COUNCIL CONSIDERS SECRETARIAT’S NOTE ON REGULATORY FRAMEWORK FOR NODULES EXPLOITATION

In the wake of renewed interest in potential commercial exploitation for deep seabed minerals, the Council of the International Seabed Authority, meeting in Kingston this afternoon, reviewed a summary Secretariat note from a technical report that provided a framework for polymetallic nodule exploitation in the Area.

The Council also reached consensus on its response to a joint venture proposal with the Enterprise, the future mining arm of the Authority, submitted by Nautilus Minerals Inc., a company incorporated in Canada. The proposal was the subject of a report by the Interim Director-General of the Enterprise (ISBA/19/C/4).

Resuming its discussion on the report on the joint venture proposal, the Council reviewed a revised text of the paragraph on a request that the Secretary-General carry out a study of the issues concerning the operation of the Enterprise. The Council reached agreement on the English text, which reads:

The Council requests the Secretary-General, referring where appropriate to the Legal and Technical Commission and the Finance Committee, to carry out a study of the issues relating to the operation of the Enterprise as contained in ISBA/19/C/6, in particular on the legal, technical and financial implications for the Authority and for States parties, taking into account the provisions of the Convention, the 1994 Agreement and the Regulations.

a) It is premature for the Enterprise to function independently.

b) The proposal for a joint venture between Nautilus and the Enterprise should no longer be an impediment to the consideration by the Legal and Technical Commission and the Council of applications for reserved areas by developing countries and other qualified applicants.
The Council then continued its consideration of the revised nodules regulations. Two additional paragraphs to the draft decision contained in ISBA/19/C/7 were circulated. They read:

5. **Decides that**, pending the receipt of the recommendation of the Legal and Technical Commission referred to in paragraph 4, regulation 21 (1) (b) of the Regulations on Prospecting and Exploration for Polymetallic Sulphides shall not apply.

6. **Further requests** the Legal and Technical Commission to review the provisions of the Regulations on Prospecting and Exploration for Polymetallic Nodules, the Regulations on Prospecting and Exploration for Polymetallic Sulphides and the Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese Crusts relating to the monopolization of activities in the Area and the option of offering an equity interest in a joint venture arrangement with a view to aligning all three sets of regulations in this respect and to make a recommendation thereon for consideration by the Council at its twentieth session in 2014.

The United Kingdom, with support from Brazil, China and India, pointed out that the regulations for the three resources might not have to be identical. Brazil further suggested that the addition of the word “possibly” in paragraph 6, to read “with a view to possibly aligning” would reflect the point made by the United Kingdom.

In response to a query from China regarding how paragraph 5 would affect its current method of fee payment by installments, the Legal Counsel explained that the paragraph of the draft decision was intended to apply to new applications only so there was no need to alter China’s system of payments.

The decision was adopted with the two additional paragraphs, including the additional word in paragraph 6.

Moving on to agenda item 15, the President invited the Secretary-General to introduce a note by the Secretariat on the development of a regulatory framework for polymetallic nodule exploitation in the Area (ISBA/19/C/5).

**Framework for polymetallic nodule exploitation**

The potential for the exploitation for polymetallic nodules, polymetallic sulphides and cobalt-rich ferromanganese crusts within the seabed Area is “arguably higher than at any time in history”, the Secretariat of the International Seabed Authority states in a Note (document ISB/19/C/5) to the Council. Meeting this challenge required the development of a strategic framework for the necessary mandates, organizational capacities (technical and administrative), policies and regulations (implementing rules and regulations), and capacities (fiscal, manpower and specialties), the Note states.

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The Secretariat also identifies the major organizational, fiscal and research recommendations that must be addressed, over the next three to five years, as part of an overall strategic plan to ensure the Authority’s ability to meet the challenge of developing an exploitation regime.

It proposes an internal mining inspectorate to maintain oversight and compliance with all exploration and exploitation licence activities. The high level of interest in marine mining, coupled with the need for many operators to apply for exploitation licences by 2016, indicates a critical need for detailed discussions on the funding, planning and implementation of such an “administrative agency” capacity within the Authority in the near future, the Secretariat states.

It recommends the incorporation of environmental rules, regulations and requirements with and within the evolving exploitation frameworks for polymetallic nodules and other metal resources within the Area. There should also be transparent engagement with deep-sea mining industry and other stakeholders in the process, it adds.

Another proposal is that the Authority should undertake a study specific to the development of a set of unified and common operating procedures, as is done within most on-land mining ministries and agencies, for the evaluation, licensing and monitoring of polymetallic nodules, cobalt-rich ferromanganese crusts and polymetallic sulphides prospecting, exploration and exploitation.

