



## Council

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### Twenty-sixth session

Council session, part I

Kingston, 17–21 February 2020

## Statement by the President of the Council on the work of the Council during the first part of the twenty-sixth session

### I. Opening of the session

1. The first part of the twenty-sixth session of the Council took place from 17 to 21 February 2020.

### II. Adoption of the agenda

2. At its 259th meeting, on 17 February 2020, the Council adopted the agenda for its twenty-sixth session ([ISBA/26/C/1](#)).

### III. Election of the President and Vice-Presidents of the Council

3. At the same meeting, following consultations among the regional groups, the Council elected the representatives of Nigeria (African States), the Russian Federation (Eastern European States), Jamaica (Latin American and Caribbean States) and Canada (Western European and other States) as Vice-Presidents. Subsequently, the Council elected Taaniela Kula (Tonga) as President of the Council for the twenty-sixth session.

4. On 19 February 2020, the President announced that he had to cease to hold office. Pursuant to rule 24(2) of the rules of procedure of the Council, one of the Vice-Presidents, Kathy-Ann Brown (Jamaica), was designated by the Bureau to act in his place until the election of a new President.

### IV. Report of the Secretary-General on the credentials of members of the Council

5. At the 263rd meeting, on 20 February 2020, the Secretary-General indicated that, as at that date, credentials had been received from 33 members of the Council. It was noted that, in accordance with the system agreed upon for the allocation of



seats among the regional groups at the first session of the Council, the Asia-Pacific Group had designated Tonga to participate in the meetings of the Council without the right to vote during the twenty-sixth session. It would be the turn of the Latin American and Caribbean Group to relinquish a seat on the Council in 2021.

## **V. Issues relating to the election in 2021 of members of the Legal and Technical Commission**

6. As requested at its 258th meeting, on 19 July 2019, the Council reverted to the issue of the elections of members of the Legal and Technical Commission as a matter of priority at its 259th and 260th meetings, on 17 February 2020. The Council considered two proposals: the draft decision of the Council relating to the election of members of the Commission, submitted by Algeria, on behalf of the African Group, and by Brazil, on behalf of the Latin American and Caribbean States Group ([ISBA/25/C/L.2](#)), and the proposal to amend draft decision [ISBA/25/C/L.2](#) of the Council relating to the election of members of the Commission, submitted by Australia, Canada, France, Germany, Italy, Norway, Spain and the United Kingdom of Great Britain and Northern Ireland ([ISBA/26/C/L.2](#)).

7. Although several delegations underlined that there were many commonalities in the two proposals before the Council, neither proposal attracted a consensus. On 17, 18 and 19 February, the Council convened in an informal setting in order to find a compromise on the optimum composition and size of the Commission, with the appropriate range of expertise, taking into account equitable geographical distribution and representation of special interests. The Council tasked one of the Vice-Presidents, Vladislav Kurbatskiy (Russian Federation), with facilitating informal consultations for the purpose of preparing a draft decision that would sufficiently reflect the views of the whole membership of the Council for consideration and adoption by consensus.

8. The discussions focused on the size and composition of the Commission and ensuring that the issues of equitable geographical distribution and expertise were treated equally. Several delegations emphasized that the necessary expertise could be found in all regions. Delegations also noted that the text needed to be consistent with the relevant provisions of the United Nations Convention on the Law of the Sea. In this respect, it emerged that for the next election in 2021, the process governing the election of members of the Commission would be informed by the assessment of the present and future needs of the Commission.

9. On 20 February 2020, the facilitator, Mr. Kurbatskiy, presented a working paper in which he proposed to work on a formula on the basis of the following elements:

(a) Overall number of members of the Commission should not exceed the current membership of 30 or be less than 25;

(b) Assessment of the current and future areas of expertise necessary for the proper functioning of the Commission;

(c) Equitable geographical distribution and the representation of special interests in accordance with the relevant applicable provisions of the Convention;

(d) Existing practices applicable in the selection of members of various United Nations bodies, including technical and expert bodies.

10. At its 263rd meeting, on 20 February 2020, the Council adopted a decision relating to the election in 2021 of members of the Commission ([ISBA/26/C/9](#)). The Council decided to consider the question of the composition of the Commission as a matter of priority at the next meeting of the Council, with a view to taking a decision on a mechanism to govern the election of members of the Commission.

## **VI. Election to fill a vacancy on the Legal and Technical Commission**

11. At its 260th meeting, the Council elected Carsten Rühlemann (Germany) to fill the vacancy on the Legal and Technical Commission resulting from the resignation of Christian Jürgen Reichert (Germany), for the remainder of his term until 31 December 2021 (see [ISBA/26/C/5](#)).

