COUNCIL AGREES ON CRITERIA FOR APPROVED CONTRACT EXTENSION, TAKES NOTE OF PLANS FOR EXPLOITATION REGULATIONS, ADOPTS RECOMMENDATION OF FINANCE COMMITTEE

The Council of the International Seabed Authority meeting in Kingston today, adopted the procedures and criteria for extension of an approved plan of work for exploration and took note of the draft framework for exploitation of mineral resources in the Area. The body also adopted the recommendations of the Finance Committee related to financial and budgetary matters.

Council members were able to resolve their differences over the content of a proposal by the Legal and Technical Commission on procedures that would govern the extension of an approved plan of work for exploration of marine minerals by contractors.

At the start of the morning meeting the President of the Council, Peter Thomson (Fiji), said that a working group formed at yesterday’s meeting of the Council to iron out differences over proposals made by the Group of Latin American and Caribbean States (CELAC) to amend the document ISBA/21/C/WP.1 had work to do. The working group, with the Council President as its coordinator, met concurrently as the Council resumed its work under the guidance of one of its vice-presidents, David Wilkens (Germany).

The Council resumed its discussion on agenda item 13 - Consideration, with a view to adoption, of draft regulations for exploitation of mineral resources in the Area. The interim president invited members to comment on this topic as well as the paper submitted by the Netherlands on addressing serious harm to the marine environment in the exploitation regulations (ISBA/21/C/13).

Discussion

The South African delegation supported the principles of commercial viability, equitable sharing of profits, sustainable exploitation, respect for national and international laws, and transparency in reporting by contractors so that data collected could be made public.
Bangladesh, referring to the “data deficient environment” cited in the first high level issue of the draft framework, said that it would be logical to extend the deadline for formulating the framework to 2017 or 2018 to give contractors time to comply with the requirements for reporting data which could provide a basis for the framework. The delegation considered it important to proceed with expediency towards a “zero draft” of the regulations by February 2016 as this would provide a clearer picture of the regulations.

Speaking as a coastal State, Indonesia emphasised the importance of environmental protection and called for a regulatory mechanism comprising sanctions for non-compliance and in instances of serious harm.

Singapore said further that stakeholder consultations were crucial as the exploitation regulations were developed and become more complex. While agreeing that work undertaken by other relevant entities, such as the offshore oil and gas industry, could serve as a reference, Singapore said the unique aspects of deep seabed exploitation must be considered as the regulations were developed. The delegation said it would support regulations that were consistent with international law, ensured that exploitation of resources in the Area were conducted in an environmentally sustainable yet commercially feasible manner, and were based on fairness to encourage wider participation from members of the Authority, including developing countries.

China said the draft framework represented a good basis for providing direction to external consultants for the drafting of the exploitation code. The delegation hoped that the regulations would be framed for the benefit of everyone while ensuring the protection and preservation of the marine environment.

Trinidad and Tobago observed that the issue of liability and responsibilities of sponsoring States conducting activities in the Area had been the subject of lengthy debate. The Council had sought an advisory opinion on the matter from the International Tribunal for the Law of the Sea (ITLOS), which was duly received by the Authority at its 17th session in 2011. The representative said that although the opinion was not binding, it could serve as an appropriate guide in formulating provisions relating to liability. Jamaica endorsed this view as did the observer from Greenpeace, speaking on behalf of his organization as well as the Deep Sea Conservation Coalition.

India noted that the complete exploitation code including guidelines and recommendations would evolve over time as more data and information became available. This was particularly relevant, the delegation said, considering that mining technology, important for environmental study, was not yet demonstrated in the deep Ocean. India said that drawing experience from land mining and oil and the offshore industries were welcome steps, but noted that the proposed deep sea mining and the marine environment were entirely different and new, and based on scanty data. This aspect, India said, needed to be carefully addressed and incorporated in the draft framework.
Kenya supported the recruitment of independent experts to assist with the drafting of the regulations and called for the incorporation of more requirements for training into exploitation contracts, a point supported also by Ghana. Kenya also called for a payment mechanism that allowed optimum revenues but at a level that would not discourage investment.

Japan said it was not appropriate to discuss the payment mechanism without clear definitions, such as the meaning of royalty. The delegation said it was not appropriate to discuss royalty rate in advance of discussion on conditions of exploitation code, since it was impossible to calculate total cost unless the conditions, such as cost of environmental measures are defined.

Nigeria supported the seven deliverables recommended by the Commission as well as the recruitment of consultants. The delegation expressed the need for environmental impact assessment and a social impact assessment which Nigeria said was important to coastal and small island developing States that were more likely to be affected by mining activities. New Zealand said it strongly supported a zero draft of the exploitation regulations and standard contract terms by 2016 and wished for a continuation of the momentum of the exploration phase.

The United Kingdom said it stood ready to offer expertise to the Authority in a number of areas, including electronic surveillance and monitoring, environmental management, and repository. Brazil felt that the draft regulations should address, among other things, a collection of data from pre- and post- mining activities as well as monopolistic activities in the Area, and stipulate conditions for training to be available to developing countries. Brazil also wanted an estimate of consultants’ costs. Senegal pointed to the need to have exploitation regulations as quickly as possible.

