The Council of the International Seabed Authority, meeting in Kingston this morning considered the report of the Finance Committee in which it recommended a budget of $14,312,948 for the Authority’s operations for the two years 2013 and 2014.

Also this morning the Council recommended to the Assembly a workplan, prepared by the Secretary-General, for the formulation of regulations for the exploitation of polymetallic nodules in the Area. It decided to approve the environmental management plan for the Clarion-Clipperton Zone, and agreed to approve the report and took note of the Legal and Technical Commission, pending a revision to its draft decision.

The 36-member Council, acting in accordance with article 162, paragraph 2 (b), of the Convention, proposed to the Assembly by acclamation the candidacy of Nii A. Odunton (Ghana) for election as Secretary-General.

In other matters, the Council heard the report of the Secretary-General concerning the credentials of members of the Council. He reported that he had received formal credentials from 33 members and notes verbale had been submitted for three members.

**Workplan for exploitation code**

The Council heard the report of the Secretary-General on a proposed workplan for the formulation of regulations for the exploitation of polymetallic nodules in the Area which it had requested at the seventeenth session.

In accordance with its mandate, derived primarily from the provisions of section 1 of the annex to the 1994 Agreement relating to the implementation of Part XI of the Convention, the Authority has so far elaborated two sets of regulations governing prospecting and exploration for polymetallic nodules(adopted in 2000) and polymetallic sulphides (adopted in 2010). The
Secretary-General hoped that those regulations for the exploration for cobalt-rich ferromanganese crusts would be adopted during this session.

In his report, the Secretary-General defined exploitation as “the recovery for commercial purposes of polymetallic nodules (or sulphides) in the Area and the extraction of minerals therefrom, including the construction and operation of mining, processing and transportation systems, for the production and marketing of minerals”. He explained that the basic activities of any mineral exploitation framework included prospecting; exploration; evaluation; development; mining; and mine closure. For the Authority, two very important components of this framework were related to environmental protection and the payment system to be adopted; that is, “the framework to be administered by the Authority to ensure that it receives the agreed upon payments as well as compliance with its rules, regulations and procedures for exploitation.”

The 1994 Agreement, in sections 6, 7 and 8 of the annex, provides broad guidance on the policy framework within which detailed regulations are to be developed.

Section 6, on production policy, emphasizes that the development of the resources of the Area shall take place in accordance with “sound commercial principles” and that there shall be no subsidization of activities in the Area “except as may be permitted under the provisions of the General Agreement on Tariffs and Trade, its relevant codes and successor or superseding agreements, nor shall there be any discrimination between minerals derived from the Area and from other sources.

Section 8, paragraph 1, on financial terms of contracts, provides, inter alia, that:

(a) The system of payments to the Authority shall be fair to both the contractor and to the Authority and shall provide adequate means of determining compliance by the contractor within such system;

(b) The rates of payment under the system shall be within the range prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage;

(c) The system should not be complicated and should not impose major administrative costs on the Authority or on a contractor. Consideration should be given to the adoption of a royalty system or a combination of a royalty and profit-sharing system. If alternative systems are decided upon, the contractor has the right to choose the system applicable to its contract. Any subsequent change in choice between alternative systems, however, shall be made by agreement between the Authority and the contractor.

In terms of the actual work involved in commercial mining for polymetallic nodules, testing of collecting systems and equipment, processing facilities and transportation systems is considered a permissible activity during the exploitation phase. However, the Secretary-General said that no contractor holding a licence to explore for these minerals had notified the Authority on its intention to undertake such tests which would determine the level of commercial viability.

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The Secretary-General gave a summary of tests carried out in the 1970s on polymetallic nodule collecting systems; however, he maintained that the level of reliability and efficiency of these systems remains unknown.

At the Authority’s eleventh workshop on polymetallic nodule mining technology, which took place in India in 2008, a preliminary cost model for a deep seabed polymetallic nodule mining was developed. Inputs to the model came from technical and legal presentations made by participants at the workshop, including some of the eight exploration contractors for polymetallic nodule development in the Area at the time. The cost model will need to be reviewed in light of new developments and the Secretary-General hoped to have a fine-tuned model for the nineteenth session.