The secretariat note calls for the development of a “staged” or “phased” licensing system for polymetallic nodules exploitation. Prior to the expiration of an exploration licence a contractor (if interested in proceeding to the mining phase) must be required to first apply for a provisional mining licence based upon the preparation and submission of a prefeasibility study and workplans to undertake a detailed bankable feasibility study based upon a pilot polymetallic nodule mining operation in the contract area.

It observes that the staged or phased licensing process would allow the Authority to make an intermediate decision as to whether or not to allow a pilot project to fully demonstrate viability and safety. The provisional licence would provide an important measure of control and power to “claw back the project” should unforeseeable problems arise, without a full-scale mining project being suspended or terminated.

**Phased licensing approach**

China, France and the United Kingdom lauded the proposed “staged” or “phased” licensing system that would have the contractor applying for a three-year preliminary mining licence based on a prefeasibility study. The provisional mining licence would, in France’s view, allow contractors to “test the waters” while giving the Authority the flexibility to determine, based on data, information and analysis, whether a full-scale mining operation could be undertaken in a manner that was acceptable and environmentally minimally invasive. China endorsed the gradual approach to exploitation of nodules emphasizing that deep seabed was
unprecedented and complicated. The preliminary mining licence would, according to China, encourage “conscious decision-making” on the part of both the contractor and the Authority.

Environment and corporate responsibility

Brazil expressed satisfaction with the Secretary-General’s emphasis on a strong environmental approach. Japan, Nigeria, and New Zealand (Observer) commented on the environmental considerations they felt should be included in the regulatory framework for nodules exploitation in light of the unique technical issues that differentiate deep seabed mining from land-based mining. Japan commended the reference to environmental protection and management throughout the report. Nigeria suggested that, in the interest of environmental preservation, provisions should be included in the regulations to address accidents. New Zealand said that as an environmental imperative, mechanisms must be in place for quick and effective action on marine protection and preservation issues. Poland recommended increased collaboration between the Authority and International Maritime Organization which had already adopted conventions on health and safety at sea.

The Netherlands raised the issue of liability and reparation in cases of environmental damage as well as others where blame could not be directly attributed to a contractor. Argentina was also concerned about liability issues and said that in considering an application, any group to which the applicant is linked should be taken into account.

Jamaica, South Africa, and the United Kingdom supported aspects of the hybrid social business model particularly as it would promote the “dual challenge” of generating value to all mankind through sustainable development of deep seabed resources, and meeting the return on investment requirements of investors.

Mining inspectorate

With regard to the establishment of an internal mining inspectorate, Mexico called for case studies to be submitted for consideration by the organs of the Authority in order to establish such an entity. The United Kingdom pointed out that the costs would have to be studied carefully. Australia agreed, suggesting that the inspectorate could be funded through profits made by contractors. France suggested that the Authority could use existing regimes for the inspection of fisheries to guide its work.

Fiscal system

Discussing the issue of a fiscal system, Cameroon, China and South Africa cautioned that any system would need to consider the welfare of the environment without compromising the need for commercial feasibility – a balance between risk and profit was essential. France suggested it might be useful to consider a fiscal regime that would be applied to a conventional mining enterprise.
Closure plans

Jamaica suggested that in elaborating the exploitation code for polymetallic nodules, the Authority could utilize the approach applied to on-land mining, where all mining plans were required to incorporate a closure plan, in keeping with the concept of progressive restoration. This ensured that due attention was paid to the environmental impact as mining activities progressed. Cameroon and Fiji agreed with the concept of a closure plan as one of the requirements in applying for a mining contract.

Following the exchange of ideas, the Secretary-General said that the purpose of the paper was to stimulate discussion. It was clear, he said, that the Authority needed to inform contractors more accurately about the kind of information needed from them annually. As such, the Secretariat intended to make available to the Legal and Technical Commission, all the information which emerged from taxonomic exchange workshops, so that the Commission could issue some documentation as a guide to contractors.

Before it took note of the Secretary-General’s note, the President of the Council, Tobias Pierlings (Germany) echoed Jamaica’s earlier assertion that the exploitation of the mineral resources of the deep seabed was “the reason we are here”.

The Council will meet tomorrow morning when it is expected to complete consideration of agenda items 8 (revised Nodules Regulations), and 9 (report on status of national legislation on deep seabed mining). It will also take up the two remaining items - ‘Date of the next session’ of the Council and ‘Other matters’ - on its agenda for the nineteenth session.

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