SEABED COUNCIL RESUMES CONSIDERATION OF DRAFT REGULATIONS ON COBALT-RICH CRUSTS

The Council of the International Seabed Authority resumed its work on the Draft regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area as it continued meeting in Kingston this evening.

The 36-member body considered outstanding issues related to regulations 12 - Total area covered by the application; 21 – Fee for application, and 27 – Size of area and relinquishment. It agreed to resume discussions tomorrow when delegations would have had time to examine all views concerning regulations 12 and 27, and consider new wording to be put forward by working groups on regulation 21. All three regulations are linked and were the focus of discussions by the Council at the previous session of the Authority.

Regulation 27 (With China’s amendments in bold)
Size of Area and Relinquishment

2. By the end of the eighth year from the date of the contract, the contractor shall have relinquished at least one-third of the original area allocated to it;

3. By the end of the tenth year from the date of the contract, the contract, the contractor shall have relinquished at least two-thirds of the original area allocated to it; or

3 (bis). Notwithstanding the provisions in paragraph 2 and 3 above, a contractor shall not be required to relinquish any additional part of such area when the remaining area allocated to it after relinquishment does not exceed 1,000 square kilometres.
Discussion

France wanted the first relinquishment to take place after the fifth year as in the original regulations, rather than after the eighth as proposed by China. The Russian Federation felt that the Chinese proposal would provide motivation for the contractors whose work would ultimately be for the benefit of all.

India and Bangladesh took issue with paragraph 3 of Regulation 27 in China’s proposal, arguing that if one-third of the area were relinquished after year eight and two-thirds after year ten, it implied that the contractor would be left with no exploration area for the rest of the contract time. China pointed out that it had used identical wording to the original text in the draft regulations (ISBS/18/C/WP.1), substituting one-third for 50 per cent and two-thirds for 75 per cent, and explained that after the second relinquishment, the contractor would have given up only “two-thirds of the original area allocated to it.” Cote d’Ivoire proposed that the wording be changed to clarify this point and Brazil agreed to meet with that delegation and others to come up with new text.

China also proposed the inclusion of a paragraph 3bis which mirrored language in the sulphides regulations. However, Brazil expressed the view that this addition was made redundant by paragraphs 2 and 3.

Regulation 12 (With China’s amendments in bold)

Total area covered by the application

2. The area covered by each application for approval of a plan of work for exploration for cobalt crusts shall be comprised of not more than 150 cobalt crust blocks which shall be arranged by the applicant in clusters, as set out in paragraph 3 below.

3. Five contiguous cobalt blocks form a cluster of cobalt crust blocks. Two such blocks that touch at any point shall be considered to be contiguous. Clusters of cobalt crust blocks need not be contiguous. Clusters of cobalt crust blocks need not be contiguous but shall be proximate and located entirely within a rectangular area not exceeding 300,000 square kilometres in size and where the longest side does not exceed 1,000 kilometres in length.

4. Notwithstanding the provisions in paragraph 2 above, where an applicant has elected to contribute a reserved area to carry out activities pursuant to article 9 of annex III to the Convention, in accordance with regulation 17, the total area covered by an application shall not exceed 300 cobalt crusts blocks. Such blocks shall be arranged in two groups of equal estimated commercial value and each such group of cobalt crust blocks shall be arranged by the applicant in clusters, as set out in paragraph 3 above.
Discussion

China’s proposal also includes a change to the shape of the exploration area allocated to contractors. Since cobalt-rich crusts are distributed along seamounts in the shape of a chain, it said, a rectangular area would be more economically viable than a square.

Brazil said that it could not agree to a change to regulation 12 without consultations with its government. The Republic of Korea suggested that all efforts should be made to minimize the possibility of monopolization, and felt that the original designation of areas of 550 kilometres by 550 kilometres was appropriate.

The Council President noted that since the only point of contention was the issue of the shape of the allocated exploration area, this matter could be taken up again tomorrow after delegations had had time to examine all views. The Council then moved on to the discussion of regulation 21 concerning application fees for contractors.

Regulation 21
Fee for applications

1. The fee for processing a plan of work for exploration for cobalt crusts shall be: (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; or (b) At the election of the applicant, a fixed fee of 50,000 United States dollars or its equivalent in a freely convertible currency, payable by the applicant at the time of submitting an application, and an annual fee calculated as set out in paragraph 2.

2. The annual fee shall be calculated as follows: (a) 25 United States dollars multiplied by the area factor from the date of the first anniversary of the contract; (b) 50 United States dollars multiplied by the area factor from the date of the first relinquishment in accordance with regulation 27 (2); and (c) 100 United States dollars multiplied by the area factor from the date of the second relinquishment in accordance with regulation 27 (3).

3. The “area factor” means the number of square kilometres comprised in the exploration area at the date upon which the periodic payment in question becomes due.

4. Upon notification by the Secretary-General that the amount of the fee is insufficient to cover the administrative costs incurred by the Authority in processing an application, the fee set out in paragraph 1 (a) of this regulation shall be reviewed by the Council.

5. If the administrative costs incurred by the Authority in processing an application are less than the fixed amount, the Authority shall refund the difference to the applicant.
Discussion

Brazil opened the exchange by proposing a new rate of $750,000 for application fees, arguing that it would prevent contractors from incurring losses in the event of overruns. He said the figure is sufficient to recoup losses, calling it a “precautionary financial” move. Argentina and Senegal said the Brazil proposal was reasonable, agreeing that the Authority should also not absorb any additional costs of private contractors. While concurring that the Authority should not be responsible for any shortfall, Canada maintained that that $500,000 remained a suitable figure for application fees, but suggested that a mechanism be created to address the ongoing costs of managing the contracts.

China requested a fee chart which had been prepared by the secretariat for the seventeenth session, saying it would be an appropriate guide for contractors. The chart was subsequently distributed to delegates.

The Netherlands challenged the validity of the system of paying in installments. In response the Legal Counsel explained that this was a common practice in the mining sector which encouraged contractors to work expeditiously.

The President suggested that the Council wait for the input of the Finance Committee to continue examining this matter but Brazil, supported by Cameroon and Senegal, insisted that it was the task of the Council to establish a “budgetary philosophy”, while the figures for fees could be recommended by the Finance Committee.

At the end of the meeting it was agreed that The Netherlands would redraft regulation 21 and in tandem with regulation 30 which deals with the cost-incurring task of reviewing the implementation of plans of work.

The Council will meet tomorrow morning to examine proposals on the outstanding issues of the draft regulations.

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