impacts for the wider population.

On the assessment of impacts on the physical, chemical, and geological environment and proposed mitigation, the discussion focused on cumulative impacts vis-à-vis synergetic effects. A delegate suggested an overarching section on cumulative impacts and a detailed list of what such impacts include to be incorporated into the standards and guidelines. Observers emphasized that assessment of impacts and validating proposed mitigation measures are very challenging, if not impossible, due to scientific gaps.

On a section addressing the assessment of impacts and environmental effects on the biological environment and proposed mitigation, many delegations highlighted the need to streamline the text, including addressing part of it under a relevant standard. One delegation highlighted the importance of properly understanding and differentiating between effects and impacts.

On a section on the assessment of impacts on the socioeconomic and sociocultural environment and proposed mitigation, several delegates welcomed the introduction of the assessment of uncertainty, with one delegation suggesting that similar subtitles can be added to other sections of the annex.

On a section focusing on hazards arising from natural, accidental, and discharge events, one delegate stressed that the request to include for each component a description of the nature and extent of any impact, equals a requirement to describe something that has not yet happened, which is challenging. Another delegation asked for the deletion of references to waste management and ballast water in this section.

On the environmental management, monitoring, and reporting section, many delegations and observers requested retaining text on collection of data disaggregated by gender. One observer highlighted that for reporting, data will be collected in the mine, impacted area, and in the preservation area, calling for including the latter in the provision.

On the **scoping report** (Annex IV bis), some delegates supported summarizing gaps and baseline knowledge, the consideration of reasonable alternatives, proactively further identifying a preliminary list of stakeholders as well as references to cultural heritage and traditional knowledge. The group further discussed the placement of the annex, avoiding duplicate requirements, and whether some of its details should be moved to the respective section or to guidelines and standards. An observer noted that environmental data collected in accordance with the exploration regulations should be sufficient for the environmental impact statement in accordance with the exploitation regulations.

On the **EMMP** (Annex VII), a regional group submitted a proposal detailing six monitoring parameters for the EMMP, noting that its prior submission had not been included in the revised text. Many delegates welcomed references to IRZs and PRZs. A delegate stressed that any monitoring plan should be hypothesis-driven with clear expectations whether monitoring should continue or cease. Some requested deleting reference to baseline data for underwater cultural heritage, noting it should not be an obligation for the contractors. A delegate urged clarifying the criteria for identifying areas of environmental value.

On the **closure plan** (Annex VIII), a regional group highlighted the need for a definition of temporary suspension of mining activities. A delegate suggested that relevant summary data and information should be submitted upon presentation of the final closure plan.

On **design criteria for IRZs and PRZs** (Annex X ter), a couple of delegates stressed the need to ensure that requirements for IRZs and PRZs align with the corresponding ones in the exploration phase, with another adding that these zones need to be in close proximity to the mining area for comparability. He also suggested that the definitions, purpose, and time for establishment of these zones remain in the draft regulations, while everything else should be moved to a standard.

A delegate stressed that if an area includes sub-areas with separate ecological requirements, each sub-area will require separate reference zones. Another suggested including ease of sampling and species abundance as additional criteria to determine the suitability of a species as an indicator. An observer stressed the need to consider indirect impacts and include in the PRZs description of buffer zones similar to the areas of particular environment interest.

On the **schedule**, which includes definitions of relevant terms, a delegate noted that environmental “impact” and “effect” are not differentiated in the draft regulations, noting that if the terms are to be considered distinct, a definition of impacts will be required. He further offered a definition of cumulative impacts and suggested referring to synergistic “effects” rather than “impacts.” Another delegate highlighted the need to differentiate between synergistic and cumulative impacts. An observer pointed to the definition on cumulative effects in the BBNJ Agreement.

A delegation noted that the definition of environmental effect should include a reference to underwater cultural heritage, while opposing, with others, reference to “material” consequences. Others opposed language on cultural heritage and reference to objects of archaeological nature.

Many delegates thanked Facilitator Taga for her hard work leading the process. She thanked all members and observers for their contribution, noting progress. She highlighted important intersessional work under the relevant working groups, underscoring relevant deadlines for submissions.

On Friday, 31 March, Facilitator Taga presented to the Council on the deliberations of the working group on the protection and preservation of the marine environment, highlighting progress made during the discussions and intersessional work by informal groups on:

- a standardized approach to stakeholder consultation, led by the UK;
- coastal states’ rights and obligations, led by Mexico;
- underwater cultural heritage, led by FSM;

- restructuring of provisions related to general obligations relating to the marine environment, led by Spain;
- relevant standards and guidelines, led by Germany;
- the environmental management system, EIAs, and scoping, led by Norway and Germany;
- test mining, led by Belgium and Germany; and
- the closure plan, led by Fiji.

She highlighted the deadlines for submission of comments: 15 May 2023 for submissions on the revised draft text and 1 June 2023 for outcomes from the intersessional working groups.

**Working Group on Inspection, Compliance, and Enforcement:** This working group, facilitated by Maureen Tamuno (Nigeria), met on Thursday and Friday, 23-24 March.

On Thursday, Facilitator Tamuno introduced the further revised text of part XI of the draft regulations ([ISBA/28/C/IWG/ICE/CRP.1](#)), as a basis for negotiations. She stressed the need to agree on the respective roles of the Secretariat, the Council, the LTC, and the compliance mechanism. She introduced guiding questions, including on: the need for an independent inspectorate and/or compliance committee; their establishment, staffing requirement, nominations processes, and administration; and reporting requirements of potentially established inspection and compliance bodies.

Three main conceptual models emerged during the discussion:

- establishing an inspectorate, including an inspector general;
- establishing a compliance committee; and
- delegating the inspection, compliance, and enforcement functions to the LTC.

A representative of a group of countries reported on intersessional work, noting that the informal group discussed two different conceptual models: the creation of an inspectorate or the establishment of a compliance committee. He highlighted the effort to develop a revised proposal, incorporating important elements from both models. He emphasized that all decision making should be independent from inappropriate influence, including political influence, following an evidence-based, consistent approach. He noted that any compliance mechanism must be in line with UNCLOS Articles 162 (powers and functions of the Council) and 165 (LTC). He underscored the difference between the two models is largely on the terminology, expressing flexibility on the name of the self-standing entity to be created. He suggested the establishment of a seabed mining inspectorate as an independent organ, accompanied by an inspector general, and a roster of inspectorates with the Council exercising relevant control.

Two groups of countries drew attention to their distinct prior submissions, based on the establishment of a compliance committee with an oversight function, stressing the need for an independent and robust institutional arrangement, ensuring impartiality. Another delegation underscored that the LTC should assume relevant responsibilities according to UNCLOS Article 165, reducing redundancies and achieving cost efficiency by optimizing the functions of existing organs.

Many delegates found the proposals helpful, suggesting further discussions and noting that different suggestions can be combined. A delegate suggested a combination of the inspectorate and compliance committee options, where the inspectorate would detect infringements and take responsive actions and the compliance committee would assume a stirring role as a magistrate body or public prosecutor. Another suggested establishing a committee

consisting of independent experts based on regional representation, acting within the LTC, and further called for carefully identifying executive, oversight, and inspection functions.

Many delegations showed flexibility, highlighting the importance of focusing first on the functions to be performed rather than the mechanism's architecture and name. Others underscored the need to first agree on the conceptual nature of the compliance mechanism.

Despite differences, delegates highlighted some general converging views: the need for inclusiveness in the appointment of qualified inspectors; functional independence; transparency; avoidance of duplication in roles and responsibilities; avoidance of conflict of interest; and consistency with provisions of UNCLOS and the 1994 Implementing Agreement. One delegation highlighted that inspectors should be independent in appointment and performance but paid by the contractors.

One ISA official underscored the need to consider that the contractors' rights and obligations also apply to the Enterprise once established, and the importance of ensuring that activities in the Area are carried out for the benefit of humankind as a whole.

One observer highlighted the relevance of including gender considerations when deciding on the mechanism and bearing in mind the focus on protecting the marine environment. Another stressed that a combined proposal is within reach, reiterating the requirements of independence, responsiveness, expertise, capacity, clearly defined roles, and transparency, and highlighted the need for the relevant regulations to be finalized prior to the approval of the first plan of work for exploitation. Yet another suggested focusing on the competencies of existing organs and ensuring cost effectiveness.

Facilitator Tamuno invited interested delegations to develop relevant diagrams on their preferred mechanism for further consideration on Friday, 24 March, and welcomed suggestions for intersessional work.

Delegates then addressed the relevant draft regulations under this part, as included in the further revised text. Under the section on inspections, on **general considerations** (regulation 96), delegates focused on: a code of conduct for inspectors and inspections; jurisdiction-related issues for inspection; a minimum notification period for routine inspections; cases of urgent inspection without prior notification, including whether to move the relevant provisions under standards and guidelines; flag states' rights and obligations; access to data; geographical balance in representation; provision of communication facilities to inspectors and additional personnel, as required; changes in vessel routes; monitoring and surveillance of equipment; and undue interference by inspectors. An ISA official reiterated the need to refer to the Enterprise when references are made to the contractors in the draft regulations.

On the **appointment and supervision of inspectors** (regulation 97), delegates agreed that the Council shall establish a roster of inspectors and that Member States may submit nominations of candidates regardless of their nationalities. Different views remain in other provisions of the regulation.

On **inspectors' powers** (regulation 98), discussion focused on a provision on the inspectors seizing any document or sample for examination or analysis. Many supported the provision, but others suggested its deletion. A delegate suggested that seizing samples may be necessary in certain activities. A regional group suggested exploring ways to preserve evidence without resorting to seizures. A delegate suggested harmonizing inspectors' powers and enforcement

at the national level. An observer queried reference to inspectors testing machinery or equipment, noting that such operations require technical training.

