SEABED COUNCIL CONCLUDES DISCUSSION ON WORK OF LEGAL AND TECHNICAL COMMISSION FOR 2016; TAKES NOTE OF REPORT

The Council of the International Seabed Authority, meeting in Kingston today, took note of the report of the Legal and Technical Commission on its two sessions in 2016.

On the recommendation of the President of the Council, Mariusz Jędrysek (Poland), the Council agreed that the report be presented in segments, with time afforded for discussion among members before proceeding to subsequent segments.

The report, (ISBA/22/C/CRP.1) was introduced by Commission Chairman, Christian Reichert and covered a number of issues the Commission considered in February and July 2016. They included: status of contracts for exploration; implementation of training programmes under those contracts; applications for extensions of exploration contracts; annual reports of contractors; environmental matters; draft regulations for exploitation; databases and data management strategy for the Authority; issues relating to the operation of the Enterprise and stakeholder consultation and engagement strategy.

The report also has two annexes – Annex 1 on status of the former registered pioneer investors; and annex II covering priority deliverables, high level issues, action plan and an updated and indicative work programme.

The Chairman began his presentation by announcing that the Commission had registered one of its highest levels of attendance as some 91 per cent of its members had participated in its sessions. In the first segment of his presentation, the Chairman addressed the status of exploration contracts, the implementation of training programmes, and applications for extensions of exploration contracts.
With regard to the status of contracts for exploration issued by the Authority, the Chairman stated that the Commission had taken note of the report provided by the secretariat.

**Implementation of training programmes**

The Chairman expressed the satisfaction of the Commission that candidates had been selected for the 18 training opportunities, including seven internships, ten at-sea training places and a master’s programme, provided by contractors individually in accordance with their respective exploration contracts with the Authority in 2016. The Commission had received a preliminary analysis of the status of implementation of the training programmes provided by the contractors from 2013 to date as well as the proposed training opportunities from 2016 to 2020 under new, and on-going extended exploration contracts. The Commission expressed its appreciation to the contractors for their valuable commitment to increasing the number of training opportunities over the next five years, noting that the number might reach 200 by the year 2020. The Commission encouraged developing member States to take advantage of the upcoming training opportunities.

In light of the increasing number of training opportunities, the Commission requested the secretariat to prepare suggested revisions of the “Recommendations for guidance of contractors and sponsoring States relating to training programmes under plans of work for exploration” for the consideration by the upcoming Commission.

**Application for extension of contracts for exploration**

The Chairman said that six applications were placed before the Commission for consideration. The members were divided into three working groups to review geological and technological aspects, environmental and training aspects, and legal and financial aspects of the applications.

After consideration of the applications, the Commission recommended to the Council approval of the six applications for extension, noting that “the applicants should be ready to proceed to exploitation at the end of the five-year extension period.”

The recommendations of the Commission on each of the applications are contained in documents ISBA/22/C/11 through ISBA/22/C/16.

**Discussions**

At this point of the presentation, the Council President opened the floor for intervention from members of the Council.

Cameroon began the discussion by expressing its appreciation for the training programmes to be implemented. This sentiment was echoed by the representative of South Africa, who spoke in particular of the Master’s level programme which represented the kind of “meaningful capacity-building” that would benefit developing countries. Bangladesh expressed satisfaction at the possibility of 200 training opportunities being offered in the next few years.
and suggested that early notification about these opportunities would afford member States time to identify eligible candidates. Jamaica hoped that the knowledge gained by those trained would be harnessed for future benefit.

Addressing the issue of extension of contracts, Brazil wanted to know what would be different in the new plans of work to ensure that contractors would be ready to proceed to exploitation at the end of the 5-year extensions. Cameroon felt that contractors granted extensions should be able to demonstrate some examples of testing during the extension period or else “they may never move to the mining stage”.

In his response, the LTC Chairman explained that this issue would be subject to the negotiations between the contractor and the secretariat regarding plans of work.

The Chairman was then invited by the Council President to continue his presentation of the report.

**Annual reports of contractors**

The Chairman reported that at its July session, the Commission had considered 22 annual reports on activities of contractors in 2015. Fourteen reports were related to exploration for polymetallic nodules, 5 of them were on exploration for polymetallic sulphides and 3 on exploration for cobalt-rich ferromanganese crusts.

