

## ISA-27 Assembly Highlights: Thursday, 4 August 2022

The 27th session of the Assembly of the International Seabed Authority (ISA-27) finalized its deliberations, addressing all remaining items in its agenda.

### **Elections to fill Vacancies in the Council**

Acting President Myklebust introduced the draft decision (ISBA/27/A/L.3), which includes the nominations to fill the vacancies in the ISA Council for a four-year period from 2023-2026.

Delegates adopted the draft decision, electing the new members with no objections.

### **Other Matters**

Acting President Myklebust drew attention to the proposal by Belgium, which was discussed on Wednesday, to amend Rule 82 of the rules of procedure of the Assembly to allow “representatives of entities having obtained a contract with the Authority” as well as the Enterprise to obtain observer status at the ISA. He noted that no consensus could be reached neither about amending the rules of procedure nor on establishing a relevant Committee as required by Rule 97. He suggested recalling in his report of the session that the Assembly discussed the item and agreed to revert to it at a later stage.

BELGIUM took note of the lack of consensus and suggested reverting to the matter at a future meeting. Recalling that the goal of the proposal was to increase transparency and inclusivity in proceedings of the Authority, he thanked delegates who suggested that industry bodies representing entities that have obtained a contract with the Authority could obtain observer status under Rule 82, paragraph 1(e). The RUSSIAN FEDERATION expressed the concern that some contractors could be on an unequal footing as contractors who are sponsored by a state would be able to join industry representative bodies, whilst contractors representing government bodies would not, disadvantaging governmental body contractors.

Recalling his comment on Wednesday to encourage observers to form associations, BELGIUM clarified that the intention was not to exclude individual NGOs once an association is formed, but rather to encourage joint statements and working together to increase efficiency, encouraging the same for Member States.

Ghana, on behalf of the AFRICAN GROUP, asked for clarification as to whether, if the Assembly is to revert to the matter in the future, it would be the initial proposal made by Belgium (ISBA/27/A/6) or the draft decision circulated by Belgium that would form the basis for the discussion. BELGIUM suggested that any future work should be undertaken on the premise of the original proposal.

Acting President Myklebust noted that the matter would not be placed on the agenda of the Assembly at the next session, but that Belgium or other Member States could make proposals in this respect in accordance with the rules of procedure.

CHILE addressed its proposal for a discussion on the two-year timeline, expressing concern about the activation of the deadline, noting that the request by Nauru in 2021 was presented at one of

the worst times internationally amidst the COVID-19 pandemic and has “pushed us to an unprecedented situation.”

She stressed that it is necessary for the Assembly, as the supreme organ, to consider and deliberate on the topic. She noted that it is “us in the room” who are called upon to protect the CHM and not contractors, asking delegates to consider whether they are willing to be accomplices to the unknown and irreparable damage that mining may cause, drawing attention to insufficient scientific knowledge and a limited understanding of the potential effects of exploitation activities.

CHILE wished to continue the negotiation process to achieve solid rules that are holistic and protect the seabed, but without pressure, suggesting to establish a cautionary pause of 15 years, as a period during which the Authority cannot approve plans for exploitation. Drawing attention to the UN resolution on a human right to a healthy environment, she stated Chile would try to create spaces to discuss the matter at the highest level during the September meeting of the UN General Assembly.

NEW ZEALAND stated that a discussion around the two-year timeline is important, reiterating its view that the rule does not require the Council to adopt exploitation regulations or to automatically approve a plan of work, but rather that it is required to make the best endeavors to complete the exploitation regulations within the deadline. She stressed that if the regulations are unfinished after two years have passed, the Council is not required to adopt them.

COSTA RICA expressed concern regarding constraining and obliging states “in a haphazard way” to come up with a legal framework that is of utmost importance. She noted that many of the provisions of the draft exploitation regulations are still at a fledgling stage, and that the two-year timeline is unclear and presents a number of legal uncertainties that are liable to be interpreted in many ways.