On **inspectors' power to issue instructions** (regulation 99), many delegates suggested deleting a reference to inspectors "anticipating" dangers to safety or harm to the marine environment for issuing an instruction. Opinions diverged on whether "serious" harm to the marine environment should be the threshold for issuing an instruction. Opinions further diverged on the inclusion of underwater cultural heritage, with further work anticipated intersessionally by the relevant informal working group under the protection and preservation of the marine environment.

On the provision about the inspector issuing an instruction requiring a suspension in some or all activities for a specific period, opinions diverged on whether this should be done upon written authorization by the Council. A delegation requested deleting these provisions, noting that suspension power only rests with the Council. Another supported ensuring that the sponsoring state is aware of issued instructions.

On deciding whether an issued instruction has been complied with by the contractor, many delegates noted that the period of three days is too short for the inspectorate to take the decision. They further suggested addressing the provision after deciding on the institutional framework, underscoring the importance of the interrelationship between issued instructions and follow-up actions. A delegate suggested developing a provision for cases where the contractors conform with the instruction.

Regarding the **inspection report** (regulation 100), delegates agreed on the title, and the addition of a regulation aimed at the preparation of an **annual compliance report** for each contractor (regulation 100bis). Delegates also exchanged views on who should prepare the reports, to whom they should be sent to, and the respective timeframes.

On the **complaints relating to inspections** (regulation 101), several delegates and a regional group stressed the Council should receive the complaint reports. On the **whistle-blowing procedures** (regulation 101bis), many delegates agreed on the relevance of establishing such a procedure. A few delegations asked for further clarification.

Under the section of monitoring on **vessel notification, electronic monitoring, and data reporting** (regulation 102), delegates addressed, among other issues: real-time data and position; electronic monitoring systems; best-available environmental and archaeological techniques; underwater cultural heritage; links with the EMMP, and environmental data collection.

On the section on enforcement and penalties, regarding **compliance notice, suspension, and termination of exploitation contract** (regulation 103), a delegation noted that in the case of termination of a contract, the Council should have the ability to prohibit contacting the contractor for a period of 10 years.

A delegate suggested that the entity selected according to the institutional arrangements should be the one responsible for issuing a compliance notice, with the Council deciding upon suspension or termination of a contract, with another noting that this should be the role of the compliance committee. Observers suggested: clarifying language on "one or more warnings" prior to a decision on suspension or termination; incentivizing avoidance of harm with higher penalties for more serious harm; allowing observer representation concerning any part of the compliance notice along



with the contractor; addressing liability issues; clarifying the relationship between inspectors' instructions to compliance notices; and a separate section on the grounds for termination.

On Friday, the working group addressed the remaining provisions of the text.

On **compliance notice, suspension, and termination of exploitation contract** (regulation 103), delegates agreed to delete a provision related to having a Bureau member always available to convene virtual Council meetings to ensure a timely response on measures imposed by the compliance committee.

On **power to take remedial action** (regulation 104), delegates agreed to remove a sentence on extinguishing the contractor's debt based on the payment for the application of remedial actions by the Authority or the environmental performance guarantee.

Two delegations presented diagrams detailing their suggestions. The first includes an independent compliance mechanism, to be appointed by the Council upon relevant recommendations by the LTC, as a subsidiary body of the Council, acting independently from due interference.

The second envisages a central role for the LTC with inspectors working under it. Under this approach, the Council, based on LTC recommendations, will be responsible for issuing emergency orders, compliance notices, and potential penalties, and drawing the attention of the Assembly to cases of non-compliance. The proponent stressed that concerns over independence or transparency are valid for the establishment of any body, and that they are not resolved through a self-standing compliance mechanism, adding that the LTC can be strengthened in terms of expertise, if required.

Facilitator Tamuno thanked all delegates and observers for their contributions, and highlighted intersessional work, to be facilitated by Norway, to reach consensus on the institutional structure, including considerations on the Enterprise.

On Friday, 31 March, Facilitator Tamuno presented to the Council on the progress of discussions of the Working Group on inspection, compliance, and enforcement, highlighting that delegates agree on the need for a robust, operational, and functional compliance mechanism. She underscored that three options remain on the table: a compliance committee; an independent inspectorate; and the LTC overseeing compliance, stressing that further discussions will be needed to reach consensus. She said Norway will lead relevant intersessional discussions and highlighted the deadline for submission of comments.

**Working Group on Institutional Matters:** The Working Group met on Monday, Tuesday, and Wednesday, 27-29 March, and was facilitated by Georgina Guillén Grillo (Costa Rica) and Salvador Vega Telias (Chile), who introduced the revised document ([ISBA/27/C/IWG/IM/CRP.1/Rev.1](#)).

On Monday, Co-facilitator Guillén reminded delegates that, in previous sessions, the working group had addressed draft regulations on the introduction (section 1) and on the applications for approval of plans of work in the form of contracts (part 2), suggesting starting work on the regulations on the review and modification of a plan of work (part 5).

On the **modification of a plan of work by contractors** (regulation 57), many delegations and a regional group supported an alternative proposal in which the Secretariat shall, upon a contractor's request for modification of a plan of work, inform the Council and transfer the request to the LTC, which shall consider whether a proposed modification to the plan of work constitutes a

material change. With many delegates stressing the urgent need for a clear definition of material change, the concept will be added to the schedule.

Some delegates opposed that, if a modification is considered as a material change, the contractor should seek the approval of the Council. They proposed instead to involve the LTC, avoiding the contractor directly seeking the Council's approval. One intervention requested the inclusion of references to the Enterprise consistently throughout the regulations when contractors are mentioned. One observer suggested that the ISA could also propose material change. Following a clarification by Co-facilitator Guillén on a previous proposal for developing a standard to determine whether modifications of a plan of work constitute material changes, a reference to standards in the regulation was accepted.

For cases of minor changes to a plan of work to correct omissions and errors, some delegates suggested that both the Secretariat and the LTC should be able to propose such changes. Others supported the LTC assuming this role. Opinions diverged on whether it is at the discretion of the contractor to agree or not to such minor changes. A delegation highlighted that the distinction between a material or a minor change can come down to subjective interpretation.

On the **review of a plan of work** (regulation 58), delegates discussed a list of events that can trigger a review. A delegate suggested, as an additional event, changes in best environmental practices. Some noted that events such as "a significant change to existing risk calculations," "new information relevant to the effective protection of the marine environment," or "changes in ownership or financing which may adversely affect the financial capability of the contractor" require further discussions.

Delegates further discussed the event where cumulative impacts of the exploitation activities exceed any environmental objectives or thresholds as established under the applicable REMP, suggesting referring instead to the relevant standard. They stressed the need to define which ISA organ will take the decisions.

Observers stressed the absence of independent scientific assessment in the regulation, highlighting that inadequate scientific information may lead to inaccurate conclusions regarding the environmental impacts. They suggested including a provision for cases where the impacts were not anticipated or are of a scale or intensity that was not anticipated when the plan of work was approved. Several delegations said they see merits in the proposal.

On Tuesday, the working group continued with the review of a plan of work. Co-facilitator Vega provided a summary of interventions already submitted on the draft regulation. Noting that the LTC is one of the options for relevant decision making, one observer stressed that it has the necessary expertise but is overloaded with work.

On a provision on an invitation by the Secretariat and the contractor to sponsoring states and relevant coastal states to participate in the review of activities, some delegates, opposed by others, suggested referring to the review of the plan of work, rather than the review of activities. The reference to coastal states generated a lengthy discussion, with some suggesting its deletion. Many underscored that the issue of coastal states is cross-cutting across the draft regulations and pointed to the relevant intersessional working group. Delegates further suggested restructuring towards a simplified approach, including triggering, carrying out, and reporting on the review process. An observer stressed that independent experts commissioned by the contractor should be conducting the reviews.

Different views were expressed on two alternative proposals of the provision, noting the procedure for the report on each review and the responsible ISA organ for conducting it. Further clarification was requested from some delegates on the role of the Council, and the LTC.

Opinions diverged on the information that the Secretary-General will require from the contractor for the purpose of the review. Some delegations said that further details should be added about the manner and time of the request. Other delegations and a regional group opined that the paragraph should address the contractor's substantive obligation to comply with the request. One delegate suggested that the procedural aspects can be adequately addressed in the standards and guidelines.

Other delegations requested to add reference to the role of the LTC in this regard. One observer highlighted that the review should be carried out by independent experts.

Some delegations proposed deleting a provision addressing that nothing in the regulation shall preclude making a request to initiate discussions regarding any matter connected with the plan of work, while others requested further details. Delegates agreed to make the findings and recommendations resulting from the review publicly available.

On the section addressing annual, administrative, and other applicable fees, Co-facilitators Guillén and Vega suggested, and delegates agreed, that the Council should request the Finance Committee to clarify the purpose, use, and mechanism to calculate each annual and administrative fee.

On the **annual reporting fee** (regulation 84), some delegates suggested that Appendix II, which calculates the relevant fees, can be deleted. Others noted that if the appendix is deleted, its contents need to be covered in other parts of the draft regulations. A delegate noted that fee revisions should be communicated to the contractor. A delegate proposed that, in cases where the effective date for payment is part way through a calendar year, the first payment should be made after the submission of an annual report rather than 30 days after the effective date. An observer suggested deleting the draft regulation, suggesting a fixed, single, annual fee applied throughout the exploitation contracts as well as a provision addressing cases of non-payment.

On the **annual fixed fee** (regulation 85), delegates discussed: the need for a definition and criteria for commercial production; the communication channels, which will inform contractors on the relevant fees; and whether the fee should be payable upon signature of the contract or when commercial production commences. An observer suggested deleting a provision noting that the annual fixed fee may be credited against any royalty.

On an **application fee for approval of a plan of work** (regulation 86), a delegate suggested that the Secretariat shall submit relevant information to the Finance Committee, which in turn shall consider such a fee prior to any additional amount becomes due and payable by contractors. An observer suggested deferring the application fee to a Council decision.

On **other applicable fees** (regulation 87), delegates noted that if Appendix II is deleted, the regulation will become unnecessary.