Responding to comments from the floor, the Secretary-General reiterated that the Legal and Technical Commission had made a presentation to the Finance Committee on its list of priority deliverables in the knowledge that its plans would require additional resources. He said that it was likely that some savings could be found in the 2015-2016 budget to finance the formulation of the zero draft by February next year. With regard to the other elements, most of the resources would have to be allocated from the 2017-2018 budget.

To a query regarding mining tests, the Secretary-General explained that the Authority intended to have talks with contractors to determine whether those tests could be carried out in a collaborative manner using a common vessel. The last time seabed mining took place was in 1978, he said, therefore no up-to-date information existed on collecting devices or and how quickly polymetallic nodules would be brought to the sea’s surface.

Afternoon Meeting

After a late start, the Council President announced that the group which had been working on an acceptable text for a draft decision on the procedures and criteria relating to applications for contract extensions, (ISBA/21/C/3) had concluded its work. He said the group was “close to a negotiated package” and the next step was for the regional representatives from the working group to report to their respective groups on that package.
South Africa stated that the African Group had shifted its position for a solution and could now accept the compromise text. Argentina, speaking on behalf of the Latin American and Caribbean Group, echoed the words of the South African representative.

On the other hand, Singapore, on behalf of the Asia-Pacific group informed the members that it had not yet achieved unanimity. Similarly, the Czech Republic (Eastern European Group) and Spain (Western European and Others Group) said they were close to finding a solution but needed more time.

At the request of the President, the Legal Counsel outlined the implications of a lack of decision on the matter at the current session. He referred to the governing texts and cited two elements: the right or entitlement of a contractor to seek an extension of a contract and the procedural elements involved in approving such an extension. A contractor’s right to apply for an extension was cited in the 1994 Agreement (paragraph 9 of Section 1 of Annex 1). The paragraph further states that “Such extensions shall be approved if the contractor has made efforts in good faith to comply with the requirements of the plan of work but for reasons beyond the contractor's control has been unable to complete the necessary preparatory work for proceeding to the exploitation stage or if the prevailing economic circumstances do not justify proceeding to the exploitation stage.” Similar language is found in Regulation 26.2 of the regulations on polymetallic nodules.

The document on procedures and criteria (ISBA/21/C/WP.1) was prepared on the basis of three elements: the inclusion of the fee for processing an application for extension; the modification of the content and format of an application; and the fact that there would be no transitional period allowing for extensions between the next meetings of the Commission and the Council, which would mean that some contracts would expire.

The Authority would find itself on very uncertain ground, the Legal Counsel added, with many questions to be answered: would contractors have to reapply for approval of plans of work? Would they be given preference over the areas they had been allotted previously? What would happen if another application was received for the same area?

The Council President declared that the Council’s failure to make a decision was not an option in terms of good governance. He suggested that the working group should convene to attempt to hammer out a consensus. However, several delegations were concerned that reconvening the group might lead to resolved matters being reopened.

France assured the members that his group had no intention of returning to points which had already been agreed upon. Paragraph 2 of the proposal was the only point which needed further discussion. His delegation wanted paragraph 9 of Section 1 of Annex 1 to be quoted in its entirety.

At the suggestion of Argentina, supported by Singapore and the Czech Republic, the President suspended the meeting to allow a consensus to be achieved by those groups that had requested more time.
The strategy proved to be successful as the Legal Counsel read out the amendment to paragraph 2, which was the compromise, taken directly from paragraph 9, section 1 of annex 1 of the Agreement. The paragraph therefore provided for an extension to a contractor who had made efforts to fulfil its obligations under the contract “but for reasons beyond the contractor's control has been unable to complete the necessary preparatory work for proceeding to the exploitation stage or if the prevailing economic circumstances do not justify proceeding to the exploitation stage”.

All regional groups agreed they could accept the new wording. The President declared the decision adopted and said the compromise text would be available tomorrow.

Finance Committee recommendations

The Council adopted the recommendations of the Finance Committee on financial and budgetary matters (ISBA/21/C/L.4) with an amendment to paragraph 1 (d) proposed by Nigeria. The new paragraph 1 (d) now reads:

Request the Secretary-General to endeavour to identify the cost and sources of funding for the priority deliverables identified in the draft action plan and to report to the Committee on the progress made and the resources used;

Other matters

Under the final agenda item “Other matters” Australia presented a draft decision relating to the summary report of the Chair of the Legal and Technical Commission along with Canada on the basis of comments and contributions by members of the Council. The document recalled the Council’s decision on the Chair’s report at the last session (ISBA/20/C/31).

Australia briefly drew the Council’s attention to changes made to the text since the unofficial document was circulated to members on Monday, July 20. Trinidad and Tobago pointed out an incorrect reference in paragraph 11 to United Nations Resolution 68/70 which was amended to Resolution 69/245.

The final paragraph of the Australian text read: “requests the Secretary-General to update the Council on the implementation of this decision at its 22nd session in 2016.” The draft decision was adopted by the Council.

In closing the last meeting of the Council for this year’s session, the President thanked the Secretary-General, the Secretariat and all members for their hard work.

The Assembly will convene tomorrow morning - 24 July - for its final meeting of the session.

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