COUNCIL Completes lengthy debate on LTC Report; no consensus on procedures and criteria for extensions of contracts due to expire

The Council of the International Seabed Authority at two meetings held today in Kingston, took note of the report of the Chairman of the Legal and Technical Commission (LTC) and resumed debate on procedures and criteria for extensions of contracts due to expire in 2016 and 2017 which are covered in the report.

Today’s discussions on the LTC report focused on section V (Draft regulations for the exploitation of mineral resources in the Area), Section VI (Data Management and Standardization) and Section VII (Matters referred to the Commission by the Council). Annex III of the report, which outlines priority deliverables for the development of the exploitation code over the next 12 -18 months, was also examined.

At the afternoon meeting, the Council was unable to achieve consensus on the Commission’s proposal setting out the procedures for contract extensions (ISBA/21/C/WP.1) despite suspension of the meeting to allow the Group of Latin American and Caribbean States to formulate a new text for the proposal. The President decided to defer action on the proposal to next week.

Discussion of Legal and Technical Commission (LTC) report

As the Council resumed discussion of the report on the Commission’s work for the year, the representative of Cameroon acknowledged that the exploitation code was a very important document but warned that its development would require additional resources, including studies conducted by external consultants, which would have to be financed through the budget of the Authority. The representative said the drafting of the code hinged upon a number of steps and reiterated his concerns about the standardization of data from contractors, the lack of up-to-date technology, and the absence of baselines, prototypes and samples.
Argentina echoed the concern about the finances needed for external consultants and requested more details about their number, and their terms of reference.

The representative of Nigeria questioned the logic of setting a time-frame of seven months for the Commission to develop draft regulations for exploitation, while it would be some three years before any contractor would progress to the exploitation stage. Furthermore, with regard to the Secretariat producing a fully costed data management strategy by 2016, she wondered how a plan could be formulated when proper data was still lacking after many years. The representative also pointed out that there was no allocation in the 2015-2016 budget to cover the additional expenses associated with the task.

Germany commented that the priority deliverables for the next 12 to 18 months represented “a huge amount of work” which would be a long and costly process. Brazil suggested that some flexibility was needed to be applied to the deadline for the code.

In his response, the Commission Chair referred to the new reporting templates and guidance for contractors which would enter into force in January 2016. He said the new system would lead to better regulation of data delivery in terms of quality and quantity and those improvements would impact the process of developing the new mining code. He assured members that there was no possibility of any contractor reaching the exploitation stage in 2016 as there were pre-conditions to be met, including: a comprehensive environmental assessment, and mining tests accompanied by environmental monitoring before, during and one year after such tests, as well as a comprehensive economic feasibility study. Contractors given extensions would be required to submit plans of work for the extension period within which mining tests were to be conducted.

The LTC Chair explained that the 12 to 18 month time-frame was a guideline, and reminded members that a status report would be forthcoming after the Commission’s February 2016 session with a view to producing an outline of the main elements of the draft regulations by July 2016.

In response to Argentina’s concerns, the Chair said the most likely methodology to be used to engage consultants would be a “call for tenders” process.

Trinidad and Tobago emphasised that in making preparations for the negotiation of an exploitation code, due regard should be paid to the preservation of the marine environment in keeping with the Convention and the 1994 Agreement. Environmental impact assessment was critical to the process, he said, adding that environmental sustainability should not be sacrificed on the altar of expediency in the development of the code. Bio-diversity in the Area must be protected, and the exploitation code should contain environmental protection measures stronger than those contained in the exploration code. Environmental impact assessment standards must be consistent with those discussed at other United Nations fora. He called for the term “serious harm”, referred to in Annex III of the LTC report, to be precisely defined. He further noted that he welcomed the establishment of a legal working group with equitable geographic representation to ensure that small island developing states were included.
China supported the data management strategy of the Authority and welcomed the templates and guidance that would help contractors report efficiently. He stressed the importance of formulation and implementation of environmental management plans.

Two Observers, Greenpeace International and the International Union for Conservation of Nature, requested that the deliberations of the Legal and Technical Commission to be conducted in open rather than closed meetings as was currently the case.

David Billet, a member of the LTC, responded to questions from Argentina, Cameroon and Trinidad & Tobago on standardized format that data should be presented in reports of contractors to the Authority. On the disparities in the reporting and presentation of data between contractors, he emphasised that data was valuable only if sampling was done correctly and included the precise descriptions and taxonomies. Mr. Billet noted that methods and practices that were not helpful to the Authority were pointed out to contractors by the Commission. He said contractors were constantly reminded of the importance the Authority placed on protection of the marine environment.

