SEABED COUNCIL APPROVES AGREEMENT OF COOPERATION BETWEEN AUTHORITY AND INTERNATIONAL HYDROGRAPHIC ORGANIZATION; COMPLETES DISCUSSION ON THREE AGENDA ITEMS; ELECTS TWO MORE VICE PRESIDENTS

The Council of the International Seabed Authority meeting in Kingston this afternoon disposed of four agenda items and elected two vice-presidents to complete a slate of four vice-presidents to serve the executive body in 2016.

The executive body took note of a report on the periodic review of the implementation of plans of work for exploration for polymetallic nodules in the Area. It also took note of a report on the status of national legislation for deep seabed mining and related matters.

Also this afternoon, the 36-member Council discussed matters relating to cooperation with other international organizations, approving agreement between the Authority and the International Hydrographic Organization. It deliberated on issues associated with the conduct of marine scientific research in the exploration areas.

The two vice presidents elected today were Uganda and France on behalf of the African and Western European and Others Group, respectively. Yesterday the Council elected India for the Asia and Pacific Group and Mexico for Latin America and Caribbean Group (GRULAC).

Periodic Review of Implementation of Plans of Work

The report (ISBA/22/C/7), introduced by the Secretary-General Nii Allotey Odunton, provided information on the status of periodic reviews of current exploration contracts in accordance with the relevant Regulations on Prospecting and Exploration for Polymetallic Nodules and Polymetallic Sulphides in the deep sea Area (Regulations 28 and 30 respectively) of the Authority. The two Regulations provided a mechanism for contractors to adjust their programme of activities at five-year intervals.
The Secretary-General indicated that the 2016 review was undertaken in respect of two exploration contracts for polymetallic nodules and one exploration contract for polymetallic sulphides. In the case of the contract for exploration for polymetallic nodules between the Authority and the Federal Institute for Geosciences and Natural Resources of Germany, the second five-year period would expire on 19 July 2016.

The first five-year period of the contract for exploration for polymetallic nodules between the Authority and Nauru Ocean Resources Inc. (NORI), would expire on 22 July 2016. In the case of the contract for exploration for polymetallic sulphides signed with the China Ocean Mineral Resources Research and Development Association, the first five-year period would expire on 18 November 2016.

In accordance with the Regulations and the terms of the contracts, the Secretary-General initiated the review in March 2016 by inviting the Federal Institute and Nauru Ocean Resources Inc. to provide a detailed synthesis and analysis of all exploration work and environmental studies carried out during the previous five-year period.

They were also invited to include in their reports a revised historical breakdown of reported actual and direct exploration expenditures in accordance with the recommendations for the guidance of contractors relating to such reporting issued by the Legal and Technical Commission in 2015 (ISBA/21/LTC/11), together with raw data previously collected and not yet supplied to the Authority. They were further invited to provide a proposed programme of activities for the next five-year period of the contract, together with a revised schedule of anticipated expenditures and a proposed training programme for the same period. The report said the Secretary-General would initiate a similar process with the China Ocean Mineral Resources Research and Development Association following the current session.

It also said that Nauru Ocean Resources Inc. and the Federal Institute responded to the request of the Secretary-General in April and May 2016, respectively, and submitted their proposed programmes of activities and schedules of anticipated expenditures for the coming five-year period. Those documents would be made available to the members of the Legal and Technical Commission for their review.

Nauru Ocean Resources Inc. also submitted an environmental inception report in relation to a proposed test of a nodule collector to seek an input from the Commission about the proposed scope and timings for it to meet relevant requirements about the submission of an environmental impact assessment.

The report said the Secretary-General intended to respond to the contractors at an appropriate opportunity following the current session, including holding consultations with individual contractors where appropriate.

Taking the floor following the presentation of the report, Cameroon said that the periodic review was a valuable tool which allowed the Council to monitor the activities of the contractor and provided protection from all kinds of surprises that might spring up over a 15 year contract. It also gave the Legal and Technical Commission the opportunity to monitor the training - more -
programmes and ensure that they were implemented in a standardized way. The representative expressed satisfaction that NORI had already envisaged providing the Authority with environmental data with regard to a nodule collector.

