SEABED COUNCIL SUPPORTS CANDIDACY OF NII ALLOTEY ODUNTON FOR NEXT SECRETARY-GENERAL; TAKES NOTE OF LEGAL AND TECHNICAL COMMISSION REPORT

The Council of the International Seabed Authority International this morning adopted a decision proposing Nii Allotey Odunton of Ghana as the sole candidate for election as Secretary-General of the Authority.

The Council’s recommendation now goes to the Authority’s Assembly which is expected to vote sometime next week. Mr. Odunton, currently Deputy to the Secretary-General, will succeed Mr. Satya N. Nandan, who is stepping down at the end of the year after three successive four-year terms as Secretary-General.

In another action, the Council took note of the Legal and Technical Commission’s report recommending the adoption of the draft regulations for prospecting and exploration for cobalt-rich crusts but with a number of proposed revisions, and inclusion of an anti-monopoly provision.

Based on the draft text contained in document ISBA/13/LTC/WP.1, the Commission said the revisions should include a revised basic unit for defining an exploration area; a progressive fee system; a review clause and a revised accounting system. It requested the Secretariat to prepare a revised text incorporating its recommendations for its review at its next session.

It deferred action on the applications for approval of plans of work for exploration by Nauru Ocean Resources Inc. and Tonga Offshore Minerals Ltd., sponsored, respectively, by the Governments of the Republic of Nauru and the Kingdom of Tonga.

The Commission’s report was presented to the Council by its Vice-Chairman, Elva Escobar (Mexico).

Topics discussed at the Commission’s closed meetings which began on 19 May, a week ahead of the Authority’s fourteenth session, included annual reports of contractors exploring for polymetallic nodules in the international seabed Area; selection of candidates for training by Germany on behalf of the German Federal Institute for Geophysics and Natural Resources, one of the contractors; and
recommendations of a workshop on polymetallic nodule mining technology held in Chennai, India, last February.

**The Candidate**

Mr. Odunton was nominated by Ghana and endorsed by the African Union. The Interim Director-General and Programme Coordinator of the International Seabed Authority since 1996, he has more than 20 years’ experience in the International Civil Service with progressively increased responsibility in marine resource policy formulation, particularly marine mineral resources.

Mr. Odunton is Secretary of the Assembly and substantive head of the Authority’s Office of Resources and Environmental Monitoring. He has conceptualized and convened technical workshops and their proceedings, including, a) deep seabed polymetallic nodule exploration; development of environmental guidelines (1998); and b) proposed technologies for deep seabed mining of polymetallic nodules (1999).

**Legal & Technical Commission’s report**

On the draft regulations for prospecting and exploration for cobalt-rich crusts, the Commission recalled that it focused its consideration of the text on two key issues - the size of the area to be allocated for exploration and the progressive fee system during the Authority’s thirteenth session in 2007.

After reviewing all information available to it, including additional material prepared by the Secretariat, it had decided to recommend the adoption by the Council of the regulations as contained in document ISBA/13/LTC/WP.1, but with the following proposed revisions:

(a) the exploration area should be defined by a basic unit of 20 square kilometre block. An applicant may apply for up to 100 such blocks, which may be arranged in non-contiguous clusters within a geographical area of 550 kilometres by 500 kilometres;

(b) a progressive fee system as proposed in ISBA/14/C/4, should apply, and the Council should be empowered to review it every five years;

(c) endorsement of the proposal in ISBA/14/C/4 for the inclusion of a clause providing for an automatic review of the regulations every five years or at any time when the development of scientific knowledge so required;

(d) revision of provisions relating to financial accounting to ensure that contractors provide information which fully discloses the actual and direct expenditures incurred by them on exploration work and facilitates effective audit;

(e) The Commission would also consider whether further elaboration of the requirement of effective control was required.

The Commission said it was important that an anti-monopoly provision was included in the draft regulations in the light of recent developments. It recommended that the regulations for both polymetallic sulphides and cobalt-rich crusts should prevent multiple applications by affiliated applicants in excess of the overall size limitations referred to in regulation 12 (i.e. 2,000 square kilometers in the case of cobalt-rich crusts and 10,000 square kilometers in the case of polymetallic sulphides). For the purposes of the
provision, applicants would be regarded as affiliated if they were directly or indirectly, controlling, controlled by, or under common control with one another.