In general comments on the reports, the Commission once again, among other observations, called upon the contractors to fulfil their obligations, as agreed upon and further specified in the standard clauses of their contract. Noting that 14 out of 22 contractors had used the recent reporting templates contained in document ISBA/21/LTC/15, the Commission urged all of them to apply them for their next reports. Significant progress had been made, the Chairman said, in the submission of data to the Authority. The Commission also noted and encouraged the emerging trend of collaboration among contractors.

**Periodic reviews of implementation of plans of work**

The Chairman reported that the Commission welcomed the announcement of the first ever proposed collector test by Nauru Oceans Resources Inc. and its intention to consult with the Authority on the technical requirements. It looked forward to the contractor’s proposal for the testing, including its proposed environmental work, to provide guidance. The Commission further encouraged other contractors to conduct similar tests.

**Environmental matters**

The Commission noted the suggested creation of two additional areas of particular environmental interest, as indicated on a map, and recommended that the proposed eleventh area should be shifted further north, directly east of the UK Seabed Resources Ltd. exploration area. The Commission also pointed out a need for cross-sectoral planning of areas.
The review of the Clarion-Clipperton Fracture Zone environmental management plan required an in-depth analysis of the status of the elements of the plan. In July, the Commission considered a report by the secretariat (ISBA/22/LTC/12), in which the progress made in the implementation of the plan and the steps to be taken until 2021 were recalled.

The Commission said it would consider holding a scientific workshop integrated by marine reserve/management specialists to determine the suitability or need to amend the plan to designate the network of nine areas of particular environmental interest. The workshop would review and assess the data available as well as the results of environmental workshops to define the size, location and number of required areas of particular environmental interest to enable the Commission to make a clear recommendation to the Council.

The Commission observed that recommendations of a workshop the Authority organized in Ghent, Belgium last December on taxonomic methods and standardization of meiofauna in the Clarion-Clipperton Zone, and other related workshops were relevant to the Commission’s review of its existing recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area (ISBA/19/LTC/8). The workshop recommendations covered topics including taxonomic methods and standardization.

The Commission indicated that the term “impact reference zones” needed to be redefined at its next session, after which a workshop could be organized to help develop specific guidelines for contractors in establishing such impact and preservation reference zones.

Discussions

In the ensuing discussions, Cameroon welcomed the increased collaboration among contractors and the fact that most of them were submitting annual reports in the required format. Mexico noted the progress in terms of transparency but maintained that there was still “some way to go” in that regard.

Australia was pleased to see the continued focus on environmental protection and supported having a workshop to review the CCZ environmental management plan. The representative urged the Authority, in its efforts to collect environmental data, to collaborate with other organizations rather than “reinvent the wheel.”

Referring to the three workshops on taxonomic standardization of benthic fauna inhabiting the Clarion-Clipperton Fracture Zone, China expressed the hope that positive action would result from the recommendations for the benefit of contractors.

Draft regulations for exploitation

Resuming his presentation of the report, the Chairman said the Commission had noted the challenges in developing a full regulatory framework and said it considered the ‘building block’ approach taken by the Authority as the best one. However, the Commission reiterated that no
single element or package of the regulatory code would be agreed upon until everything was agreed.

The Commission concluded that a revised working draft presented to it at its July 2016 session should be circulated to stakeholders at the earliest available opportunity for their comment. It observed that the draft should be considered a work in progress as a number of areas required further feedback, discussion and expert input. It said that following the receipt of stakeholder comments a new working draft, together with stakeholder feedback would be presented to the upcoming Commission in February 2017. (A new Commission will be constituted following election of members during the current session of the Authority.)

A priority for the next Commission was the identification of a better working methodology for the development of the exploitation regulations, including timelines and stakeholder contribution in the regulatory content and drafting process, the Commission noted.

Following its deliberations on the working draft, the Commission, according to the Chair’s report, reviewed a number of suggested areas of action towards the development of the regulations, including the second phase of work on the priority deliverables and actions flowing from the high-level issues and action plan delivered to the Council in July 2015. An updated and indicative work programme is included in Annex II of the report.