**National laws and regulations on deep seabed mining**

The Council then took up the question of the status of national legislation relating to deep seabed mining. The Legal Counsel presented a report of the Secretary-General, which provided an update on laws, regulations and administrative measures adopted by sponsoring States and other members of the Authority on activities in the international deep seabed Area (ISBA/22/C/8). The report has been presented annually since the Secretary-General was requested by the Council to do so in 2011.

The report said that as at 30 May 2016, the following States had provided information on, or texts of, relevant national legislation: Belgium, China, Cook Islands, Cuba, 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 (Observer) and Zambia. It added that a submission had also been received from the Pacific Community Secretariat on behalf of the Pacific islands region.

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

The report said that the Secretariat would continue to keep the online database updated and that a comprehensive study of the existing national legislation would be conducted with the receipt of more information and as resources permitted.

The Legal Counsel added that some States had adopted legislation but had not yet officially submitted the texts to the Secretariat.

The representative of France said that his country would complete legislation on deep seabed mining by the end of 2016 and that it would include provisions on the responsibilities and obligations of sponsoring States.

Tonga recalled an announcement it had made at the 20th session of having passed the Seabed Minerals Act (2014) and requested that this be included in an updated text of the report. The representative also informed the Council that his country was in the process of completing amendments to the Act and would provide the relevant details to the Secretariat.

**Cooperation with other Organizations**

As it took up an agenda item 19 on Cooperation with other Organizations, the Council had before it a note of the Secretary-General (ISBA/22/C/6), inviting it to approve a proposed Agreement of Cooperation between the Authority and the International Hydrographic Organization, an intergovernmental consultative and technical organization, established in 1921.

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Introducing the note to the Council, the Legal Counsel said that the proposed agreement (contained in an annex to the document) followed the pattern of similar ones previously concluded with interested entities. It was submitted for consideration by the Council in accordance with article 169 of the United Nations Convention on the Law of the Sea.

The International Hydrographic Organization had an observer status with the Assembly of the Authority, and also enjoyed a similar status at the United Nations General Assembly, the International Maritime Organization and the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization.

The Organization was recognized as the competent international authority on hydrography and nautical charting. As a general rule, United Nations instruments referred to the Organization’s standards, guidelines and doctrine on hydrography, nautical charting and associated activities, according to the Secretary-General’s note.

The note recalled that one of the recommendations of a workshop on submarine cables and deep seabed mining, organized by the Authority in 2015, was that the International Hydrographic Organization should be contacted to consider with the Authority the interest and feasibility of charting exploration areas under contract, to show the presence of cables.

Discussions on forging a relationship between the two bodies took place during the twenty-first session of the Authority. The President of the Directing Committee of the International Hydrographic Bureau, which is the permanent secretariat of the Organization, and the Secretary-General of the Authority agreed to consider establishing suitable arrangements for a mutually beneficial relationship between the two organizations.

Subsequently, informal exchanges took place at the secretariat level to initiate the preparation of a draft agreement of cooperation to improve common knowledge, understanding and mapping of the sea floor in the Area for the common benefit of mankind.

The Secretary-General’s note said this was particularly relevant in the context of Goal 14 of the recently adopted United Nations Sustainable Development Goals and supported the long-standing aims of the Organization and the regime governing activities in the Area. (Goal 14 covers the conservation and sustainable use of the oceans, seas and marine resources).

**Discussions**

After the presentation of the Secretary-General’s note, the President of the Directing Committee of IHO was given the floor. He said that the principal role of the 85-member organization was to ensure that the world’s seas, oceans and navigable waters were properly surveyed and charted. He pointed out that more data and maps were available on the moon than on the planet earth’s oceans and that only 5 to 15% of the seafloor had been measured by echo sounders. All existing charts and maps, he added, were based on extrapolations of the few depth measurements available.

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The IHO president reiterated his organization’s interest in entering into an agreement of cooperation with the Authority to ensure that the activities of both entities were complementary and mutually supportive.

The observer from Monaco, which had been the host country of IHO since 1967, said his country was pleased with the prospect of the signing of the agreement.

