SEABED COUNCIL COMPLETES 2013 SESSION AGENDA;
RECOMMENDS ADOPTION BY ASSEMBLY OF DRAFT DECISION ON RECOVERY OF
COSTS FOR ADMINISTERING EXPLORATION CONTRACTS

The Council of the International Seabed Authority, at its final meeting of the nineteenth session, this morning recommended the adoption by the Assembly of a draft decision to institute a fixed overhead charge of $47,000 to be payable annually by contractors to cover the administration and supervision of contracts and review of their annual reports by the Authority.

By the draft text annexed to the Council’s decision on financial and budgetary matters (ISBA/19/C.L.2/Rev.1), the Assembly would also decide to amend the standard clauses for exploration contract by the addition of sections 10.5 and 10.6 which shall apply to contracts entered into by the Authority as a result of applications made after the date of adoption of the decision.

The new clauses read as follows:

10.5 The contractor shall pay at the time of submission of the annual report an annual overhead charge of $47,000 (or such sum as may be fixed in accordance with section 10.6 hereof) to cover the Authority’s costs of the administration and supervision of this contract and of reviewing the reports submitted in accordance with section10.1 hereof.

10.6 The amount of the annual overhead charge may be revised by the Authority to reflect its costs actually and reasonably incurred.

The proposed fixed charges based on the original recommendations of the Finance Committee, dominated debate during the Council’s meetings at this session. The final version of the decision that emerged was the result of consultations by the President of the Council, Tobias Pierlings (Germany), the Council’s four vice-Presidents, the Secretary-General, the vice-Chairman of the Finance Committee and the Legal Counsel.

By other provisions of the draft text, the Assembly would request the Secretary-General, in the case of an application for approval of a plan of work submitted prior to the date of adoption of the present decision, to consult with the applicant prior to signature of the contract for exploration to incorporate the clauses set out in the annex.

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The Secretary-General would be urged to consult as soon as possible with all contractors whose contracts were entered into as a result of applications made before the date of the adoption of the present decision, to renegotiate those contracts, in accordance with section 24.2 of the standard clauses for exploration contract, in order to include the provisions set out in the annex to the present decision.

The Assembly would decide that the Council, upon the recommendations of the Finance Committee, shall review the amount of the overhead charge every two years to ensure that it continues to reflect the costs actually and reasonably incurred by the Authority, and may in particular consider, in due course, whether to substitute a variable sum for each contract which is dependent upon the level of administrative costs actually and reasonably incurred by the Authority in relation to that contract.

Subject to the decision, such expenditures would be treated as actual and direct exploration expenditures as referred to in Annex 4, section 10.2 (c) of the standard clauses for exploration contract. Overhead charges would be credited to the general administrative fund of the Authority as miscellaneous income. The final paragraph of the text contains a request that the Secretary-General report annually on the implementation of all aspects of the decision.

Prior to the discussion, the Secretary-General observed that it had taken a long time to get to this present position of the matter of cost recovery, and made an appeal for cooperation from the Council so that the decision could be adopted.

The representative of Australia expressed support for the decision. Other Council members, including Kenya, Namibia and Nigeria, endorsed this position. South Africa suggested that the overhead charges were part of the cost of doing business. Cameroon said while his delegation was not happy with all aspects of the draft decision, it was time to move on to consensus.

While most members stated their willingness to reach consensus, some expressed misgivings about certain aspects of the draft decision. The representative of the Russian Federation raised an issue with regard to paragraph 3 which refers to applications already submitted but not yet under contract. The representative stressed the need for all parties to be considered on equal footing with regard to consultations with the Authority. He requested that this point be reflected in the Council President’s report. Japan’s representative supported that view.

The representative of the United Kingdom said his delegation remained “uneasy” about paragraph 3. Applicants had paid a fee of $500,000 on the basis of the existing regulations; they might have been aware of the possibility of a fee but would not have known the amount or the frequency. The United Kingdom also made the point that contractors who did not pay the fee would have a commercial advantage over those who did. Echoing the concern over additional costs to contractors, France indicated that the newly imposed costs would, in effect, double the cost of the contract.

The Secretary-General gave assurances that negotiations would be in good faith with the objective of ensuring a level playing field for all the Authority’s contractors.

The representative of Trinidad and Tobago expressed disappointment that certain aspects of the decision were contrary to that adopted by the Council last year (ISBA/18/C/29) and were inconsistent with article 140 paragraph 2 of the 1982 United Nations Convention on the Law of the Sea relating to the equitable sharing of financial and other economic benefits derived from activities in the Area. Brazil and Mexico shared this view, citing other provisions in the Convention that should be taken into account in the application of the decision.

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Argentina stated that earlier in the session, the Finance Committee had presented a draft decision that was acceptable and in full accordance with the Convention and the Agreement. The representative expressed concern that the redrafted version now under consideration might give rise to an erosion of the potential resources that were intended for the benefit of mankind. Contractors should be required to bear the administrative costs associated with their contracts as was decided at last year’s session.

Spain spoke of the need for the Authority to identify new sources of income apart from the assessed contributions of members. It was therefore urgent that a cost recovery system be implemented. The representative felt that the draft decision gave cause for concern that, in the long term, the activities of potentially 23 or more contractors might be subsidized by the contributions of member States.

The Republic of Korea said it still had reservations on whether the decision was the best solution but it was ready to join the consensus. Noting the inclusion of China’s proposal on the treatment of overhead charges by contractors, India said members should not have to bear the cost of administering contracts.

In other matters, the representative of Brazil noted that some documents mentioned in the report of the Finance Committee were not issued to members of the Council. Endorsing that observation Argentina said all documents that are not confidential should be made available to the Council.

Cook Islands (Observer) said his country had initiated a national plan to fully engage with the International Seabed Authority. Among the initiatives was the establishment of a Seabed Mineral Authority and the promotion of the Islands’ vast mineral resources. The representative said that instead of the "small island State" projection, Cook Islands was seeking to be correctly classified as a "Large Ocean State" with a vast Exclusive Economic Zone in the South Pacific Ocean of approximately 2.4 million square kilometers.

Wrapping up the business of the Council for the nineteenth session, its President praised the delegations on completing the complex agenda items. Declaring that “what we have achieved we have done so with joined hands”, Mr. Pierlings said the significance of the work completed was that it was done to preserve the common heritage of mankind.

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