Matters referred to the Commission by the Council

On issues related to the handling of confidential data and information, the Commission said the question was deliberated upon at its first session. It noted that while the Convention established an obligation not to disclose confidential information, and to some extent defined what data and information were to be considered confidential, it did not deal with the procedures by which confidential information was to be handled. Instead, such procedures were outlined in the Authority’s Regulations on prospecting and exploration.

Issues relating to operation of the Enterprise

The Commission said that the question of the operationalization of the Enterprise, the future mining arm of the Authority, should be addressed in the near future, it took note of the progress report to date on the topic and decided to keep it on the agenda for the consideration of the new Commission. It requested the secretariat, within existing resources and list of priorities, to continue its work on the 2014 studies on the identification of gaps and clarification of the terms and conditions upon which a future joint venture arrangement between a contractor and the Enterprise could be implemented.

Interim report of the Article 154 review committee

The Commission expressed its great satisfaction at the interest shown by those individuals who attended the open session on the interim report of the review committee. It had considered the interim report provided by the consultants, deeming it timely and essential to the
assessment of the implementation of the international regime of the Area pursuant to article 154 of the Convention to date, but was unable to reach consensus.

The report summarised the views of the majority of its members, whose concerns included:

- shortcomings in the methodology of the review survey;
- lack of visibility of the largest category of respondents as to their knowledge of the regime under review and consequently their accountability or responsibility in relation to matters relating to the mandate of the Authority;
- underrepresentation of geographical regions;
- the phrasing of some questions that had the potential to influence responses, and outcomes.

It was also highlighted that the report was interim in nature.

The Chairman of the Commission commented on the work load placed on members to complete the report and suggested that more expertise might be required to assist the body to complete its work. Argentina, Australia, China and India responded with a suggestion that a formal request be made to the Council.

**Discussions**

Commenting on the need to identify a better working methodology in relation to the development of the regulatory framework including stakeholder contribution to the drafting process, Cameroon suggested that the Commission’s observation in paragraph 40 of its report should also be included as one of the priority deliverables in Annex II of the report. Regarding the drafting of the exploitation regulations, the United Kingdom encouraged the Commission to develop a precise calendar with deadlines and agreed with Australia that the exercise should be given top priority. The observer from the Netherlands endorsed the position of the United Kingdom. Mexico said it was important to have involvement of stakeholders in the development of a code of exploitation of minerals on the deep seabed.

Australia was pleased with the high priority given to the draft exploitation regulations and said that it made sense to extend the time needed to secure the best working methodologies, including stakeholder contributions in the regulatory content and drafting process.

On the data management strategy of the Authority, South Africa drew reference to the strong support expressed by the Commission for improved strategies proposed by a working group it established as well as a project proposed by the secretariat, to begin in January 2017, to develop and strengthen the data management capacity of the Authority. Welcoming the initiatives, South Africa said the two staff positions proposed would add value to the resources of the Authority. Cameroon said the Commission’s strong advocacy on data management was correct as the secretariat would be in a position to provide useful data from all sources.

Describing the Enterprise as a work in progress, Cameroon said there were many questions that remained to be answered concerning its legal, technical and financial operations.
Commenting on the open meeting of the Commission on the interim report of the Article 154 Review Committee, many delegations called for more opportunities to attend such sessions. Replying to Cameroon’s preference for a consensus view on the report, the chairman of the LTC reminded the Council that only a snapshot of opinions was required of the Commission.

Observers

At the end of the meeting, representatives of observer organizations were invited to make comments on the report.

The observer from World Wildlife Fund International highlighted the importance of workshops on the impact reference zones and preservation reference zones during the exploration phase in order to proceed to the exploitation phase.

Greenpeace also joined Australia in underlining the importance of the review of the CCZ environmental management plan, and supported the Commission's suggestion of the need for cross-sectoral planning of areas of particular environmental interest (APEI). The representative welcomed the Secretary-General's assurances of transparency in the workshops, and like the representative of the Deep Sea Conservation Coalition looked forward to participating in them with other stakeholders.

The International Union for the Conservation of Nature supported the positions of other observers and stressed the need to link contractors’ plans of work with regional environmental plans.

The Commonwealth Secretariat agreed with Mexico and the United Kingdom with regard to the need for transparency and data sharing but was mindful that issues of confidentiality had to be taken into account.

The Council will meet on Monday, July 18, to discuss the recommendations of the Commission on the applications from six contractors for extensions of plans of work.

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