SEABED COUNCIL ADOPTS REGULATION ON APPLICATION FEES

The Council of the International Seabed Authority this afternoon resolved one of the outstanding issues related to the draft regulations on polymetallic sulphides as it adopted a proposal hammered out in informal meetings to deal with the matter of fees for applications for plans of work for the exploration for these minerals in the Area. It continued its deliberations on regulation 23, concerning overlapping claims of applicants.

Regulation 21 – Fee for application

Introducing the redrafted paragraphs 4 and 5 of regulation 21 concerning the fee for applications, the Netherlands explained that the informal working group had used the Convention as the basis for the draft. The refund clause was not mentioned because it was felt this matter could be discussed and decided in the Council.

Namibia expressed the view that the regulation could be adopted in its present form. This was endorsed by Sudan and Nigeria. Bangladesh agreed, declaring that the members of the Council could be entrusted with the task of looking after the interests of the Authority as well as the contractors. After an intervention from Indonesia, it was decided to delete the word “manifestly” from paragraph 4. The two final paragraphs now read:

4. Upon notification by the Secretary-General that the amount of the fee has been insufficient to cover the administrative costs incurred by the Authority in processing an application, the fee set out in paragraph 1(a) shall be reviewed by the Council.

5. If the administrative cost incurred by the Authority in processing an application is less than the fixed fee, the Authority shall refund the difference to the applicant.
Regulation 23 – Overlapping claims

Introducing the discussion on paragraph 2 of regulation 23, the Council President, Mahmoud Samy (Egypt), suggested that a compromise might be reached by setting a time frame of 45 days which would begin when the application was circulated to members of the Authority.

Jamaica said that its delegation was flexible with regard to the number of days but wanted the time period to begin upon receipt of an application by the Secretary-General. Australia, Canada Germany, Ghana and New Zealand endorsed this position.

China said it could accept the proposal of the president. It suggested that the term “circulation” could be expressed more clearly to denote a fixed date. In response, Bangladesh proposed new wording which would refer to “the date of official despatch” of an application from the Secretariat.

The Russian Federation made a proposal to include new text of paragraph 2. It would read: ‘the date upon which an application is received by the Secretary-General in accordance with regulation 22, but not later than the next meeting of the Legal and Technical Commission...” The representative explained that this proposal was put forward to deal with the situation where the Commission might work on an application it had received before its meetings, only to receive another application with an overlapping claim on the 44th day of the time period, before the Council had made a decision. Including the proposed text would mean that the first application would not have to “lie on the table” for 45 days pending the receipt of another claim.

Regarding the Russian Federation’s proposal, Australia was concerned that it might encourage a flood of applications just before the LTC meetings aimed at preventing competing applications. India suggested that a fixed “cooling period” for each application before it was examined by the Commission might eliminate malicious submissions made just prior to LTC meetings.

The Council president suggested the setting of a period in the year for submission of applications to resolve the issue. South Africa referred to rule 7 of the rules and procedures of the Legal and Technical Commission which required the Commission’s meeting agenda to be circulated at least 30 days before its session. The delegation expressed the view that this requirement would take care of the issue raised by the Russian Federation.

China argued that if the Russian Federation’s amendment were accepted, there would have to be changes made to other parts of the regulation. The Russian Federation agreed to provide a draft of the proposal for the Council’s consideration at its next meeting.
China said paragraph 3 and its proposed new paragraph 10 could be discussed together because they were related. The Council adopted paragraph 4 with the added phrase “as appropriate” agreeing to insert the time within which applicants might amend their applications so as to resolve the overlapping claims associated with such applications.

Explaining its reasons for proposing paragraph 10, the Chinese delegation said that the Legal and Technical Commission and the Council, before making any decisions on overlapping claims, should adhere to the principle of fairness and equity rather than that of first-come-first served. The following is the text of the new paragraph:

10. The Legal and Technical Commission and the Council shall make a decision on the conflicts with respect to such overlapping claims on a fair and equitable basis 180 days after the Secretary-General’s report mentioned in paragraph 9 above. For the purpose of making the decision, the Legal and Technical Commission and the Council shall take into account, inter alia:

(a) The location and number of polymetallic sulphides sites that have been discovered in any area of conflict and the date of each discovery.

(b) The workload, continuity and extent of survey activities with respect to polymetallic sulphides conducted in any area of conflict, and

(c) The financial cost of such survey activities conducted in any area of conflict, which is measured in constant United States dollars.

South Africa said the original paragraph of the draft regulation 23 gave effect to portions of the Convention, including Articles 6 and 7 of Annex 3. He said paragraph 3 of Article 7 of the annex specified the applicants to which the Authority should give priority but gave no assurance that the first application would be guaranteed a contract. Trinidad and Tobago, Germany, Sudan, Australia, and Japan supported the views of the South African delegation.

The representative of Germany argued that the text of China’s proposed new paragraph did not guarantee a decision. Australia warned of the dangers of deviating from the decision-making criteria set out in the Convention. Responding to China’s request for definition of the term first-come-first-served, the representative of Australia suggested that the first application would be considered first but not necessarily approved.

Objecting to the inclusion of paragraph 10, the Netherlands’ representative appealed to delegates to focus on the procedures set out in the working paper facilitated by New Zealand. She noted that regulation 24 already established the role of the Legal
and Technical Commission in considering applications for plans of work. She received support from a number of delegations, including Australia which also noted that the issues were addressed in a section of the Convention.

The Council president said wording in paragraph 3 made the proposed tenth paragraph obsolete. China said it would not insist on the inclusion of paragraph 10 if delegates agreed to delete the last section of paragraph 3.

The Council meets again at 10 a.m. tomorrow to continue its discussions.

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