

Mechanism and process - Independent review of environmental plans and performance assessments

Input of Belgium

Belgium would like to thank the Secretariat for its very useful preparation paper on the *“Consideration of a mechanism and process for the independent review of environmental plans and performance assessments under the regulations on exploitation of mineral resources in the Area”*.

We also thank all members of the Council for their great support to the suggestions Belgium made in its non-paper submitted at the last meeting of the Council.

We would like to offer a few considerations for this topic, following this non-paper and in line with many observations made by the Secretariat in its dedicated preparation paper. It seems important to us to come back to the basics, i.e. the objectives pursued, before turning to the questions asked by the preparation paper.

A. Objectives

The first idea we developed in our non-paper concerned the creation of system of publicly available independent evaluation of environmental reviews and monitoring. This idea would contribute in achieving the three following objectives when the Authority considers the environmental plans and performance assessments submitted by contractors:

1. *Expertise:*

We are all aware of the great variety and complexity of scientific parameters that the LTC, the Council and the Assembly need to take into account in their decision-making process. To take a well-informed decision, it is therefore crucial to provide these bodies with a cutting-edge scientific information.

2. *Independence:*

The activity of exploiting the seabed mineral resources is a very risky one. Investments are important, but so are the sought-after benefits. Given the great amount of money and the huge interests that are at stake, it is reasonable to think that there is a risk that the evaluation of the environmental plans and of the performance assessment of contractors in following these plans might be subject to influence. The credibility and legitimacy of the future ISA processes for exploitation will require to tackle the issue of independence of the scientific evaluation of the environmental plans and their related performance assessment assessments.

3. *Transparency:*

Ensuring a higher level of transparency will also contribute to the credibility and legitimacy of the future system put in place. It will be of particular importance that the scientific evaluation of the environmental plans and their related performance assessments will be easily accessible to all the stakeholders of this process.

To ensure these goals, we're firmly of the view, as has been mentioned in the preparation paper that "a more formalized and transparent approach to the use and engagement of independent experts merits consideration".

B. How would this work in practice?

With this proposal, we think we already gave at least some guidance as to the question posed by the preparation paper, that is "of which subject matters or regulatory provision there should be a requirement to call for an independent expert review (or matter that would trigger such a review) (...)?"

It seems obvious to us that, once the principle of a system of three different scientific evaluations of the environmental documents submitted by contractors is accepted?, terms of reference will have to be defined.

Nevertheless, we would like to provide further clarification as to how these three separate and independent scientific evaluations would function, which matter under the draft regulation they would concern and how this could be reflected in the exploitation regulation?.

Hence, the following questions, to which Belgium suggests answers that could guide further fine-tuning of the provisions of the draft regulation:

1. Which matters? When would the external evaluation be triggered?

Our suggestion is therefore that the exploitation regulation to be adopted foresees, for the environment-related reviews and compliance assessment, that three external evaluations are carried out automatically, separately and simultaneously, by independent and internationally recognized experts.

By environment-related review and compliance assessment, we understand:

- the consideration by the LTC and by the Council of the environmental plans and of their reviews (Draft regulation 11, 12 and 14);
- the performance assessments of the Environmental Management and Monitoring Plan (Draft regulation 50);
- the consideration by the LTC and by the Council of the Final Closure Plan (in case of material change to the Closure Plan) (Draft regulation 58)
- consideration of the Post-closure monitoring (Draft regulation 59)
- possibly also for the assessment by the LTC and the Council of the annual reports (cfr. Draft regulation 40).

A separate and independent scientific evaluation would be automatically ordered as a required input for the assessment of these document by the LTC and the Council.

The Secretariat, the LTC or the Council would also have the possibility to use the system of experts for other issues, such as the assessment criteria under draft regulations 13 and 14, as mentioned in the preparation paper.