## **VII. Report of the Secretary-General on the status of contracts for exploration and related matters**

12. At its 260th meeting, the Council took note of the report of the Secretary-General on the status of contracts for exploration and related matters, including information on the periodic review of the implementation of approved plans of work for exploration ([ISBA/26/C/4](#)), including the proposed development of guidance for contractors on the content, format and structure of periodic reports.

## **VIII. Report of the Secretary-General on the implementation of the decision of the Council in 2019 relating to the reports of the Chair of the Legal and Technical Commission**

13. At its 260th meeting, the Council took note of the report of the Secretary-General on the implementation of the decision of the Council in 2019 relating to the reports of the Chair of the Legal and Technical Commission ([ISBA/26/C/3](#)). With regard to progress on the development of standards and guidelines, the Secretary-General informed the Council that a considerable amount of work had been carried out and the output would be reviewed by the Commission in accordance with the process and schedule proposed by the Commission (see [ISBA/25/C/19/Add.1](#)) and taken note of by the Council in July 2019. Delegations recognized the importance of the work led by the Commission on the development of standards and guidelines and said it was essential that such standards and guidelines be developed as part of a package, along with the draft regulations on the exploitation of mineral resources in the Area, with the necessary standards and guidelines developed before the adoption of the draft regulations. Some delegations cautioned against sacrificing quality for speed and emphasized the need to advance such work and the development of environmental goals, objectives and principles in a transparent manner.

14. Some delegations welcomed the progress made in the review and development of regional environmental management plans in the Clarion-Clipperton Fracture Zone and northern Mid-Atlantic Ridge and emphasized the need for such plans to be developed in other priority regions, such as the Indian Ocean.

## **IX. Draft regulations on the exploitation of mineral resources in the Area**

15. From 17 to 21 February 2020, the Council resumed its consideration of the draft regulations on the exploitation of mineral resources in the Area ([ISBA/25/C/WP.1](#)). The Council had the benefit of comments on the draft regulations submitted by members of the Council and other States members of the International Seabed Authority, observers and stakeholders in response to the invitation issued by the Council at its twenty-fifth session ([ISBA/25/C/37](#)); a note by the secretariat on

comments on the draft regulations, which provides a broad overview of the main issues raised in the written submissions and an overview of general points arising from specific regulatory provisions (ISBA/26/C/2); and a collation of specific drafting suggestions made by members of the Council (ISBA/26/C/CRP.1).<sup>1</sup>

#### **A. Resumed substantive consideration of the draft regulations on the exploitation of mineral resources in the Area**

16. From 18 to 21 February 2020, the Council convened in an informal setting to resume its consideration of the draft regulations on the exploitation of mineral resources in the Area (ISBA/25/C/WP.1). The Council considered parts IV, V and VI and their related annexes IV, VII and VIII.

#### **B. Progress regarding the development and negotiation of the financial terms of a contract**

17. At the 261st meeting, on 17 February 2020, the Council received the report of the Chair on the outcome of the third meeting of the open-ended working group of the Council in respect of the development and negotiation of the financial terms of a contract (ISBA/26/C/8).

18. At the 262nd meeting, on 18 February 2020, some delegations expressed the view that the financial model should include assumptions concerning metal prices, contractor costs and revenues, sponsoring State fees and corporate income tax. The importance of ensuring that there is sufficient transparency in the relationship between contractors and sponsoring States and of including environmental parameters when reviewing the model was also emphasized. It was recalled that the system should be fair to both the Authority and the contractors. Delegations agreed that no option for a payment system should be ruled out at that stage.

19. The Council decided to convene a fourth meeting of the open-ended working group of the Council in advance of the second part of the twenty-sixth session of the Council in order to further advance work on the payment mechanism for polymetallic nodules as a priority. The Council also invited all stakeholders to submit comments to the secretariat by 23 March 2020, for the purpose of further refining the assumptions of the model. While recognizing that the working group had not fully endorsed or discarded any of the four options for the payment mechanism, the Council requested the secretariat to prepare a report in order to refine further the two-stage fixed ad valorem royalty mechanism and the two-stage progressive ad valorem royalty mechanism, including taking into account any comments submitted by stakeholders by 23 March. The Council also requested the secretariat to prepare a comparative study of seabed mining and land-based mining with regard to the policy objective contained in section 8, item (1)(b), of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982. The Council requested the secretariat to make the documentation to be considered at the next meeting of the working group available on the Authority's website at least 14 days before the first day of the next meeting. The Council emphasized the need for broad participation of the member States of the Authority in the fourth meeting and recalled that it had agreed to the use of the voluntary trust fund to support the participation of members of the Council from developing countries for that purpose.

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<sup>1</sup> Available at [www.isa.org.jm/document/isba26ccrp1](http://www.isa.org.jm/document/isba26ccrp1).

