COUNCIL DISCUSSES REPORTS ON PROSPECTING AND CONTRACTS FOR EXPLORATION OF MINERALS, AND NATIONAL LEGISLATION ON ACTIVITIES IN THE SEABED AREA

The Council of the International Seabed Authority, meeting in Kingston this afternoon, took note of two reports of the Secretary-General at its second meeting of this historic 20th Session in Kingston this afternoon. One report addresses the status of prospecting and contract for exploration for three types of mineral resources in the seabed Area, and the other outlines laws, regulations, and administrative measures adopted by sponsoring States and other members of the Authority with respect to activity in the Area.

In the first report, Secretary-General Nii Allotey Odunton (Ghana) provided information on the status of prospecting and of contracts for exploration for polymetallic nodules, polymetallic sulphides and cobalt-rich ferromanganese crusts in the deep seabed Area (ISBA/20/C/12 and ISBA/20/C/12/Add.1). It included information on the status of the periodic review of the implementation of the exploration contracts for polymetallic nodules between the International Seabed Authority and the Government of India.

Status of prospecting

The report stated that on September 6, 2011, the Federal Institute for Geosciences and Natural Resources of Germany (BGR) had expressed its intention to engage in prospecting for polymetallic sulphides in the area of the Southern Central Indian Ridge and the Northern Southeast Indian Ridge. The first annual report from BGR was received on 23 December 2013 and submitted to the Legal and Technical Commission in February, 2014. The second, submitted on 22 May 2014, had been placed before the Commission at its July session.

Status of exploration contracts

The Secretary-General stated that 17 contracts for exploration were in force. This includes 12 contracts for exploration for polymetallic nodules, three for exploration for polymetallic sulphides and two for exploration for cobalt crusts. A complete list of contracts, including details of the contractor and date of entry into force of each contract, is provided in annex 1 to the report.

According to the report, since the nineteenth session, two plans of work for exploration for cobalt-rich ferromanganese crusts that had been approved by the Council in July 2013 (see ISBA/19/C/13

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and ISBA/19/C/15) were prepared in the form of contracts. On 27 January 2014, a contract with Japan Oil, Gas and Metals National Corporation (JOGMEC) was concluded in Tokyo. The contract with the China Ocean Mineral Resources Research and Development Association (COMRA) was signed in Beijing on 29 April 2014.

Seven more applications are under consideration by the Legal and Technical Commission, and if all are approved by the Council during its current session, the number of exploration contracts will total 26.

**Periodic review of the implementation of the plan of work for exploration by the Government of India**

The report states that the five-yearly review process regarding the contract for exploration for polymetallic nodules with the Government of India was formally concluded by exchange of letters dated 6 March 2014.

**Status of consultations regarding the implementation of the Assembly decision on overhead charges**

Part of the report highlights the application of the decision adopted by the Assembly on 25 July 2013 (ISBA/19/A/12) which established an annual overhead charge of $47,000 to cover the cost of administration and supervision of contracts with the Authority. The Secretary-General explained that for those contractors who signed contracts after the date of the decision, the two amended standard clauses of the contract relating to the annual charge (Sections 10.5 and 10.6 of Annex 4) were automatically included, and payment was to be made by 31 March of each year.

With regard to the 14 contractors who had signed before the 25 July 2013, the Secretary-General said he had been instructed to engage in discussions with them to determine when payment would be made. So far, he had contacted five contractors: Japan Oil Gas and Metals National Corporation (JOGMEC), China Ocean Mineral Resources Research and Development Association (COMRA), the Government of the Republic of Korea, Marawa Research and Exploration Ltd, and l’Institut français de recherche pour l’exploitation de la mer (IFREMER). While JOGMEC, COMRA and the Government of Korea had agreed to incorporate the clauses into their contracts, negotiations were continuing with IFREMER and Marawa Research and Exploration Ltd.

**Discussion on the Report**

Deliberation on the report included comments and questions from Brazil, Cuba, France, Germany, India, Mexico, Senegal, South Africa, and Trinidad & Tobago.

Leading the discussion on the status of prospecting, the representative from Germany called for more binding regulations and urged the Authority “not to abandon this instrument and allow it to become meaningless”. The representative expressed concern that the Federal Institute for Geosciences and Natural Resources of Germany (BGR) was the only applicant for prospecting for polymetallic sulphides. Brazil agreed on the need to revisit the regulations on prospecting to make it more attractive and possibly more binding.

Responding, the Secretary-General outlined the stages undertaken by prospectors in the search for deposits of minerals, including notification to the Authority of the area of interest, refinement and mapping of the proposed area, and approval from the Authority. The Secretary-General said contractors
were given exclusive rights to the area for 15 years to conduct activities resulting in important data and information that the Authority secured for the common heritage of mankind.

The Secretary-General said prospecting was an integral part of any mineral development. It was as important an activity as exploitation itself. He said prospecting was expensive but the valuable data provided an estimate on the amount of resources available for exploitation.

