

# International Seabed Authority

**Press Release**



Eleventh Session  
Kingston, Jamaica  
15 - 26 August 2005

**Council (AM/PM)**

**SB/11/15  
24 August 2005**

---

## **SEABED COUNCIL COMPLETES FIRST READING OF DRAFT NEW CODE FOR POLYMETALLIC SULPHIDES AND COBALT CRUSTS. COUNCIL PRESIDENT TO REPORT TO ASSEMBLY ON WORK OF SESSION**

Wrapping up its meetings of the eleventh session of the International Seabed Authority (15-26 August, Kingston), the Authority's Council today completed the first reading of the draft new mining code for polymetallic sulphides and cobalt-rich crusts – a major item on its agenda.

At a brief meeting of the Council this afternoon to hear a draft report he will present to the Assembly, Council President Hee Kwon Park (Republic of Korea) said completing the first reading of the draft regulations was no mean achievement. "We had to complete our job in the very difficult situation in which knowledge and information on polymetallic sulphides and cobalt crusts are not sufficient", he said.

It was clear during the deliberations that the positions of delegations were converging on some provisions in the draft. On others, the President said the divergence of views and perspectives were of a substantial nature, making consensus more difficult in the short term. The core issues would form the basis of deliberation when the Council, at its twelfth session in 2006, receives a revised text of the draft regulations.

The Secretariat was expected to prepare the revised text which would address some technical issues that had been raised during the session as well as to correct a number of errors in translation noted by delegations. The Secretariat would also provide analyses of the more complex issues and make them available before the next session, to allow members time to consider them in detail.

The draft text, which is in nine parts containing 43 regulations and four annexes, sets out the legal rules that contractors and the Authority must follow in prospecting or

---

exploring for those metals. Polymetallic sulphides are found on sea ridges, while cobalt-rich crusts are deposited on seamounts.

At its earlier meeting this morning, the Council first took up regulation 38 on the issue of proprietary data and information and confidentiality. This regulation contains a new paragraph which does not appear in the code for polymetallic nodules adopted in 2000. It reads: “Data and information that is necessary for the formulation by the Authority of rules, regulations and procedures concerning protection of the marine environment and safety, other than equipment design data, shall not be deemed proprietary.”

The Netherlands suggested that the text should refer to “protection and preservation” of the marine environment. The suggestion was endorsed by Argentina, Brazil, Canada, Portugal and Spain.

On the other hand, the United States Observer said that data which was very valuable to the contractor was dependent on confidentiality. The language of the new paragraph was too broad and she favoured reverting to the text of the polymetallic nodule regulations. The Republic of Korea also wanted the paragraph deleted.

New wording in regulation 40, notice and general procedures, makes it acceptable to send applications, notices, reports and other correspondence “by electronic mail which contains an authorized signature”. Delegations raised no objections to this use of technology but Australia and the United States sought clarification on the date at which such communications would be deemed to be effective and how their receipt would be acknowledged.

The final Regulation 43 places an obligation on prospectors or contractors to notify the Authority should they find resources other than polymetallic sulphides or cobalt crusts while conducting their activities in the Area. The United States wanted to know what basis there was in the United Nations Convention on the Law of the Sea to support the imposition of that new responsibility. She also pointed out that a prospector looking for polymetallic sulphides might not necessarily recognize the presence of other resources. The Russian Federation concurred with the United States position, and added that it should be clear that the definition of those other resources must be consistent with the definition in Part XI of the Convention.

Indonesia asked what rules would apply to those other resources and suggested that the Legal and Technical Commission might need to prepare legislation for them on the completion of the draft regulations.

The Chairman of the Commission, Baïdy Diène (Senegal) said that the discovery of other resources in the Area would raise issues for both the Authority and contractors. The latter would need to know how to proceed and what rights they had to the resources while the Authority would have to come up with legal provisions to deal with the matter.

He pointed out that the purpose of draft regulation 43 was to call on the contractor to notify the Authority of such a discovery.

The Council proceeded to discuss the four Annexes to the draft regulation. Questions were raised by some delegations on issues that had already been discussed during consideration of the 43 regulations.

Annex 1 (Notification of intention to engage in prospecting), attracted comments on item 17 (c) which states that the prospector will “make available to the Authority, as far as practicable, such data as may be relevant to the protection and preservation of the marine environment”. The Netherlands said the language needed to be strengthened while the Observer from the United States said the requirement was too broad and should be deleted.

Annex 2 covers Application for approval of a plan of work for exploration to obtain a contract. In section IV on financial and technical information, paragraph 24 (c) requires the “curricula vitae of the senior managers and key technical personnel expected to be employed in carrying out the proposed plan of work for exploration”. Responding to the Netherlands and Russia, the Secretary-General said it was the norm to have such a provision in mining contracts to give the Authority information on the qualification of the personnel involved.

Nigeria, with support from Chile and Kenya, said the essence of the provision appeared in the introductory paragraph which indicated that the Council could determine whether the applicant was technically capable of carrying out the proposed plan of work for exploration.

In paragraph 25 (c) which calls for “a preliminary assessment of the possible impact of the proposed exploration activities on the marine environment”, Canada proposed adding “according to internationally recognized standards and practices.” Spain proposed the addition of a reference to the provisions of international law applicable to the environment and the sub-aquatic cultural heritage in paragraph 25(d), and inserting a new paragraph (d bis), as follows: “a preliminary assessment of the possible impact of proposed exploration activity of the sub aquatic cultural heritage.”

Paragraph 27 of Annex 2, which refers to the affiliation of an applicant to a person, firm, corporation or entity that had been awarded any contract with the Authority, drew the attention of the USA, Argentina and France. They sought clarification on the legal basis for that provision. The Chairman of the Legal and Technical Commission suggested that the wording could be improved to provide a better understanding of what is meant by previous contract.

Annex 4 to the draft regulations contains standard clauses for the contracts to be issued to applicants wishing to engage in prospecting and exploration for polymetallic sulphides and crusts. Referring to Section 5 on environmental monitoring, Canada

supported the suggestion of The Netherlands for a return to the original text of the polymetallic nodules code. The United States called for the deletion of section 5.2 which requires the contractor to submit specific information to the Authority prior to the commencement of exploration activities.

Section 10 of the standard clauses deals with the annual reports that contractors must submit to the Authority. According to the new text in 10.1, the reports must now be submitted “in such format as may be recommended from time to time by the Legal and Technical Commission”. The Russian Federation recalled that the question of the content of annual reports was the subject of negotiations during the Council’s consideration of the polymetallic nodules code. A compromise reached was reflected in the code. However, he said, the Legal and Technical Commission had subsequently formulated new requirements for annual reports that were not in keeping with the regulations. His delegation was categorically opposed to the inclusion of the new text.

\* \* \* \* \*