COUNCIL ACCEPTS GUIDELINES FOR ELECTION OF LTC MEMBERS; FUTURE SIZE; COMPOSITION TO BE DEBATED IN 2010

Oral agreement on new guidelines for the conduct of future elections of members of the Legal and Technical Commission was reached by the Council of the International Seabed Authority today as it entered its second week of meetings in Kingston.

At the same time, the 36-member Council decided to cut off debate on the size of the Commission until 2010 when Secretary-General, Satya N. Nandan will report on the problems, needs and operational effectiveness of the 25-member expert body.

The Council will tomorrow formally adopt the guidelines contained in a note of the Secretary-General (ISBA/13/C/2) for future elections to the Commission. They will include an amendment to paragraph 15b, proposed by Australia, adding the requirement for a curriculum vitae and other background information on the candidate to be submitted with each nomination. The guidelines are based on the relevant provisions of the Statute of the International Tribunal for the Law of the Sea.

The Council will resume deliberations on the draft regulations on prospecting and exploration for polymetallic sulphides in the international seabed Area when it meets tomorrow.

Guidelines

According to the Secretary-General’s note, the guidelines, contained in two paragraphs, should include:

15a) letters by the Secretary-General addressed to all member States of the Authority at least six months before the opening of the Authority’s session at which election was to take place, inviting submission of nominations for members of the Commission within three months. Late nominations will not be accepted.
b) the Secretary-General shall prepare a list in alphabetical order of all the persons thus nominated, indicating which members of the Authority nominated them. The list will be submitted to members of the Authority no later than two months prior to the opening of the session at which the election was to take place.

Finally, the Secretary-General proposes in paragraph 16 that the Council should determine in advance that in the future, in the absence of any special justification relating to the expertise necessary for its proper functioning, the Commission would be composed of 15 members, as provided for in the United Nations Convention of the Law of the Sea.

Under article 163 (2) of the 1982 Convention, the Commission shall be composed of 15 members. However, if necessary, the Council may decide to increase the size of the Commission, giving due regard to economy and efficiency. The Council made use of that provision by increasing the size of the Commission in all of its three elections to date – in 1996, 2001 and 2006.

At the Authority’s twelfth session, the Council requested the Secretary-General to prepare a report on considerations relating to the future size and composition of the Commission for its consideration at the current session.

The first election of members of the Commission was held in August 1996, following the election of the first President of Council. According the Secretary-General’s note, following protracted and difficult negotiations on the election of the members of the Council and Finance Committee, the President of the Council proposed that the Council take advantage of the flexibility inherent in article 163 (2) of the Convention and increase the number of seats on the Commission from 15 to 22, without prejudice to future elections. The Council decided to have all 22 nominees elected by acclamation. The same procedure was repeated in 2001 and 2006 for the two subsequent elections to the Commission. The number of seats on the Commission was increased from 15 to 24 in 2001 and 25 in 2006.

The Secretary-General notes that, with 25 members, the size of the Commission exceeds that of both the International Tribunal for the Law of the Sea and the Commission on the Limits of the Continental Shelf.

The issue that stirred most debate at today’s meeting was the number of members that could be elected to serve on the Commission once the current term ends in 2011. The representative of Senegal proposed that the number should remain at 25 to facilitate equitable geographic representation of all regions. India, speaking on behalf of the Asian group, said that limiting the Commission to 15 members would not represent the interest of all groups. Korea agreed with this view, adding that a greater number would contribute to economy and efficiency. Some delegations noted that if contractors were to be represented on the Commission, not many seats would remain for other members, especially as the number of contractors increased.
Brazil noted that the membership of the Authority had increased significantly in its thirteen years of existence and as such the Commission membership could be increased. He saw no need for following the guidelines of the International Tribunal for the Law of the Sea and the Commission on the Limits of the Continental Shelf with regard to the size of the membership. Nigeria and Portugal also spoke against reducing the membership to fifteen. Cuba, France, the Ivory Coast and Jamaica recommended a 21-member Commission.

The representative of the Netherlands urged the Council not to deviate from a 15-member Commission as set out in Article 163 of the Convention, maintaining that the small size was not an impediment to equitable geographic distribution. Increased size had not improved the Commission’s potential to do its work, she said, and added that only 11 out of the 25 members were present at this session, which was not enough for a quorum.

Trinidad and Tobago did not see a convincing argument for maintaining a 25-member Commission and pointed out that there was no clear formula established to ensure equitable geographic representation in the body. Argentina saw wisdom in avoiding excessive increases in the size of membership but warned that due consideration must always be given to electing members based on qualifications.

The United Kingdom endorsed Cameroon’s suggestion that the Council should assess how the Commission functioned at its current size before a decision was taken on future membership. He proposed that the Secretary-General prepare a report on how the size of the Commission affected its work. This report was to be presented to the Council at the 2010 session, a year before the elections to the Commission became due.

Argentina, Australia, Cameroon, Fiji, Jamaica, Mexico, the Netherlands, and Trinidad & Tobago were among the delegations that expressed support for the proposal by the United Kingdom. Describing the proposal as “extremely interesting,” the representative from Argentina said the report, debate and subsequent decision regarding the size of the Commission could be a positive exercise that should be done by the Council in 2008, instead of 2010. The Netherlands said the size of the Commission should be decided based on its work and not depend on the number of candidates presented.

In his response, the Secretary-General said the United Kingdom’s proposal was a useful one, and agreed to prepare a report, which would include input from the Commission Chairman. On the matter of the representation of contractors on the Commission, he explained that contractors had no automatic right to serve on that body, but given that experts in the field of ocean mining were rare, members elected in their own capacity for their scientific expertise were often the same experts associated with contractors.

Fiji posed a question that led the Council off into another debate: What if the Commission lost one of its members between now and 2011, would a vacancy exist? Many delegations weighed in on the issue, pointing to Article 163, paragraph 7 of the Convention which states: “In the event of the death, incapacity or resignation of a member of a Commission

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prior to the expiration of the term of office, the Council shall elect for the remainder of the term, a member from the same geographical region or area of interest.” Secretary-General agreed with the view expressed by India, and endorsed by others, that when the Council elected 25 members to the Commission in 2006 it formally expanded the body by ten members.

Responding to Argentina’s suggestion to hear from the Secretary-General and debate the size of the Commission next year, instead of in 2010, the representative of the United Kingdom explained that the Secretary-General would have three years of experience to report concerning the workings of the body. Council President Raymond Wolfe (Jamaica) said members of the Council should be prepared to debate and decide on the size of the Commission at the 2010 session of the Authority.