International Seabed Authority

Press Release

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Kingston, Jamaica
26 April - 7 May 2010

Council (AM)

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SEABED COUNCIL DEADLOCKED ON WAY FORWARD WITH NAURU PROPOSAL; NEW DRAFT DECISION TO BE STUDIED AT NEXT MEETING

The proposal by Nauru for an advisory opinion from the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea was the only item considered by the Council of the International Seabed Authority meeting in Kingston this morning.

The Secretariat of the Authority presented delegates with a draft decision (ISBA/16/C/L.4) requesting the opinion pursuant to Article 191 of the United Nations Convention on the Law of the Sea. The draft decision reads as follows:

"The Council of the International Seabed Authority,

Having considered the proposal submitted to it by the Republic of Nauru at the sixteenth session of the International Seabed Authority to seek an advisory opinion from the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea on matters regarding sponsoring State responsibility and liability (ISBA/16/C/6),

Decides, in accordance with Article 191 of the United Nations Convention on the Law of the Sea, to request the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea, pursuant to Article 131 of the Rules of the Tribunal (ITLOS/8, 17 March 2009), to render an advisory opinion on the following questions:

What are the legal responsibilities and obligations of States Parties to the Convention with respect to the sponsorship of activities in the Area in accordance with part XI of the Convention?

What is the extent of liability of a State Party for any failure to comply with the provisions of Part XI of the Convention by an entity whom it has sponsored under Article 153, paragraph 2 (b), of the Convention?

What are the necessary and appropriate measures that a State Party must take in order to fulfil its responsibility under Article 139 and Annex III, article 4, of the Convention?"

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Discussion

Discussion on the draft decision began with a statement from Fiji which that delegation said was prepared in consultation with the Nauru delegation.

Fiji urged the Council to adopt the draft decision “in affirmation that the system works for all of us, big and small”. Its representative asked the Council to help preserve the development momentum being achieved by allowing the advisory opinion to be obtained in a timely manner. Whatever opinion came out, he said it would help developing countries “to more effectively assess their risks and responsibilities, to get their houses in order” so that they could properly work with the international private sector as Sponsoring States. It was the only meaningful path that led to the participation of the developing countries in the exploration and harvesting process, as envisaged in Convention for the Law of the Sea.

Delegations from Cote d’Ivoire, Germany, Jamaica, Mexico, Namibia, Russia, Spain, Trinidad and Tobago, the Republic of Korea, Senegal, Sudan, and Uganda argued in favour of sending the proposal to the Chamber for an advisory opinion.

The main arguments in favour of the decision were that: the request was legitimate; the request did not interfere with Nauru’s application for a plan of work for its sponsored company before the Legal and Technical Commission (LTC); the Chamber was competent to deal with the request in accordance with Article 191 of the United Nation’s Convention on the Law of The Sea; the Council’s decision to submit the proposal to the Chamber would be proper.

Argentina, New Zealand, and Norway were not convinced of the merits of an opinion on the Nauru request from the Seabed Disputes Chamber. Questioning the procedure, the delegations favored having the LTC study the issue and report back to the Council.

Describing the draft decision as a very good basis for the submission of the Nauru proposal, Mexico said the Council had a unique opportunity to draw on the resources of the Chamber in accordance with the provisions of the Convention. Mexico proposed amending paragraph 1 of the draft decision as follows:

What are the legal responsibilities and obligations of States Parties to the Convention with respect to the sponsorship of activities in the Area in accordance with the Convention, in particular with part XI?

India, supporting Mexico’s amendment, also recommended a redraft of the paragraphs. It suggested a more general paragraph 1 with the remaining paragraphs referencing sections of the Convention specific to the request. Supporting Mexico and India, Uganda said paragraph 1 was important, not only to Nauru but to all nations that are concerned with the protection and preservation of the marine environment. Jamaica also felt a redraft of the decision along the lines of the amendments proposed would be a way towards consensus.

President, Syamal Kanti Das (India) said the Secretariat would produce a new draft decision including the amendments suggested for consideration by the Council when it meets at 3 pm today.