**Annual Overhead Charges**

Trinidad and Tobago expressed concern that some contractors had not yet accepted the amendments to their contracts and hoped that the Secretary-General could find some means of ensuring that all would adhere to the decision of the Assembly. France indicated that ‘positive consultations’ had taken place between the IFREMER and the Secretariat and that arrangements would be made to include the relevant amended clauses by the end of the year. Mexico and South Africa commended the efforts of the Secretariat in ensuring that contractors remained compliant.

Delegations voiced queries about what would happen to the information collected from contractors. South Africa asked whether the Authority had a system in place to receive that information, especially from those contractors whose contracts would expire in the next two or three years, and who had the right to apply for an extension for exploration or a plan of work for exploitation. Cuba sought clarification on whether there was a policy on dissemination of information gathered by contractors after the expiration of their contracts, and whether information was available for purchase or to be utilised for the common heritage of mankind.

In his response, the Secretary-General said that the Authority did not have sufficient data with which to build a database. Furthermore, he emphasised that information from the various contractors was not standardized and therefore difficult to merge. He pointed out that ‘tried and true’ standards existed for land-based mining, which were invaluable to financial investors in their decisions to lend. Such standards did not exist for seabed mining; however, the Secretary General suggested that discussions could begin on how to introduce these standards to the work of the Authority.

**Report on national legislation**

The second report of the Secretary-General dealt with the status of national legislation on deep seabed mining and related matters.

On 1 February 2011, the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea affirmed, at the request of the Council of the Authority, that the Convention requires a sponsoring State to adopt, within its legal system, laws and regulations and to take administrative measures to ensure compliance by the contractor with its obligations and to exempt the sponsoring State from liability.

The Council, at the Authority’s seventeenth session in 2011, adopted a decision requesting the Secretary General to update on an annual basis a report on legislation enacted by sponsoring States and other members of the Authority pertaining to activities in the Area.

Presenting his report (ISBA/ 20/C/11) to the Council this afternoon, the Secretary-General said that since the Authority’s nineteenth session in 2013, Belgium had promulgated two laws, in July and August 2013, concerning prospecting, exploration for and exploitation of the resources in the Area and subsoil beyond the limits of national jurisdiction.

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An addendum to the report (ISBA/20/C11/Add.1) stated that the United Kingdom of Great Britain and Northern Ireland had informed the Authority on 4 July 2014 in a note verbale that Royal Assent had been given on 14 May 2014 to the Deep Sea Mining Act 2014. It was to enter into force on 14 July 2014.

The following member States had also, as of 4 July 2014, provided information on or texts of relevant national legislation: Belgium, China, the Cook Islands, the Czech Republic, Fiji, France, Germany, Guyana, Japan, Mexico, Nauru, the Netherlands, New Zealand, Oman, the Republic of Korea, Tonga, the United Kingdom of Great British and Northern Ireland, and Zambia. The United States had also provided relevant information and text to the Secretariat. A submission had also been received from the South Pacific Commission on behalf of the Pacific Islands region. The information regarding national legislation is available on the Authority’s website (www.isa.org.jm/en/mcode/NatLeg).

The report indicated that the Secretariat would continue to keep the online database updated as new information was received. It was also undertaking a comparative study of the existing national legislation to analyze common elements that might be contained in them.

Annexed to the report is the complete list of legislative instruments provided by sponsoring States and other members of the Authority.

Discussion on national legislation

In the discussion following the Secretary-General’s presentation of his report, a number of delegations, including Brazil and China, welcomed the Secretariat’s commitment to undertake a comparative study of the existing national legislation. Germany expressed willingness to assist in the exercise. The Netherlands, recalling previous discussions on the drafting of model legislation to guide member States, suggested that the Secretariat could prepare a guidance document derived from general principles set out in international legislative instruments in time for the next session.

The representative of the United Kingdom explained that his government had thought it prudent to update its existing legislation now that the exploitation phase was imminent, in order to ensure consistency with the Convention and the Implementation Agreement. China, Tonga and Trinidad and Tobago indicated that their governments were in the process of developing legislation to govern activities in the Area.

Australia asked whether the Secretariat had done any analysis to ascertain whether legislation submitted by members was in keeping with the guidelines set out in the advisory opinion of the International Tribunal for the Law of the Sea (ITLOS).

In his response, the Legal Counsel stated that no such analysis had been done but suggested that the comparative study to be undertaken could take the guidelines of ITLOS into account. He confirmed that all countries passing new legislation were taking the advisory opinion very seriously, and that there was emphasis on prohibiting any activities to proceed in the Area except through the Authority. He further stated that with legislation being developed rapidly in some countries, the Authority’s database would become a valuable resource for member States in the coming years.

The Council will meet tomorrow morning to take up the report of the Finance Committee and the budget of the Authority for the financial period 2015 and 2016.