The Commission requested the Secretariat to prepare a revised text (to be issued as ISBA/14/LTC/CRP.6) of the proposed regulations for prospecting and exploration for cobalt-rich crusts, incorporating the Commission’s recommendations, and also fully aligning the text with the adjustments to the draft regulations on polymetallic sulphides agreed by the Council in 2007 (ISBA/13/C/CRP.1). It would then review the revised text at its next session, with a view to formally adopting it for submission to the Council at the Authority’s fifteenth session, taking into account the requirements under articles 162 (2) (o) (ii) of the United Nations Convention on the Law of the Sea, together with section 1, paragraph (15) of the annex to the 1994 Agreement, that such rules, regulations and procedures were to be developed within three years of a request being made by a member of the Authority.

**Annual reports of contractors**

In addition to evaluating each of the annual reports, the Commission made several comments of a general nature, particularly its emphasis on the need for reported expenditure to be properly itemized, and related only to the actual and direct costs of exploration as established in section 10.2 (c) of annex 4 to the Regulations.

It requested the Secretariat to prepare for its next session, a more detailed report and analysis of the actual and proposed financial expenditures reported by contractors to date. It expressed concern about the contractors’ failure, despite repeated requests, to provide raw data. It suggested that it might be useful for the contractors to collaborate in standardizing classifications of nodule types.

**Applications for approval of plan of work**

The Commission said it had not reached a consensus on recommendations to the Council with respect to the applications for approval of a plan of work for exploration in reserved areas from Nauru Ocean Resources Inc. (sponsored by the Republic of Nauru) and Tongan Offshore Mining Ltd. (sponsored by the Kingdom of Tonga). The Commission said it will continue to consider the applications at the next possible opportunity.

**Selection of candidates for training by Germany**

Eight candidates (four candidates and four alternates) were selected out of 42 nominations from 18 different members of the Authority for the training programme proposed by Germany pursuant to the contract for exploration between the Authority and the German Federal Institute for Geophysics and Natural Resources. Details of the training programme and the selection process used by the Commission, as well as the names of the candidates are contained in document ISBA/14/LTC/7.

**Clarion-Clipperton Zone preservation reference zones**

A sub-group of ecological and legal experts from the Commission, with the assistance of the Secretariat, will continue to work on the proposal relating to the criteria for the establishment of preservation reference zones in the Clarion-Clipperton Zone (CCZ) (ISBA/14/LTC/2) with a view to formulating a complete proposal for consideration by the Commission at the fifteenth session of the Authority. The Commission may then consider making a recommendation to the Council under article 165 of the 1982 United Nations Convention on the Law of the Sea.

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Geological model for the Clarion-Clipperton Zone

The Commission took note of an oral report on the progress with geological model for the Clarion-Clipperton Zone. It noted that the project had been running for the past three years and was in its last phase of completion. A final report on the geological model and the prospectors’ guide will be ready by the end of 2008.

Recommendations on polymetallic nodule mining technology

The Commission noted with interest a briefing on the outcome of the Authority’s international workshop on polymetallic nodule mining technology which took place in Chennai, India, from 18 to 22 February 2008.

On other matters, the Commission decided to place on its agenda in 2009, the question of a review of the “Recommendations for the guidance of contractors for the assessment of possible impacts arising from exploration for polymetallic nodules” issued in 2001 in the light of advances in knowledge and sampling techniques that had taken place since then.

Discussions on Commission’s report

China noted the proposal of several formulae for determining the size of exploration areas and welcomed the inclusion of an anti-monopoly provision. It emphasized the need for consideration of both issues against the background of solid scientific and technological knowledge and called on the LTC to offer as much information as possible from those perspectives.

India expressed concern that after some six years, the geological model for the Clarion-Clipperton Zone was still not completed. It called for more details about the project, namely, the number of samples that had been collected and the area covered.

Trinidad and Tobago sought clarification on the recommendation of the LTC with regard to the automatic review of the regulations. The representative suggested that to include a clause providing for a review “at any time when the development of scientific knowledge so required” would lead to all kinds of interpretations. New Zealand expressed the same reservations.

With regard to the annual reports of contractors, Argentina supported the LTC’s call for contractors’ reported expenditure to be properly itemized to allow the Commission to correlate the expenditure with actual exploration work. That delegation referred to Section 9 of annex 4 of the regulations governing polymetallic nodules which stipulates that a contractor must keep accounts and financial records “consistent with internationally accepted accounting principles.”

