

International Seabed Authority

Press Release



**Fourteenth Session
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Council (PM)

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SEABED COUNCIL CONCLUDES WORK OF FOURTEENTH SESSION

The Council of the International Seabed Authority concluded its work for the fourteenth session this afternoon after completing its examination of the draft regulations on prospecting and exploration for polymetallic sulphides in the International Seabed Area, adopting some revised texts and deferring action on others to its next session in 2009.

A revised version of the document, with all the work done by the Council on forty-four regulations and four annexes, will be prepared by the Secretariat for consideration at the fifteenth session of the Authority.

As is customary, the President of the Council Liesbeth Lijnzaad (Netherlands) will report to the Assembly on the work of the 36-member body during the two week session.

The Council adopted Regulation 33 related to the protection and preservation of the marine environment, based on changes to paragraph 2ter drafted by a group of delegations including Australia, India, New Zealand, South Africa and Spain. The paragraph now reads:

2ter The Commission shall develop and implement procedures for determining, on the basis of the best available scientific and technical information, including information provided pursuant to Regulation 20, whether proposed exploration activities in the Area would have serious harmful effects on vulnerable marine ecosystems, in particular hydrothermal vents, and ensure that, if it is determined that certain proposed exploration activities would have serious harmful effects on vulnerable marine ecosystems, those activities are managed to prevent such effects or not authorized to proceed.

Discussion on the Annexes

The Council proceeded to examine Annex 2 (Application for approval of a plan of work for exploration to obtain a contract) contained in document ISBA/14/C/CRP.3. Those sections adopted were Sections I (Information concerning the applicant); III (Financial and technical information); V (Undertakings); VI (Previous contracts) and VII (Attachments) were adopted by

the Council. Section IV, related to the plan of work for exploration, would be redrafted to reflect wording in Regulation 20 of the draft code.

Section II, dealing with information relating to the area under application, was the focus of some discussion. With regard to paragraphs (C) and (D) of paragraph 19 (i), China and Japan said that the data requested pertained to the use of technologies that would not necessarily be employed by the applicant. In response, the Secretariat explained that data required of the applicant would be in keeping with the techniques and technologies employed by the applicant. For example, if remote sensing was not utilized, remotely sensed data could not be supplied.

With regard to paragraph 18, China noted that production sharing was not mentioned as an option for the applicant along with contribution of a reserved area or equity interest in a joint venture. Council President, Liesbeth Lijnzaad (Netherlands) pointed out that no definite decision had been made with regard to production sharing and that this paragraph in Annex 2 would be revisited once the Council had made such a decision. Section II is to be worked on at the next session in 2009.

The Council moved on to discuss annex 4 of the draft regulations (Standard clauses of exploration contract) contained in ISBA/14/C/CRP.4. The first issue to be raised dealt with the possibility of extending contracts beyond the initial fifteen years for periods of not more than five years. According to paragraph 3.2 of annex 4, “not more than two such extensions may be permitted.”

India maintained that this restriction to two extensions had not been decided upon. Mexico, on the other hand, said it was under the impression that all of Regulation 28, which deals with the issue of the duration of contracts, was pending. At last year’s session, that delegation had put forward a suggestion to limit initial contract period to 10 years. Germany and Jamaica shared the position of Mexico. However, the Russian Federation and India contended that the 15-year contractual period was settled. The president agreed, pointing out that this was the contract period established in Section 1, paragraph 9 of the Annex of the 1994 Agreement. She maintained that only the question of extensions was in doubt and that the issue was how to formulate the possibilities for extensions. It was therefore agreed that paragraph 3.2 of the annex would remain pending until Regulation 28 was finalized.

A drafting error was identified in Section 12 (Confidentiality). The paragraph now reads: “Data and information transferred to the Authority in accordance with this contract shall be treated as confidential in accordance with the provisions of the regulations.”

Addressing section 17 on Force majeure, United Republic of Tanzania noted that there was no clause providing for an “exit mechanism” in the event of a prolonged effect of a force majeure. The Secretariat pointed out that the wording of this section reflected that of the regime for polymetallic nodules, which had been reviewed in detail by the Legal and Technical Commission and the Council. If normal conditions could not be restored, it would follow that a contract might have to be dissolved. However, Uganda agreed with United Republic of Tanzania that the clause should explicitly address such a case. The president requested the Secretariat to draft a clause that would be discussed at the next session.

On section 25 (Disputes) of Annex 4 (Standard clauses for exploration contract), Canada suggested removing paragraph 25.2 dealing with the enforceability, in the territory of each State Party to the Convention, of any final decision rendered by a court or tribunal having jurisdiction under the 1982 United Nations Convention on the Law of the Sea relating to the rights and obligations of the Authority and of the Contractor.

The representative of Canada felt the clause would not be enforceable and therefore was not a proper contractual provision. Mr. Nandan referred the Council to the relationship between Article 21 (Applicable Laws) of Annex 3 of the Convention and paragraph 25.2. He said the contractor would be obliged to subject itself to the State Party's jurisdiction. The Council President suggested the paragraph be left pending with a footnote, keeping in mind that similar text appeared in the nodules regulations.

List of pending items

After completing the review of the informal text of Annex 4 of the draft regulations, the President of the Council said the document would be updated to reflect the work done during the session. She proceeded to list the pending draft regulations and annexes (regulations 1(3), 12(3), 21, 22bis, 28(2), Annex 2 section 2, and Annex 4 sections 3.2, 17.5 and 25.2) that would be taken up by the Council in 2009.

China argued that Regulation 12 in its entirety remained pending because no consensus had been reached on all three paragraphs. The representative said he could not recall any serious discussion on the regulation by the Council although his delegation had indicated that there were substantive issues outstanding. China strongly rejected the president's insistence on listing paragraphs 1 and 2 of Regulation 12 as approved saying it was attempting to safeguard the deliberations of the Council.

The president said her notes indicated that there was agreement by the Council on the first two paragraphs of Regulation 12, with only 12(3) left pending. New Zealand and Jamaica supported the president who, after Jamaica noted a link between the second and third paragraphs, reminded members that adoption of the paragraphs was on the understanding that they would revisit paragraph 3. She said her list of pending items was not a matter for approval by the Council but merely a guide to members. In a compromising gesture, the Secretary-General said the president's list was indicative of the way things occurred as she saw it. "We are not required to adopt the list, but to be guided by it," Mr. Nandan said.

India made a reference to the Council document concerning the review of outstanding issues with respect to the draft regulations (ISBA/14/C/4) which listed Regulation 12 as a pending article to be taken up by the body at this session. However, the representative of Jamaica, who presided as president of the Council in 2007, recalled that Australia and the Russian Federation delegations had produced text for the regulation which was discussed by the Council during the current session.

The president said a revised version of the draft sulphide regulations would be ready for circulation tomorrow, 6 June.