

International Seabed Authority

Press Release



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SEABED COUNCIL APPROVES FOUR APPLICATIONS FOR EXPLORATORY CONTRACTS WITH AUTHORITY IN DEEP SEABED AREA

Requests Secretary-General to issue them with a plan of work in the form of contracts with the Authority

Acting on recommendations of the Legal and Technical Commission, the Seabed Council this afternoon approved the plans of work for exploration for polymetallic nodules and polymetallic sulphides in the international deep seabed Area submitted by four entities.

Adopting four draft decisions (documents ISBA/17/C/2, 3,4 and 5,), as amended during debate, the Council requested the Authority's Secretary-General to issue them with plans of work in the form of contracts with the Authority in accordance with the relevant regulations.

The entities are Nauru Ocean Resources Inc. (NORI), sponsored by Nauru, and Tonga Offshore Mining Limited (TOML), sponsored by Tonga. They submitted their applications on 31 March 2008 for exploration for nodules in the reserved Area of the Clarion-Clipperton Fractured Zone.

The other two bodies are China Ocean Minerals Resources Research and Development Association (COMRA), and the Ministry of Natural Resources and the Environment of the Russian Federation which submitted their applications on 7 May 2010 and on 24 December 2010 respectively, for approval of their plan of work for exploration for polymetallic sulphides in the Area.

Amendments to the draft decision

In the debate on the recommendations for approval of the application of Nauru Ocean Resources Inc., Germany made a reference to the recent advisory opinion of the Seabed Disputes Chamber in which the judges said that sponsoring States should have laws, regulations and administrative measures in place for "active supervision of the activities of the sponsored contractor".

Referring to paragraph 22 to 24 of the Legal and Technical Commission's report on the application of NORI (ISBA/17/C/9), the German representative welcomed the progress made and actions planned by the Government of Nauru with regard to implementing a comprehensive legal framework to

regulate the activities of their sponsored contractor. However, he suggested that the original draft decision should be amended to reflect the importance attached to the enactment of appropriate legislation following the comments of the Disputes Chamber. It would also help to ensure that a legal framework was in place before the actual commencement of work by the contractor. The representative of the Netherlands supported the German position.

In relation to this issue, Brazil later pointed out that the draft decision on the application of TOML should be similarly amended to reflect a reference to paragraph 19 of the report on that entity's application (ISBA/17/C/10).

Consequently, the first paragraphs of the draft decisions for Nauru and Tonga were amended to contain a reference to the paragraphs in the Commission's reports which addressed the applicants' actions to implement appropriate legislation.

On the suggestion of Brazil, delegations met informally after the morning's meeting to agree on wording that would underscore contractors' reporting obligations. These discussions produced the following two proposals which were added as the final paragraphs of the preamble of the draft decision:

The Council of the International Seabed Authority, acting on the recommendation of the Legal and Technical Commission,

Reaffirming the obligations on contractors with the Authority to comply fully with the terms and conditions of the contract, including reporting of environmental data and actual and direct exploration expenditures in accordance with the Regulation and the standard terms of contract,

Noting the advisory opinion of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea of 1 February 2011.

The final amendment to the draft decision came from the representative of Egypt who suggested that the words "to take the steps necessary" be deleted from the third paragraph of the draft decision as it added nothing to the meaning.

Discussion on Nauru application

India expressed concern about the matter of the financial capacity of the applicant. The representative pointed out that paragraph 37(c) of the Commission's report stated that the applicant possessed the financial capability to carry out the plan of work for exploration; however in paragraph 31, he said, the Commission noted that the applicant proposed to finance the activities through borrowing. India considered those statements to be contradictory – the applicant could not be deemed to possess adequate financial capacity if the funds had to be borrowed. Brazil disagreed with that view, arguing that financial capability referred to the ability to raise the necessary capital for activities. In response, the Legal Counsel suggested that the Commission had based its assessment on detailed information submitted to it in the application.

The Indonesian representative sought clarification on modification of activities authorized by a contract. He asked whether, in the case of such modifications, the application process would have to begin all over again. The Legal Counsel explained that Section 24 of the Standard Clauses for exploration contracts allowed for such modifications.

