

Item 5 Public Participation in International Forums

IV. General discussion and additional topics

Statement by International Seabed Authority, Mr. David Pusztai

Distinguished Delegates,
the members of the working group,

it is a pleasure to contribute to the thematic session on the promotion of the principles of the Aarhus Convention in international forums on behalf of the Secretariat of the International Seabed Authority.

This statement is made by a video recording due to the fact that at the time of your meeting, the hurricane Beryl has just made landfall in Kingston, Jamaica, which is where the headquarters of the International Seabed Authority is located. The circumstances prevent us from logging in real time. Thank you for the opportunity to present this recorded message.

As most of you will know, the Authority is one of the three institutions established by the 1982 United Nations Convention Law of the Sea and the 1994 agreement on the implementation on part 11 of the Convention.

Unlike the Aarhus Convention, the legal regime set out by UNCLOS is a global one. As such, the Authority has a global mandate over 54% of the world ocean seabed beyond national jurisdictions. Area is called in the Convention, the area with a capital A. The authority is comprised of 169 members, including 168 States and the European Union. The authority is entrusted with the responsibility to regulate and organize activities in the area for the benefit of humankind, with a view to ensuring the sustainable management of the mineral resources that contains and which are designated as the common heritage of humankind.

At the core of this mandate lies the responsibility to ensure the effective protection of the marine environment from potential harmful impacts that may be caused by activities in the area. Under this regime, all states parties have the right to sponsor activities in the area, provided they do so in accordance with the rules, regulations, and procedures adopted by the authority, no activity of exploration, and no activity of exploitation is permitted, absent approval in the form of a contract by the authority.

In the year 2000, the authority adopted the first set of exploration regulations to regulate and control access to polymetallic nodules in the area. These regulations did not yet govern exploitation, only the exploration for such resources. This was complemented with the adoption of specific regulations for other mineral resources, namely poly metallic sulfides and cobalt ferromanganese crusts.

For the last 10 years, the authority has been engaged in the development of regulations for the

future exploitation of seabed minerals in the area. This marks the first time that an industrial activity will have been fully regulated at global scale before it begins.

Ensuring the vilest public participation in this process has been a foremost priority for the authority all along. Robust public participation has been guaranteed in three main ways:

Firstly, as mandated by the Law of the Sea Convention, the expert bodies have the authority. In particular the legal and technical commission have prepared the first draft of the exploitation regulations after soliciting, assembling and processing stakeholder contributions for around five years. In what can only be described as a commendable and exemplary treatment of such contributions. All of the relevant materials have been published and made immediately available online on the website of the authority. This has directly informed the decision-making process led by isa member states and such contributions are clearly traceable and demonstrable.

Secondly, in 2019, the draft exploitation regulations are being negotiated in the Council. The Council is the executing organ of the authority, which comprises delegates from 36 Member States, who, in turn are elected by all member states of the authority for full three year periods. The Council carries out key regulatory functions, and it has the power to authorize exploration and exploitation of natural resources. At the same time, it is one of the very few, if not the only international regulatory bodies, which conducts decision making in an entirely open format. The meetings of the Council, including its informal meetings allow for the participation of all member states of the authority beyond the 36 elected members, as well as all observers. All can share their proposals and leaves in writing or orally. As of today, more than 100 entities including 45, non-governmental organizations have been granted observer status in the council. The accreditation of observers follows clear procedural rules based on well-established un practice, and in fact mirrors the approach of the principal organs of the United Nations. Observers include, for the most part, representatives of civil society preoccupied with environmental matters, as well as civil society representatives with interest in Indigenous issues. Further, all meetings of the Council are broadcasted live online, ensuring full transparency over its proceedings.

Since 2022, the Council meets for four to six weeks every year. By our calculation, around 25% of this meeting time is dedicated to addressing contributions from non-state actors and civil society representatives. It is therefore Respectfully submitted that this is an extraordinarily robust public participation regime, in fact, unparalleled which may indeed serve as an inspiration and springboard for other regulatory bodies. By equivalence it could be noted that in comparison to the negotiations that led to the third implementing agreement under UNCLOS, adopted in 2023, the discussions of the council isa pertaining to the operationalization to the operationalization of what has already been agreed upon clause, in the form of exploitation regulations, follows a much more inclusive and transparent approach. A similar level of public oversight and participation, let alone an opportunity to provide specific drafting inputs was not guaranteed to public participants and stakeholders to this extent, in the context of the negotiation of the third implementing agreement on their own

costs.

Thirdly, a perhaps often overlooked aspect of the work of the authority, is that it is very much driven by member states. The draft regulations on exploitation have been shaped, developed, codified, restructured in working groups, led by Member States. In fact, many States Parties to the Aarhus Convention have been actively engaged in the process under which the legal framework relating to environmental impact assessments for activities in the area is being consolidated. In particular, proposals by Member States form the basis of the current draft regulations on environmental impact assessments, environmental monitoring and compliance. In putting forward those proposals, it was incumbent on member states to factor in and to build upon proposals from NGOs, civil society representatives and expert groups. In other words, all public stakeholders. In the current text of the draft exploitation regulations, which the council is still deliberating on, dozens of draft provisions find their origin, in whole or in part in the contributions from public participants or state parties to the Aarhus Convention. We consider this to be a very successful and exemplary instance of public participation.

Today's thematic discussion on the authority has been prompted by in our understanding, a statement authored by a number of academics who are also regularly accredited as part of NGO delegations to the authority, and who regularly had and will always have an opportunity to present their commitments for consideration by the global membership of the authority.

In this context, we regret that a considerable part of the outline that has been submitted for consideration by the working group in relation to the mechanisms in place for public participation in ISA is factually incorrect and gives a distorted and misleading picture of the work of the authority, as well as of the efforts engaged by its member states to ensure that the views of all public participants are taken into account.

The three points of criticism raised in the statement in question related to an alleged lack of transparency, allegedly insufficient public participation, and alleged accountability issues. Remarkably, however, none of the robust pillars of the transparency regime I have just outlined are even mentioned in the outline shared with the working group, which reflects poorly on the superficial and biased approach taken by its authors in depicting the current practices in ISA.

Lastly, it is important to emphasize that public access to information is also guaranteed by the authority. All documents and statements before the council are available on the authority's website, as well as submissions to the draft exploitation regulations. In the exploration regulations and in the currently still developing draft exploitation regulations, stringent obligations are placed on the authority to disseminate data obtained from contractors, including environmental data. This is done through the deep data portal, which I invite the participants to consult.

In concluding our contribution. Please allow me to thank the members of the working group for their attention, and we remain at your disposal to address any further specific questions

you may have.

Thank you very much for your attention.