## C. Working modalities

20. At its 262nd meeting, the Council discussed a working method to advance the consideration of the draft regulations. While some delegations expressed support for the establishment of additional informal working groups focusing on thematic and complex questions, others raised concerns over timing and potential parallel meetings of such working groups. Concerns were also expressed about proposals that intersessional meetings of such working groups could be convened or that meetings could be held away from the headquarters of the Authority. It was generally agreed that the informal working groups should make full use of the time and meeting services available during the Council's meetings and that parallel and intersessional meetings should be avoided.

21. On 20 February 2020, the Council appointed one of the Vice-Presidents, Kenneth Wong (Canada), to facilitate informal consultations on the working modalities related to the draft regulations.

22. At the 264th meeting, on 21 February, on the basis of the informal consultations, the facilitator presented a working paper to the Council containing proposed working modalities to advance the consideration of the draft regulations. The Council adopted the proposed working modalities and, in addition to the open-ended working group of the Council in respect of the development and negotiation of the financial terms of a contract, the Council agreed to establish the following three informal working groups on thematic issues, each to be led by a facilitator:

(a) Informal working group on the protection and preservation of the marine environment;

(b) Informal working group on inspection, compliance and enforcement;

(c) Informal working group on institutional matters (including the role and responsibilities of the various organs of the Authority, timelines, recourse to independent expertise and stakeholder participation).

Liability issues were not considered to be ripe for consideration in the context of an informal working group as the Legal and Technical Commission was currently seized of the matter.

23. The annex to the decision of the Council concerning working methods to advance discussions on the draft regulations ([ISBA/26/C/11](#)) details the mandate and working modalities of the informal working groups and the role of the facilitators. The Council requested the facilitators to report on progress in their work at the next meeting of the Council in July 2020.

24. The Acting President recalled that the open-ended working group of the Council in respect of the development and negotiation of the financial terms of a contract was chaired by a member of the Western European and other States Group. The African Group appointed Janet Omoleegho Olisa (Nigeria) as the facilitator of the informal working group on inspection, compliance and enforcement. The Council agreed that the Asia-Pacific Group would nominate a facilitator for the informal working group on the protection and preservation of the marine environment, while the facilitator of the informal working group on institutional matters would be appointed by the Latin American and Caribbean Group. It was agreed that the Asia-Pacific Group and the Latin American and Caribbean Group would communicate their nominations to the secretariat at their earliest convenience and that the Bureau would work with the secretariat to ensure that the facilitators were fully briefed in preparation for the second part of the twenty-sixth session of the Council in July 2020. The Council noted that a member of the Eastern European Group had already been appointed to facilitate

work on the question of the election of the members of the Legal and Technical Commission and therefore the Group had indicated that it would not put forward a facilitator for the informal working groups.

#### **D. Regional environmental management plans**

25. On 19 February 2020, in the context of part IV of the draft regulations, the Council considered a proposal on a procedure for the development, approval and review of regional environmental management plans ([ISBA/26/C/6](#)) and a proposal for a template with minimum requirements for regional environmental management plans ([ISBA/26/C/7](#)), both of which had been submitted by the delegations of Germany and the Netherlands, with co-sponsorship by Costa Rica. The general views on the matter coincided with the desirability of working towards the standardization of the approach to the development of regional environmental management plans. A delegation suggested that such plans should be legally binding. Some delegations appreciated the importance of developing the plans and said that any suggested technical working groups should be informal and ad hoc and that no formal bodies should be established. A number of delegations emphasized the importance of ensuring that both proposals were considered in conjunction with the existing work being carried out under the draft regulations as well as under the auspices of the Legal and Technical Commission in accordance with its mandate under the Convention. Delegations raised questions about the specifics of how the technical working groups would function and suggested that the cost implications of establishing such groups be considered by the Finance Committee. Delegations were hesitant about the Council adopting the approach described in the two proposals, on the basis that the creation of a body of experts external to the Legal and Technical Commission could raise problems. Reference was also made to the Commission's current review into improving its processes for the development of regional environmental management plans on the basis of a guidance document prepared by the secretariat, and it was noted that the Commission's processes were similar to the process outlined in the two proposals. The importance of the Council having a greater supervisory role in this respect was also emphasized.

26. At the 264th meeting, on 21 February 2020, following further discussions in an informal setting, the Council adopted a decision concerning a standardized approach for the development, approval and review of regional environmental management plans in the Area ([ISBA/26/C/10](#)). The Council requested the Legal and Technical Commission, in consultation with the Finance Committee if necessary, to further develop the guidance to facilitate the development of regional environmental management plans, in accordance with the Convention, the Agreement and the rules, regulations and procedures of the International Seabed Authority, and taking into account, as appropriate, the two above-mentioned proposals ([ISBA/26/C/6](#) and [ISBA/26/C/7](#)), with a view to recommending to the Council a standardized approach, including a template with indicative elements. The Council also requested the Commission to report on the progress made in its work on this issue at the next meeting of the Council, in July 2020.

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