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Council (AM)

SEABED COUNCIL CONTINUES ITS REVIEW OF DRAFT REGULATIONS ON POLYMETALLIC SULPHIDES

Emergency orders in response to potentially harmful incidents in the international seafloor Area caused by the activities of contractors, the rights of affected coastal States and confidentiality of data were the focus of deliberations in the Council of the International Seabed Authority in Kingston this morning.

The Council is considering draft regulations on prospecting and exploration for polymetallic sulphides in the Area beyond national jurisdiction contained in the working paper (ISBA/13/C/WP.1). It resumed discussion on a revised draft of Regulation 35 (Emergency orders) which a group of delegations, led by Australia had presented to the body. There was much debate over paragraph 3, which deals with the temporary measures to be taken by the Secretary-General to deal with emergencies – pending action by the Council - and, in particular, the time-frame of those measures. The Council agreed to an informal working group ironing out a revised text for the paragraph and reporting back on Thursday.

Secretary-General Satya N. Nandan reminded the Council that the matter of the emergency measures to prevent, contain and minimize serious harm or the threat of serious harm to the marine environment was not new, having been dealt with in the nodules regulations of 2000. He also noted that Article 162 (2) (w) of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) sets out the types of emergency orders the Council may make to prevent serious harm to the marine environment. He warned against the inclusion of wording in the paragraph that would appear to extend the authority of the Secretary-General beyond that of the Council.

Delegations, including Germany, India, Jamaica, Korea, Mexico, Trinidad and Tobago and Viet Nam, sought clarifications on specific types of actions the Secretary-General might take in an emergency and the legal review process available to contractors.

Jamaica, the Republic of Korea, Viet Nam and Trinidad and Tobago supported the need for a clear definition of “practical” and “reasonable” in reference to measures of a temporary nature which the Secretary-General shall take.
Council President Liesbeth Lijnzaad (Netherlands) suggested an informal group, including Australia, India, Korea, Mexico, Trinidad and Tobago, Viet Nam, and that other interested delegations work on an agreed text for paragraph 3 of Regulation 35. As suggested by Jamaica, the Secretary-General said the text should refer to Annex 4, section 6 (Contingency plans and emergencies) of the draft regulations. The group was also asked to consider Article 162 of UNCLOS as well as the Rules of Procedures of the Council.

The President invited debate on paragraph 4 of regulation 35 which covers the action of the Legal and Technical Commission (LTC) upon receiving the Secretary-General’s report on the measures taken by the contractor to minimize serious harm to the marine environment. The paragraph reads:

4. After having received the report of the Secretary-General, the Commission shall determine, based on the evidence provided to it and taking into account the measures already taken by the contractor, which measures are necessary to respond effectively to the incident in order to prevent, contain and minimize serious harm or the threat of serious harm to the marine environment, and shall make its recommendations to the Council.

Responding to questions, Mr. Nandan said the Secretary-General was bound by the regulation to inform the Council of the measures taken by a contractor involved in an incident. The Council agreed to keep the draft text as recommended.

Discussions followed on the paragraph which reads:

6. The Council, taking into account the recommendations of the Commission and any information provided by the Contractor, may issue emergency orders, which may include orders for the suspension or adjustment of operations, as may be reasonably necessary to prevent, contain and minimize serious harm or the threat of serious harm to the marine environment arising out of activities in the Area.

Mexico, with support from Fiji, Jamaica, Uganda and Viet Nam, wanted paragraph 6 of the regulation to include language that would expand the range of sources from which the LTC would receive information on any threat of serious harm to the marine environment from activities in the Area. One suggestion, from Viet Nam proposed, including the phrase “all relevant information” as an option. The Secretariat was requested to take all suggestions into account when redrafting the paragraph.

The Council then proceeded to consider regulation 36 (Rights of coastal States) which begins with a declaration that nothing in the provision shall affect the rights of coastal States as enshrined in the Convention. Under paragraph two, a coastal State which has grounds to believe that any activity of a contractor in the Area is “likely to cause a threat of serious harm to the marine environment under its jurisdiction” may notify the Secretary-General. The contractor and its sponsoring State are then given “a reasonable opportunity” to examine the evidence upon which the coastal State has based its belief and “may submit their observations thereon to the Secretary-General within a reasonable time.”

Netherlands recalled that there was some discussion at last year’s session on the use of the term “threat of serious harm.” New Zealand suggested the use of the wording from regulation 35: “serious harm or the threat of serious harm to the marine environment.” This suggestion was supported by Mexico and Trinidad and Tobago.

According to paragraph 3 of the regulation, if there are clear grounds for believing that such harm is likely to occur, the Secretary-General is then authorized to take immediate temporary measures as shall be provided for in regulation 35 (Emergency orders), once that regulation has been finalized.
The regulation goes on to stipulate that contractors should “take all measures necessary to ensure that their activities are conducted so as not to cause damage by pollution to the marine environment under the jurisdiction or sovereignty of other States…”

With regard to regulation 38 (Proprietary data and information and confidentiality), the debate focused on paragraph two:

2. Data and information that is necessary for the formulation by the Authority of rules, regulations and procedures concerning protection of the marine environment and safety, other than equipment design data, shall not be deemed proprietary.

The Secretariat explained that paragraph two reflected the wording of Article 14 of annex 3 of the United Nations Convention. However, in Annex 3, the word “proprietary” is used in a very different context, as the provision deals with the transfer of contractors’ data to the Authority, including the type of data required and the uses of that data. Proprietary data is not to be disclosed to any party outside the Authority. Regulation 38, on the other hand, deals with how the Secretary-General is to deal with confidential data, and paragraph 2 seeks to make it clear that data necessary to formulate regulations for the marine environment is not to be treated as confidential.

Viet Nam, supported by Australia, suggested the use of the word “confidential” to replace “proprietary”. This suggestion was endorsed by several other delegations including Mexico, Namibia and Trinidad and Tobago. However, India wanted more time to examine the text in relation to Article 14, Annex 3 of the Convention, while China did not see the need to include this paragraph of the provision in the regulations.

Fiji proposed a further change, which drew support from India, Jamaica and New Zealand. Taking this change into account, the new version of the paragraph reads as follows:

2. Data and information that is necessary for the formulation by the Authority of rules, regulations and procedures concerning protection and preservation of the marine environment and safety, other than equipment design proprietary data, shall not be deemed confidential.

The Council will continue its discussions on the draft regulations on sulphides, this afternoon.

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