On the miscellaneous section, regarding **review and payment** (regulation 88), the Co-facilitators' text proposed the elimination of a reference to the payment of fees in a freely convertible currency equivalent to the US dollar. One delegation proposed alternative text with no mention of any currency, while another requested the

retention of the convertible currency phrase to provide more options to the contractor, highlighting that a similar reference can be found in the exploration regulations.

Regarding the **use of terms and scope** (regulation 1), Co-facilitator Guillén reminded delegates of prior discussions on using language from the exploration regulations as much as possible.

On the provision stating that nothing in the regulation should affect the right, jurisdiction, and duties of the states under the Convention, delegates accepted the inclusion of a reference to the legitimate interest of coastal states pursuant to UNCLOS Article 142 (rights and legitimate interest of coastal states), and the right to conduct marine scientific research in the Area pursuant to UNCLOS Articles 143 (marine scientific research) and 256 (marine scientific research in the Area).

On a provision noting that the regulations are complemented by standards and guidelines as well as by further rules, regulations, and procedures of the ISA, in particular on the protection and preservation of the marine environment, delegates discussed potential references to REMPs and to conservation and management measures.

Opinions diverged with some delegates stressing the need to include reference to REMPs, while others opposed it, noting it is redundant. Some delegates noted that reference to conservation and management measures is not needed. Co-facilitator Guillén suggested including the reference to REMPs under a different provision, which attracted some support, and the proposal remains on the table. Some delegates further suggested that referring "in particular" to the protection and preservation of the marine environment creates a hierarchy between the regulations. Others emphasized that this provision can also be found in the exploration regulations.

On a provision noting that the regulations are subject to the provisions of the 1994 Implementing Agreement, delegates discussed whether to include reference to other applicable rules of international law, not incompatible with UNCLOS. Some delegates opposed reference to other rules of international law, noting that some of the Council members may not be parties to the different instruments. Others noted that the provision is included in the exploration regulations. An observer suggested reference to the BBNJ Agreement once it is open for signature, opposed by some delegates that noted the need for the agreement to enter into force.

Regarding **principles, approaches, and policies** (regulation 2), delegates considered an observer's proposal to change the regulation title to "Fundamental principles." Some language addition and restructuring proposals were accepted by delegations on applying the regulations in conformity with the principles governing the Area and UNCLOS (Part XI on the Area, and Part XII on protection and preservation of the marine environment).

An extended discussion took place on a proposal to add language about activities in the Area giving reasonable regard for other activities in the marine environment, in line with UNCLOS Article 147 (accommodation of activities in the Area and in the marine environment). Some delegations and one observer opined that such a provision might go beyond the scope of the exploitation regulation, with the proponent withdrawing the proposal, suggesting retaining reference to Article 147. Other delegations stressed that the issue can be discussed under reasonable regard for other activities in the marine environment (regulation 31).

Delegations discussed a proposal to include a provision to strike a balance between exploitation and preserving the marine environment without reaching consensus.

Observers mentioned that such a balance is not in line with the precautionary approach and that any exploitation activity will create some harm to the environment. They also highlighted that the states' obligation to protect and preserve the environment in UNCLOS Article 192 (general obligation under Part XII to protect and preserve the environment) has no restrictions attached.

The proponent pointed out that balance is an important principle, stressing that different delegations may have different interpretations of what constitutes a principle, approach, or policy. She suggested improving environmental protection to proceed with exploration and exploitation in a more orderly, reasonable, and sustainable manner, emphasizing that only with such sustainability can the principle of protecting the common heritage of humankind be operationalized and the protection of the ocean fulfilled.

On a provision noting that exploitation activities shall not be authorized in the Area unless it can be demonstrated that there will be effective protection and preservation of the marine environment, delegates discussed including a reference to relevant standards and guidelines. They agreed that not all standards and guidelines need to be in place before authorization of activities, noting that some standards and guidelines refer to the commercialization stage. Some delegates noted that environmental protection is not the only factor that needs to be taken into account.

On Wednesday, Co-facilitator Guillén opened the session, drawing attention to a [UN resolution](#), which had just been adopted by consensus, requesting an advisory opinion from the International Court of Justice on the obligations of states to ensure the protection of the climate system and other parts of the environment from greenhouse gas emissions, and the legal consequences of their acts and omissions if they caused significant harm. VANUATU, the resolution's original sponsor, highlighted the "historic moment," emphasizing that the advisory opinion will contribute significantly towards protecting the rights of present and future generations from the adverse impacts of climate change.

Regarding principles and approaches that should guide the application of the exploitation regulations, an observer called for strengthening environmental obligations, including references to UNCLOS Articles 145 and 194 (measures to prevent, reduce and control pollution of the marine environment), and recent high-level political commitments, including Sustainable Development Goal 14.2, the GBF, the CBD COP15 decision on marine and coastal biodiversity, and the BBNJ Article 5 provisions, regarding an integrated approach to ocean management. A participant drew attention to BBNJ Agreement Article 4 on not undermining existing bodies and processes, noting that the draft exploitation regulations are not subject to provisions of other agreements.

- On the principles and approaches to be included, delegates discussed:
- intergenerational equity;
- the precautionary approach vis-à-vis the precautionary principle, with divergent opinions tabled and some pointing to the formulation of the BBNJ Agreement, referring to the precautionary approach and/or precautionary principle as appropriate as a potential compromise;
- the ecosystem approach, with a delegation suggesting referring instead to ecosystem-based management;

- the polluter pays principle;
- access to data and information relating to the protection and preservation of the marine environment;
- accountability and transparency in decision making; and
- effective public participation.

Delegations did not comment on the inclusion of the polluter pays principle. Regarding access to data and information, some delegations suggested adding a reference to knowledge sharing, considering how knowledge can be accessed and the consent needed. Several delegations supported the inclusion of a reference to exclude confidential information, with some raising concerns over such inclusion.

On the principle for accountability, inclusivity, and transparency in decision making, a few delegations requested the deletion of inclusivity. Another asked for the rationale behind the inclusion of principles beyond the direct protection of the marine environment. Co-facilitator Vega, complemented by a delegation, explained that the agreed chapeau text has been broadened and has no direct reference to the protection of the marine environment. Another delegate suggested reordering to "transparency, inclusivity and accountability," arguing the necessity of transparency for due accountability.

On the public participation principle, many delegations supported the "effective stakeholder participation" proposal, with one underscoring the need to ensure that it covers all kinds of stakeholders. One delegation asked to retain all options for further deliberations. Co-facilitator Vega encouraged delegates to send written suggestions on further principles and approaches to be added.

Delegates exchanged views related to an observer's proposal for a new paragraph addressing the adoption of the ISA environmental policy prior to the consideration of a plan of work. Most delegates agreed on the proposal's substance but questioned its placement, and some suggested that language adjustments may be needed. Some delegations requested its deletion.

On the provision regarding the need for states, sponsoring states, contractors, and the ISA to ensure public trust and regulatory integrity, and not engage in decisions when a clear conflict of interest exists, some delegates requested adding reference to the Enterprise. A few suggested clarifying the concept of regulatory integrity. Some delegates pointed out that sponsoring states are bound by conflict of interest and cannot participate in decision making on the approval of a plan of work. A delegate noted that the notion of "clear" conflict of interest requires further discussion.

Co-facilitators Guillén and Vega thanked delegates and observers for their active participation, and noted that a refreshed text, incorporating the session's interventions as well as written submissions, will be developed for further consideration at the next Council meeting in July 2023. They further highlighted an intersessional webinar on effective control.

On Friday, 31 March, Co-facilitator Vega presented to the Council on the deliberations of the Working Group on institutional matters. Noting that textual negotiations were productive, he highlighted, among others:

- general support for some of the provisions related to the modification and review of a plan of work for exploitation, with more work remaining to further simplify and streamline the review process;
- consensus on the need to include a definition of material change;



- provisions related to contractors' fees, noting that many delegates underscored the need to retain flexibility;
- agreement to retain the title principles, approaches, and policies in the relevant draft regulation;
- intersessional work by Morocco and FSM on including reference to traditional knowledge under general principles; and
- intersessional work on effective control.

**Informal Group on the President's Text:** The Council met in an informal setting on Wednesday and Thursday, 29-30 March, to discuss the President's text, which includes a compilation of all draft regulations not taken up by any of the working groups. The sessions were facilitated by President Mijares.

On Wednesday, President Mijares introduced the President's text ([ISBA/28/C/WOW/CRP.1](#)), stressing it is a compilation of all suggestions and textual proposals since 2019. Reminding delegates that during the third part of the 27th session in 2022, a first reading covered the preamble and draft regulations 17-30, he invited delegates to resume the first reading starting with the section on other uses of the marine environment.

On the **reasonable regard for other activities in the marine environment** (regulation 31), delegations focused on, among other issues: the reference to submarine cables, pipelines, and fisheries; the inclusion of REMPs; the mention of standards and guidelines; and the placement of a climate mitigation provision.

Several delegations requested the deletion of a reference to "any applicable international rules and standards established by competent international organizations, and relevant national laws and regulations of sponsoring states and flag states," noting it is ambiguous and creates legal uncertainty.

Observers highlighted: substantial overlaps between contractors' areas and high seas fisheries areas in the Pacific; the importance of the reference to REMPs; and the need to give due regard to ecosystem services. Another suggested to apply the BBNJ concept of not undermining relevant frameworks and bodies, in this regard.

Many delegates supported language furthering the due and reasonable regard obligations in UNCLOS Articles 87 (freedom of the high seas) and 147 (accommodation of activities in the Area and in the marine environment), noting the ISA, in conjunction with Member States, shall facilitate early-stage coordination between the contractors and proponents of other activities in the marine environment. A few supported the original formulation, noting, however, that language needs to be streamlined and simplified. An observer underscored that ISA does not have jurisdiction over other activities in the marine environment.

