

International Seabed Authority

Press Release



Thirteenth Session
Kingston, Jamaica
9 - 20 July 2007

Council (AM/PM)

**SB/13/18
18 July 2007**

SEABED COUNCIL ADOPTS DECISION ON PROCESS FOR FUTURE ELECTIONS TO THE LEGAL AND TECHNICAL COMMISSION

The Seabed Council Wednesday adopted a draft decision on the future size and composition of the Legal and Technical Commission and the process for future elections to the expert body after protracted exchanges on amendments to the text.

The decision was taken following two meetings of the 36-member Council based on proposals by the Secretary-General on guidelines for election of Commission members. The Commission advises the Council on all matters relating to exploitation and exploration of non-living marine resources. The Commission currently consists of 25 members who are elected by the Council for 5 years on the basis of personal qualifications relevant to the tasks of the Commission.

The text laid out the procedures for nomination of the candidates for future elections of the Commission as follows: at least six months before the opening of the Authority's session at which the election was to take place, the Secretary-General shall address a written invitation to all members of the Authority to submit their nominations of candidates for election to the Commission.

The nominations shall be accompanied by a statement of qualifications or curriculum vitae setting out the candidates's qualifications and expertise in fields relevant to the Commission's work. It shall be received not less than three months prior to the opening of the relevant session of the Authority. Nominations received later than that would not be accepted.

According to the text, the Secretary-General shall prepare a list in alphabetical order of the persons nominated for election, indicating the nominating member of the Authority, and containing an annex with the statements of qualification or curricula vitae.

The Secretary-General would be requested to take account of the views of the current and previous chairs of the Commission, to prepare a report for consideration by the Council in 2010 on the functioning of the Commission. This is expected to assist the Council in its deliberations on the number of members of the Commission to be elected in 2011.

During the debate on the original version of the draft decision, Australia suggested the addition of a second paragraph to the preamble that would separate reference to qualifications and elections. Following an intervention by the Secretary-General that the relevant clause of the Convention be mentioned, Australia proposed an amendment and a new draft was circulated with a second paragraph in the preamble:

“Recalling further the provisions of article 165, paragraph 1, of the Convention, which provides that members of the Legal and Technical Commission shall have appropriate qualifications such as those relevant to exploration for and exploitation and processing of mineral resources, oceanology, protection of the marine environment, or economic or legal matters relating to ocean mining and related fields of expertise”

The other issue of concern was contained in paragraph 2 of the draft decision which requests the Secretary-General to “prepare a report for consideration by the Council in 2010 on the functioning of the Commission, with a view to the Council reaching an understanding in 2010 on the number of members of the Commission to be elected in 2011.”

Nigeria, supported by Australia, France, the Netherlands and Trinidad and Tobago, maintained that the Council would have to reach a decision rather than just an understanding on the size of the Commission in 2010 in order to proceed to elect the members the following year. Fiji and Argentina felt that if an understanding were reached in 2010, a firm decision could still be made in 2011 before the election. After some debate, the Council adopted the decision with new wording formulated by the Secretary-General to read: “with a view to the Council determining in 2010 the number of members of the Commission to be elected in 2011.

Draft regulations

Resuming deliberations earlier on the draft regulations on prospecting and exploration for polymetallic sulphides in the Area, the Council decided to hold **Regulation 33** in abeyance pending a proposal from Australia for an amendment to paragraph 2. **Regulation 34**, on environmental baseline and monitoring, was adopted without discussion.

Consideration of **Regulation 35** was suspended to allow delegations to revisit a proposed amendment to it and resume discussion at the Council’s next meeting.

Regulation 35, on emergency orders, as currently drafted, is based on the 1982 United Nations Convention on the Law of the Sea. It spells out procedures for dealing with events that poses a threat of serious harm to the marine environment. Once the Authority’s Secretary-General was advised on an incident he would notify the contractor and its sponsoring State or States, and report to the Legal and Technical Commission. The Commission would meet as soon

as possible to decide on a course of action and send a recommendation to Council. Following on the recommendation, the Council might issue an emergency order. In the interim, the Secretary-General could take temporary measures over a 90-day period to “prevent, contain, and minimize” threats to the marine environment.

Much of the debate on the regulation concerned the obligation of the contractor to notify the Secretary-General of incidents that may pose a threat to the marine environment, and the time that would elapse between the occurrence of a potentially damaging incident and the adoption of emergency measures by the Council to contain and minimize such threat.

Portugal and Germany suggested the use of language in **Regulation 5**, paragraph 3 in the first paragraph of **Regulation 35** to deal with the contractor’s requirement to notify the Authority in the event of an incident arising from exploration activities. Portugal stressed the importance of coastal states being notified as soon as possible after an incident that threatened their jurisdiction. Australia, pointing to the possibility of the Secretary-General being notified of damage after it had occurred, proposed a further amendment to paragraph 1.

India warned the Council against attempting to redraft **Regulation 35** saying all its provisions dealt with threats to the marine environment. Supported by Fiji, Jamaica and the Secretary-General, India pressed to have the provision square bracketed until the subsequent six paragraphs were examined.

China was concerned about how long-lasting such temporary measures might turn out to be Argentina suggested the Council could decide on issuing emergency orders at its first meeting following the imposition of temporary measures. Portugal supported this position. Australia was not in favour of stipulating a finite period for the application of temporary measures and supported a proposal made by Mexico to delete the phrase “as long as necessary” in paragraph 3, which might encourage the Council to move speedily toward adopting measures. That delegation was concerned about having to lift temporary measures while they were still needed while awaiting the decision of the Council.

The Secretary-General saw the need for a timeframe to be established and suggested that if the Council did not take a decision by the end of the regular session following the imposition of measures, such measures could be extended for a further 90 days.

With regard to **Regulation 36**, Rights of Coastal States, the Netherlands pointed out that paragraphs 2 and 3 dealing with potential threats to Coastal States were closely linked to **Regulation 35**. The discussion of these two paragraphs was therefore deferred pending the adoption of final wording for the previous regulation. Paragraph 1 of regulation 36 was adopted without discussion.

Paragraph 4 stirred a great deal of debate. Kenya felt that the reference to pollution was too limiting. The paragraph requires contractors to “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 and that pollution arising from incidents or activities in its exploration areas does not spread beyond such area.”

Nigeria endorsed Kenya’s view and Uganda asked what might happen in cases of environmental damage from sources other than pollution. A number of delegations, including Australia, the United Kingdom and Fiji, suggested amendments to the paragraph. The Netherlands, expanding on a suggestion from Honduras, proposed the following text, which was approved by the Council:

“Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause serious harm, including but not restricted to pollution, to the marine environment under the jurisdiction or sovereignty of coastal States, and that such harm or pollution arising from incidents or activities in its exploration area does not spread beyond such area.”

The Council will resume its consideration of the draft regulations on polymetallic sulphides at its next meeting tomorrow morning, 19 July.

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