COUNCIL MAKES SOME PROGRESS ON OUTSTANDING ISSUES: 
DEBATE CONTINUES ON REGULATIONS 12 AND 23; 
INFORMAL WORKING GROUPS AIDING CONSENSUS BUILDING

The Council of the International Seabed Authority made more progress in its deliberations on the outstanding issues with respect to the draft regulations on prospecting and exploration for polymetallic sulphides in the Area by adopting revisions to section 21 of annex 4 (Suspension and termination of contract and penalties), of the draft, at its meeting in Kingston this afternoon.

On the remaining issues, the Council invited working groups to meet informally to iron out compromise language for regulation 12, paragraph 5 which addresses the total area covered by the application, as well as regulation 23 which deals with overlapping claims. The Council heeded a request for more time to work on the text of paragraph 4 of regulation 21 – Fees for application.

Anti-monopoly

Following deliberations in the Council yesterday, and consultations with India, the Authority’s Secretariat proposed the insertion of a new paragraph 5 for regulation 12 – Total area covered by the application - in the draft document (ISBA/15/C/WP.1). The original paragraph as proposed in the Secretariat working paper (ISBA/15/C/WP.2), detailing the issues outstanding from the 2008 session, dealt with applications by affiliated applicants. India suggested the inclusion of an anti-monopoly clause while China wanted language that would clarify the meaning of the word affiliated. India had offered to assist with new text which the Secretariat proposed as follows:
The total area covered at any one time by plans of work for exploration for polymetallic sulphides sponsored by the same State or allocated under a contract for exploration for polymetallic sulphides to affiliated entities, even if such affiliated entities sponsored by different States, shall not exceed the limitations set out in paragraphs 2, 3 and 4 of this regulation. For purposes of this regulation, an entity is affiliated with another entity if an entity is directly or indirectly, controlling, controlled by, or under common control with, another entity.* The implementation of this paragraph shall be reviewed by the Council after five years.

Canada said the proposed text for paragraph 5 of regulation 12 did not address the Council’s major objectives which, among other things, she said was to avoid excessive or undue number of applications from affiliates of the same entity. The representative said inclusion of the phrase “at any one time” was a useful indicator, because it reduces the possibility of an entity making additional sponsorship applications or conducting new activity. Supporting the view expressed by Canada, the USA Observer called for language that would prevent any one entity from monopolizing activities in the Area.

China offered an additional suggestion to paragraph 5, which it said would ensure that state and private entities were treated separately. But China said the relevance of its suggestion would depend on the outcome of deliberations with respect to the proposed paragraph. Following some debate Council President Mahmoud Samy (Egypt) invited Canada, India, China and other interested parties to meet informally to help resolve the issue.

Mexico advised the 36-member Council it was working informally with delegations that were bothered by its proposal yesterday to retain regulation 21 – Fee for application – with an amendment as follows:

The amount of the fee shall be reviewed every five years by the Council in order to ensure that it covers the administrative costs incurred by the Authority in processing the application.

Suspension and termination of contract and penalties

Following some debate, the Council adopted section 21 of annex 4 of the draft sulphides regulations, with an amendment to the revised proposal developed following informal consultations between interested delegations. It was agreed to replace the phrase “…and in consultation with…” with “… and after consultation with…” The new paragraph now reads as follows:

The Council may, without prejudice to Section 17 and after consultation with the contractor, suspend or terminate this contract, without prejudice to any other rights that the Authority may have, if the contractor is prevented from performing its obligations under this contract by reason of an event or condition of force majeure, as described in Section 17.1, which has persisted
for a continuous period exceeding two years, despite the Contractor having taken all reasonable measures to remove its inability to perform and comply with the terms and conditions of this contract with a minimum of delay.

Overlapping Claims

Introducing the discussion on regulation 23 concerning overlapping claims, New Zealand said the informal working group had made good progress on a general structure of the regulation which reflected both the Secretariat’s and the Chinese proposals.

Senegal read out a written proposal which had been circulated in the meeting and New Zealand cited one change to the text that had been decided in the working group. The first sentence of paragraph 4 now reads:

The applicants concerned and, as appropriate, their sponsoring State shall resolve any conflicts with respect to overlapping claims as soon as possible on the basis of a fair and equitable solution.

Paragraph 2 of the proposal states that “if, within 30 days of the date upon which an application is circulated to members of the Authority by the Secretary-General in accordance with regulation 22, one or more other applications for a plan of work are submitted that overlap with the same area or areas, the Secretary-General shall notify all applicants concerned, including the original applicant.” New Zealand reported that some members of the working group had suggested reverting to the Secretariat’s proposal that the timeframe should start once an application is received by the Secretary-General.

Much of the debate within the working group had surrounded paragraph 3 of the proposal, New Zealand said. According to this paragraph, the Legal and Technical Commission and the Council shall consider overlapping applications only after “any overlapping claims between applicants have been resolved in accordance with the procedures set out in this regulation” or in cases where “the overlapping claims have to be resolved 180 days after the Secretary-General’s notification to all applicants.”

China made reference to paragraph 2 of regulation 24 which states that the Commission shall examine applications in the order in which they are received. The representative maintained that while this was the procedure to be followed under normal circumstances, in the case of overlapping claims, the application of this paragraph would compromise the effectiveness of the 180-day period set aside for resolving conflicts because the first applicant would be in an advantageous position from the outset and might not make sufficient efforts to seek an equitable solution.

With regard to regulation 12, relating to the total area covered by applications, China expressed the view that there were some issues which still needed clarification. The delegation indicated its intention to put forward a new proposal on the size of the exploration area at the next meeting of the Council.