ISA COUNCIL TAKES NOTE OF REPORT OF FINANCE COMMITTEE; CONTINUES DEBATE ON PROCEDURES AND CRITERIA FOR EXTENDING EXPLORATION CONTRACTS SOON TO EXPIRE

The Council of the International Seabed Authority meeting in Kingston this morning, considered the report of the Finance Committee, presented by its Chair, Olav Myklebust (Norway), elected its four vice-presidents for the twenty-first session, and continued its deliberations on agenda item 12 relating to procedures and criteria for extensions of contracts for exploration for marine minerals, which are due to expire between 2016 and 2017.

The vice presidents are: Brazil, for the Latin American and Caribbean Group; Germany for the Western European and Others Group; Nigeria for the African Group and Poland for the Eastern European Group.

Report of the Finance Committee

The Seabed Authority’s Finance Committee, in identical reports to the Assembly (ISBA/21/A/6) and the Council (ISBA/21/C/15), has recommended that the fee for processing an application for extension of a contract for exploration for marine minerals in the Area should be set at $67,000. (The Legal and Technical Commission had earlier proposed a $110,000 fee (ISBA/21/C/WP.1).

The Committee also recommended the adoption of paragraphs 4 to 6 of the draft procedures and criteria proposed for that purpose by the Commission in its document as adjusted accordingly.

In other recommendations, the Finance Committee said the Assembly and the Council should:

(a) Strongly encourage contractors still considering their position on the annual overhead charge levied by the Authority for the administration and supervision of contracts to accept the relevant amendments to the standard terms of contract to ensure equitable burden-sharing among all contractors. (The amendments are the introduction of two new standard clauses 10.5 and 10.6).
(b) Urge members of the Authority to pay their assessed contributions to the budget on time and in full; and appeal once more to members to pay outstanding contributions from previous years as soon as possible. The Committee recommended that the Secretary-General be requested, at his discretion, to continue his efforts to recover those amounts.

(c) Strongly encourage members to make voluntary contributions to the Endowment Fund for Marine Scientific Research in the Area and the Voluntary Trust Fund of the Authority. (The Endowment Fund was established in 2006 to promote and encourage the conduct of collaborative marine scientific research in the international seabed Area, particularly with the participation of qualified scientists and technical personnel from developing countries. The Voluntary Trust Fund was established in 2002 for the participation of developing country members of the Finance Committee and the Legal and Technical Commission).

Furthermore, the Finance Committee recommended the appointment of KPMG as independent auditors for two more years – 2015 and 2016 – to complete its four-year term.

The Finance Committee, in its report, also said that the Secretary-General should be requested to consult with the United Nations Joint Staff Pension Fund and other United Nations bodies, as well as an investment counsellor, on the steps that might be taken to generate a higher rate of return from the Endowment Fund and to report to the Committee in 2016 on the status and outcomes of those consultations. He was also to make recommendations on the investment of the Endowment Fund.

The Committee also recommended that the Assembly and the Council should take note of the new format to be used in the presentation of the Authority’s budget for 2017-2018. It would include two expenditure sections, namely (a) the administrative section, and (b) the substantive programme section, which would comprise six programmes. The income section of the budget would remain as specified in the 2014 report of the Finance Committee showing gross income. (More details of the format are contained in paragraphs 25-29 of the Committee’s report).

Commenting on the status of the implementation of Assembly decision ISBA/19/A/12 on the annual overhead charge, the Finance Committee “noted with appreciation the progress and success of the Secretary-General” in the negotiation on the subject and encouraged him to continue with his consultations with the remaining four contractors.

On the issue of financial and budgetary implications of the proposed work programme for the development of regulations for exploitation of marine minerals in the Area, the Finance Committee recommended that the Assembly and the Council should request the Secretary-General to endeavour to allocate sufficient resources in the budget for 2015-2016 to the priority deliverables identified in the draft action plan and to report to it on the progress made and the resources used.

The Finance Committee’s report also shows the amounts Palestine, the Authority’s new Member State, would contribute to the general administrative budget of the Authority.

