

Deep-Sea Minerals

Briefing, Autumn 2017

Latest Developments

The International Seabed Authority 23rd Annual Session 2017

All Commonwealth member countries are members of the International Seabed Authority (ISA), the independent intergovernmental body created by the UN Convention on the Law of the Sea to manage deep-sea mining activities in seabed areas beyond national jurisdiction. The ISA's executive body is the Council, almost half of whose membership comprises Commonwealth countries.

The Commonwealth Secretariat attended the ISA's 23rd Annual Session held on 7-18 August 2017 in Jamaica. Many issues were discussed over the two week meeting, with interventions from numerous Commonwealth member governments. A more comprehensive summary of the formal proceedings of the ISA's 23rd Annual Session can be found online here: <https://www.isa.org.jm/sites/default/files/files/documents/enb25151e.pdf>.

This 23rd Annual Session marked a critical juncture for the ISA, coming at a time when it:

- Seeks to draft the international regulatory regime for deep-sea mining ('the Mining Code' – for more information of the regulations under development, please see here: <https://www.isa.org.jm/legal-instruments/ongoing-development-regulations-exploitation-mineral-resources-area>)

- Considers a recent independent review that made a number of recommendations to improve the operation of the ISA (copy of the review report, can be found online, here: https://www.isa.org.jm/sites/default/files/files/documents/isba-23a-3_1.pdf).

Throughout all discussions, the need for transparency and increased stakeholder participation in ISA processes, were recurrent themes.

Another strong emerging theme, particularly raised by members of the African Group, was a need for increased focus on the equitable benefit-sharing aspect of the ISA's financial regime: a key component of the Common Heritage of Humankind principle, which applies to the resources of the Area.

Other items of interest included:

- Acknowledgement of the heavy workload, and lack of resources available for ISA operations. Consideration of how to bolster the efficiency and expertise of the advisory organs of the ISA, and emphasis on the importance of supporting developing country attendance at ISA meetings.
- A decision to hold ISA Council meetings biannually, for 2018 and 2019.

Our expert team are available to advise Commonwealth member countries looking for more information on any of the issues raised in this briefing, or other deep-sea mineral matters. Please contact Hannah Lily, h.lily@commonwealth.int.

- Discussion of the Mining Code currently under development, and in particular, draft exploitation regulations released with a 17 November 2017 deadline for consultation, and a proposed work-plan indicating a 2020 deadline. See below for more information.
- Acknowledgment of advances in national deep-sea mining regulatory laws within Commonwealth countries. States requested the ISA Secretariat to produce a model law, noting that precedents may be obtained from Commonwealth Secretariat.
- Approval of an application for a new ISA exploration contract (the 28th), sponsored by Poland. A discussion about inter-play with other international bodies ensued, upon realisation that the Polish application included seafloor features described as an Ecologically or Biologically Significant Marine Area under the Convention on Biological Diversity.
- A call for greater focus on environmental management, including environmental impact assessment guidance, regional environmental management plans, operationalisation of the precautionary approach, and disclosure of environmental data provided to the ISA by contractors.
- Support for a new 'Legal Working Group on Liability for Environmental Harm from Activities in the Area' to be co-chaired by Commonwealth Secretariat, and which was encouraged to be transparent and inclusive in its work. See below for more information.

Commonwealth Secretariat ISA Side Event

An inaugural 'Commonwealth at the ISA' side event was held during the 23rd Annual Session. This was an opportunity for the Commonwealth Secretariat to seek instructions on how best to support member countries' engagement with deep-sea mineral issues.

At the event, attended by over 100 ISA delegates, Commonwealth Secretariat advisers:

- Presented an overview of the Secretariat's existing natural resources expertise, and current technical assistance projects (provided bilaterally to member countries upon request).
- Detailed ISA-related work with which the Secretariat has recently engaged, including: advice to the ISA Secretariat concerning the draft Mining Code, engagement at ISA workshops on environmental management and the financial payment regime, and co-convening a new Legal Working Group on Liability in the Area. See below for more information.
- Highlighted the potential influence of the Commonwealth as a grouping within the ISA, and the opportunity for more coordinated engagement by Commonwealth countries.

Seventeen member countries provided feedback during the event and were supportive of the Secretariat's current deep-sea minerals

programme, and made the following additional recommendations, which the Secretariat will implement over the coming months:

- Exploring a more coordinated Commonwealth approach at the International Seabed Authority, supported prior to, and during the, official ISA meetings by the Commonwealth Secretariat.
- Additional technical briefings for Commonwealth member countries, including:
 - development of the international Mining Code for deep-sea mining in the Area,
 - financial modelling and design of the international financial payment regime and equitable sharing criteria for deep-sea mining,
 - model templates for deep-sea mining legal instruments and
 - sponsoring State issues.
- Tailored regional capacity building for Commonwealth Pacific and Africa countries.
- The Secretariat acting as a platform for sharing of learning on deep-sea mineral issues from country-to-country across the Commonwealth.

Upcoming events

Berlin IRZ/PRZ Workshop: The ISA will host a workshop on 27-29 September 2017 in Germany on the design of set-aside 'impact reference zones' and 'preservation reference zones' in the Area. These zones are required within contractor areas, in order to assess effects from contractor activities, and other changes, to the marine environment. The workshop will be a forum for the ISA, its contractors, and scientific and technical experts to exchange information and develop a common understanding of the key elements of reference area design and monitoring principles applicable to exploitation contracts for deep-sea minerals.

Commonwealth Secretariat will attend the workshop, and will report back to member countries.

London Legal Liability Working Group Meeting:

The Commonwealth Secretariat will host a workshop on 28-29 September in the UK for a working group co-convened by the Centre for International Governance Innovation and the ISA. The 'Legal Working Group on Liability for Environmental Harm from Activities in the Area' comprises 14 international legal experts, who will be tasked to explore key issues that need to be addressed in order to advance the development of a robust liability regime in the Area, including the concept of 'effective control' by sponsoring States. This first meeting will seek to map the issues and to set the Group's work-plan.

Commonwealth Secretariat will report back to member countries after the meeting.

Exploitation Regulations Consultation: "Draft regulations on exploitation of mineral resources in the Area" were released on 8 August 2017 by ISA Secretariat for comment by stakeholders by 20 December 2017 (document reference: ISBA/23/LTC/CRP.3; online link: <https://www.isa.org.jm/files/documents/EN/Regs/DraftExpl/ISBA23-LTC-CRP3-Rev.pdf>), together with a list of consultation questions (document reference: ISBA/23/C/12; online link: <https://www.isa.org.jm/document/isba23c12>). Responses are to be sent by email to consultation@isa.org.jm.

Commonwealth member governments are encouraged to participate in the ISA Exploitation Regulations consultation, and – in our first response to the recommendations from the Commonwealth at the ISA side event – Commonwealth Secretariat will provide a detailed briefing note in due course on the draft regulations and consultation questions to assist member country responses.



The Commonwealth

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