COUNCIL CONSIDERS REPORTS ON STATUS OF NATIONAL MINING LEGISLATION, APPLICATION FEES, AND REVIEW OF CONTRACTS FOR EXPLORATION; RECOMMENDS SECRETARY-GENERAL FOR RE-ELECTION

The Council of the International Seabed Authority, meeting in Kingston this morning, considered a report prepared by the Secretary-General on the status of national legislation relating to the sponsorship, and conduct of activities in the Area. The Council had requested the report at last year’s session on the basis of the Advisory Opinion, issued by the Seabed Disputes Tribunal on 1 February 2011, which was discussed at the seventeenth session.

The Council, in its second meeting since the eighteenth session of the Authority began Monday, 16 July, discussed the periodic review of implementation of plans of work for exploration for polymetallic nodules, and the status of fees paid for processing of applications for approval of plans of work. It decided to suspend deliberations on those two agenda items pending recommendations from the Authority’s expert bodies – the Legal and Technical Commission and the Finance Committee.

Also this morning, Nii Allottey Oduntun (Ghana) received a unanimous recommendation from the Council, as the sole candidate, for re-election to the post of Secretary-General of the Authority for another four years. The recommendation goes next to the Assembly for consideration and a decision.

The Council elected China, representing the Asia Group, and The Netherlands, from Western European and Other States group, to the remaining two positions for vice-president, joining Brazil (Latin American and Caribbean States) and the Czech Republic (Eastern European Group) who were elected at its first meeting.
Report on national legislation

The report by the Secretariat on laws, regulations and administrative measures adopted by sponsoring States and other members of the International Seabed Authority with respect to the activities in the Area, is contained in ISBA/18/C/8, and ISBA/18/C/8/Add.1. The report is in response to a request by the Council to the Secretary-General, on a recommendation from the Legal and Technical Commission at the seventeenth session, that the Authority be charged with preparing model legislation to assist sponsoring States in fulfilling their obligations with respect to ensuring compliance on the part of their contractors with the provisions of the Convention.

Article 153, paragraph 4, of the 1982 United Nations Convention on the Law of the Sea states that the obligation of the sponsoring States, in accordance with article 139 of the Convention, entails “taking all measures necessary to ensure” compliance by the sponsored contractor.

The Council further invited sponsoring States and other members of the Authority, as appropriate, to provide information on, or texts of, relevant national laws, regulations and administrative measures to the secretariat of the Authority (ISBA/17/C/20, para. 3).

The Secretariat reported that the following members of the Authority had provided the secretariat with information on, or texts of, their respective legislation: China, Cook Islands, the Czech Republic, Germany, Mexico, and the United Kingdom. Relevant information was also provided by the secretariat of the Pacific Community Applied Geoscience and Technology Division (SOPAC).

China reported it now has specific laws and regulations on marine activities within areas under its national jurisdiction. These laws were developed from research undertaken since 2011 by China Ocean Mineral Resources Research and Development Association (COMRA), which was established to manage and supervise China’s activities on exploration and development of resources in the international seabed area.

Cook Islands’ Seabed Minerals Act, passed by the Parliament in 2009, is yet to come into force. The key objective of the Act is to establish a legal framework for the efficient management of the seabed minerals of the Cook Islands Exclusive Economic Zone. The Cook Islands also have a Model Seabed Minerals Agreement.

The Czech Republic has had legislation since 2000 governing the rights and obligations of individuals and entities engaged in prospecting, exploration for and exploitation of mineral resources from the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.

Germany’s legislation ensures compliance with the obligations of Germany deriving from part XI of the Convention, its annex III, the 1994 Implementation Agreement, and the rules and regulations issued by the Authority. The Act requires that any person wishing to prospect in the Area must first be registered by the Secretary-General of the Authority and provides for fines for failing to register or engaging in activities in the Area without a contract.
Mexico reported that to date, no laws, norms or specific administrative methods had been developed relating to activities in the Area. Environmental legislation and administrative measures relating to mining activities in maritime areas under Mexico’s national jurisdiction cover four main areas, i.e., (a) environmental impact assessments; (b) monitoring; (c) the establishment of natural protected areas; and (d) the identification of vulnerable deep sea ecosystems.