Additionally, she raised the question whether the two-year timeline could be triggered in the midst of the COVID-19 pandemic, noting that the pandemic created a force majeure as it was practically impossible to advance on the regulations during that time. Although recognizing that UNCLOS does not provide any guidance on that, she drew attention to the legal principle “that all lawyers learn at the outset of studying law,” namely *Impossibilium nulla obligatio est*, that no one is obliged to do the impossible.

COSTA RICA stated that it might be worth addressing questions to the International Tribunal of the Law of the Sea (ITLOS). She emphasized that, from a legal perspective, there is no obligation to conclude the exploitation regulations in two years, urging a precautionary approach.

BELGIUM noted that, despite progress in the development of the exploitation regulations, a lot of work remains. Noting that there is no chance to finalize work before the two-year timeline, he stressed the need to study the implications, emphasizing that legal uncertainty is “the last thing anyone needs as the stakes for humankind are too high.” He looked forward to discussing “what if” scenarios at the next Council meeting.

BELGIUM, ARGENTINA, the RUSSIAN FEDERATION, and SOUTH AFRICA noted that asking an advisory opinion by ITLOS should be considered.

AUSTRALIA noted the need to consider the implications and options if the Council has not concluded the regulations before the two-year timeline expires, saying that a considerable amount of work remains on the exploitation regulations. NAURU asked to consider this new agenda item at the next ISA Assembly. KIRIBATI said it is still awaiting instructions from capital and asked this issue be discussed at the next Assembly meeting.

The RUSSIAN FEDERATION underscored the importance of the exploitation regulations, noting that no hasty decisions should be taken. She suggested that if the regulations are not ready after the two-year timeline, the contract submission could be extended waiting for their finalization. CUBA supported discussing the Chilean proposal, stressing the need to promote generation of scientific knowledge on the short-, medium-, and long-term consequences of commercial exploitation in the Area.

SPAIN called the two-year timeline a “Damocles’ sword” hanging over the negotiations and pointed to too many legal uncertainties. He urged a consensus-based solution, if necessary invoking a pause, noting that while the two-year timeline states that the Council must consider a proposal after that period, it does not mean it must approve it. Stressing the importance of the ocean as a source of food security, the mitigation of climate change, and pointing to the threats to the ocean, ECUADOR urged postponing the deadline and continuing the debate.

SINGAPORE said that, in absence of strong environmental safeguards, deep sea mining should not proceed. PAKISTAN pointed to concerns based on scientific and technical information and urged consideration of alternatives. ARGENTINA expressed readiness to continue constructively developing a regime with the necessary level of specificity.

The DEEP SEA CONSERVATION COALITION (DSCC) strongly supported the “concerns expressed by a significant majority of states” and remained puzzled by the failure of the Assembly to add an agenda item on this, suggesting that a standing agenda item was warranted. He reminded the Assembly that, as a political body, they can take decisions on this issue, since not everyone is represented in the Council. He reminded delegates that the UN Ocean Conference at Lisbon, the International Union for Conservation of Nature (IUCN), and others had called for a moratorium, stressing that “without it, future generations might be betrayed.”

IUCN recalled that it had adopted a resolution to protect deep-ocean ecosystems and biodiversity through a moratorium on deep seabed mining, underscoring the need to know the risks of deep seabed mining and ensure the effective protection of the marine environment.

GREENPEACE INTERNATIONAL welcomed states who said the Council must not adopt regulations or grant licenses at the end of the two-year timeline. He stated that if deep seabed mining would be allowed to commence in less than a year, it would be “disastrous” and completely contradicting the many states who have prioritized protecting the marine environment.

The DEEP OCEAN STEWARDSHIP INITIATIVE (DOSI) stressed that deep seabed mining will cause biodiversity loss and irreversible harm to ecosystems, and the functions and services they provide, and stressed that decisions regarding our common heritage can only be taken on the basis of solid scientific knowledge, but that scientists have hardly begun to understand deep sea ecosystems. She noted that the two-year timeline does not give sufficient time to complete the necessary scientific studies and that its triggering runs counter to the precautionary approach.