The representative of Brazil welcomed the setting up of a subgroup of experts of the Commission, to continue work on the establishment of preservation reference zones in the Clarion-Clipperton Zone, with the assistance of the Secretariat. He added, however, that the proposal coming out of the last October’s workshop in Hawaii should not form the basis for this work. That document addressed the biodiversity of the seabed, and these matters were outside the mandate of the Authority.

Responding to China’s call for scientific information, the LTC Vice-Chairman assured the Council that the Commission would provide as much detailed information as possible to assist it in its deliberations. Addressing Brazil’s concern, she acknowledged that the issue of bio-diversity fell under the mandate of a separate organization and that due care would be taken to avoid overlapping. The Secretary-
General further explained that the Commission’s work would focus on setting aside areas as sanctuaries where no exploration activities may take place. Those efforts fell well within the purview of the Authority under the 1982 United Nations Convention on the Law of the Sea.

In response to Mexico’s query about the issues that generated the greatest debate regarding two applications for approval of a plan of work (received from Nauru Ocean Resources Inc and Tonga Offshore Mining Ltd), the Vice-Chairman explained that those discussions, conducted in the Commission’s closed sessions, were confidential. In general terms, factors taken into consideration in approving plans of work were the technical and financial capacities of the applicants.

Addressing Argentina’s call for proper financial reporting by contractors, the Secretary-General said that at the request of the Commission, the Secretariat would draft recommendations to be used by contractors as a model for submitting details of financial costs relating to their exploration activities.

In response to a query from Fiji, the Secretary-General explained that the LTC would continue its consideration of the two applications for approval of a plan of work during its meetings at the fifteenth session in 2009.

Contributing to the discussions on the report, Kenya called for more training to be made available to scientists from developing States in order to encourage capacity building. Indonesia suggested that the provision relating to financial accounting could be applied to other minerals, such as nodules, and that the principle of effective control should also be extended to address current concerns expressed by the Secretary-General in his report to the Assembly.

Taking note of the comments from Kenya and Indonesia, the Commission’s Vice-Chairman said more training opportunities would be available as new contractors came on board. The Secretariat explained that paragraph 12 (e) of the report to which Indonesia and Kenya referred, relates to Article 9 of Annex III of the United Nations Convention on the Law of the Sea which deals with basic conditions for prospecting, exploration and exploitation. An entity wishing to enter into a contract with the Authority must be sponsored by a State party to the Convention, as evidenced by a certificate of sponsorship, and must be under the control of that state.

Discussion on the draft

The Council resumed discussion to the outstanding issues in the draft regulations on sulphides, taking up Regulation 19, paragraph 2 (a) which deals with equity interest in a joint venture arrangement; Regulation 21, fees for applications.

On regulation 19 (2) (a), China, with support from Japan, suggested the use of both equity participation and production sharing in the joint venture arrangement that would take effect at the time of application for a contract for exploration. China said all options should be kept open to allow for specific decisions on issues as they arise. In his response, the Secretary-General said China’s suggestion would require a definition of production sharing in terms of the percentages, obligations and other options. The Council President invited delegations to produce a text that would show how options would be formulated under China’s proposal.

A number of delegations commented on the proposed fee structure for applications for prospecting and exploration of polymetallic sulphides contained in the review of outstanding issues document prepared by the Secretariat (ISBA/14/C/4). Japan, Germany and Italy wanted the fixed processing fee to remain at 250,000 United States dollars. Taking issue with the proposed fee increase to
500,000 United States dollars, the representative from Germany called for an itemized list of the costs for processing an application to justify the increase.

Argentina recalled the issue of increasing fees was discussed last session when 500,000 United States dollars was proposed as a minimum. Brazil questioned whether the costs of monitoring the activities of contractors would be borne by members of the Authority. New Zealand suggested that the issue be considered along with Regulation 27.

Responding to the debate on the fees, the Secretary-General said fees needed to be updated to meet increasing costs associated with the processing of applications. He listed the costs of meeting services, administration, and others, and acknowledged that these increases were not taken into account during earlier contract negotiations.

The Council will continue its consideration of the Legal and Technical Commission report this afternoon.