Relevant legislation in the United Kingdom includes provisions addressing the issue of marine preservation, terms, conditions, content, duration and scope of exploration or exploitation licences, and procedures for the revocation of licences, and procedures for surveillance of a licensee’s operations by state-appointed inspectors.

Nauru and Tonga have both commenced collaborative work with the Applied Geoscience and Technology Division (SOPAC) of the secretariat of the Pacific Community (SPC) on its deep-sea minerals project funded by the European Union aimed at strengthening the system of governance and capacity of countries in the management of deep-sea minerals through the development and implementation of sound and regionally integrated legal frameworks. Through the project, both countries have been provided with drafting instructions for a Bill to regulate deep-sea mining activities under its control. Tonga expected that draft legislation will be formulated by June 2012.

Guyana and Zambia have no national laws or regulations in relation to the Area. In their reports to the secretariat, both countries recognized the importance of such legislation and Guyana expressed interest in participating in the process of preparing the model legislation as well as accessing any assistance to be offered by the Authority in the drafting of its own national legislation.

**Discussion on the report**

Argentina, Brazil, China, France, India, Jamaica, Japan, Mexico, The Netherlands, Senegal, and the United Kingdom contributed to the debate.

The Netherlands said it would be useful to have information on the actual laws in place in various member countries and suggested that a database containing the text of national legislation on the deep seabed be developed on the Authority’s website so as to ensure access by all members. The representative recalled the difficulties highlighted in previous discussions with regard to developing model legislation for countries with different legal traditions. He suggested an approach used by the United Nations Committee on Peaceful Uses of Outer Space (COPUOS) whereby elements to be contained in legislation were identified and options recommended made for developing the laws.

France, Jamaica and Senegal were among those members endorsing the approach suggested by The Netherlands of highlighting legislative areas to assist states in developing their own laws, while stressing that these laws should be no less binding than the relevant provisions of the Convention.
Several delegations, including Brazil, China and the United Kingdom, agreed that a database of legislation would be beneficial, however, some members warned against burdening the Secretariat with the technical task of translating these laws into the official languages of the Authority.

Following the discussion, the Legal Counsel observed that the compiling of national legislation was a valuable task to have undertaken and that the Secretariat would continue efforts to build its database of information as quickly as resources would allow.

**Periodic Review**

The report on periodic review of the implementation of the plans of work for exploration for polymetallic nodules in the Area (ISBA/18/C/9) included an introduction, the review process, considerations for the future work of the contractors, and recommendations.

Regulation 28 of the Polymetallic Nodules Regulation, allows contractors to adjust their programmes of activities at five-year intervals through a periodic review process undertaken jointly between the Secretary-General and each contractor prior to the expiration of each five-year period from the date on which the contract enters into force. A review of the implementation of the plan of work for exploration must include a programme of activities for the following five-year period, including a revised schedule of anticipated yearly expenditures, making such adjustments to its previous programme of activities as are necessary. The revised programme of activities is then incorporated into the contract.

The Legal and Technical Commission expressed its concern over the lack of raw data associated with resource assessment and environment baseline studies. It noted that a lack of such data was an impediment to the assessment of activities in the Area by the Authority, such as the creation of a regional environmental management plan.

The Authority sought to correct these shortcomings through meetings with contractors between November 2011, and May 2012. Three of those meetings - with China Ocean Mineral resources Research and Development Association, Deep Ocean Mineral Resources Development Co. Ltd. and the Government of the Republic of Korea - were held during official visits with those contractors. Similar discussions with the Federal Institute for Geosciences and Natural Resources of Germany and the Interocianmetal Joint Organization, took place at the Authority’s headquarters in Kingston, Jamaica.

With regard to Section III of the report: Considerations for the future work of the contractors, the Secretary-General pointed out that discussions were still ongoing in the Legal and Technical Commission on these matters.