Regarding the section on incidents and notifiable events, on **risk of incidents** (regulation 32), delegates discussed a provision noting that the contractor shall reduce such risk as much as reasonably practicable. A few delegates requested reference to the relevant standards, in addition to the guidelines. An observer underscored that cost-related considerations should not be taken into account regarding environmental protection.

On a provision noting that contractors shall maintain the necessary risk assessment and risk management systems in accordance with good industry practice and best environmental practices, and report annually on such systems, some delegates requested clarification. A delegate suggested including references to the substitution principle and the precautionary principle.

On **preventing and responding to incidents** (regulation 33), most delegates agreed that the contractor shall not proceed or continue with exploitation if it is reasonably foreseeable that the activity would cause or contribute to an incident. The term "incident" addresses seabed activities that can cause serious harm to the marine environment and those defined in the Casualty Investigation Code of the International Maritime Organization.

Divergent opinions were tabled on options on the contractor's notification obligations over an incident. Most delegations agreed that the contractor should notify the sponsoring state and Secretariat immediately, but no later than 24 hours from the moment the contractor becomes aware of the incident. Some further suggested that the relevant compliance organ to be notified, following a decision on the compliance mechanism. A delegate suggested including the submission of a contractor's report on the incident. Many delegates reiterated the need to address the cross-cutting issue of reference to adjacent coastal states. An observer stressed the need for a public notification provision in this regulation.

On **notifiable events** (regulation 34), opinions diverged on the inclusion of coastal states along with sponsoring states and the Secretary-General to be notified of an event. Some delegations asked for further clarification on the kind and rationale of complaints, as well as the definition of regulatory authorities. They further queried the purpose of the consultations that the Secretary-General can undertake under this regulation. One delegation suggested considering stakeholders' consultations and possible links with the compliance and enforcement provision. Another delegate drew attention to the potential overlap of circumstances considered as incidents in the use of terms on the schedule and as notifiable events in the list of Appendix 1.

Regarding **human remains and objects and sites of an archaeological or historical nature** (regulation 35), one delegation suggested, and most agreed, to split the paragraph to improve its clarity. Many delegations supported, and several observers opposed, the deletion of paleontological among the findings that shall be notified by the contractors. Other delegates suggested deleting the reference to human remains, with another expressing concerns about the deletion.

Many queried the rationale and details of a reference to compensation if the Council decides that exploration or exploitation cannot continue. Some delegations suggested giving the compliance mechanism a role regarding the need to define preservation measures for the objects and sites, and further clarify decision-making competencies and associated timeframes.

On the section of insurance obligations, under **insurance** (regulation 36), many delegations requested further clarification on the kind and purpose of the insurance, and the deletion of a provision that notes that the "contractors shall include the Authority as an additional assured." A delegate noted that the provision is about indemnifying the ISA as a third party in relation to contractors' activities. Most delegations agreed that further discussion and reflection are needed, as well as adding more details to the provision. A delegate suggested, given that no market exists for this type of risk, to establish an alternative mechanism until such market is created.

On the section on training commitment, on the **training plan** (regulation 37), a delegate noted that many types of training exist, proposing developing standards and guidelines, including a list of different types of training as well as reflecting the special needs

of developing states. An observer suggested training programmes on marine sciences and ecosystems, including best practices, accompanied by gender equality and non-discrimination training.

On Thursday, on the miscellaneous section and regarding the **prevention of corruption** (regulation 40), one delegation opposed adding the reference to the Organisation for Economic Co-operation and Development (OECD) recommendations on anti-corruption and integrity guidelines.

On **other resources categories** (regulation 41), most delegations agreed on the importance of adding a provision for the Secretary-General to inform the Council about notifications received about the finding of resources other than the category to which the exploitation contract relates, with one delegation highlighting its links to transparency.

On the **restrictions on advertisements, prospectuses, and other notices** (regulation 42), on a provision that no statement shall be made in any manner claiming or suggesting, whether expressly or by implication, that the ISA has or has formed or expressed an opinion over the commercial viability of exploitation in the contract area, one delegation requested the deletion of the reference to implied permission of the contractor.

Regarding **compliance with other laws and regulations** (regulation 43), one regional group supported that nothing in an exploitation contract shall relieve a contractor from its lawful obligations under any national law, suggesting adding reference to “international or other law.” On the maintenance by the contractor of all the permits, licenses, approvals, certificates, and clearances not issued by the ISA, one regional group suggested its deletion. A delegate proposed adding “including those” not issued by the Authority.

Regarding the general procedures, standards, and guidelines, on **notice and general procedures** (regulation 93), a regional group proposed to move the definition of communication and designated representative to the use of terms on the schedule for a wider application across the regulations.

On the **adoption of standards** (regulation 94), three draft alternative texts remain, with delegations divided in their preferences, and one delegation proposing to merge the options. One delegation proposed, and many supported, the deletion of a provision that the Council shall ensure that “requirements and legally-binding obligations associated with relevant and/or applicable international treaties and agreements” are adopted/integrated into the ISA’s standards and guidelines, noting that ISA members cannot establish obligations from other treaties if the membership does not coincide.

Many delegations welcomed a general stakeholder reference rather than “relevant” ones regarding their participation during the adoption process. One delegation suggested reflecting this in the public consultation’s rules of procedure.

Some delegates queried: a reference to the development of all standards on the basis of best available scientific evidence, given that not all of them will be based on science; the need for always having both quantitative and qualitative standards; and the fact that not all standards will refer to environmental topics. Another delegation suggested replacing best available scientific evidence with “best available science and scientific information” in line with other fora.

One delegation suggested that after the Council’s adoption of standards, the Assembly should also adopt them. One observer

suggested retaining the reference to provide contractors a transition period to comply with any changes in the standards and amendments thereto for an already approved plan of work. Another observer suggested some tweaks to emphasize that amendments to standards bind all contractors, not just the new ones, and to clarify that standards apply to all Member States and not only to sponsoring states.

One observer proposed the addition of provisions related to: clarifying the legally binding nature of standards, including repercussions or sanctions where a contractor is found to be in non-compliance with standards; and identifying and managing conflicts that may arise in the interpretation of primary and subsidiary regulatory instruments, mentioning that in the event of any conflict between the provisions of these regulations and the provisions of a standard, the regulations shall prevail.

On **issuing guidelines** (regulation 95), some delegations preferred an alternative formulation, noting that the LTC shall develop guidelines of a technical nature to guide and assist the contractors in the implementation of the exploitation regulations, taking into account the views of relevant stakeholders.

On the **application for approval of a plan of work to obtain an exploitation contract** (Annex I), a delegation highlighted connections with discussions on effective control, emphasizing the need to revert to the provisions at a later stage. Regarding information concerning the applicant, a participant stressed the need to redraft the provision, taking into account that the functioning of the Enterprise is not predicated upon state sponsoring. A delegate suggested addressing cases where a consortium applies for a plan of work.

On the annex section about information relating to the area under application and regarding geographical coordinates, some delegates stressed that such coordinates should be in accordance with the most recent applicable international standards used by the ISA rather than the World Geodetic System 84, noting that the regulations should be future-proof.

On the section on technical information, many delegates stressed the importance of clear communication lines between contractors and submarine cable operators throughout the contract period to reduce impacts on such infrastructure. A couple of delegations suggested referring to existing cables and pipelines as opposed to planned ones.

On financial information, a few delegates stressed that when an application is made by the Enterprise, it should be its Director-General certifying that the Enterprise has the necessary financial resources to meet estimated costs. A delegate requested adding a provision that in cases of consortiums, all partners should provide balance and income sheets. A delegation underscored that having access to adequate financial resources and disposing those resources are distinct steps, suggesting reflecting this in the text.

Delegates did not comment on the **mining workplan** (Annex II) and the **financing plan** (Annex III).

On the **emergency response and contingency plan** (Annex V), regarding cooperation with relevant entities in providing a plan of action in the case of serious incidents that may harm the marine environment, a delegation requested deleting reference to “other persons with the relevant expertise or know-how.” She further noted that the assessment of mining discharge should not be subject to emergency response but rather included in the environmental

management plan. A delegate stressed the need for further discussions over reference to adjacent coastal states.

On the **health and safety plan and maritime security plan** (Annex VI), some delegates suggested including procedures for the periodic review and updating of such plans and proposed including reference to protection of workers from other vulnerable groups, in addition to women.

On **standard clauses for exploitation contracts** (Annex X), under the section on responsibility and liability, a delegation suggesting linking the provisions with the relevant part of the regulations. A delegate suggested developing definitions for “wrongful act or omission” and “recoverable damages.” On the section on *force majeure*, a delegate suggested defining the term and another analyzing how this provision interacts with other parts of the exploitation regulations.

On the termination of sponsorship section of the annex, a delegate emphasized that these important provisions should be under the main body of the regulations. On suspension and termination of contracts and penalties, a delegate stressed the importance of linking the provision with regulation 103 (compliance notice, suspension, and termination of exploitation contract). On obligations on suspension or following expiration, surrender, or termination of a contract, a delegate suggested retaining bracketed reference to adverse impacts, or reasonable likelihood of such impacts to the marine environment.

Delegates further addressed the **use of terms** in the schedule.

On “best available techniques,” opinions diverged over two options. Some delegations suggested reference to relevant standards, in addition to guidelines. On “best environmental practices,” some delegations suggested including references to traditional knowledge as well as the effective protection of the marine environment and international best practices. Some suggested developing a separate definition for traditional knowledge.

On “contractor,” one delegation highlighted the importance of retaining the reference to employees, subcontractors, agents, and all persons engaged in working or acting for them in the conduct of its operations under the contract.

Several delegations agreed on the need to further develop “cumulative environmental effect.” One observer stressed the need to add synergistic effects to the definition, in line with the discussions in the Working Group on environmental protection. Another observer emphasized the importance of including all the stressors in the definition, not only deep sea mining-related ones, and suggested, supported by a delegate, to consider the BBNJ definition for further inspiration.