The INTERAMERICAN ASSOCIATION FOR ENVIRONMENTAL DEFENSE (AIDA) noted that the two-year timeline cannot be seen in isolation, noting that the majority of delegates had said that a lot of work remains on the exploitation regulations.

The OCEAN FOUNDATION supported calls for a moratorium, noting there is much left to discuss, including financial, scientific, and legal uncertainties, drawing attention to environmental protection, also for future generations.

OCEANCARE expressed concern that observers were cut off due to a three-minute time limit “plucked out of thin air” and which had not been communicated prior to the morning’s session. She noted that there is ample time to listen to observers considering that there is a whole day left on the agenda on Friday.

### *Dates of the Next Session of the Assembly*

Acting President Myklebust noted that: the next session of the Assembly would be held from 24-28 July 2023; sessions of the Legal and Technical Commission (LTC) have been scheduled for 6-10 March 2023 and 26 June-7 July 2023; the Finance Committee would meet from 5-7 July 2023; and the Council would meet for its first session from 13 March-1 April 2023 and its second session from 10 July-21 July 2023.

CHILE asked whether the Assembly’s meeting could be moved, so that it be held after the first session of the Council ends in April 2023. She added that, if necessary, an additional meeting could take place after the second Council meeting in July 2023.

COSTA RICA and BELGIUM supported the proposal, noting that the two-year timeline will have elapsed by the time the Assembly’s 28th session has been scheduled, with COSTA RICA noting that it would be necessary to have taken a decision prior to the period elapsing, and to have had the opportunity to discuss the matter in both the Assembly and Council. BELGIUM stated it would be strange for the second session of the Council and for the Assembly to be held just after the period elapses.

Secretary-General Lodge stated that changing the dates announced is “extremely difficult,” drawing attention to the preparation and translation of UN documents and interpretation, stating that if a meeting of the Assembly were to be held in April 2023, there would be “no reasonable possibility” that the Authority could produce the usual documents for that Assembly meeting. He noted delegations are free to make use of the rules of procedure to call for special sessions of the Assembly.

COSTA RICA and CHILE reminded all that Member States “are the Authority” and their requests should be afforded the importance they merit. COSTA RICA further noted that, in the past, a special session of the Assembly had been called with two months’ notice and it was still fully serviced with documents and translation, and urged for one. Recognizing the right of Member States to request special sessions, the UK suggested taking stock after the Council meeting in November and deciding then about a potential special session.

Delegates agreed to take note of the current dates and to leave open the option of requesting a special session after the Council meeting in November. JAMAICA thanked delegates for their understanding regarding the temporary venue. Acting President Myklebust thanked all who facilitated and participated in the meeting and gavelled it to a close at 1:21 p.m. Central time (GMT-5).

### *In the Corridors*

Most delegates were not too surprised when the ISA Assembly ended a day early, which can be seen as an indication of its efficiency. What did surprise many was that a time limit was imposed on observer interventions when the dialogue about the two-year timeline finally took place. Eyebrows were raised as, in the words of a delegate, “there was still so much time to spare.” The time limit was not announced in advance, making it hard to adjust statements on the fly and the cut off was abrupt.

The dates for the next Assembly session, usually a procedural undertaking for the Authority, generated controversy. Some delegates noted that the two-year timeline would have elapsed at the time of the Assembly’s next scheduled session, suggesting either moving the Assembly forward or arranging for a special session. Although tensions were somewhat relieved by a compromise to readdress the issue during the next Council meeting, there is no doubt that all ISA’s meetings during the next year will include difficult negotiations that are crucial both for the future of deep seabed mining and, more importantly, for the future of the ocean.

The ENB Summary and Analysis of the ISA-27 Assembly will be available on Sunday, 7 August 2022, at: [enb.iisd.org/assembly-international-seabed-authority-isa-27](http://enb.iisd.org/assembly-international-seabed-authority-isa-27)