Tonga Offshore Mining

The question of ownership, effective control and the jurisdiction under which Tonga Offshore Mining Limited (TOML) would operate drew much debate among delegations from Brazil, France, Germany, Indonesia, Jamaica, Netherlands, Nigeria, South Africa, and the United Kingdom, with interventions also from the representative from Argentina, the Secretariat's Legal Counsel, and a response from the Kingdom of Tonga.

Paragraph 15 of the report and recommendations to Council relating to TOML's application (ISBA/17/C/10) indicated that the company "is a registered national of the Kingdom of Tonga that is incorporated within the jurisdiction of the Kingdom of Tonga and is under the effective control of the Kingdom of Tonga". It described TOML as a Tongan incorporated subsidiary of Nautilus Minerals Incorporated, which holds 100 per cent of the shares of TOML through another wholly owned subsidiary, United Nickel Ltd., incorporated in Canada.

At issue was whether the sponsorship, legal jurisdiction and effective control of the entity were clearly established and could meet the requirements set out in regulation 11 (Certificate of sponsorship) of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area.

Germany queried the nationality of the Tongan entity and said paragraph 15 of the Commission's report left room for interpretation on the issue as it relates to paragraph 2 of regulation 11 which states:

2. Where the applicant has the nationality of one State but is effectively controlled by another State or its nationals, each State involved shall issue a certificate of sponsorship.

Delegations including Brazil, Germany and the Netherlands agreed that the principle of effective control in 11 (2) of the nodules regulations needed to be clarified. In the case of TOML, Brazil said the explanation provided was insufficient to clarify the nationality of the entity for which effective control appeared to reside in Canada. The Netherlands delegation noted Tonga's intention to adopt laws and take administrative measures, within the legal framework for securing compliance by the applicant under its jurisdiction. Netherlands said that, in view of the Advisory Opinion, while the legal framework was not a requirement at the signing of the contract, legislation must be in force before exploration work started.

In an explanation, the Legal Counsel said the Commission, at the conclusion of its study of the application, based its recommendation on the fact that the application was made by TOML, a Tongan-owned shareholding, under the control of Tonga, as evidenced by a Certificate of Sponsorship issued by the state which has effective control.

Frida Armas-Pfirter, an outgoing member of the Legal and Technical Commission from Argentina explained that the Commission had studied the application with all the relevant material in hand, including the certificate of sponsorship in due and proper form. Speaking on her own behalf, she said application such as TOML's was one way of enabling developing countries to participate in activities in the Area.

The United Kingdom and Nigeria cautioned that the Commission reached its conclusion following detailed examination of the application, and that second-guessing its decision could send the wrong signal. France said that although Brazil's concerns were well founded his delegation would accept the findings of the Commission. South Africa said questions posed by Germany, Brazil and The Netherlands were valid as a closer look at paragraph 15 of its recommendation revealed that the Commission also had some concerns.

The representative of the Kingdom of Tonga reminded the Council that it was a developing nation and that the TOML application was one way such States could realize meaningful participation in operations in the Area.

China, Russian Federation applications approved

The applications for approval of plans of work for China Ocean Mineral Resources Research and Development Association (COMRA), and the Government of the Russian Federation were both approved, without debate. Following the adoption of each decision by Council, representatives from Tonga, Nauru, China and the Russian Federation made brief remarks thanking the Commission and the Council for their work.

In accordance with the 1994 Agreement and the nodule and sulphide regulations, as well as rule 70 of the rules of procedure of the Council, “the Council shall approve recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of the chambers of the Council, the Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation shall be deemed to have been approved by the Council at the end of that period. The prescribed period shall normally be 60 days unless the Council decides to provide for a longer period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its rules of procedure for decision-making on questions of substance.”

Council President Andrzej Przybycim (Poland) announced that the Finance Committee report would be tabled tomorrow morning before the Council resumed discussions on the crusts regulations. Also tomorrow, the Council will hear the report of the Secretary-General concerning the credentials of members of the Council.

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