Cameroon said quality and presentation of data were very important in the fair and just evaluation of the work of contractors, and the delegate commended the Commission for its work in making the data delivery process clear.

South Africa suggested that specialists could be trained by the contractors to standardize the data before they were sent to the Authority. Mexico noted that while the Authority was the depository of all data regarding the Area, a special section should be established for genetic data. The delegate also called for a mechanism to be developed for the ongoing evaluation of data so as to assess when confidential information could become part of the public domain.

Responding to a call by Australia for the Authority to remain focused on a 2016 deadline for a review of the implementation of the environmental management plan for the Clarion-Clipperton Zone, the Secretary-General said work on the plan was on target.

**Afternoon session**

Meeting in the afternoon, the Council resumed deliberations on Agenda item 12 - Procedures and criteria for the extension of an approved plan of work for exploration pursuant to section 1, paragraph 9, of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.

Argentina, with help from Brazil, and on behalf of the Group of Latin American and Caribbean States (GRULAC) offered a draft amendment to the working paper containing the proposal by the Legal and Technical Commission (ISBA/21/C/WP.1). GRULAC held the view that Article 165 of the Convention, outlining the role of the Legal and Technical Commission, should be explicitly mentioned in the working paper.
Argentina and Brazil said the amendment would replace paragraph 3 to clarify the role of the sponsoring States in the application for an extension of a contract and insert paragraph 8 bis to ensure that the contractors had fulfilled their obligations before moving to the exploitation phase. They also proposed a small change to Annex 1, paragraph 1(c).

Cameroon, the Netherlands, Nigeria, and South Africa said they could support the proposed amendment as it would provide clarity and prevent ambiguity. France, supported by Germany preferred to have the document remain as is.

The President of the Council, Peter Thomson (Fiji), suspended the meeting to allow the group to formulate the proposal to Council. The proposal which was presented on resumption of the meeting read as follows:

Paragraph 3 to be replaced by the following:

To fulfil its obligations in accordance with Regulation 11 of the Regulations on Prospecting and Exploration for Polymetallic Nodules, Polymetallic Sulphides and the Cobalt Rich Ferromanganese Crust, Article 139 and 153 (4) of the Convention and Article 4 (4) of Annex III of the Convention, the Sponsoring State or States shall submit confirmation of its Certificate of Sponsorship at the time of or prior to an application for an extension of the contract by the contractor to the Legal and Technical Commission where the application will be considered.

After paragraph 8, insert paragraph 8 bis

8.bis The Commission shall consider if the contractor has fulfilled its obligations under the contract, in particular Sections 4, 5 and 10 of the Standard Clauses of the Exploration Contract.

Annex 1, Paragraph 1 (c)

1. (c) A description and a schedule of the proposed exploration programme during the extension period, including a detailed programme of activities, **underlining the** proposed modifications or/and additions (…)

Once the formal proposal was presented to the Council, Poland, Russian Federation, The Czech Republic, Italy, Japan, Spain, Republic of Korea, and India supported France and Germany to keep the language as recommended by the Legal and Technical Commission. Trinidad and Tobago, citing Article 162 sub paragraph (o) (ii), reminded members that the Commission was a “subordinate organ” of the Council and as such the Council was not obliged to adopt its recommendations.

The President advised that debate on the agenda item would be concluded during the second week of this two-week session. On Monday the Council is scheduled to begin deliberations on agenda item 11 – Consideration, with a view to approval, of applications for approval of plans of work for exploration in the Area.

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Side Event

An environmental baseline programme, a joint side event held between meetings, was hosted by UK Seabed Resources (UKSR), sponsored by The United Kingdom, and Ocean Minerals Singapore (OMS), sponsored by the Republic of Singapore. The event provided briefings on their contractor collaboration on an environmental baseline programme and highlighted developments since UKSR’s first cruise in 2013. It highlighted the significant amount of data resulting from the two studies to be analyzed and published by the international scientific team engaged since 2013. UKSR and OMS also highlighted the fact that their joint environmental cruise in 2015 detoured to an Area of Particular Environmental Interest (APEI), for two days of sampling. The UKSR and OMS presenters emphasized the need for greater sharing of environmental data, in order to advance a broader environmental baseline in the Clarion-Clipperton Zone.

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