COUNCIL SET TO APPROVE SULPHIDES REGULATIONS
AFTER CLEARING ALL OUTSTANDING ISSUES;
WORK TO START ON CRUSTS REGULATIONS

A major obstacle to the adoption of the draft regulations on prospecting and exploration for polymetallic sulphides in the Area was cleared when the Council of the International Seabed Authority, meeting in Kingston this afternoon, decided by consensus, to adopt a draft decision related to the regulations which it had deliberated upon over the past two days.

The Council has had the issue before it since yesterday when it decided to remove regulation 23, Overlapping claims, from the draft regulations on prospecting and exploration for polymetallic sulphides in the Area, and instead reformulate its contents into a resolution.

A revised version of the draft regulations, in all languages, was made available, and Council President Syamal Kanti Das of India urged delegations that needed to consult with their capitals to do so immediately so as not to delay its adoption.

The Secretariat prepared a draft decision comprising four paragraphs and a seven-paragraph annex, which the Council agreed to yesterday except paragraph 4 of the decision and paragraph 7 of the annex. Both paragraphs dealt, inter alia, with the timeframe to be applied to processing and resolving overlapping applications by the Authority’s expert body, the Legal and Technical Commission (LTC) and the Council.

A redraft of the decision by the Council, which the Secretariat prepared overnight and circulated this morning, included a five-paragraph annex, as the original paragraphs 5 and 6 were deleted by consensus yesterday.

Opening the discussion on the revised draft this morning, China said paragraph 5 as presented fully accommodated the views of some delegations concerning the role of the Council and LTC in proposing recommendations and resolving those applications. The representative of
China proposed an amendment in the chapeau of the paragraph to include the words “for its consideration” so that the sentence would read (in part): “The Commission shall, within 180 days following such report, submit an appropriate recommendation to the Council, for its consideration, on overlapping applications...”

South Africa said it would accept the framework of the text but, like Nigeria, India, Japan and Germany, wanted to be clear about the time window for the application process. China said the period of one year following the date of adoption of the decision would include the time for settlement of a dispute. If that were the case, Germany suggested reducing the one year, in paragraph 2 of the annex, to six months. Namibia proposed an amendment to paragraph 4 of the annex that would stipulate the exact period, one year, during which the Council should proceed to consider the applications. The Russian Federation commented that since the Council met annually it would be beneficial, from a legal perspective, to act during the one year period.

**Role of LTC and Council**

Delegations had differing views on how the Council and the Commission would deal with the overlapping applications during the period stipulated in the decision. The United States observer said it continued to see paragraph 5 as a departure from the Convention, and that the draft was unclear about the criteria to be used by the Commission to consider and make recommendations on applications to the Council. China reminded the Council that under its rules of procedure only member states could vote on decisions.

Canada also registered its reservations concerning paragraph 5 of the annex of the draft decision saying that while it would not dispute the LTC’s powers to recommend, it was concerned about the process. The delegation proposed a small working group to iron out differences. China insisted that the Convention was clear on the role of the LTC in making recommendations to the Council. Jamaica proposed substituting “an appropriate recommendation” in paragraph 5 with “a report” as a compromise.

Argentina reminded delegations that the proposed resolution, establishing a period of one year to handle overlapping applications, complemented the draft sulphides regulations, which included procedures for resolving disputes. Supporting this observation, the Netherlands suggested that the Council’s difficulty arose from its attempt to qualify a rule that already existed.

The President of the Council, Syamal Kanti Das (India), read an amendment to paragraph 4 of the draft decision, which was adopted, as follows:

4. Decides also that the procedures set out in the Annex shall have effect for a period of one year following the date of adoption of the present decision.

The president announced that he would present the revised version of the draft sulphides regulations, in all languages, to the Council for adoption tomorrow afternoon. The move to do so was based on an amended document which was circulated when the Council met to resume its consideration of the matter this afternoon.

- more -
Afternoon meeting

The Legal Counsel of the Secretariat guided the Council through the draft decision pointing out a few minor changes.

Paragraph 2 of the Annex now allows for a period of **180 days** after the date of the adoption of the present decision, during which the Secretary-General must notify all applicants of any overlapping applications he has received.

According to paragraph 5, if the overlapping applications have not been resolved within **90 days** of the Secretary-General’s notification under paragraph 2, the Secretary-General shall then provide a report to the Council and the Legal and Technical Commission on his efforts to resolve the matter. After receiving such a report the Commission shall have **90 days** in which to submit an appropriate recommendation to the Council.

Following the presentation of the amended text, several members, including Bangladesh, Brazil, Canada, China, Germany, India, Jamaica, Nigeria, Namibia, the Russian Federation, South Africa, Sudan, and Trinidad and Tobago, took the floor to voice their support of the draft text. The text of the draft decision was therefore adopted by the Council by consensus. Since this was the last obstacle standing in the way of agreement on the regulations, by adopting this text, the Council, in effect, opened the way for the adoption of the draft regulations on sulphides. The next step involves the preparation of a decision of the Council whereby it:

1. Decides to adopt the regulations on prospecting and exploration for polymetallic sulphides in the Area, as contained in a document ISBA/16/C/L.5, dated 4 May 2010; and

2. Decides further to apply the regulations provisionally, pending their approval by the Assembly of the Authority;

The Council president then introduced Agenda item 8 “Consideration of the draft regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area.” The draft regulations are contained in ISBA/16/C/WP.2, while a Note by the Secretariat (ISBA/16/C/5) outlines the background and progress of the development of the draft regulations.

After a brief introduction to these two documents by the Legal Counsel, the President opened the floor for general comments on the regulations.

The Chinese delegation made an observation on Regulation 12 which deals with the area covered by each application for approval of a plan of work for exploration for cobalt crusts. It felt that the areas needed to be larger to be commercially viable. However, the representative suggested that members were exhausted after completing their deliberations on polymetallic sulphides and furthermore, delegations needed time to communicate with their capitals about the progress on the sulphides regulations.
Seeing that no other members asked for the floor, the Council president complied with the request of Trinidad and Tobago to adjourn the meeting.

When it meets tomorrow, Thursday, May 6 at 10 a.m., the Council will take up consideration of a draft decision requesting, on behalf of the Republic of Nauru, an advisory opinion from the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea pursuant to Article 191 of the Convention on the responsibility and liability of sponsoring States.

At 3 p.m., the Council will resume its examination of the draft regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area.