With regard to the timing for elaborating the exploitation code, the Secretary-General pointed out that the first contracts for exploration for nodules would expire in 2016 and it was expected that contractors would proceed to exploitation. It was important, therefore, to establish a regulatory framework for exploitation to be established prior to 2016. He acknowledged that attempting to complete this in four years might be optimistic.

The Secretary-General concluded his report by recommending to the Council that it should:

(a) Decide that it is timely to begin to elaborate the rules, regulations and procedures for exploitation in the Area, with an initial focus on the exploitation of polymetallic nodules;
(b) Prioritize the development of such regulations within the work programme of the Authority and provide such policy advice on the development of the regulations as may be necessary, taking into account the provisions of section 8 of the annex to the 1994 Agreement;
(c) Invite the Legal and Technical Commission to commence work on an exploitation code in 2013 as a matter of priority and to report to the Council on its work at the nineteenth session.

Workplan discussion

A number of delegations endorsed the workplan for elaborating regulations for exploitation although some members agreed with the Secretary-General that the proposed timeline was somewhat optimistic. Brazil, Cuba and India expressed concern about whether the Authority would have the human and financial resources to complete the work involved in completing the regulations by 2016.

Poland called for the formulation of a legal “roadmap” to guide the transition period between the exploration and exploitation phases.

The representative of Brazil urged the Commission, in drafting the regulations, to be guided by the national legislation of countries which were already exploiting marine mineral resources within their national jurisdictions. He further suggested that in light of the similarities between the codes for nodules and for sulphides which had already been adopted, as well as the
regulations for crusts which were nearing adoption, consideration could be given to elaborating a single exploitation code for these three resources.

China opposed this view, maintaining that in spite of similarities, it was appropriate to formulate a set of regulations focused on governing the exploitation of polymetallic nodules.

In response to concerns about human resources, the Secretary-General said that while his request for funds to employ a mining lawyer and a mining engineer at the Secretariat had not met with favour, funds were in place to cover cost of ad hoc working groups as well as a consultant. He confirmed that with these resources, the work could be completed.

With regard to whether 2016 was a realistic completion date, the Secretary-General reiterated that if tests were not conducted to establish if deep seabed mining for polymetallic nodules was commercial viable, the exercise would be “more academic than practical.” He added elaboration of the code would be guided by the payment system determined by the Council for the Authority.

A decision on the workplan will be drafted for approval by the Council at this afternoon’s meeting.

**Decision on LTC report**

A proposed draft Council decision in response to the Legal and Technical Commission Chairman’s report was put forward by Canada as follows:

The Council of the International Seabed Authority,

Taking note of the summary report of the Chair of the Legal and Technical Commission on the work of the Commission during the eighteenth session (ISBA/18/C/20),

Noting the importance of contractors complying with their contractual obligations, and recalling in this regard article 10 of Annex III of the Convention,

Noting that the Commission considered the environmental reporting by contractors in 2011 to be generally of better quality,

Noting that the Legal and Technical Commission expressed concern that some contractors report no work at all under exploration, mining and metallurgy-related activity,

Noting that the Legal and Technical Commission agreed on the need to review its reporting to the Council, in particular with regard to annual reports of the contractors,

1. Calls upon contractors to:

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a) Submit their annual reports in a timely manner within 90 days of the end of each calendar year, in accordance with the terms of their contracts, and to follow the general template prescribed by the Legal and Technical Commission,

b) Submit the results of fieldwork (especially with regard to exploration) in the detail required and in digital format, in accordance with the terms of their contracts,

c) To provide data in digital format for inclusion in the database of the Authority, in accordance with regulation 31, paragraphs 4 and 5, of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area (Nodules Regulations) and with regulation 34 of the Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area (Sulphides Regulations), and to do so before 31 March 2012,

d) Provide detailed financial statements, in accordance with the terms of their contracts and following the guidance of the Legal and Technical Commission contained in the Recommendations for the guidance of contractors for the reporting of actual and direct exploration expenditures (ISBA/15/LTC/7).

