COUNCIL DEBATES PROPOSAL FOR JOINT VENTURE WITH THE ENTERPRISE

The Council of the International Seabed Authority, meeting in Kingston, this afternoon debated a proposal by a company registered in Canada for a joint venture operation with the Enterprise to develop eight of the reserved area blocks in the Clarion-Clipperton Zone. The Council concluded that it was premature to consider the proposal without the expert opinions of the Authority’s advisory bodies.


A presentation was made by Nautilus Minerals Inc., the Canadian company, as a side event prior to the meeting.

The report of the Interim Director-General of the Enterprise, the Authority’s future mining arm (document ISBA/19/C/4), contains a proposal by Nautilus Minerals Inc (Nautilus) for a joint venture operation with the Enterprise to develop eight of the reserved area blocks in the Clarion-Clipperton Zone in the Pacific. Annexed to the report is a draft Heads of Agreement setting out the terms of the joint venture.

Secretary-General’s Report on the Proposal

Commenting on the proposal, the Secretary-General, in a report (ISBA/19/C/6), recommends two alternative models for the governance of the Enterprise during the interim period. The first possible option would be the establishment of an independent unit within the Secretariat under the leadership of the Interim Director-General of the Enterprise.

An alternative, more cost-effective option, would be to authorize the Interim Director-
Council (PM) 19 July 2013

General to appoint from outside the Secretariat a special representative and such other technical and legal advisers as may be necessary who will be independent of the Secretariat, and of Nautilus, for the purposes of conducting negotiations on behalf of the Enterprise between now and 2015. The special representative would report directly to the Council through the Interim Director-General of the Enterprise.

The Secretary-General recommends that the Council take a decision on the matter during the nineteenth session in order not to unnecessarily block access by other qualified applicants to the reserved areas covered by the Nautilus proposal.

The Interim Director-General’s report also states that Nautilus will bear the total cost of the work programme estimated at $550,000. The Heads of Agreement includes a provision whereby the company shall provide an annual report on its expenditure. In addition, Nautilus agrees to underwrite the costs incurred by the Enterprise (or the secretariat performing the functions of the Enterprise) through an annual fee to be paid to and administered by the Authority for this purpose.

The report emphasized that the Council is not being asked to approve a joint venture operation at this time, but rather, to approve the heads of agreement. Once this is done, the Council will then issue a directive for the independent functioning of the Enterprise.

**Debate on the proposal**

Fiji maintained that it was very premature for the Council, as the policy making organ of the Authority, to be expected to consider a proposal put forward by a commercial entity when neither the Legal and Technical Commission (LTC) or the Finance Committee or the Secretariat had given the Council the benefit of their formal advice.

If Council members were in agreement that the proposal was premature, the representative said, the way forward would be for the Secretariat to exercise due diligence in the form of a desk study Secretariat on the implications of launching the Enterprise, including the costs involved for the Authority and member States. This desk study should then be examined by the Finance Committee and the Legal and Technical Commission and the Council informed of their opinions.

Fiji pointed out that only then would the Council be in a position to make a decision on whether or not to launch the Enterprise, and the proper steps to take, as laid out in the Convention, for appointing the Board of Governors and Director-General of the Enterprise. Joint venture proposals from commercial entities could then be negotiated “on the basis of a level playing field for all.” The representative stressed that until a decision was taken by the Council to launch the Enterprise, it should be “business as usual” at the Authority.

Several delegations, including France, Germany, India, Japan, Myanmar, Philippines, Republic of Korea, Russian Federation, South Africa and Uganda endorsed Fiji’s position with regard to seeking guidance from the Authority’s expert bodies before considering the Nautilus proposal.

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Brazil added that the proposal represented a “trigger” event and as such serious thought should be given to the structural and conceptual issues at hand as “things are starting to move very fast”. Mexico expressed the concern that by accepting funding from a joint venture partner, the Enterprise might not be able to fully exercise its mandate.

