A compromise proposal to amend regulation 21 (fee for applications) of the draft regulations on polymetallic sulphides was presented this afternoon by the CANZ group (Canada, Australia and New Zealand) as the Council of the International Seabed Authority continued deliberations in Kingston.

Debate resumed on the draft regulations (ISBA/13/C/WP.1) in light of the recommendations on some outstanding issues presented in a document (ISBA/14/C/4)) by the Secretariat at the start of the Authority’s fourteenth session. In addition to debate on the level of fixed fees, the Council also considered Regulation 24 (2) on conflict regarding applications approved for work by more than one applicant, and Regulation 27, size of area for exploration and relinquishment.

Speaking on behalf of CANZ, Canada proposed a redraft of Regulation 21 (a) as follows:

(a) “A fixed fee of 500,000 United States dollars or its equivalent in a freely convertible currency, payable by the applicant at the time of submitting an application, and, if the costs incurred by the Authority are less than the fee, the Authority shall contribute the difference to the International Seabed Authority Endowment Fund for Marine Scientific Research in the Area; or”.

There was mixed reaction to the new proposal. A number of delegations supported it, while some preferred the original wording by the Secretariat, and other delegations wanted to see the components of the fees.

India said it would not be acceptable to put unused money from application fees into the Endowment Fund. Kenya, Nigeria and Uganda said they would support the proposal. Argentina, Brazil, The Netherlands and Senegal said they preferred the option proposed by the
Secretariat but were encouraged by the CANZ proposal and would support it by way of compromise. Jamaica said it preferred to keep the original wording, while Italy joined Germany and Japan which maintained their earlier position calling for a breakdown of the fees.

The Secretary-General Satya N. Nandan noted that paragraph 1 of the regulation under review referred to the entire “plan of work”. He explained that the fee was for services and resources, and itemized the components for the benefit of the delegates, noting that each application would be unique. Indonesia suggested an added sentence to the CANZ proposal to stipulate that if the processing fee paid by any contractor proved insufficient that contractor would pay the additional sum. The United Kingdom said the fee was not unreasonable and urged the Council to stick with the Secretariat’s proposal.

Paragraphs 2 and 3 of Regulation 21 deal with how the annual fee should be calculated in terms of the “area factor” - the number of square kilometres comprised in the exploration area at the date upon which the periodic payment in question becomes due. Germany and India felt the area factor would be better determined if the size of the area for relinquishment by a contractor was known. Germany suggested that delays in relinquishment could be tied to the duration of the contract for exploration which was 15 years. The Secretary-General said the recommendation was made in view of the 15-year standard contract which could be reviewed for the sulphides regulations.

The Council then began the discussion on Regulation 24 (consideration and approval of plans of work for explorations by the Council). Paragraph 2 of this regulation reads as follows:

2. If the Commission has made recommendations for the approval of application in the same areas or areas by more than one applicant, the Secretary-General shall so notify such applicants, who may, within 45 days of such notification, amend their application so as to resolve conflicts with respect to such applications. If such conflicts are not resolved within the said period, the Council shall determine the area or areas to be allocated to each applicant on an equitable and non-discriminatory basis.

Japan felt the issue of overlapping areas should be resolved through negotiation between the applicants who have made those overlapping claims. Jamaica, on the other hand, advocated the use of a “first-come, first served” system: the first applicant to lodge a complete application with the Authority should have priority.

The Secretary-General pointed out that there had been instances of overlapping areas in the past with respect to polymetallic nodules. Those overlaps had been resolved through negotiations among the pioneer investors that stretched over a period of three years. Following an intervention by the Russian Federation, it was decided that the Secretariat would redraft Regulation 24, taking into account Regulation 23, paragraph 6 which prevents the Commission from recommending approval of a plan of work if “part or all of the area covered by the proposed plan of work for exploration” was included in a plan of work already approved by the Council.

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Regulation 27 sets out the conditions for the relinquishment of polymetallic sulphide blocks by a contractor. By the end of the first year of its contract, the contractor is required to relinquish at least 50 percent of the blocks allocated to it. By the end of the tenth year, that figure increases to 75 percent.

Japan objected to the relinquishment of 75 percent. It was not convinced that 2,500 square kilometres of the original 10,000 square kilometres allocated to a contractor would be sufficient for commercial mining. The representative felt that the relinquishment ratio should be 50 percent, the same as that set out in the regulations for polymetallic nodules. China supported this view. The Secretary-General explained that the decision to modify the ratio had been taken in accordance with technical advice from experts. Since polymetallic sulphide deposits were far more localized than nodule deposits, smaller areas of exploitation could be commercially viable. Given the different nature of the two resources, it was not advisable to blindly import from the regulations on polymetallic nodules, he stated.

China noted that until Regulation 12, dealing with the application area and the configuration of blocks was finalized, it was difficult to make a decision on relinquishment. On the other hand, Australia suggested that the issue of relinquishment was related to the exploration area which had already been set at 10,000 square kilometres. This intervention drew support from Argentina, the Netherlands, and Spain. New Zealand, supported by Jamaica, proposed that members agree in general on the concept in regulation 27 and that once regulation 12 and other related regulations had been confirmed, the Council could return specifically to the issue of the relinquishment ratio.

The Council then turned its attention to regulation 12 (total area covered by the application (polymetallic sulphides)). Australia and the Russian Federation have written proposals for the redrafting of that regulation. The first two paragraphs of both proposals are identical. They read:

1. For the purposes of these Regulations, a “polymetallic sulphide block” means a cell of a grid as provided by the Authority, which shall be approximately 10 kilometres by 10 kilometres and not greater than 100 square kilometres.

2. The area covered by each application for approval of a plan of work for exploration for polymetallic sulphides shall be comprised of not more than 100 polymetallic sulphide blocks, which shall be arranged by the applicant in at least five clusters as set out in paragraph 3 below.

The third paragraph of Australia’s proposal reads:

3. Each cluster of polymetallic sulphide blocks shall contain at least five contiguous blocks. Two such blocks that touch at any point shall be considered to be contiguous. Clusters of polymetallic sulphide blocks need not be contiguous, but shall be proximate and located within an overall square or rectangle area not greater than 302,500 square kilometres, and with a ratio of length to width or width to length of not more than 1 to 3.
The Russian Federation’s proposal is very similar, except that the clusters of blocks are to be located “within an overall rectangle having a maximum area of 300,000 square kilometres with the longest dimension not to exceed 1000 kilometres.”

In a general statement to the Council, Senegal, on behalf of the African group, said it supported the progressive fee in the revised form in Annex I of the document. The African Group also welcomed efforts to correct weaknesses in the nodules regulations that were adopted in 2000, and said it supported the review clause in the present sulphide draft. The Group also proposed that the term “effective control in respect to sponsoring States” in the draft sulphide regulation be defined for avoidance of any misinterpretation.

Members of the Council agreed to consider both proposals at the weekend in preparation for their meeting on the afternoon of Monday, June 2.