Cameroon, France and Mexico supported the approval of the agreement of cooperation.

**Marine Scientific Research**

The Legal Counsel introduced the Secretary-General’s report (ISBA/22/C/3*) on the topic which stated that the security of tenure for contractors and the exercise of the rights and freedoms of marine scientific research were essential for good governance and administration of the mineral resources of the Area.

It added that reconciling the possibly competing interests of contractors and researchers raised a number complex and sensitive legal questions and concerns.

The purpose of the report was to identify possible ways of responding to those issues in accordance with the relevant provisions of the United Nations Convention on the Law of the Sea. It provided details of applicable rules of international law of the sea governing marine scientific research and the rules in part XI of the United Nations Convention on the Law of the Sea.

Referring to the latter, the report noted that article 147 (1) required that activities in the deep sea Area be carried out with “reasonable regard” for others in the marine environment, while paragraph 3 of the same article contained a reciprocal provision which required that other activities in the marine environment be also conducted with “reasonable regard” for others in the Area. Paragraph 3 followed article 87 (2), which required that high seas freedoms be exercised with “due regard” for rights under the Convention with respect to activities in the Area. The term with “due regard” was used in many other articles of the Convention, the report pointed out.

It stated that marine scientific research activities in the Area must not unreasonably interfere with a contractor’s rights and duties under its contract with the Authority and that the two have to give due regard to the rights of each other without undue interference with activities of the other.

The report said that one way to avoid future disputes might be to further develop the exploration regulations to lay down specific rules for contractors and researchers. That might not be appropriate for what was essentially a need for the clarification of existing provisions, particularly the reciprocal obligation of “reasonable regard” of contractors and researchers regarding their activities in the Area, the report explained.

It suggested that such a clarification could more appropriately be obtained by a request for an advisory opinion of the Seabed Disputes Chamber of the International Tribunal for the
Law of the Sea. The report said the advisory opinion could be rendered at the request of the Assembly or the Council as provided for under article 191 of the Convention.

It added that the Chamber’s advice could contribute to the development of the future minerals exploitation regulations by the Authority, as well as to the development of guidance for researchers by the Intergovernmental Oceanographic Commission through the Advisory Body of Experts on the Law of the Sea.

Finally, the report provided a summary of the legal issues which required clarification and invited the Council to take appropriate action or make recommendations.

Discussions

In the debate on the report France highlighted the imbalance between contractors and researchers regarding their obligations. The representative pointed out that the contractors’ obligations were well laid out especially with regard to the environment. Conversely, he said the researchers had no such obligations. The Convention did not give guidance on the issue because part XIII had not provided a clear definition of marine scientific research.

Poland suggested that there might be conflict between two fundamental rights provided in the Convention: the freedom of marine scientific research and exclusive rights for exploration. The representative also proposed that regulations be developed to draw a clear line where research interfered with contractors’ rights.

While encouraging the conduct of marine scientific research in the Area, Singapore nevertheless recognized the fact that contractors were also undertaking exploration activities in the Area, and would be undertaking exploitation activities in the future.

A number of delegations, including Argentina, Cameroon, Canada, France, and Uganda, were reluctant to refer potential disputes to International Tribunal of the Law of the Sea as the first recourse.

Norway agreed with Argentina that the Legal and Technical Commission could be asked to review the issue and provide recommendations to the Council. China said the key to addressing issues of that kind lay in the exercise of good faith and communication by parties concerned. COMRA had effectively dealt with such a situation through frank communication and exchanges. The United Kingdom agreed with China’s suggestion that the approach should be pragmatic.

Singapore felt that it would be useful for Council members to know what some of those encounters had involved, and what practical problems had been faced on the ground thus far, whether by researchers, contractors or other stakeholders. Such knowledge would enable the Council to better understand what the specific issues were and how they might be addressed.
Delegations agreed that the issue must be kept on the agenda of the Council as the discussions were preliminary in nature, with other priorities, including drafting of legislation, requiring attention.

The discussion on agenda item having been completed, the Council President, Mariusz Jędrysek (Poland) announced that the Council would meet next on Thursday afternoon, 14 July to discuss the Finance Committee’s report on financial and budgetary matters.

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