ISA COUNCIL BEGINS DEBATE ON EXPLORATION CONTRACT EXTENSION; HEARS STATUS REPORT ON CONTRACTS FOR EXPLORATION AND NATIONAL LEGISLATION OF MEMBER STATES ON ACTIVITIES IN THE SEABED AREA

Procedures and criteria for extending contracts for exploration for marine minerals in the seabed Area due to expire soon, were highlighted in the Council of the International Seabed Authority (ISA) on the third day of its Twenty-First session in Kingston this afternoon.

Seven contracts were due to expire between March 2016 and March 2017 and the Authority’s Secretariat invited the Council to consider, with a view to adopting, draft procedures and criteria recommended by the Legal and Technical Commission in a working paper (ISBA/21/C/WP.1.).

In another matter, the Secretary-General of the Authority, Nii Allotey Odunton (Ghana) reported that 23 sponsoring states and other members of the Authority had either provided information on or texts of relevant national laws, regulations and administrative measures with respect to activities in the seabed Area. The Council also took note of a report by the Secretary-General on the status of contracts for exploration of three mineral resources, and an overhead charge for the administration and supervision of the exploration contracts.

Status of exploration contracts

The Council first took up a report of the Secretary-General on the status of contracts for exploration for three types of mineral resources in the seabed Area – polymetallic nodules, polymetallic sulphides and cobalt-rich crusts, (ISBA/21/LTC/8/ Rev.1). The report also has information on the implementation of the decision of the Authority on overhead charges for exploration contracts contained in document ISA/19/A/12.

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Addressing the Council, the Secretary-General said that as at 1 July 2015, of the 26 plans of work approved by the Council, 22 had been signed as contracts for exploration: 14 for exploration for polymetallic nodules; 5 for exploration for polymetallic sulphides and 3 for exploration for cobalt-rich ferromanganese crusts.

Since the twentieth session in 2014, five new contracts making up the totals above had been signed. These included: a contract for exploration for polymetallic sulphides with IFREMER in an area on the mid-Atlantic Ridge signed on 18 November 2014; a contract for exploration for polymetallic nodules with Marawa Research and Exploration Limited in a reserved area in the Clarion-Clipperton Fracture Zone of the Pacific Ocean was signed on 19 January 2015; and a contract for exploration for polymetallic nodules with Ocean Mineral Singapore Private Limited Company for a reserved area in the Clarion-Clipperton Zone in the Pacific Ocean was signed on 15 January 2015 and on 22 January 2015 respectively.

The rest are: a contract for exploration for cobalt-rich ferromanganese crusts with the Ministry of Natural Resources and Environment of the Russian Federation in an area on the Magellan Mountains in the Pacific Ocean signed on 10 March 2015; and a contract for exploration for polymetallic sulphides signed with the Federal Institute for Geosciences and Natural Resources of Germany for an area in the Central Indian Ridge and South-east Indian Ridge signed on 6 May 2015.

It was anticipated that a contract for exploration for polymetallic nodules with the U.K. Seabed Resources Ltd. for an area in Clarion-Clipperton fracture zone would be signed shortly, he said. The contracts with the Government of India for polymetallic sulphides in an area in the Indian Ocean Ridge, as well as with Companhia de Pesquisa de Recursos Minerals S.A. of Brazil for cobalt-rich crusts in an area on the Rio Grande in the South Atlantic Ocean would be signed during the course of the year, he added.

(A complete list of the contracts, with details of the contractor and the date of entry into force of each contract is provided in annex I to document ISBA/21/LTC/8/Rev.1).

Status of consultation on implementation of Assembly decision on annual overhead charges for contracts for exploration

The Secretary-General also addressed the implementation of the Assembly decision of 25 July 2013 on an annual overhead charge of $47,000 to cover administrative costs incurred in the supervision of contracts (ISBA/19/A/12). The charge is due on 31 March each year.

