

Deep-Sea Minerals

Briefing, August 2018

Latest Developments

Report on the International Seabed Authority's Annual Session July 2018

Record attendance at the July 2018 Annual Session of the International Seabed Authority (ISA) saw thirty Commonwealth Member countries amongst the delegations meeting in Kingston to discuss the regime for seabed mineral activities beyond national jurisdiction.

Please find below notes from the Commonwealth Secretariat on a number of the different topics discussed. A more detailed summary of the proceedings from the IISD reporting service can be found here: <https://www.isa.org.jm/sites/default/files/files/documents/enb25168e.pdf>.



ISA Annual Session July 2018 at the Jamaica Conference Centre, Kingston [photo credit IISD]

1. Financial regime

The ISA Secretariat's recent work on an economic model came under scrutiny at the start of the Council Session. Queries raised by Commonwealth countries included: the source of the data upon which the model relies, the lack of discussion around profit-based levies and benefit-sharing, and the presumption that contractors should receive financial incentives to mine. A more thorough critique submitted in writing by the African Group of 47 countries can be found here: <https://www.isa.org.jm/document/statement-algeria-obo-african-group-2>. A lack of 'environmental cost' modelling

was also raised as a concern during a robust Council discussion. It was agreed by the Council that an inter-sessional working group should be set up to examine these matters. The Massachusetts Institute of Technology is to be commissioned to revise the existing model to incorporate alternative approaches proposed by Germany, China and the African Group, for re-consideration at the Council's next meeting in February 2019.

For more information on any of the issues raised in this advisory note, or other deep-sea mineral matters, please contact Hannah Lily on h.lily@commonwealth.int

This is Issue 5 in the Commonwealth Deep Sea Minerals Briefing series. Previous Issues can be found here: <http://thecommonwealth.org/oceans-and-natural-resources>



Caribbean delegations at the ISA Annual Session, July 2018 [photo credit IISD]

2. Draft Exploitation Regulations

The Council held a two-day part-by-part discussion on the draft Exploitation Regulations (copy of the latest draft, available here: <https://www.isa.org.jm/document/isba24c20>). Commonwealth countries were particularly vocal in these sessions, highlighting a range of issues, from the contract application and award process, to monitoring, compliance and project closure. It was agreed by the Council that submissions made verbally (and any additional points) should be lodged in writing with the ISA Secretariat by 30 September 2018. The Council will discuss the Regulations again in its next

session in February 2019. The Legal and Technical Commission were also tasked to work further on reflecting key points in the Regulations, including:

- the 'common heritage of mankind' status of the resources of the Area,
- the role and responsibilities of sponsoring states,
- development of standards and guidelines to operationalise the Regulations,
- liability issues, and
- regulatory timelines / deadlines

3. Environmental management

Delegations (including the African Group, Canada, Australia, New Zealand, United Kingdom, Jamaica, Singapore, Nauru, the Cook Islands, and Fiji) highlighted that the ISA's draft regulatory regime needs strengthening with regards to environmental protection. Pacific countries also flagged an issue in danger of being overlooked: the risk of transboundary harm. Wide support was given to a paper submitted by Belgium on strengthening the environmental expertise, independence and transparency of the ISA, (copy here: <https://www.isa.org.jm/document/statement-belgium-0>) and the Council adopted the recommendations of a submission made by the Netherlands, which sets out existing measures for environmental protection in areas beyond national jurisdiction, and requires the ISA to keep this updated, and to refer to it in considering future contract applications (copy here: <https://www.isa.org.jm/sites/default/files/files/documents/isba24c-15-en.pdf>).

[isa.org.jm/document/statement-belgium-0](https://www.isa.org.jm/document/statement-belgium-0)) and the Council adopted the recommendations of a submission made by the Netherlands, which sets out existing measures for environmental protection in areas beyond national jurisdiction, and requires the ISA to keep this updated, and to refer to it in considering future contract applications (copy here: <https://www.isa.org.jm/sites/default/files/files/documents/isba24c-15-en.pdf>).

4. Contract management

As in previous years, the Legal and Technical Commission reported to the Council that there had been instances of non-compliance by exploration contractors, but no further details as to nature of breaches, identities of contractors, or whether these are repeat offenders were provided. The Council asked the ISA Secretary-General to communicate these breaches to the respective sponsoring States, in addition to the contractors.

5. BBNJ

An interesting new point, raised by the African Group of 47 countries and supported by others (including Fiji, New Zealand, Australia and Jamaica) was the need for further work examining overlaps between the ongoing development of a new treaty on marine biodiversity of areas beyond



Delegates from The Gambia and The Seychelles during ISA Council Session, July 2018

national jurisdiction (known as 'BBNJ') and the ISA. It was noted that Ms. Rena Lee, Legal and Technical Commission member from Singapore, was recently elected as President of the BBNJ Intergovernmental Conference.

6. The Enterprise

Written submissions made in advance of the Annual Session by Poland (<https://www.isa.org.jm/document/isba24c12>) and the African Group's 47 ISA member States (<https://www.isa.org.jm/document/statement-algeria-obo-african-group-1>) triggered a constructive discussion on 'the Enterprise': the organ of the ISA intended directly to carry out seabed mineral activities in the Area (including by way of joint ventures). The African Group's recommendations towards the commencement of the Enterprise as an independently functioning organ of the ISA were supported by the Latin American and Caribbean Group of countries, and other delegations

(e.g. Bangladesh, Nauru). The ISA Secretary-General was therefore requested by the Council to prepare with urgency:

- a previously-requested paper on operationalising the Enterprise, which should now incorporate the African Group's paper;
- to appoint an Interim Director General of the Enterprise from within the Secretariat, and a Special Representative (independent of the Secretariat); and
- a report back to Council on these matters in February 2019.



Pacific region representatives at the ISA Annual Session July 2018 [photo credit IISD]



L-R representatives from Cook Islands, Nauru, Fiji and New Zealand at the ISA Annual Session July 2018
[photo credit: Paul Lynch]

7. Other

- A new Strategic Plan 2019-2023 for the ISA was adopted by the Assembly. A copy is available here: <https://www.isa.org.jm/document/isba24acrp3rev1>
- Delegations reiterated the need for a comparative study of national sponsorship laws. ISA Secretariat is working now, with Commonwealth Secretariat collaboration, to complete such a report for Council consideration in February 2019.
- The Commonwealth Secretariat joined with partners (the ISA Secretariat and the Centre for International Governance Innovation) for a side event during the July Annual Session, focused on legal liability for environmental harm arising from seabed mineral activities in the Area. The side event launched a 'synthesis' report of an expert working group.

A series of more detailed papers will be published later this year. For more details, please access these links:

- Short video - <https://www.cigionline.org/multimedia/legal-pathways-addressing-environmental-harm-deep-seabed-mining-activities>
- Synthesis Report - <https://www.cigionline.org/sites/default/files/documents/Deep%20Seabed%20paper%20no.1.pdf>
- We congratulate our Commonwealth colleague Dr. Diva Amon, recipient of the Secretary-General's inaugural award for Excellence in Deep Sea Research. Dr. Amon, a marine biologist from Trinidad and Tobago with significant deep-sea ecology expertise, picked up the award, whilst also representing the Deep Ocean Stewardship Initiative, at the July 2018 Annual Session.



The Commonwealth

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