On the “environmental effect,” a couple of delegates highlighted the pending discussion on the use or effects or impacts, stressing they are not synonymous and the need to harmonize the use of those concepts throughout the regulations. Some queried the deletion of the reference to negative environmental effects. Several delegations agreed on the need to further develop the definition and the importance of consistency in the use of the terms.

On “exploitation,” a delegation suggested adding a reference to test mining. Delegates also addressed “standards” and “guidelines,” with some suggesting reflecting their mandatory and recommendatory nature, respectively.

On the “marine environment,” a delegation suggested adding oceanographic components to physical, chemical, geological, and biological ones, with another noting that physical and chemical

components are effectively oceanographic. On the “mining area,” a delegation suggested referring to the contract area from which minerals will be extracted.

Defining “minerals” as resources that have been recovered from the Area led a delegate to note that there are resources that are not minerals that can be recovered. On “rules of the Authority,” a delegate requested deleting reference to guidelines. On “serious harm,” some delegates suggested deleting reference to “unlawful” significant adverse change in the marine environment, and one suggested using the definition developed by the Food and Agriculture Organization of the UN (FAO) under the international guidelines for the management of deep sea fisheries in the high seas.

Delegates called for definitions of monopoly, test mining, good and best industry practices, sound commercial principles, EIA, and environmental impact statement. Observers highlighted the need for definitions of IRZs and PRZs.

President Mijares thanked all delegates and observers for their contributions and flexibility. He invited written comments by 15 May 2023 for the preparation of the second part of the 28th session in July 2023.

On Friday, 31 March, President Mijares acknowledged the progress made during the discussions on the informal group addressing the President’s text and in several working groups. He stressed that intersessional work is expected to deliver important outcomes before the next Council meeting and encouraged delegates to engage in the informal groups established. He thanked all delegations for their engagement and commitment and encouraged them to respect the submission deadlines. He announced that the updated text can be expected as soon as possible and well in advance of the July meeting.

### **Discussion on the Two-Year Rule**

In the afternoon of Friday, 24 March, the Council engaged in a discussion on the “two-year rule” also known as the “deadline,” or “trigger” and colloquially referred to as the “what if” scenario.

The two-year rule refers to Section 1(15) of the 1994 Implementing Agreement. It stipulates that if a state submits a request for a plan of work for exploitation, or if a state expresses it intends to apply for approval of a plan of work for exploitation, the Council shall complete the adoption of the relevant rules, regulations, and procedures within two years of the request.

In June 2021, Nauru submitted such an intent, triggering the two-year deadline, which will expire on 9 July 2023. Nauru has indicated that it does not plan to support any plan of work for exploitation prior to the second Council meeting for the 28th session, which is scheduled to conclude its deliberations on 21 July 2023.

President Mijares noted that in 2022 the Council established an informal intersessional dialogue on the “two-year rule” to facilitate further discussion on the possible scenarios and on any other pertinent legal considerations. He invited the Co-facilitators of the intersessional dialogue to present the main outcomes.

Hugo Verbist (Belgium) and Tan Soo Tet (Singapore) presented the outcomes of the intersessional dialogue, which focused on:

- the meaning of the phrase “consider and provisionally approve” a plan of work and whether this includes potentially not approving the plan or postponing consideration of a pending application;
- the procedure and criteria to be applied in the consideration and provisional approval of a pending application of a plan of work and the respective roles of the Council and the LTC; and



- the consequences of the Council provisionally approving a plan of work, including whether a provisional approval of a plan of work equates to the conclusion of an exploitation contract.

They highlighted points of convergence, including that: there is no obligation on the Council to automatically approve a pending application for a plan of work; there is a role for both the Council and the LTC in the consideration of a pending application for a plan of work; and provisional approval of a plan of work is not the same as, and does not amount to, final approval, nor does it equate to a contract for exploitation.

Divergences remain on:

- the legal basis and circumstances for the Council to postpone the consideration and/or provisional approval of a pending application for a plan of work;
- whether the LTC is required to review a plan of work and submit recommendations to the Council as part of the process of consideration;
- the guidelines, directives, or instructions that the Council may give to the LTC, including relevant criteria, for reviewing a plan of work; and
- the considerations and procedures that apply after a plan of work for exploitation has been provisionally approved, leading up to the conclusion of a contract for exploitation.

Many delegates congratulated the Co-facilitators for the intersessional work and expressed willingness to work towards a consensus decision. Many pointed towards the intersessional dialogue's points of convergence and expressed their commitment to keep working towards finalizing a robust and holistic set of regulations.

Brazil, for GRULAC, Ghana, for the AFRICAN GROUP, NEW ZEALAND, PALAU, PORTUGAL, SWEDEN, SWITZERLAND, SINGAPORE, and others stressed that commercial seabed mining activities in the Area should not begin before a comprehensive set of rules, regulations, and procedures, including a robust institutional framework, standards and guidelines are in place.

The AFRICAN GROUP highlighted the primacy of UNCLOS and the 1994 Implementing Agreement on the legal and practical implications of not completing the regulations by the expiration of the two-year deadline. She noted that lack of precedence leads for the need for further consideration, pointing to differing interpretations and the need for consensus.

GRULAC said that the assessment of a plan of work should be based on the best available scientific information and stressed that UNCLOS contains the most comprehensive set of rules governing activities in the Area.

FIJI outlined efforts at the national and regional levels to ensure sustainable management of the ocean and realize international commitments on marine protected areas. He stressed that the Pacific small island developing states are custodians of 20% of Earth's surface, and emphasized that attaining the necessary environmental, social, and economic balance is essential before any exploitation in the deep sea commences. He added that such balance can be attained through the precautionary approach, which should be at the forefront of the Mining Code.

PALAU stressed that the two-year rule does not require the LTC to make a recommendation to the Council to approve a pending application. Pointing to insufficient scientific information to ensure effective protection of the marine environment, as required by UNCLOS Article 145, he called for actions towards a moratorium or

precautionary pause. He urged "developing contemporary ecological concepts such as ocean connectivity rather than a fragmented approach to ocean governance" and "resisting industry's siren songs that promise profits, but at the expense of ocean health and future generations."

VANUATU stated that, in line with the precautionary principle and the ISA obligation of acting for humankind as a whole, the Council can and should reject any proposal of a plan of work due to the lack of robust scientific information available on deep-sea ecosystems and biodiversity. Underlining the considerable and irreversible harm that deep-sea mining would have on the ocean, he announced that his country has officially joined the growing international call for a precautionary pause. Acknowledging the leadership of Palau, Fiji, Samoa, and the FSM—who were the first to take a stance against deep-sea mining—he called on all ISA Member States to join them.

PANAMA supported that a precautionary pause is desirable based on the lack of sufficient independent scientific understanding of the dynamics of the seafloor ecosystems and the absence of a robust legal structure for the sustainable development of seabed mining activities.

SPAIN reinforced their commitment to the precautionary pause and, noting the outcome of the BBNJ negotiations, reminded delegates that UNCLOS and 1994 Agreement provisions must be interpreted jointly.

NEW ZEALAND emphasized that only the Council can provide final approval for a plan of work once the exploitation regulations have been completed and only final approval can result in a contract allowing exploitations to take place. She added that a clear statement from the Council on what will happen if an application is received after the deadline and before the regulations are completed would be useful.

BELGIUM stressed that the two-year rule is a procedural one, which does exempt members from applying the principles of UNCLOS and international law, highlighting, in this respect, Articles 145 and 136 (common heritage of mankind), and the precautionary approach. He added that the Council should remain in charge if the regulations are not adopted after the two-year deadline, cautioning that, in the case of adoption of a plan of work on a provisional basis, liabilities are unpredictable.

FRANCE recalled President Macron's commitment to the precautionary approach and stated that no approval can be made without the needed guarantees for environmental protection. INDIA queried how the LTC can evaluate an application without the respective regulations. The FSM supported that the LTC is not obliged to approve or disapprove the application of a plan of work in the absence of proper rules.

CHILE underscored the existence of a legal basis for the postponement of the approval and stated the possibility of leaving an application pending is not against UNCLOS. He highlighted the Council's empowerment to establish specific policies concerning any issue within its competence, supporting the adoption of a relevant decision.

BRAZIL drew attention to the event organized by GRULAC on the two-year deadline and noted that while familiarizing with the provisions, including Articles 145, 153 (system of exploration and exploitation), and 165, differing interpretations remain. She noted that the conditions for the LTC to be in a position to submit

recommendations are not met, adding that without the draft regulations, the LTC will probably have to defer the matter to the Council without recommendation.

ARGENTINA stressed the importance of considering the respective mandates of the Council and the LTC and taking any decision based on the provisions of UNCLOS and the 1994 Implementing Agreement.

The NETHERLANDS underscored the need for the Council to provide clarity and legal certainty on the steps after the two-year deadline elapses, and the need to continue working on the draft exploitation regulations to ensure a robust framework for environmental protection.

GERMANY emphasized that further work is needed, pointing to points of convergence contained in the briefing note as a good basis for further discussions.

TRINIDAD AND TOBAGO reaffirmed her commitment to work to bridge differing opinions, stressing the need to protect the common heritage of humankind, sustainable use of marine resources, and negotiate in good faith to reach consensus.

The COOK ISLANDS called for the finalization of the exploitation regulations in good faith with robust rules aligned with the precautionary approach, questioning if the moratorium calls provide the means to have a strong regulatory framework in place. She highlighted that to make informed decisions, research should always be allowed to continue.

NORWAY highlighted the obligation to finalize the regulations within the two years, agreeing that mining should not occur without all the rules in place. He expressed that any Council assessment should be based on LTC recommendations, whose role in revising all requests for plans of work is clear in UNCLOS.

JAPAN underscored that exploitation activities should commence by fully complying with robust environmental standards, stressing the need for the Council to continue working on the draft regulations to fulfil its mandate under UNCLOS. She stressed that, in the absence of a set of regulations, it will be challenging for the LTC to review a plan of work, noting that, possibly, no recommendation will be provided. She underscored, however, the importance of recognizing each organ's mandate, expressing doubts about the Council directing the LTC towards not providing a recommendation.