2. Stresses once again the importance of the role of the Legal and Technical Commission, as provided for in regulation 21, paragraph 3 (d), of the Nodules Regulations and in regulation 23, paragraph 3 (d), of the Sulphides Regulations, to determine that an applicant for a new plan of work for exploration has satisfactorily discharged its obligations in relation to any previous contract with the Authority, including in relation to environmental reporting, and supports the Commission in continuing to fulfil its role in this regard,

3. Stresses the need for recommendations by the Legal and Technical Commission for the guidance of the contractors for the assessment of possible environmental impacts arising from exploration for polymetallic sulphides in the Area,

4. Requests the Legal and Technical Commission, when evaluating the annual reports of the contractors and the applications for approval of work in the Area, to provide as full an evaluation as possible taking into account the confidentiality of information received, in order to facilitate the performance by the Council of its functions,

5. Requests the Secretary-General to update, on an annual basis, the study of the laws, regulations and administrative measures adopted by Sponsoring States and other members of the Authority with respect to activities in the Area, and to invite, for this purpose, Sponsoring States and other members of the Authority to provide texts of relevant national laws, regulations and administrative measures to the Secretariat,

6. Agrees with the list of likely priority items referred to by the Legal and Technical Commission in paragraph 30 of its summary report (ISBA/18/C/20).
In her presentation of the draft, the representative of Canada explained that elements were included to take into account suggestions and concerns voiced by members when the report was presented to the Council. She said that the third and fourth preambular paragraphs reflected wording from the Chairman’s report (paragraphs 11(n) and 11(h) respectively). The representative explained that operative paragraphs 1(a) and 1(d) were requirements already outlined in the Standard Clauses for Exploration Contracts, while paragraph 1(c) and paragraph 2 echoed wording from the Council’s decision on the Commission’s report last year (ISBA/17/C/20).

Several delegations, including China, Germany, Mexico and the United Kingdom, took the floor to endorse the draft. Based on the suggestion from South Africa, it was decided that operative paragraph 3 would be redrafted as a preambular paragraph. The Russian Federation proposed to add wording in paragraph 1(b), to indicate that reports of fieldwork would be submitted only “if such work had been carried out.” The decision will be redrafted to take these recommendations into account.

**Environmental Management Plan**

The Council adopted a decision to establish an environmental management plan for the Clarion-Clipperton Zone following consideration of a draft decision proposed by the Australian delegation.

The draft decision takes into account Article 165 paragraph 2(e) of the Convention which mandates the Legal and Technical Commission to make recommendations to the Council on the protection of the marine environment. It also refers to Article 145 which deals with the protection of the marine environment from the harmful effects of mining activities and Article 162 relating to the powers and the function of the Council.

The draft decision also refers to Resolution 63/111 which reaffirms the need for states and relevant international organizations to improve the management of risks to marine biodiversity, as well as the work of the ad hoc group of the General Assembly to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.

The rights of entities holding contracts with the Authority for exploration for polymetallic nodules in the Clarion-Clipperton Zone are recognized in the draft decision, in particular their security of tenure over areas allocated for exploration in accordance with their contracts. The proposed draft recommends the implementation of the plan for an initial three-year period, and states that it should be applied in a flexible manner to allow improvement as more scientific technical and environmental baseline data are available.

The Legal and Technical Commission is requested to make recommendations to the Council relating to the network of areas of particular environmental interest, and the text stipulates that for a period of five years from the date of the present decision, or until further review by the Legal and Technical Commission or the Council, no application for approval of a plan of work for exploration or exploitation should be granted in the areas of particular environmental interest.

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Finance of the Authority

Debate on the budget followed the report of the Authority’s Finance Committee (ISBA/18/A/4-ISBA/18/C/12) presented by its Vice-Chairman, Duncan Laki. The Committee held six meetings between 16 and 19 July, 2012, and its recommendations were based on proposals made by the Authority’s Secretary-General (ISBA/18/A/3-ISBA/18/C/7).

The budget recommended by the Committee represents a 10 per cent increase over the previous biennium, but is a revision of the $16,502,100 in the Secretary-General’s original budget proposal.

The Committee considered, among other things, the increase in the work of the Authority and current global economic conditions, the overall increase in the proposed budget for 2013-2014 in relation to the budget for 2011-2012 and prevailing inflation rates. It also considered proposed increases in costs related to staffing, training and other operational expenses including building management and conference services. Also considered were the addition of two new budget items, United Nations common system and IPSAS implementation.