He explained that the decision was to be implemented through the addition of two new clauses (sects. 10.5 and 10.6) to the standard clauses for exploration contracts with effect from 25 July 2013. Special provisions were made for existing contracts, pending ones and approved applications received before that date. The new standard clauses were applied automatically to any contract entered into as a result of an application for approval of a plan of work for exploration submitted after 25 July 2013.

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With regard to applications submitted before that date, the Secretary-General said four of the seven applications which were approved by the Council in July 2014 were submitted before 25 July 2013.

He also said that based on the consultations he had with contractors on the incorporation of the standard clauses 10.5 and 10.6, it was expected that from the 26 countries the Authority would receive $470,000 this year and $1,034,000 in 2016.

The Council took note of the Secretary-General’s report and some delegations, including Brazil, Cameroon and Germany extended their congratulations to the Secretary-General and the secretariat for their successful negotiations with contractors. Trinidad and Tobago expressed regret at the inordinate length of time that it had taken for negotiations to reach near their conclusion and hoped that contractors would pay the overhead charges well ahead of the session in 2016.

National laws and regulation on deep seabed mining

The Secretary-General in a report to the Council (ISBA/21/C/7) gave an update on the laws, regulations and administrative measures adopted by sponsoring States and other members of the Authority regarding activities in the international seabed Area.

The Secretary-General invited the Council to take note of the report which was submitted in response to its requests for annual updates.

As at 31 May 2015, the following States had provided information on, or texts of, relevant national laws, regulations and administrative measures relating to deep seabed mining: Belgium, China, Cook Islands, Czech Republic, Fiji, France, Germany, Guyana, India, Japan, Mexico, Nauru, Netherlands, New Zealand, Nigeria, Niue, Oman, Republic of Korea, Singapore, Tonga, United Kingdom, United States of America and Zambia.

A submission was also received from the Secretariat of the Pacific Community, on behalf of the Pacific Island region.

A complete list of the legislative instruments is annexed to the report, and is also available on the Authority’s website (www.isa.org.jm/national-legislation-database).

The report said the Secretariat would continue to keep the online database updated as new information was received. The Secretariat was unable to complete a comprehensive study of the existing national legislation as scheduled owing, however, to the limited resources available and the need to prioritize other activities. That work would be continued in due course, as resources permitted, the report added.
Discussions on the report

Singapore announced that it had enacted the Deep Seabed Mining Act earlier this year to fulfil its obligations under the United Nation Convention on the Law of the Sea (UNCLOS) in relation to deep seabed mining activities. It was to enable companies to participate in activities in the Area. Singapore had also established a licensing regime, accompanied by penalties, to ensure companies acted responsibly to avoid damage to the marine environment. Tonga said it also had adopted legislation on activities in the Area and looked forward to debate in the Council on agenda item 13 – “Consideration, with a view to adoption, of draft regulations for exploitation of mineral resources in the Area”.

Nigeria urged members of the Authority to act quickly to increase the number of national legislations ahead of the exploitation phase. The Republic of Korea suggested that the Authority should provide a legal framework to harmonize legislation among States to help speed up the process. The suggestion by Korea’s delegation was supported by Cameroon, Mexico, and the President of the Council, Peter Thomson (Fiji).

Two observers took the floor to contribute to the debate. Cook Islands said it was scheduled to sign a contract for exploration next month, while Tuvalu requested that its Seabed Mineral Act of 2014 be included in the report of the Secretary-General of the Authority.

Agenda item 12

Item 12 of the Council’s agenda addressed procedures and criteria under which a contractor may submit an application for the extension of an approved plan of work for exploration. Deputy Secretary General and Legal Counsel, Michael Lodge introduced the relevant documents to the Council.

The note by the Secretariat (ISBA/21/C/3) outlines the way in which the commission conducted its deliberations on the matter. Annex I of the document shows the status of each of the contracts, the date of their entry into force and date of expiry, and the latest date on which an application for extension could be submitted under section 3.2 of the standard clauses for exploration contracts contained in annex IV to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area.