**Discussion of Finance Committee’s report**

The representative of Trinidad and Tobago was the first to speak after the presentation of the Committee’s report by its re-elected Chairman, Olav Myklebust. He commended the Chairman and the Committee members for a clear and excellent report and agreed with the recommendation of $67,000 fee for the processing of contract extensions. With regard to the Endowment Fund, he expressed his intention
to recommend to his government to make a contribution to the Fund. He agreed with the Committee’s suggestion that the Secretary-General should be requested to consult with the United Nations Joint Staff Pension Fund to identify the steps that might be taken to generate a higher rate of return from the Endowment Fund.

Brazil was concerned that the fee for processing applications for extension of exploration contracts should be sufficient so as to place no additional burden on the resources of the Secretariat. Cameroon also expressed some reservation about the adequacy of the fee, given the fact that the original figure proposed was $110,000. Nigeria was of the same view, and warned that a fee increase might have to be imposed next year.

Responding to the comments of the delegates, the Finance Committee Chairman referred to paragraph 33 of his report which outlined the procedure by which the decision had been reached. It involved a review of a detailed analysis provided by the Secretary-General of the actual costs of processing each application. The costs covered the work of the Legal and Technical Commission and the Council, along with the attendant conference services, as well as support from the Secretariat in the form of documentation and guidance. Following an in-depth discussion, it was determined that the $67,000 fee could cover the costs incurred for the processing of the applications for contract extensions.

The Secretary-General echoed the intervention of the Committee Chairman, adding that for each application, the contractor would have to pay for any amount incurred over that figure and would, in like manner, be given a refund for any costs saved.

Council President, Peter Thomson (Fiji), suggested that the Council agree to take note of the Finance Committee’s recommendation until the document had been translated into all the languages of the Authority, at which time it could be formally adopted at the next meeting.

Procedures and criteria for contract extension

Two views prevailed in the continuing debate on agenda item 12 concerning procedures and criteria for the extension of an approved plan of work for exploration of minerals on the ocean floor. Argentina, Brazil, Chile, Jamaica, Mexico, Netherlands, Nigeria, South Africa, Tonga, and Trinidad and Tobago held the view that an explicit reference to the role of the Legal and Technical Commission, as mentioned in Article 165 of the Convention, be included in Section III of the proposal contained in ISBA/21/C/WP.1. Canada, China, Fiji, France, Germany, India, Japan, Norway, Poland, and the Russian Federation agreed with the proposals by the Commission.

France stressed the point that a decision had to be made on contract extensions before the end of the current session. Essential elements such as the technology for the exploitation for polymetallic nodules and bringing them to the surface of the ocean; the establishment of plants or factories equipped to process the raw materials; the development of a mineral exploitation code to provide a safe framework for activities (including ensuring the protection of the marine environment) were all still lacking. Furthermore, current global economic conditions in the metals market were not favourable. Only when all the necessary conditions were brought together would States be able to enjoy the sharing of benefits of the deep seabed resources.

Nigeria sought clarification on the criteria for extending a contract and the consequences in the event there was no extension. The delegation also wanted to know the procedure to be followed by the Authority in the consideration of a contract for extension. In response, the Authority’s Legal Counsel
said that a contract would end if it was not extended. Contractors would turn over data and information as provided in the Standard clauses, and the contract area would become part of the Area. Regarding the processing of an application for extension of a contract for exploration, the Legal Counsel pointed to section II of the working paper as follows:

7. The Secretary-General shall:

(a) Acknowledge in writing the receipt of every application for extension of a contract for exploration, specifying the date of receipt;

(b) Notify the sponsoring State or States of the receipt of the application and of the requirement set out in paragraph 3 above;

(c) Place the application, together with the attachments and annexes thereto, in safe custody and ensure the confidentiality of all confidential data and information contained in the application;

(d) Notify the members of the Authority of the receipt of such application and circulate to them information of a general nature which is not confidential regarding the application;

(e) Notify the members of the Legal and Technical Commission and place consideration of the application as an item on the agenda for the next meeting of the Commission.

The Council will hear the report of the Chair of the Legal and Technical Commission on the work of the Commission during the twenty-first session when the Council resumes this afternoon.