NAURU drew attention to its submission during the intersessional dialogue, stressing the statement that a provisionally approved plan of work does not equate to a contract for exploitation does not have consensus.

CHINA and POLAND stressed that the review procedure of any plan of work submitted should be treated as a regular submission. They highlighted the LTC's role to conduct a preliminary review and submit relevant recommendations to the Council, cautioning against interfering with its work. CHINA added that further discussions are needed on the legal basis to postpone the consideration and/or provisional approval of a pending application, highlighting relevant provisions of the 1994 Implementing Agreement.

POLAND stressed the need to proceed in caution as the regulations under discussion have not been applied until now. He added that Article 145 does allow for postponing consideration of a plan of work by the Council, suggesting focusing on work on the draft regulations, including standards and guidelines.

Noting that UNCLOS and the 1994 Implementing Agreement represent a single, comprehensive document, the RUSSIAN FEDERATION stressed that Article 11.2 of the Implementing

Agreement on timeframes, and UNCLOS Article 165 on the LTC's role are applicable. She added that further discussion is needed on the legal grounds for the Council to provide guidelines to the LTC on issues in the Commission's mandate. She said that moving into commercial exploitation before adopting a complete set of regulations, standards, and guidelines that ensure the protection of the marine environment is premature.

PORTUGAL and MEXICO expressed their commitment to keep working towards finalizing a robust and holistic set of regulations.

CANADA invited the Council to adopt a decision on the issue, offering to lead the work on developing such a draft decision based on the comments submitted in writing during the intersessional period and orally during this Council's session. Many delegations welcomed the proposal and showed a willingness to work on this path to reach consensus.

The US highlighted that the Council should remain focused on developing the regulations, rules, and procedures, and agreed on the need for more scientific research to understand the ecosystem for an effective regulatory regime.

The PEW CHARITABLE TRUSTS supported that a legal basis for the postponement of the consideration or approval of any plan of work exists and that the LTC cannot properly review a proposal without the set of criteria or norms. GREENPEACE INTERNATIONAL stated that the Indigenous Pacific perspective has been missing in this process, assuring that it is essential for the Pacific people and future generations to be consulted.

DSCC emphasized the need to involve youth in this discussion, highlighting that ISA's decisions will affect them. Underscoring the lack of sufficient science to make these decisions, she reminded delegates that the ocean is our best ally against climate change and the need to understand that seabed mining will only worsen climate change effects.

The INTERNATIONAL UNION FOR CONSERVATION OF NATURE (IUCN) warned against decisions of the Council that might undermine successful outcomes in other fora, including the recently finished BBNJ negotiations and the need to ensure coherence in ecosystem protection and management. Recalling Resolution 122 of the IUCN World Conservation Congress in 2021 for the protection of deep-ocean ecosystems and biodiversity through a moratorium on deep-sea mining unless and until a number of conditions are met, she cautioned that deep sea mining consequences will exacerbate the ongoing triple crisis of climate change, biodiversity loss, and pollution.

On Friday, 31 March, President Mijares thanked Canada for facilitating the informal discussions on the draft decision during the meeting. CANADA highlighted divergent views on various elements of the draft decision, which required significant concessions to reach agreement. He presented the draft decision) and underscored that the general sense is that the draft reflects a sensible, cautious, and balanced compromise, which allows the Council to retain leadership and control over the process. The Council adopted the draft decision without amendments.

**Final Outcome:** In the final decision, the ISA Council:

- emphasizes that in submitting appropriate recommendations to the Council, the LTC is under no obligation to recommend approval or disapproval of a plan of work;
- understands that upon receiving appropriate recommendations from the LTC, the Council has the obligation to consider a plan

of work but has the capacity to decide whether to provisionally approve it; and

- requests the Secretariat to inform Council members within three business days of the receipt of an application for a plan of work for exploitation.

The Council further decides to continue the informal intersessional dialogue, with a view to continuing making progress in the areas of divergence, including on:

- a legal basis for the Council to postpone the consideration and/or the provisional approval of a pending application for a plan of work;
- whether the LTC is required to review a plan of work and submit appropriate recommendations to the Council as part of the process;
- the guidelines or directives that the Council may give to the LTC, or relevant criteria, for reviewing a plan of work; and
- the consideration and procedures that apply after a plan of work for exploitation has been provisionally approved, leading up to the conclusion of an exploitation contract.

The Council also decides:

- that the informal intersessional dialogue shall be open to all members and observers, and will be convened regularly, using virtual means, from April-July 2023;
- that the co-facilitators shall prepare and present a new briefing note to the Council at its next meeting; and
- to allocate at least two half-day sessions at the July 2023 Council meeting to discuss the outcome of the intersessional dialogue.

### ***Status of Contracts for Exploration and Related Matters***

On Monday, 27 March, Secretary-General Lodge presented the report ([ISBA/28/C/3](#)) and provided updates. He noted that 30 exploration contracts are currently in force, following the termination of the contract with Companhia de Pesquisa de Recursos Minerais S.A. (CPRM). He underscored constructive collaboration with CPRM and Brazil on collecting and analyzing additional requested data and information. Secretary-General Lodge further noted that pending reports on periodic reviews had been received by contractors and reported on contracts' extensions and the status of relinquishments. BRAZIL noted that CPRM is working on providing additional information in good faith.

The DEEP OCEAN STEWARDSHIP INITIATIVE (DOSI) noted that periodic reviews seem to be overdue indefinitely without consequences. She called for more clarity on the content of the results of the reviews, noting that such results can be useful for the requirements of the environmental impact statements.

The Council took note of the report.

### ***Consideration of Matters Related to the Enterprise***

On Monday, 27 March, Eden Charles, Special Representative of the Secretary-General for the Enterprise, presented his report ([ISBA/28/C/2](#)). He stressed the need to operationalize the Enterprise, consistent with the evolutionary approach provided to in the 1994 Implementing Agreement, which contemplates, among others, the appointment of an interim director general. He drew attention to his previous reports as well as to the relevant technical report submitted in 2019, which clarifies the role and mandate of the Enterprise, the meaning of the evolutionary approach, and legal, technical, and financial implications. He reminded the Council that the role of the special representative must be distinguished from the role of the interim director general, adding that the latter

would act on a permanent basis. He highlighted that a number of contractors are willing to engage in joint venture agreements with the Enterprise.

Ghana, for the AFRICAN GROUP, presented the draft decision for the appointment of an interim director general for the Enterprise (ISBA/28/C/L.2). She stressed the need to further advance the operationalization of the Enterprise under an evolutionary approach in line with the 1994 Implementing Agreement, underscoring the group's flexibility to discuss further suggestions towards a consensus decision.

The NETHERLANDS, JAMAICA, TRINIDAD AND TOBAGO, INDIA, the UK, TONGA, FIJI, and many others supported the draft decision in line with the step-by-step approach for the operationalization of the Enterprise and the ISA evolutionary criteria in line with UNCLOS and the 1994 Implementation Agreement.

CHILE suggested adopting a decision related to the establishment of the position of an interim director general of the Enterprise, rather than related to the appointment of an interim director general per se. He stressed the need to establish the requirements and functions to be carried out by the interim director general, including a discussion on the relevant terms of reference. ARGENTINA, COSTA RICA, and SPAIN supported many of the suggestions presented by Chile.

The RUSSIAN FEDERATION, the REPUBLIC OF KOREA, BRAZIL, MEXICO, CHINA, BELGIUM, TONGA, and others noted the importance of addressing the relevant budgetary and administrative considerations. NIGERIA and ZIMBABWE further pointed to avoiding a vacuum between the end of the mandate of the Special Representative and the appointment of an interim director general of the Enterprise. COSTA RICA, GERMANY, PAKISTAN, ARGENTINA, and others called for adopting the decision.

President Mijares invited delegations to engage in informal dialogues to reach consensus on the draft decision by week's end.

On Friday, 31 March, President Mijares introduced the draft decision (ISBA/28/C/CRP.1). GERMANY and SINGAPORE proposed adding that the Secretary-General shall explore all options to deliver the establishment of the proposed positions within the existing budget and, if not possible, provide detailed justifications before asking for a supplementary budget. Following restructuring suggestions by Ghana, on behalf of the AFRICAN GROUP, and the RUSSIAN FEDERATION, the Council adopted the draft decision.

***Final Outcome:*** In the final decision (ISBA/28/C/CRP.1) the Council:

- adopts the LTC's recommendation to establish the position of an interim director general for the Enterprise;
- requests the Secretary-General to provide, for all proposed positions, job classifications, as appropriate; explore all options to deliver the establishment of the proposed positions within the existing budget, and if not possible, to provide detailed justifications; if needed, submit a supplementary budget proposal in an amount not exceeding USD 641,301 for the financial period 2023-2024, for the Council's consideration at the second part of the 28th session in July 2023; and to extend the contract and renew the terms of reference of the Special Representative of the Secretary-General for the Enterprise until the end of the second part of the 28th session; and
- further requests the Finance Committee to consider the supplementary budget proposal and report to the Council its financial and budgetary implications no later than the second part of the 28th session.



***Operationalization of the Economic Planning Commission***

On Monday, 27 March, President Mijares introduced this agenda item. He noted that, until the establishment and the operationalization of the economic planning commission, the LTC shall continue carrying out its relevant functions. Secretary-General Lodge called for guidance from the Council with respect to the operationalization of the commission.

CAMEROON, NIGERIA, GHANA, TRINIDAD AND TOBAGO, and JAMAICA supported the timely operationalization of the economic and planning commission, urging retaining the item on the agenda for subsequent sessions. GHANA and BRAZIL pointed to the need to address the impacts of seabed mining on land-based mining operations. BRAZIL urged addressing the relationship between the economic assistance fund, the payment system, and the benefit-sharing mechanism.

