SEABED COUNCIL BEGINS DETAILED DISCUSSION OF DRAFT REGULATIONS FOR SULPHIDES

The Council of the International Seabed Authority, meeting in Kingston, this morning began a detailed review of the draft regulations on prospecting and exploration for polymetallic sulphides in the international seabed area beyond national jurisdiction.

In another action, the Council, without objection, elected Senegal as vice-president on the nomination of the African Group to complete the slate of vice-presidents for 2007. The other vice presidents are India and Poland.

Polymetallic sulphides, discovered in the oceans in 1979; contain copper, iron, zinc, silver and gold. They are found on sea-floor hot springs heated by molten rocks that well up beneath a submerged volcanic mountain range extending through all the ocean basins of the world (water depth 1 to 4 kilometers).

At the suggestion of its President, Raymond Wolfe (Jamaica), the Council launched into a regulation-by-regulation discussion of the draft after a Secretariat official had indicated that the first eight articles concerning prospecting were identical to corresponding articles in the regulations on polymetallic nodules which the Council adopted in July 2000. The Secretariat official noted that regulations on prospecting applied to all types of marine minerals.

Regulation 1, contained in Part I, introduction of the draft regulations, covers “Use of terms and scope.”

China proposed an amendment to paragraph 3 (d) of the regulation defining “polymetallic sulphides”. The President suspended discussions on the issue pending China’s proposal to the Council in writing.
On paragraph 3 (f), Mexico proposed that the term “serious harm to the marine environment” be amended to read “serious or irreversible harm to the environment.” With that addition, Mexico said the draft regulation would conform to Principle 15 of the Rio Declaration on Environment and Development that encouraged the application of the precautionary approach to protecting the environment.

The Mexican proposal received support from Honduras and Nigeria before Secretary-General Satya N. Nandan was asked by the President to comment. Mr. Nandan said the wording of the definition was considered at length by the Legal and Technical Commission which concluded that there would always be some harm in mining activities, but that “serious harm” must be avoided. Mexico conceded that the protection and preservation of the marine environment was adequately covered in Regulation 33 of the draft.

Regulation 2, in Part II of the draft, contains six paragraphs dealing with prospecting. Delegates focused discussion on paragraph 5 of the regulation which reads as follows:

“There shall be no time limit on prospecting except that prospecting in a particular area shall cease upon written notification to the prospector by the Secretary-General that a plan of work for exploration has been approved with regard to that area”.

Discussion on a time limit on prospecting centred on concerns that contractors might, on the one hand, be able to lock in an entire area for many years for a minimal fee without much benefit accruing to the Authority. South Africa referred to statements by the Secretary-General on lessons learned from the nodules regulations, where prospectors made a one time payment of $250,000 and held on to that area for long periods. Jamaica agreed that the regulation should ensure that prospecting led to exploration. India, on the other hand said the no time limit clause should remain as the fee structure was adequately covered in Regulation 21.

The Secretary-General, addressing concerns about time limit and simultaneous prospecting, noted the experience with polymetallic nodules and how the Authority was able to bring parties together in negotiations to avoid overlapping. He recalled that “The Midnight Agreement” resolved the overlapping issue between members of the ISA who were parties to the 1994 Agreement and other prospectors who were not.

Under Regulation 3, a prospector is required to notify the Authority of its intention to engage in prospecting. Most of the discussion focused on paragraph 4(d)(iii) of that regulation, which stipulates that the prospector should “make available to the Authority, as far as practicable, such data as may be relevant to the protection and preservation of the marine environment.”

Germany expressed the view that the phrase “as far as practicable” was vague, and suggested the substitution of “as far as available”. Argentina proposed that the phrase be deleted and this proposal was endorsed by several other delegations, including Brazil, Cuba, and Trinidad and Tobago. New Zealand suggested that the regulation should more directly invoke the precautionary approach to the protection of the marine environment as reflected in the wording of Regulation 33, which deals with the protection and preservation of the marine environment.

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The Republic of Korea called for a balanced position between protecting the environment and facilitating the activities of contractors. It felt that only data directly related to or critical for the protection of the environment should be required. The Secretary-General pointed out that the issue of contractors’ proprietary data was dealt with in Regulation 38. The United States called for the removal of paragraph 4(d) (iii) from the regulations on the grounds that this requirement went beyond the scope of the 1982 United Nations Convention on the Law of the Sea.

Regulation 4, which outlines how the Authority will handle the notifications submitted by prospectors, was adopted without discussion.

Regulation 5 of the draft relates to the protection and preservation of the marine environment during prospecting, and paragraph 1 requires each prospector to “take necessary measures to prevent, reduce and control pollution and other hazards to the marine environment arising from prospecting as far as reasonably possible using for this purpose the best practicable means at its disposal.”

Germany proposed the deletion of “as far as reasonably possible” from the paragraph and suggested the addition of the phrase “best technology available” to define more precisely the measures prospectors should use to avoid harming the environment. Several delegations, including Argentina, Brazil, Cuba, Mexico, Portugal, Qatar, Senegal, Spain and Uganda endorsed this call for stricter wording.

The Republic of Korea and China warned against creating a burdensome regime for prospectors. The United States objected to the inclusion of regulation 5. It said the regulation departed from the code for polymetallic nodules and that the Convention did not call for a regulatory regime to be applied to prospectors.

The Secretary-General explained that the Legal and Technical Commission had drafted regulations to govern prospecting for polymetallic sulphides because the marine environment surrounding these resources was more sensitive than that surrounding the nodules. He acknowledged that prospectors would have no contractual arrangements with the Authority and as such, this matter called for language that would foster cooperation and promote good practices. He proposed new wording for the first sentence of Regulation 5, paragraph 1 as follows:

“Each prospector shall take necessary measures to prevent, reduce and control pollution and other hazards to the marine environment arising from prospecting applying a precautionary approach and best environmental practices.”

Nigeria suggested that this proposal represented a fair compromise and the Council adopted the new text.

The Council will meet this afternoon to hear a report from the Chairman of the Legal and Technical Commission on its work at this session. The draft regulations on polymetallic sulphides will be taken up again tomorrow afternoon.

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