2. What is a scientific evaluation?

It is an advising function, no more, no less. No decision will be taken by these separate and independent experts. They will provide the necessary cutting-edge information to the decision-making bodies of the Authority, in full respect of the current institutional arrangements. The LTC conserves its full power of recommendation, but benefits from an additional crucial input. Likewise, the Council still adopt its decision, but knowing one important information.

3. *What are “separate” expert evaluations and what is it for?*

The idea of having 3 separate experts evaluation has the objective of ensuring the independence of the scientific evaluation. Indeed, if it is possible to influence one evaluation, it is already much more difficult to do so with 3 evaluations working separately from one another. If there is an attempt to influence one evaluation, the two other one will provide different results. This inconsistency will indicate to the LTC and to the Council that there are reasons to be particularly careful in issuing recommendation and taking a decision on the matter at hand.

4. *Would this delay the decision-making process set up by the draft regulations?*

The purpose is to not lose any time. Draft regulation 11, 1, provides that *“The Secretary-General shall, within seven Days after determining that an application for the approval of a Plan of Work is complete under regulation 10: Place the Environmental Impact Statement, the Environmental Management and Monitoring Plan and the Closure Plan on the Authority’s website, and invite members of the Authority and Stakeholders to submit comments in writing. This, for a period of 60 days.*

We suggest that within seven days after determining that an application for the approval of a Plan of work is complete, the Secretary General orders, in accordance with the adopted procedure, three separate and independent environmental scientific evaluations of the Environmental Impact Statement, the Environmental Management and Monitoring Plan and the Closure Plan. Draft regulation 11, 1, hereby modified, would foresee that the three separate and independent environmental scientific evaluations would have to be completed at the close of the comments period, that is in the period of 60 days during which members of the Authority and Stakeholders are already invited to submit comments in writing.

There would therefore be no delay in the decision-making process.

5. *Outreach function:*

It is impossible for any scientist to be an expert in all the scientific fields related to deep seabed mining. This is why each of the three appointed experts, acting separately, will need to reach out within his network, to the wider scientific community and to international organisations detaining the different pieces of information they will need to perform their tasks. This necessity to reach out will have to be clearly foreseen, either in the exploitation regulation or in the terms of reference of the separate and independent experts.

Belgium has a few suggestions on what a textual translations of this idea could look like and we are happy to share them and discuss them all interested delegations.

C. Nomination procedure

We are thankful of the very useful suggestions made by the Secretariat in its preparation paper with regard to the development of roster of independent experts. Here also, the fine-tuning of the procedure would probably be developed in terms of reference.

Inspiration could indeed be drawn from the list foreseen in annex VIII of UNCLOS. We find it particularly interesting that this list must be established and maintained in several respective expert fields and that international organisations are called to contribute, in their respective expertise field, to this list. Organisations like the International Oceanographic Commission of the UNESCO, GESAMP or other organisations, could indeed contribute to this process.

It will be crucially importance that the procedure for inclusion in the expert roster will foresee a procedure to guarantee the level of competence of the experts and the independence of these experts, from private interest. A screening of these experts by competent international organisations and a necessary disclosure of their affiliation are two tools.

As to the selection decision of the experts itself, it should not involve the contractor nor the State sponsoring. The decision-making process will have to be transparent.

D. Further remarks:

We thank again very much the Secretariat for its very useful preparation papers. We are sure that the benefits of this system of independent scientific evaluation fully justify the related additional costs: we would indeed have, as said in the preparation paper *“a necessary procedural safeguard, and arguably one component in the application of the precautionary approach. Furthermore, as noted by some stakeholders, the views of independent competent persons can serve to minimize subjectivity, help to foster a level playing field across the applicant and contractor base and promote the spreading of best practices in the light of new knowledge and experiences.”*

We should indeed not forget what is at stake here, aside of the commercial interests. A real independent advice to the LTC and the Council is definitely worth it if we think of the potential impacts of the type of activity foreseen and the need for legitimacy with the public eye upon us and if we compare its relatively modest cost with the importance of the revenues foreseen by the exploitation activity?