COUNCIL CONSIDERS NEW PROPOSALS FOR OVERLAPPING CLAIMS
AND REVIEW CLAUSE OF DRAFT REGULATIONS FOR SULPHIDES

The Council of the International Seabed Authority this afternoon resumed its consideration of the draft regulations on polymetallic sulphides.

The regulations taken up at this meeting concerned the confidentiality of data relating to the marine environment, the option for the regulations to be periodically reviewed after their approval, and the procedures to be implemented in the case of overlapping applications by contractors.

Continuing the discussion on regulation 38 (Proprietary data and information and confidentiality), China called for a clearer link between the first two paragraphs. Paragraph 1 states that contractors’ data shall be confidential unless the information:

a) is generally known or publicly available from other sources;
b) has been previously made available by the owner to others without an obligation concerning its confidentiality; or

c) is already in the possession of the Authority with no obligation concerning its confidentiality.

However, as China pointed out, paragraph 2 cites another instance where data shall not be deemed confidential – when such data is necessary for formulating rules to protect the marine environment. The representative said that paragraph 1 outlined procedures for determining whether data and information should be confidential. It was therefore logical and necessary that the data referred to in paragraph 2 be subjected to the same clear-cut standards. He suggested re-numbering the paragraph as 1(d).
China also sought clarification on what would happen if information is designated by a contractor, in consultation with the Secretary-General, as being confidential and is later challenged by other parties.

With regard to the integration of the two paragraphs, Australia suggested incorporating paragraph 2 as the final sentence of the first paragraph. This strategy would eliminate the need for redrafting. This proposal drew broad support and the Council President announced that the change would be incorporated into the revised draft text.

Returning to regulation 35 on emergency orders, the Netherlands introduced a redraft of the third paragraph on temporary measures to be taken by the Secretary-General in case of emergencies. The paragraph, which is a result of an informal meeting of several delegations including Argentina, Australia, Germany, India, Italy, Kenya, Mexico, The Netherlands, New Zealand, Portugal and Trinidad and Tobago, now reads:

3. Pending any action by the Council, the Secretary-General shall take such immediate measures of a temporary nature as are practical and reasonable in the circumstances to prevent, contain and minimize serious harm or the threat of serious harm to the marine environment. Such temporary measures shall remain in effect for no longer than 90 days, or until the Council decides at its next regular session or a special session, what measures, if any, to take pursuant to paragraph 6 of this regulation.

India said that the words “whichever is the earlier” had been inadvertently omitted from the new text. However, the Netherlands explained that the phrase had been deliberately left out in order to avoid any gap that might be created if the 90 days of temporary measures ended before the Council could meet.

Jamaica said it had expected to see a reference in the text to Section 6 of Annex 4 of the draft regulations, which is the part of the standard clauses for exploration contracts dealing with contractors’ contingency plans to respond to emergencies. The Netherlands explained that it was felt that the Secretary-General would “lose his flexibility” in responding to emergencies if he had to adhere closely to the steps outlined in the standard clauses. Australia explained the absence of the reference by pointing out the difference between the two provisions. While regulation 35 addressed the nature of the temporary measures the Secretary-General could take, section 6 of annex 4 spoke to the contingency plans required of contractors to respond to potentially harmful incidents.

Mexico circulated a proposal for Regulation 44 (Review), a new clause that made provisions for review of the manner in which the sulphides regulations had operated in practice five years following their approval by the Authority. The proposal is as follows:

**Regulation 44**
**Review**

1. **Every** five years following the approval of these Regulations by the Assembly, the Council may undertake a review of the manner in which the Regulations have operated in practice. In the light of the review, the Council may revise any of the
provisions of these Regulations, without prejudice to the rights conferred on any contractor with the Authority under the provisions of a contract entered into pursuant to these regulations in force at the time of any such revision.

2. If, in the light of improved knowledge or technology, it becomes apparent that the Regulations are not adequate to carry out exploration effectively and efficiently, any State Party, the Legal and Technical Commission, or any contractor through its sponsoring State or States, may at any time request the Council to consider, at its next ordinary session, revisions to these Regulations. In the event that any provisions of these Regulations are amended following such request and consideration by the Council, the Contractor and the Authority may revise the contract in accordance with section 24 of annex 4.

Mexico said the spirit of the proposal recognized the Council’s difficulty in acquiring sufficient knowledge on the mineral. The representative said regulation 44 ensured there would be a review every five years, and not just five years following approval of the regulations on sulphides. India and the Republic of Korea agreed with the Netherlands that “improved knowledge” in paragraph 2 covered too wide a scope. Nigeria, the Republic of Korea and Germany supported the proposal in principle but had some concerns. Nigeria suggested adding the word “however” at the beginning of the second paragraph to link the two paragraphs. The representative of the Republic of Korea said paragraph 2 implied that the Council could be asked for a review every year, which would be a waste of time. Germany said review should not only be considered in cases where the regulations were found to be inadequate to carry out exploration effectively and efficiently.

Asked by Viet Nam to explain the difference between the two paragraphs, Mexico said the Council would decide, based on information submitted, to review the regulations every five years. In paragraph two, the emphasis is placed on the fact that any of entities listed could request a review. South Africa proposed a revision to the opening sentence of the first paragraph to avoid having a review every five years. The delegation suggested deleting “Every” at the beginning, and adding a phrase so the sentence would begin as follows:

“Five years following the approval of these Regulations by the Assembly, or at any time thereafter, the Council may…”

Fiji and India said there was merit in the proposal by the delegation from South Africa. Supporting Mexico’s willingness to work with other delegations on improving the draft, the President of the Council recommended breaking up the regulation into three paragraphs.

The Secretariat introduced Regulation 22 bis (overlapping claims). The Council had decided earlier in this session to delete regulation 24(2) in ISBA/13/C/WP.1 and address, in a separate clause, procedures to be implemented in the event of overlapping applications by contractors. The draft text is as follows:
Regulation 22 bis
Overlapping claims

1. If, within 30 days of the date upon which an application for a plan of work for exploration for polymetallic sulphides was received by the Secretary-General, one or more other applications for a plan of work for exploration for polymetallic sulphides are submitted that overlap with the same area or areas, the Secretary-General shall notify all applicants concerned, including the original applicant.

2. The applicants concerned shall resolve any conflicts with respect to overlapping claims as soon as possible by negotiations. Any such applicant may, within 60 days of the notification by the Secretary-General, amend their application so as to resolve conflicts with respect to such application.

3. If any such conflict has not been resolved within 60 days of the notification by the Secretary-General, the applicants concerned shall arrange for the submission of all such claims to binding arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

Japan, supported by the Russian Federation, said members of the Council would need time to consider the draft text. Delegations had concerns about the time-frame for notification of overlapping, and the process and criteria for binding arbitration.

The Council will continue debate on Regulation 22 bis and review Annexes I and II of the draft sulphides regulations when it meets tomorrow, 5 June.

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