Annex II summarises divergences of opinion submitted by three members of the Commission in accordance with rule 46 of the rules of procedure of the Commission, and annex III is a draft decision for consideration by the Council.

Another document (ISBA/21/C/WP.1) outlines the Commission’s proposals on the form and content of an application for extension, the procedures and criteria for their processing by the Secretariat and their consideration by the Commission and the Council. The proposals also include a transitional provision to address the situation in which an application has been duly submitted but the contract would expire on a date following the meetings of the Commission at which the application is considered but before the next meeting of the Council.
The document containing the Commission’s proposals have two annexes: Annex I details the content of an application for extension and annex II covers the template for an agreement in writing between the Authority and the contractor concerning the extension of the contract for exploration.

The Commission states also that the issue of the amount of the administrative fee for processing an application (ISBA/21/C/WP.1, paras.4-6) was a matter within the mandate of the Finance Committee. The Council President recommended that it should be discussed after the Council heard from the Finance Committee at the next Council meeting tomorrow morning.

South Africa, on behalf of the African group noted that pursuant to Article 165 of the Convention and Section 1 (4) of the annex of the Agreement, the Commission is the competent organ of the Council to examine and assess whether contractors are compliant with the obligations of their contracts. The representative expressed the view that this special mandate of the Commission should be mentioned explicitly in Section III of the proposal contained in ISBA/21/C/WP.1.

Trinidad and Tobago found merit in the view expressed by South Africa that Article 165 of the Convention and Section 1 (4) of the Annex should not be left to be construed but rather should be embedded within the text of any decision regarding extensions of contracts. The Netherlands endorsed that view.

Referring to paragraph 7(b) of section III of the document relating to the processing of an application for extension of a contract, the Tongan representative sought clarification on the timeframe for a sponsoring State to respond to the Authority once its application had been received. He wondered whether contractors would be given time to identify a new sponsor during the extension period.

Brazil referred to a conference room paper prepared at last year’s session by his delegation and requested that it be circulated in time for the next meeting.

In response to the queries from the floor, the Legal Counsel said that Brazil’s conference room working paper would be available for circulation to delegations. With regard to Tonga’s concern, he explained that sponsorship did not lapse because of an extension of an application unless specific action was taken to withdraw sponsorship.

The Legal counsel pointed out that paragraph 1 (c) of annex 1 called on contractors applying for extensions to provide a detailed programme of activities and further reminded the Council that each contract had a number of schedules. They included the fifteen-year work programme, a detailed programme for each of the five-year period, and a training programme which was updated every five years. The fourth schedule contained the standard clauses, which applied to all contracts and had been amended since the original contracts were signed to include reference to overhead charges (Clauses 10.5. and 10.6). Since those clauses did not have retroactive application, there was need for negotiations with existing contractors. He noted that paragraph 15 of ISBA/C/21/WP.1 removed any doubt as it stated “the terms and conditions
applicable to the contract during the extension period shall be the terms and conditions in force as at the date of the extension, pursuant to the relevant regulations.”

Side events

Two side events were held today highlighting the deep ocean as a target for exploitation for polymetallic nodules, polymetallic sulphides and cobalt-rich ferromanganese crusts. The MIDAS project suggested ways to manage impacts of deep-sea resource exploitation. It reported on environmental work it had carried out in the Clarion-Clipperton Zone and suggested first steps had to be undertaken towards a strategic environmental management plan for deep-sea mineral exploitation in the Atlantic. Tonga Offshore Mining Limited (TOML) presented nodule sampling and geophysics as well as results of environmental baseline work from its 2015 nodules cruise.

Tomorrow, the Council will continue debate on the extension of exploration contracts, hear a report and recommendations from the Finance Committee and consider the report of the Chairman of the Legal and Technical Commission on the work of the Commission during the year.