SPAIN, CHINA, and FRANCE welcomed the idea of starting discussions on the operationalization of the economic and planning commission, noting the need to engage in careful detailed considerations regarding the conditions for its establishment. CHINA added that the LTC can perform the relevant functions until the Council decides otherwise or until the first exploitation contract is approved.

The Council took note of the comments on the importance of establishing the economic and planning commission, and on related timing and budgetary matters.

***Report on the Work of the LTC at the First Part of its 28th Session***

On Friday, 31 March, President Mijares invited the Council the address the report on the work of the LTC at the first part of its 28th session (agenda item 14) and, explaining that the LTC Chair, Erasmo Lara Cabrera, was not able to join this Council session, introduced the related documents:

- the report of the Chair of the LTC on the work of the Commission at the first part of its 28th session ([ISBA/28/C/5](#));
- the report on the relinquishment of 50% of the area allocated to the Government of the Republic of Korea under the contract for exploration for polymetallic sulphides ([ISBA/28/C/6](#));
- the report on the relinquishment of 75% of the area allocated to the Ministry of Natural Resources and Environment of the Russian Federation under the contract for exploration for polymetallic sulphides ([ISBA/28/C/7](#)); and
- the recommendation of the LTC on a request by the Government of the Republic of Korea to defer relinquishment of part of its contract area of part of its contract area, related to the request to delay from 2024 to 2026 the relinquishment of an additional 25% of the area approved for exploration, due to the impact of the COVID-19 pandemic in operational activities ([ISBA/28/C/4](#)).

Delegates congratulated Erasmo Lara Cabrera (Mexico) and Sissel Eriksen (Norway) for their election as LTC President and Vice-President, respectively, and thanked the LTC for its work.

BRAZIL, CAMEROON, ARGENTINA, TRINIDAD AND TOBAGO, TONGA, CHINA, the RUSSIAN FEDERATION, and others welcomed the implementation of training programmes by the contractors, particularly for nationals of developing countries. SPAIN suggested including additional information on the results of training programmes and the related benefits for nationals of developing states.

On REMPs, BRAZIL stressed that they should be in place before a plan of work is approved, while ARGENTINA and CHINA emphasized their non-binding legal nature. INDIA highlighted that the first workshop on REMPs for the Indian Ocean will be held from 1-15 May in Chennai, India.

BRAZIL and TONGA welcomed the terms of reference for developing standards and guidelines on environmental thresholds. ARGENTINA took note of them. CANADA highlighted thresholds as a crucial element for the effective protection of the marine environment. The NETHERLANDS, GERMANY, SPAIN, and others noted that additional thresholds should be considered, including for habitat loss due to the removal of nodules.

Many delegates queried the format and timing of the proposed intersessional working group, underscoring that intersessional work on thresholds should be open-ended rather than limiting the number of experts to 10 for each sub-group. CHINA called for balanced regional representation. GERMANY, COSTA RICA, SPAIN, PORTUGAL, and others noted that the timelines in the LTC report, envisaging finalizing work on thresholds by 2024, is very ambitious and possibly difficult to meet, suggesting each sub-group determine its own timeline once the baseline environmental data are reviewed.

THE PEW CHARITABLE TRUSTS expressed concerns about: the limited number of participants in the groups; the need for more transparency during the ad hoc consultations; and having contractors among the expert group developing the rule as a possible conflict of interest. DOSI emphasized that the development of thresholds needs to consider spatial and temporal changes, the understanding of cascade effects, and cumulative and synergistic impacts, and called for additional subgroups on habitat loss, and biodiversity and ecosystem connectivity. DSCC underscored three main objections to the terms of reference: the groups are envisaged to work behind closed doors, calling for transparency and public participation; the LTC will be hand-picking the experts, preventing others from participating; and the unrealistic one-year timeframe to deliver the results.

On the accident during test mining by TMC - NORI regarding the discharge of wastewater containing debris, sediment, and fragments of nodules from the seabed into the sea at surface level, BELGIUM, the NETHERLANDS, and COSTA RICA expressed concerns. They queried whether the contractor promptly reported to the Secretariat on the incident or only after it was revealed by civil society. GREENPEACE INTERNATIONAL, on behalf of several environmental organizations, validated the concerns. A lengthy discussion took place on whether the relevant EIA is available on the ISA website.

COSTA RICA and SPAIN stressed the need for the LTC to include open sessions on its agenda, underscoring the relevant long-standing requests by Member States. COSTA RICA also highlighted the need for further discussions on the LTC's use of the silence procedure for its recommendations.

NAURU and TONGA requested an update on the status of development of "phase-two" standards and guidelines, stressing the need to prioritize their development.

President Mijares drew attention to the reports on relinquishment and the Council took note of the reports.

President Mijares highlighted the LTC's recommendations related to the request by the Government of the Republic of Korea to defer relinquishment of part of its contract area to 31 December 2026. Taking into account the COVID-19 pandemic, the LTC

concluded that the reasons stated qualify as unforeseen, exceptional circumstances and recommended that the Council approve to defer the second and final relinquishment. The Council adopted the decision to defer the relinquishment to 31 December 2026.

**Final Outcome:** In the final decision (ISBA/28/C/4), the Council:

- determines that the reasons presented by the Government of the Republic of Korea qualify as “unforeseen exceptional circumstances arising in connection with the operational activities of the contractor.”
- defers the schedule of the second and final relinquishment as recommended by the LTC; and
- requests the Secretary-General to communicate the present decision to the Government of the Republic of Korea.

### Closure of the Session

On Friday, 31 March, in closing statements following the adoption of the decision on the two-year rule, BELGIUM lamented the new legal reality where a plan of work can be submitted after 9 July 2023 without the rules, regulations, and procedures being in place. He stressed that “the legal loophole was not closed, and we are now sleepwalking in legal uncertainty.” He looked forward to a robust decision in July, noting that the spirit of compromise is encouraging.

BRAZIL said that the untimely activation of the two-year rule during the COVID-19 pandemic “led us to a dive into the unknown” that can lead to legal uncertainty, internal division, and significant challenges for the ISA. She stressed that “potential commercial exploitation of deep sea mineral resources without proper rule is not consistent with our objectives” and warned that simply deferring certain decisions to the LTC, a subsidiary technical body, “could have profound effects for the future of the ISA.”

CHILE commented on the independent character of the LTC, noting that its mention in the adopted decision solely refers to issuing recommendations free of external interference. He stressed that the LTC, as a subsidiary body, is not an organ independent of the Council.

MEXICO stressed that discussions were not easy as divergent positions exist. He said exploitation activities should not commence as long as no suitable legal framework that guarantees the protection and preservation of the marine environment is in place, adding that “the conditions do not exist today for exploitation to be carried out.” He urged not to interpret certain UNCLOS articles in isolation and emphasized that the LTC should independently carry out its functions in the review process of a plan of work. He added that further discussions are needed on the meaning of provisional approval of a plan of work, stressing that any relevant Council decision on potential provisional approval must be taken according to UNCLOS and the 1994 Implementing Agreement.

NAURU underscored the extraordinary efforts, including intersessional work, towards the timely delivery of the exploitation regulations, adding that Nauru will not present an application for a plan for work prior to the July meeting, not to prejudice Council discussions towards the adoption of the regulations.

CHINA noted that, despite the belief that such a decision is unnecessary, they engaged in the discussions in good will, understanding the significance for other delegations. She highlighted LTC’s independence and called for a correct interpretation of its functions based on UNCLOS, stressing that no article should be interpreted in isolation.

INDIA, TRINIDAD AND TOBAGO, SINGAPORE, and TONGA looked forward to continuing the intersessional dialogue, stressing the need to be guided by UNCLOS and the 1994 Implementing Agreement regarding ISA’s unique mandate.

DSCC, on behalf of several environmental organizations, lamented that, in 100 days, the ISA could receive an application from a sponsoring state to mine the deep seafloor, urging for implementing appropriate safeguards as “guardians of our planet.” Noting that the ISA is different today than one year ago, and that the negotiations are no longer on an obscure, technical issue, she stressed that whether to proceed with deep sea mining is a political, ethical, and philosophical choice. She urged states to start looking beyond July and urged the ocean community “not to be held hostage to commercial interests.”

WWF INTERNATIONAL highlighted its deep connections with the ocean, calling for a precautionary pause or moratorium on deep sea mining. She called for urgent action to ensure that no mining is approved until there are guarantees for the effective protection and preservation of the marine environment, challenging delegates to question the ISA functions and whether they reflect the interests of humanity as a whole, as well as “the legitimacy, not the legality, of your decisions.”

JAMAICA recognized the progress made during this Council’s session and supported the decision adopted about the two-year rule, acknowledging that further intersessional dialogue is needed on the remaining disagreements.

President Mijares thanked all delegates, observers, Secretariat staff, and interpreters for their commitment and hard work. He underscored important intersessional work and gavelled the meeting to a close at 5:02 pm.

### A Brief Analysis of the ISA Council Meeting

The “pressure is now on the International Seabed Authority (ISA) to deliver.” ISA Secretary-General Michael Lodge opened the first part of the 28th session of the ISA Council with these words, drawing attention to two recent multilateral environmental processes that delivered noteworthy results. The 15th meeting of the Conference of the Parties (COP) of the Convention on Biological Diversity successfully adopted the Kunming-Montreal Global Biodiversity Framework (GBF), and an international legally binding instrument under the UN Convention on the Law of Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ) was agreed, following almost 20 years of negotiations.

Linking the successful conclusion of these processes to fulfilling the ISA’s mandate is less straightforward as the radically divergent opinions on deep sea mining attest. Contrary to the GBF, which includes a list of goals aiming to halt biodiversity loss by 2030, and achieve recovery and harmony with nature by 2050, or the focus on marine protected areas and environmental impact assessments in the BBNJ Agreement, the ISA’s mandate is more complex as it tries to balance resource use and environmental conservation.