**Discussion on the report**

Brazil and Argentina suggested that further deliberation on the matter should await the report of the Commission. However, a number of delegations sought clarification on some issues.
The Secretary-General reiterated plans to organize four workshops focusing on gaining better knowledge on the taxonomy in the deep seabed. Contractors would be invited to provide images and samples of fauna found during their activities and taxonomists would be attending the workshop to assist in identifying and categorizing the fauna with a view to standardization of taxonomy data. Without standardization, he explained, the data received could not be merged into a clear picture, and the Authority would be left in the position of comparing “apples with oranges.” The information emerging from these workshops would be available to all marine research organizations and would be instrumental in formulating the environmental management plan for the Clarion-Clipperton Zone.

In response to the suggestion from Australia that the issue of taxonomy was a separate question entirely from the data relevant to any required changes to the environmental management plan, the Secretary-General said that experts were of the opinion that the element to be impacted most by activities in the seabed would be fauna. Therefore, if the goal was to frame a plan aimed at protecting the environment, he noted, it was essential to “understand more about what we are protecting.”

While the Secretary-General acknowledged improvement in contractors’ annual reports, with regard to plan of work applications, the member from Mexico called for more environmental and financial data.

Status of fees for processing of applications

According to the report of the Secretary-General (ISBA/18/C/3), in 2011 four applications for approval of plans of work for exploration were considered by the International Seabed Authority. These applications were made by Nauru Ocean Resources Inc. (NORI), Tonga Offshore Minerals Ltd. (TOML), China Ocean Research and Development Association (COMRA) and the Russian Federation. All four applications were approved.

NORI and TOML each paid a fixed fee of US$ 250,000 for the processing of their applications as required under regulation 19 of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area. This fee has remained unchanged since resolution II was adopted by the third United Nations Conference on the Law of the Sea in 1982, although the Convention does provide for the fee amount to be reviewed from time to time by the Council in order to ensure that it covers the administrative costs incurred by the Authority in processing the application (Article 13, paragraph 2, of annex III).

The Sulphides Regulations offer two fee payment options: a fixed fee of $500,000 (regulation 21 (1) (a)) or an initial fixed fee of $50,000 relating to the processing cost (regulation 21 (1) (b)) followed by a variable annual fee payable over 15 years calculated on the basis set out in regulation 21 (2). The Russian Federation elected to pay the fixed fee of $500,000, while COMRA opted for the variable fee option.

The processing costs of three of the four applications submitted last year have exceeded the fees paid by the applicants. The total shortfall is estimated at $546,561. The Secretary-General noted that the regulations do not provide for a supplementary fee to be levied on the contractors to make up the shortfall. He emphasised that a significant amount of the workload of
the secretariat and the Legal and Technical Commission is directly attributable to the contracts. This includes reviewing the annual reports of contractors (an ongoing process lasting 15 years for each contract); as well as preparing summaries, analysing raw data submitted by the contractors and providing meeting services for the Commission. The Secretary-General and the secretariat, also have a general responsibility to monitor the implementation of contracts for exploration, which includes holding meetings and consultations with contractors as necessary for this purpose.

All these activities have an impact upon the budget of the Authority and neither the Nodules Regulations nor the Sulphides Regulations provide adequately for the ongoing costs of contract administration and management. The Council, the Secretary-General said, would have to consider how to move forward: whether these costs would be met on a “user pays” basis, which would involve increasing contractor fees, or whether the members would have to bear the cost through increased contributions. He indicated that the matter had been brought to the Finance Committee which would make a recommendation in its report to Council.

The report recommends that the fixed fee of $250,000, specified in the Nodules Regulations, be reviewed to make it consistent, at the least, with the amount of $500,000 specified in the Sulphides Regulations. The report also recommends that the initial fee under the variable fee option be increased to a level which is sufficient to meet the administrative costs of processing the application for approval of a plan of work, while at the same time remaining an attractive option for potential applicants.

After hearing the Secretary-General’s report, Brazil suggested that the discussion of this item be deferred until the Council could examine the recommendation of the Finance Committee on this matter. Argentina, Cameroon and Germany agreed that this was the best way forward.

When the Council resumes this afternoon, it expects to take up agenda item 8: Continued consideration, with a view to adoption, of the draft regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area

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