Cameroon, advocating a gradual approach, pointed out that the area targeted by the Nautilus proposal was in fact the reserved zone earmarked for the Enterprise for the participation of developing countries as the common heritage of mankind. Nigeria said that his country would “feel disenfranchised as a developing nation” if the Council made a rushed decision in this important issue.

The United Kingdom drew attention to the fact that Nautilus was seeking to take up eight areas, not including another area in which it already had an interest through its association with Tonga Ocean Minerals Limited. He questioned the wisdom of the Enterprise putting itself in the hands of one organization over so many areas. Furthermore, the representative said it would be ill-timed at this stage of development of the Authority’s work, to effectively “freeze the eight areas” for three years while a proposal was finalized. With regard to the Nautilus offer of $100,000 per year to cover costs, the United Kingdom pointed out that the Authority could potentially collect $4 million in application fees for the eight areas in question.

Trinidad and Tobago, speaking from the perspective of a developing country, welcomed the move to operationalize the Enterprise pursuant to Part XI of the Convention and the 1994 Agreement. The representative echoed the views expressed by other members, and said he wished to “strike a word of caution” with regard to the methodology to be utilized, and bemoaned the absence of the expert input of the Legal and Technical Commission.

The Canadian representative declared that his delegation remained puzzled by the response to the Nautilus proposal. He understood the need to treat applicants in an equitable manner and to ensure that the rules of the Authority were followed, but maintained that the document from Nautilus was not an application for a joint venture operation but rather a proposal that would be negotiated over a three year period. At the end of the three years the Council would still have the power to decide the outcome.

As a developing nation, Tonga said it stood to gain from the principle of setting aside reserved areas for the benefit of small developing States. The representative said the Enterprise was the mechanism through which the Authority could generate those benefits. He expressed concern that the Authority would wait another 20 years to debate whether the Enterprise would be ready to begin functioning. If the Enterprise was not given the opportunity to fulfill its mandate of ensuring the resources of the deep seabed were preserved as the common heritage of mankind, he said, it would serve no purpose.

China, like the Netherlands, wanted an explanation of the trigger events that would require the Council to take up the issue of how the Enterprise would function independently of the secretariat. China questioned the legal basis on which the proposal could be dealt with, as well as the implications for the four countries that had contributed to the eight reserved area.
blocks proposed for development by the joint venture. Senegal also drew attention to the number and size of the reserved area blocks identified in the proposal for development, and suggested that the Authority give some consideration to granting smaller blocks.

Singapore’s Ambassador-at-large, Tommy Koh, said he looked forward to the Enterprise becoming a reality - with the human, technical, legal and financial resources to exist as an entity - but he agreed with Cameroon, Mexico and South Africa on the need for carefully studying a joint venture proposal. He said the study should identify, among other things, those who should be responsible for negotiating the joint venture; the steps to be taken in transitioning from the embryonic stage to the full Enterprise; the financial implication for member-states; the parties that would provide initial funding; and a road map and timeline for implementation.

The president of the Council, Tobias Pierlings (Germany), noted that more than half of the members of the Council had made presentations on the issue before the Council. He proposed a draft decision as follows:

*The Council agrees to request the Secretary-General to carry out, referring where appropriate to the Financial Committee and the Legal and Technical Commission, a further study of the proposal contained in ISBA/19/C/6 in particular on the technical and financial implications of the proposal for the Enterprise and the States parties, taking into consideration the disposition of the Convention and the 1994 Agreement.*

A number of delegations commented on the proposed draft decision, offering amendments. Among them, Fiji, spurred by Brazil’s insistence that the draft decision should reflect business as usual in the reserved area, suggested the inclusion of the following sentence at the end:

*In the interim, the procedure in regard to applications in reserved areas will remain as usual.*

The Council agreed to have a small committee, headed by the representative of the United Kingdom, revise the draft for its morning meeting on Monday, 22 July. Also on Monday’s agenda are the resumption of debate on the report of the Finance Committee and consideration of measures for the recovery of the costs relating to the administration of exploration contracts with the Authority.

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