

Statement by the International Union for Conservation of Nature

Item 14: Report on the work of the Legal and Technical Commission at the second part of its twenty-eight session

Council of the International Seabed Authority, 20 July 2023

Thank you, Mr. President.

As this is the first time our delegation takes the floor, we would like to express our continuous support and trust in your capable presidency.

The International Union for Conservation of Nature, IUCN, thanks the Chair of the Legal and Technical Commission for his report. We record our appreciation for the progress made and updates provided in this report and commend the members of the Commission for their tireless efforts in assisting the work of the Council. Notwithstanding, we would like to express the following concerns on two themes: the use of the silence procedure and the intersessional expert group to develop environmental threshold values:

- First, IUCN remains troubled by the use of the silence procedure:
 - As stated in the past, IUCN contends that the silence procedure is not an appropriate method of decision-making for a complex and sensitive environmental decision of significant public interest. This procedure should be reserved only for highly urgent and primarily procedural matters.
 - We note the clarification given that the Commission will not use the silence procedure for consultations or deliberations but rather as “a means for decision-making at the end”.
 - The Chair’s report states that the silence procedure is not incompatible with the rules of procedure of the Commission, and indeed, the rules of procedure do not explicitly disallow the silence procedure. However, we are of the view that just because something is not explicitly disallowed, it does not mean it is a suitable, desirable or legally-permissible procedure.
 - On the contrary, we argue that the silence procedure would not only contravene specific voting rules of the Rules of Procedures (see for example, rules 47 to 49), but it could actually circumvent the quorum requirement for meetings of the Commission as prescribed in Rule 28.
 - We would like to pose this question to the Chair: Did the Commission specifically consider whether the use of the silence procedure would contravene the quorum requirement and decision-making requirements under the Commission’s rules of procedure?
 - We would also like to put another question to the floor: The Commission is the subsidiary organ of the Council and the Convention clearly states that the rules of procedure of the Commission must be approved by the Council. With that in mind, should it not be the case that the Commission first drafts a proposed amendment to its rules to allow the use of any non-conventional methods of

decision-making that have not been anticipated by the existing rules of procedure, and submits this for the consideration and approval of the Council?

- Second, on the intersessional expert group (IEG) to support the development of Environmental Threshold Values:
 - IUCN is concerned over the approach for developing Environmental Threshold Values for the following reasons:
 - the development of environmental thresholds and indicators requires large amounts of environmental baseline data, which remains inadequate at this point in time.
 - the IEG should not be bound by any predetermined timeline, but by the time needed for gathering the necessary science, and for due consultation and deliberation. Otherwise, each group would run the risk of developing these science-based environmental thresholds in an overly-hasty non-scientific manner.
 - the IEG should be inclusive and open-ended. IUCN recommends widening the group beyond the ten experts for the sake of inclusivity, transparency and representativity to ensure the development of robust and normative environmental thresholds to minimize the potential environmental harm of deep seabed mining activities. Indeed, we are very concerned that a call for nomination of experts for the IEG was published on the website of the Authority before the Council had the opportunity to debate this matter.
 - Mr President, we believe that no thresholds are better than rushed or bad thresholds. It is imperative for the Council to dedicate significant care and attention in their development.

With that, we thank you for giving us the floor and thank Ms Michelle Walker for fielding questions on behalf of the Chair.