SEABED COUNCIL CLOSE TO CLEARING OUTSTANDING ISSUES IN DRAFT CRUSTS REGULATIONS

Consensus was reached on all but two remaining issues relating to the draft regulations on prospecting and exploration for cobalt-rich crusts, as the Council of the International Seabed Authority, ended its first week of meetings for the eighteenth session in Kingston this afternoon.

The Council agreed to the size of a cluster of cobalt crust blocks in regulation 12, and accepted a verbal redraft of an earlier proposal to amend regulation 21 dealing with contractor’s application fees. It also agreed on the size of allotted area to be relinquished by a contractor during the course of an exploration contract.

The discussion on regulation 21 began with the presentation of a proposal from Brazil which was a redraft of the previous wording prepared by The Netherlands.

The proposal reads as follows:

**Regulation 21**

**Fee for applications**

1. The fee for processing an application for approval of a plan for exploration of cobalt crusts shall be a fixed amount of US$ 500,000.00 or its equivalent in a freely convertible currency, to be paid in full at the time of the submission of an application.

2. If the administrative costs incurred by the Authority in processing an application are less than the fixed amount indicated in paragraph 1 above, the Authority shall refund the difference to the applicant. If the administrative costs incurred by the Authority in processing an application are more than the fixed amount indicated in paragraph 1 above, the applicant shall pay the difference to the Authority.
3. The Secretary-General shall determine the amount of such differences, as indicated in paragraph 2 above, and notify the applicant of its amount. The notification shall include a statement of the expenditure incurred by the Authority. The amount due shall be paid by the applicant or reimbursed by the Authority at the time of the signing of the Contract referred to in Regulation 25 below.

4. The fixed amount referred to in paragraph 1 above shall be reviewed on a regular basis by the Council in order to ensure that it covers the expected administrative costs of processing applications and to avoid the need for applicants to pay additional amounts in accordance with paragraph 2 above.

The proposal drew support from Cameroon, Jamaica and Mexico. The United Kingdom suggested that paragraph 2 should mention a maximum amount that the contractor should have to pay in excess of the fee amount. It was therefore agreed that the applicant would pay the difference to the Authority, “provided that any additional amount to be paid by the applicant shall not exceed 10% of the fixed fee referred to in paragraph 1.”

The Netherlands thought that 10% might be too low a figure to cover unforeseen costs. However, several delegations opposed that view, and the Russian Federation pointed out that the significant shortfalls experienced in processing the applications of Nauru and Tonga was as a result of the lower fee of $250,000 being applied to applications for polymetallic nodules exploration.

Referring to paragraph 3, the Secretary-General noted that payments could not be made at the time of signing the contract as certain calculations would have to be made. The wording was amended to allow for a three-month period for making payments.

In response to concerns expressed by Nigeria and France that the proposal made no mention of the Finance Committee, The Netherlands reminded the Council that the role of the Finance Committee was defined in the 1994 Part XI Agreement and did not need to be restated.

China expressed its frustration with the lack of information and likened the Secretariat’s approach to “an elephant going through a small window.” Brazil said the situation was “unacceptable” and wondered if senior members of the Finance Committee, who were present, could shed any light on the latest developments regarding costs.

The Chairman of the Finance Committee took the floor and explained that recommendations were made to Council to increase fees for exploration for nodules from $250,000 to $500,000 but that there were no discussions on the crusts regulations.

The Council President said that once a written version of the amended proposal became available on Monday consensus could be reached on regulation 21. He then opened the floor for comments on regulation 30 - Periodic review of the implementation of the plan of work for exploration.

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Discussion on outstanding Regulations

Brazil maintained that there was a link between the costs referred to in regulations 21 and 30. At this time, members were bearing the costs of the periodic review of plans of work. He suggested an annual fee of $100,000 to be levied on contractors to cover these costs. Australia and France agreed that members should not pay for the reviews but need more detailed information about the actual costs incurred by the review process.

The Russian Federation also maintained that no decision could be made without more clarity, and agreed with a statement made by China that the issue of covering costs needed to be approached in a comprehensive fashion as it affected finances, on a whole, and therefore the budget of the Authority. He quoted Rule 3.7 of the Financial Regulations of the Authority: “Decisions by the Assembly and the Council on the administrative budget of the Authority shall take into account the recommendations of the Finance Committee.”

Jamaica expressed the view that the Council had before it the task of establishing a general principle based on the realities being experienced. The Secretary-General’s report indicated that the Authority was facing fiscal constraints and there were limited funds in the budget for expenses that the contractor should assume. Notwithstanding the overseeing role of the Finance Committee, the representative said the Council should not “derogate from our responsibility to indicate that as a general principle contractors should contribute” to certain costs.

The President suggested that the Council move on to discuss regulation 27 in an effort to reach consensus. However, Brazil pointed out that the only remaining point of disagreement was the issue of the shape of the area covered by each application for exploration which is dealt with in regulation 12. In the original regulation, the areas would be “located within a geographical area measuring no more than 550 kilometres by 550 kilometres.” However, China had proposed a more rectangular area of 300 kilometres by 1000 kilometres. The Russian Federation had suggested a flexible approach that would allow for either configuration as long as the area was a rectangle.

In this afternoon’s meeting, China stated it was prepared to accept the original measurements in regulation 12 on condition that a paragraph be included in regulation 27 dealing with relinquishment. The paragraph reads as follows:

1(bis) Notwithstanding the provisions in paragraph 1 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.

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Republic of Korea commended China on its spirit of compromise, and the President stated that the only outstanding issue was regulation 30. Brazil however raised the issue of overlapping claims which had been the subject of lengthy debates during consideration of the sulphides regulations in 2010. Canada noted that the principle of “first come, first served” had been adhered to in keeping with the Convention. The Russian Federation, supported by China, suggested that the sulphides regulations be used as the basis for formulating any decision dealing with this issue.

The Council will meet again on the morning of Monday, 23 July when it will hear the report of the Legal and Technical Commission and consider applications for approval of plans of work for exploration for polymetallic nodules in the Area.

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