The ISA is mandated, under UNCLOS and the 1994 Agreement Relating to the Implementation of Part XI (the Area) of UNCLOS (1994 Implementing Agreement), to “organize, regulate, and control” all mineral-resource related activities in the Area (the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction) “for the benefit of humankind as a whole.” In

so doing, ISA needs to ensure the effective protection of the marine environment from harmful effects that may arise from deep sea activities.

This brief analysis will look at the controversy over deep sea mining in the ISA, where the debate currently stands, and the complex decisions Member States will have to take in the near future.

### ***Controversy Revisited***

The ISA has developed exploration regulations and issued exploration contracts, with 30 such contracts currently in force. Negotiations on exploitation regulations, which is the next step towards finalizing the so called “Mining Code”, and the prospect of commercial deep sea mining has generated controversy and increasing media attention.

The two sides in the debate are now well established and the arguments familiar, even outside the small circle of negotiators and observers. On the one hand, the proponents of deep sea mining point to the valuable mineral resources in the deep sea, highlighting a sustainable supply of nickel, manganese, cobalt, and copper for a worldwide energy transition. They further add that exploiting deep sea mineral resources will remove some of the pressure on land-based mining, which also has considerable environmental impacts.

On the other hand, those opposed to deep sea mining emphasize the need to protect the ocean, which is already facing pollution, biodiversity loss, and climate change. They challenge the view that deep sea mineral resources are necessary for the energy transition, pointing to the circular economy and technological developments in the energy sector leading to lower demand for the minerals in question. They stress the need to study these little-known deep-sea ecosystems prior to authorizing potential extractive activities, highlighting the magnitude of our ignorance about such ecosystems. They further point towards the environmental functions, services, and contributions to people and nature that the ocean provides, vital for the planet’s balance and for human survival.

Proponents of deep sea mining are keen to see a set of regulations, rules, and procedures in place as soon as possible, including on the protection and preservation of the marine environment, to move forward with commercial exploitation. Those opposed are calling for a moratorium on deep sea mining or a precautionary pause, with 15 countries expressing support so far.

### ***Controversy Reinforced***

Many delegates involved in the development of the draft exploitation regulations have stressed over the task at hand. The regulations, in their entirety, including standards, guidelines, and other accompanying documents, will need to: ensure the protection and preservation of the marine environment; include robust benefit-sharing requirements to operationalize the principle of the common heritage of humankind; and address all aspects of mining operations, including commercial contracts. But, as one delegate commented on the opening day, “We now have to work under suffocating time pressure.”

This time pressure refers to the “two-year rule,” also known as the “trigger” or “deadline,” and colloquially referred to as the “what if” scenario. The two-year rule is a provision under the 1994 Implementing Agreement, which stipulates that if a state submits a request for a plan of work for exploitation, or if a state expresses it intends to apply for approval of a plan of work for exploitation,

the Council shall complete the adoption of the relevant rules, regulations, and procedures within two years of the request.

In June 2021, Nauru submitted such an intent, triggering the two-year deadline, which will expire on 9 July 2023. With 100 days until the deadline, additional controversy was generated during the Council session as some delegates and many observers expressed concern over potential provisional approval of a plan of work for exploitation without the necessary holistic regulatory framework in place.

It is clear to the vast majority of negotiators that finalizing the exploitation regulations at the next Council meeting in July is highly improbable. But what the triggering of the two-year rule will bring is less clear despite efforts to negotiate pathways under such a scenario. Intersessional work prior to the meeting, facilitated by Belgium and Singapore, led to agreement over some basic points, while grouping the remaining disagreements had created hopes that a way forward could be found during the meeting.

Despite efforts to reach consensus on a decision addressing this scenario, the final outcome did not leave everyone satisfied. The decision to continue the intersessional dialogue without reaching consensus on a provision that the Council shall provide guidance to the Legal and Technical Commission (LTC) with respect to a potential application, illustrated the diverging opinions on the issue.

Some delegates stressed that the LTC is a subsidiary body under the Council and, as such, the Council should retain a leading role on the developments. This would include issuing instructions to the LTC not to recommend the approval of a plan of work for exploitation until the full set of rules, regulations, and procedures are in place, thus alleviating concerns over triggering the two-year deadline. Others noted the need to respect the LTC’s independence and its role in reviewing applications for plans of work. A few delegates expressed particular concern with the decision, lamenting that “the legal loophole was not closed and we are now sleepwalking in legal uncertainty,” adding that the untimely activation of the two-year rule during the COVID-19 pandemic “led us to a dive into the unknown.”

### ***Where We Stand***

While most seem to agree that the exploitation regulations will not be approved at the July meeting, the time horizon for their finalization is rather obscure. Some point towards increasing convergence on many parts of the draft text, which will be aided by further intersessional work. They project that the regulations are within reach and, with a spirit of compromise and hard work, could be finalized relatively soon.

Others stress the complexity of the multiple lines of negotiations, noting that less all-encompassing agreements took a very long time to finalize. They further underscored the need for greater understanding of the ecosystem and environmental processes in the deep sea, and that despite a spirit of cooperation, the current divergence in Member States’ positions indicate that reaching consensus will not be easy.

Delegates pointed towards regulations related to the effective protection and preservation of the marine environment and those related with the financial terms of a contract as particular challenging and often of a technical nature. Additional negotiating obstacles could be placed, according to some participants, by regulations on inspection and compliance, and consideration on the need to protect underwater cultural heritage.



As one veteran sighed, “Our work does not end there.” He highlighted the need to operationalize the Enterprise, the Authority’s commercial arm, to fully embed the common heritage principle in the regulations. In that respect the decision adopted on the establishment of the position of an interim director general of the Enterprise was a step in this direction, although further discussions are needed, especially over budgetary issues. Other delegates pointed towards the need to still operationalize the economic planning commission and generate independent scientific research.

### Looking into the Future

With time of the essence, a busy intersessional period will find multiple groups working towards consensus on various parts of the draft regulations that have generated disagreement. Yet, despite all the work ahead, many delegates are focused on the two-year rule, and the deliberations in July both under the Council and the Assembly, ISA’s “supreme organ,” are anticipated with great interest.

A delegate, on his way out of the Conference Center in Kingston, Jamaica, after the closure of the session, stressed the need to not lose sight of the big picture. Emphasizing the need for holistic ocean management, she stressed that the overall objective should be to harmonize ISA decisions with the recently concluded agreements, such as the BBNJ and the GBF. “Working in silos has tormented us for a long time. Trying to imitate success is not enough. Either we find a way to work in harmony or our efforts to address the sinister environmental crisis are condemned to failure.”

### Upcoming Meetings

**11th Annual Deep Sea Mining Summit 2023:** The Deep Sea Mining Summit 2023 will bring together an array of solution providers, upcoming deep sea miners, members of the scientific community, and those within allied industries wanting to learn more about the opportunities within this emerging marketplace. **dates:** 3-4 May 2023 **location:** London, UK **www:** [deepsea-mining-summit.com](https://deepsea-mining-summit.com)

**Plastic Pollution INC-2:** The 2nd meeting of the Intergovernmental Negotiating Committee (INC) to develop an international legally binding instrument on plastic pollution, including in the marine environment, will continue negotiations with a view to complete the treaty by 2024. **dates:** 29 May - 2 June 2023 **location:** Paris, France **www:** [unep.org/events/conference/second-session-intergovernmental-negotiating-committee-develop-international](https://unep.org/events/conference/second-session-intergovernmental-negotiating-committee-develop-international)

**Resumed Review Conference on the UN Fish Stocks Agreement 2023:** This conference is mandated to assess the effectiveness of the agreement and the adequacy of its provisions and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions. **dates:** 22-26 May 2023 **location:** UN Headquarters, New York **www:** [un.org/Depts/los/convention\\_agreements/review\\_conf\\_fish\\_stocks.htm](https://un.org/Depts/los/convention_agreements/review_conf_fish_stocks.htm)

**ISA Legal and Technical Commission (LTC):** The 28th session of the ISA (Part II) includes the meeting of the ISA LTC. The Commission will consider, *inter alia*, consideration of the annual reports of contractors and matters referred to the Commission by the Council. **dates:** 28 June – 7 July 2023 **location:** Kingston, Jamaica **www:** [isa.org.jm/sessions/28th-session-2023](https://isa.org.jm/sessions/28th-session-2023)

**ISA Finance Committee:** The 28th session of the ISA (Part II) includes the meeting of the ISA Finance Committee. The Committee

will consider, *inter alia*, the audit report on the accounts of the ISA for 2022 and the development of rules, regulations, and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area. **dates:** 5-7 July 2023 **location:** Kingston, Jamaica **www:** [isa.org.jm/sessions/28th-session-2023](https://isa.org.jm/sessions/28th-session-2023)

**Second Part of the 28th Session of the ISA Council and Assembly:** The ISA Council and the Assembly will convene to continue discussions on the draft exploitation regulations, among other business. **dates:** 10-28 July 2023 **location:** Kingston, Jamaica **www:** [isa.org.jm/sessions/28th-session-2023](https://isa.org.jm/sessions/28th-session-2023)

For additional upcoming events, see [sdg.iisd.org/](https://sdg.iisd.org/)

### Glossary

1994 Implementing Agreement	1994 Agreement Relating to the Implementation of Part XI (the Area) of the UN Convention on the Law of the Sea
ABMTs Area	Area-based management tools Seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction
BBNJ	Biodiversity of areas beyond national jurisdiction
BBNJ Agreement	International legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
CBD	Convention on Biological Diversity
COP	Conference of the Parties
DOSI	Deep Ocean Stewardship Initiative
DSCC	Deep Sea Conservation Coalition
EIA	Environmental impact assessment
EMMP	Environmental management and monitoring plan
FSM	Federated States of Micronesia
GBF	Global Biodiversity Framework
GRULAC	Latin American and Caribbean Group
IGF	Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development
IRZ	Impact reference zone
ISA	International Seabed Authority
LTC	Legal and Technical Commission
PPZ	Preservation reference zone
REMPs	Regional environmental management plans
UNCLOS	UN Convention on the Law of the Sea