SEABED COUNCIL BEGINS DETAILED EXAMINATION OF NEW CODE FOR POLYMETALLIC SULPHIDES AND COBALT-RICH CRUSTS

The Council of the International Seabed Authority, meeting in Kingston this afternoon, resumed its consideration of new draft regulations to govern prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts in the international seabed Area.

The Council, at the suggestion of its President Hee-Kwon Park (Republic of Korea), proceeded with the examination of the new code “regulation by regulation”. The draft text is in nine parts containing 43 regulations and four annexes.

The Russian Federation led the debate on Regulation one, paragraph 3, which deals with the use of terms in the draft code. His delegation objected to the definition of a block (Regulation 3a) on the grounds that the area for exploration did not have to be square in shape. He suggested that a block could be defined as an area of the seafloor not exceeding 100 square kilometers and bound by parallel lines and meridians. The wording should avoid expressing the block as a specific shape. China agreed with this view, while Brazil and Egypt felt that the block size should be smaller.

With regard to the definition of cobalt crusts (Paragraph 3b) the Russian Federation also called for clarification. He said that the definition needed to spell out which crusts those regulations sought to govern as there were many crusts situated at different locations in the ocean. He also pointed out that some of the important metals found in crusts, such as manganese and copper, had been omitted in the definition. He said that paragraph 3(f) relating to polymetallic sulphides should mention where those resources were located.
A number of delegations questioned the order in which the definitions were listed in Regulation one and suggested their reorganization. However, the Secretary-General explained that the order was simply alphabetical and this was the standard method of drafting such documents.

The most debated points were those which dealt with the protection and preservation of the marine environment. A number of delegations advocated strengthening the wording of regulations relating to this issue. In the discussion on Regulation one, paragraphs 3(e), “marine environment” and 3(h) “serious harm to the marine environment”, Spain said that every effort should be made to avoid vagueness or ambiguity and as such, the phrase “significant adverse change in the marine environment” in paragraph 3(h) should be amended to read “adverse change in the marine environment”. Argentina, Canada and Fiji both endorsed the change. Canada suggested that the wording should be “adverse change in the local marine environment”.

In response to Canada’s suggestion, the United States cautioned against going “a bit too far in one direction.” That point was well taken by Germany and Norway. Germany said that paragraph 3(h) reflected a balanced compromise between different interests and he did not see the need to deal with issues that had been agreed upon before.

Regulation 2 of the draft code deals with prospecting, and paragraph 2 states that “prospecting shall not be undertaken if substantial evidence indicates the risk of serious harm to the marine environment.” Some delegations, such as Bangladesh, Brazil and Canada supported the adoption of new wording to strengthen the code’s defence of the marine environment, while others, including Portugal, were against changing language that had been agreed upon during the drafting of regulations for polymetallic nodules.

On Regulation 3 which covers notification of prospecting, Argentina sought clarification on the procedures a prospector would have to follow to indicate an intention to engage in prospecting. In response, the Secretary-General noted that this issue was addressed in Annex 3 of the United Nations Convention on the Law of the Sea (UNCLOS). He explained that, once notified of a prospector’s intention to prospect in a certain area, the Authority would ensure that the area was not under consideration for a plan of work or out of bounds for reasons of its vulnerability.

The Republic of Korea referred to new paragraph 4 (a) (iii) of Regulation 3 which was not included in the regulations for polymetallic nodules. The new paragraph states that each notification of prospecting shall “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 Republic of Korea noted that this was not a requirement under UNCLOS, and wanted the paragraph deleted. The United States also pointed out that the regulation dealt with prospecting, not exploring or exploiting, and that having to hand over data, the gathering of which was in essence the purpose of prospecting, might be a deterrent for prospectors.
On the other hand, Canada felt the paragraph should be included and moreover made stronger by deleting “as far as practicable” from the text. A number of delegations, such as Argentina, Bangladesh, Brazil, the Netherlands and Spain supported the suggestion.

With regard to Regulation 4, which deals with the Authority’s consideration of notifications from prospectors, the representative of Brazil said his delegation would submit an amendment at the next Council meeting.

Regulation 5 of the draft code deals with the protection and preservation of the marine environment during prospecting. Introducing the topic, the President noted that this new regulation places prospectors under the same obligations as contractors with regard to the protection and preservation of the marine environment.

Portugal suggested that prospectors should be required to notify both the Secretary-General and the affected coastal State of “any incident arising from prospecting which poses a threat of serious harm to the marine environment.” The Netherlands supported this view but suggested reverting to the wording of Regulation 31 of the code for polymetallic nodules, which reads “causes or is likely to cause serious harm to the marine environment.”

However, the United States said that the Council should be guided by Article 145 of UNCLOS which governs activities in the Area, noting that those activities were defined as exploration and exploitation, not prospecting. She said that Regulation 5 as it stood went beyond the mandate of the Convention.

The Russian Federation supported the United States and warned against creating a system where prospectors would be subject to the same obligations as contractors. It was not practical, he said, to ask prospectors to cooperate with the Authority on programmes for monitoring and evaluating potential impacts of exploration and exploitation since, as prospectors, they were not involved in either of those activities. He suggested the deletion of Regulation 5.

A number of delegations commented that it would be useful to request a representative of the Legal and Technical Commission (LTC) which drafted the regulations, to make clarifications that might assist the Council in its deliberations.

The Council will meet again tomorrow, 17 August at 10 a.m., to continue its consideration of the draft regulations.

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