SEABED COUNCIL APPROVES SEVEN PLANS OF WORK FOR EXPLORATION IN SEABED AREA; BRAZIL SUBMITS PROPOSAL ON EXTENSION OF EXPLORATORY CONTRACTS

Seven new applications for approval of plans of work for exploration in the international Seabed Area were approved this morning by the Council of the International Seabed Authority as it nears conclusion of its work of the twentieth session in Kingston.

Also this morning, the Council took note of the report of the Secretary-General, Nii Allotey Odunton (Ghana), concerning the credentials of members of the Council. In other matters, the Council continued discussions on guidelines and procedures it would recommend to its expert body, the Legal and Technical Commission, for the extension of contracts for exploration of minerals in the Area by investors whose contracts are due to expire in the next few years.

Three plans of work were approved for exploration for polymetallic nodules to be carried out by United Kingdom Seabed Resources Ltd, Ocean Mineral Singapore Pte Ltd, and the Cook Islands Investment Corporation. The report and recommendations of the Legal and Technical Commission for these three applicants are contained in documents ISBA/20/C/5; ISBA/20/C/7, and ISBA/20/C/18 respectively.

Two applications, from the Government of India (ISBA/20/C/6) and the Federal Institute for Geosciences and Natural Resources of Germany (BGR) (ISBA/20/C/16) were approved for exploration for polymetallic sulphides. The remaining two applications were submitted for exploration for cobalt-rich ferromanganese crusts by the Ministry of Natural Resources and Environment of the Russian Federation (ISBA/20/C/4) and Companhia de Pesquisa de Recursos Minerais, a Brazilian entity (ISBA/20/C/17).

The procedure for consideration by the Legal and Technical Commission of applications for plans of work for exploration in the Area are identical in the regulations covering each mineral. In considering a proposed plan of work for exploration, the Commission is required to take into account the principles, policies and objectives relating to activities in the Area as

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**Discussion**

Nigeria cautioned about the fact that some of the applicants already had existing contracts but their level of performance or capability had not yet been assessed by the Authority.

With regard to the application of the Ocean Mineral Singapore Pte Ltd., Argentina noted with concern that the Commission’s report did not identify the name of the affiliate which would enter into a management services agreement with the applicant. The representative was of the view that such information should be specified in the application. Chile endorsed the position.

Germany pointed out that the Federal Institute for Geosciences and Natural Resources had made amendments to its original application which modified the area under application. Those amendments were needed because its application area overlapped with that applied for by the Government of India. The representative said that such problems were likely to occur again because prospective applicants had no knowledge of the areas requested by others. The representative suggested that the Commission could look into ways to rectify them. The comment drew support from France and the United Kingdom.

A number of delegations expressed satisfaction with the progress made by the approval of the seven new plans of work in the Area. Fiji and Jamaica noted that several developing countries would be among the new contractors as was envisioned in Article 148 of the Convention. Senegal noted that the “grand dream” of converting the resources of the ocean into the wealth of mankind was closer to becoming a reality. Cameroon said the progress confirmed the wisdom and foresight of those who “tirelessly worked to craft and adopt the Convention.”

Representatives of the seven prospective contractors expressed appreciation to the Council and the Commission and affirmed their commitment to fulfil their obligations to the Authority. Russia said included in its plans were guidelines to ensure effective preservation of the marine environment and a training programme. The United Kingdom said it took great care in reviewing the work plan of UK Seabed Resources Limited, applying the highest standards of environmental protection. The representative of Singapore said that his country had a sound reputation of good governance and was in the process of developing robust legislation to govern deep seabed activities.

**Proposal on extension of exploratory contracts**

The delegation of Brazil submitted a proposal to the Council on guidelines and procedures for the implementation of regulations relating to the extension of plans of work for exploration for polymetallic nodules in the seabed Area.
The document (ISBA/20/C/CRP.2) states that in the interest of fairness, the Council might wish to authorise a provisional extension of up to six months to those contracts that expire in 2016 to allow contractors to prepare their submissions for extension, if they so wish.

In the event that an exploitation code was not available by the time a contractor attested to its willingness and capacity to proceed to the exploitation stage, as confirmed by the Legal and Technical Commission, the document says the contract in question would be awarded a provisional extension of no more than two years, as specified in Article 15 (b) of Section 1 of the Annex to the 1994 Agreement.

Noting that any request for extension was not an automatic renewal of an existing contract of exploration, but rather “akin to a new application that should be conducive to a contract of exploitation”, Brazil’s document states that the following procedures should apply:

a) The proposal should be preceded by a detailed explanation by the contractor of the reasons why an extension is requested and the length of time required, to a maximum of five years;
b) The proposal should take the form of an application that outlines the work that would be undertaken to enable the contractor to proceed to the exploitation stage, including a detailed plan of work for each year of extension;
c) The proposal should also highlight what changes in the terms and conditions of the existing contract the contractor wishes to make;
d) The sponsoring State must extend the Certificate of Sponsorship for the period of extension requested;
e) The payment of a fee that covers the costs incurred by the Authority in assessing the proposal, as well as an annual overhead charge to cover the costs of supervision; the amount of such fee and overhead charge should be determined by the Finance Committee and presented to the Council at its 2015 session.

The Brazil document earlier notes that the Council might wish to provide the Secretary-General and the Legal and Technical Commission with general guidance on the basis of the following elements – taking into account views expressed during the debate on the subject – either by adopting it or by an understanding to be provided in a report of its Chairman.

The document states that the Commission should consider the following general principles and standards for the preparation of draft procedures and criteria for applicants for extensions of contracts for exploration:

a) The pertinent principles governing the Area, as contained in Part XI, Section 2 of the United Nations Convention on the Law of the Sea, in particular those contained in articles 139 (Responsibility to ensure compliance and liability for damage), 143 (Marine scientific research), 145 (Protection of the marine environment), 146 (Protection of human life) and 148 (Participation of developing States in the activities in the Area) of the Convention;
b) Article 153 (System of exploration and exploitation) of the Convention, in particular its paragraphs 4, 5 and 6;
c) Article 189 (Limitation of jurisdiction with regard to decisions of the Authority) of the Convention;
d) Article 300 (Good faith and abuse of rights) of the Convention.

According to Brazil’s document, the periodic reviews of implementation of each plan of work should have provided for an evaluation, over the first ten years of each individual contract, of the implementation of the plan of work and of the stage in which each contractor was in terms of the necessary preparatory work for proceeding to the exploitation stage, as well as provided for any adjustment related to any circumstances confronted by each contractor, including those beyond its control.

As regards the interpretation of the prevailing economic circumstances that might not justify proceeding to the exploitation stage, the document observes that it is hard not to agree with the Secretariat that ‘if after 15 years a particular contractor’s project is not viable for reasons that are unconnected to global economic conditions, it seems difficult to understand why an extension for a further five years is justified’.

The document adds that it is worth considering only what criteria should be applied to judge the economic feasibility of each individual contract to proceed to the exploitation phase in no more than five years. It observes that the extension of each individual contract may require the revision of its terms and conditions as the Authority and the contractor may agree in accordance with the Regulations, as provided for under Section 3.2 of the standard clauses.

At this afternoon’s meeting, the Council will discuss the issues relating to the extension of exploration contracts in light of the proposal put forward by Brazil.

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