In line with article 160 (2) (e) of the Convention, the Committee recommended that the scale of assessments relating to the administrative budget of the Authority for 2013 and 2014 be based on the scale of assessments used for the regular budget of the United Nations for 2011 and 2012 respectively, taking into account the ceiling assessment rate of 22 per cent and the floor assessment rate of 0.01 per cent.

The Committee urged the members of the Authority to pay their assessed contributions to the budget on time and in full, and to pay all outstanding contributions as soon as possible.

Endowment Fund and Voluntary Trust Fund

The Finance Committee strongly encouraged members of the Authority to make voluntary contributions to the Endowment Fund and the Voluntary Trust Fund.

As at 12 July 2012, the balance of the Endowment Fund was $3,387,038, including accrued interest of $2,357 intended to be utilized to support the participation of scientists from developing countries in approved programmes. The Committee expressed its gratitude to three governments for their contributions to the Fund. Mexico contributed $2,500 on 7 September 2011, Japan’s contribution of $100,000 was made on 15 September 2011, and the United Kingdom of Great Britain and Northern Ireland contributed $20,000 on 17 January 2012.

The balance of the Voluntary Trust Fund was $16,833, as at 16 July 2012. The Committee expressed its gratitude to the Government of the United Kingdom for the contribution of $20,000 made on 7 July 2012, to the Government of China for the contribution of $20,000 made on 12 July 2012, and to Duncan Laki for the contribution of $622 made on 17 July 2012 to the Voluntary Trust Fund.

Fees for processing applications

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The Committee took note of the report of the Secretary-General (ISBA/18/FC/5) on the status of fees for the processing of applications for approval of plans of work for exploration and related matters paid by applicants for contracts in 2011. It also noted that the current level of fees for polymetallic nodules does not cover the actual cost incurred in processing such applications. Furthermore, the Committee recalled that at the present time, the costs of the administration and supervision of contracts between the Authority and the contractor are borne entirely by the general administrative fund.

The Committee requested the Secretary-General to report, at its next meeting in 2013, on possible measures to ensure that the cost of administration and supervision of contracts between the Authority and the contractors was not borne by member States. It said it had started a study to better describe and account for, in the budgetary document, the use of fees for processing of applications for approval of plans of work for exploration.

The Committee recommended that the Council and the Assembly of the Authority authorized the Secretary-General to apply such miscellaneous income to the extent necessary to meet expenditures incurred in the financial period 2011-2012, as a result of processing plans of work for exploration. The Secretary-General should also be authorized to revise the current level of fees paid for processing of applications for approval of plans of work for exploration for polymetallic nodules (regulation 19 (2) of the regulations on prospecting and exploration for polymetallic nodules in the Area) to $500,000 to ensure that the fees reflect the actual costs incurred in processing such applications.

Discussion on the Report

Brazil expressed concern that two key elements dealing with status fees for processing of applications for approval of plans of work for exploration and related matters were not included in the committee’s list of recommendations to the Council. His delegation considered paragraphs 13 and 15, as addressing critical issues for the Authority.

Paragraph 13 states:

13. The Committee took note of the report of the Secretary-General (ISBA/18/FC/5) on the status of fees for the processing of applications for approval of plans of work for exploration and related matters paid by applicants for contracts in 2011. It also noted that the current level of fees for polymetallic nodules does not cover the actual cost incurred in processing such applications. Furthermore, the Committee recalled that at the present
time, the costs of the administration and supervision of contracts between the Authority and the contractor are borne entirely by the general administrative fund.

Paragraph 15 states:

15. The Committee requested the Secretary-General to report, at its next meeting in 2013, possible measures to ensure that the cost of administration and supervision of contracts between the Authority and the contractors was not borne by member States. Brazil called for an immediate debate by Council on their inclusion among the recommendations.

Senegal considered the report “excellent in quality” but wondered if there were enough resources to fund the Authority’s increased workload. The Secretary General again assured members that the Committee had allocated sufficient funds to take care of the Authority’s projects.

South Africa welcomed the report, saying it enabled delegates to make “informed decisions.”

The discussion on the Finance Commission Report continues in the Council this afternoon.

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