



**International Seabed Authority 25th Session
25 February-1 March 2019**

Agenda item 11: Draft Regulations for exploitation of mineral resources in the Area

Independent Assessment of Environmental Plans

27 February 2019

Thank you, Madam President

First we would like to join others in welcoming the appointment of Ms. Lee to her position with the Secretariat. We welcome the Secretariat's paper ISBA/25/C/10 and Belgium's paper. Independent review properly taking into account the views of recognized experts and best available scientific advice in the field of environment protection is important, as required under Article 165(2)(e) of the Convention. The Secretariat Paper provides in paragraph 10 a list of processes to which this could be useful and with which we agree:

The examination of an environmental impact statement, an environmental management and monitoring plan, a closure plan, assessment criteria under draft regulations 13 and 14, and with the independent conduct or evaluation of environmental performance assessments. We would add to this list the reviews envisioned under DR 56, and extension applications under DR 21 of the draft regulations.

However, we would note that reviews need to be based on measuring the EIAs, EMMPS, performance reviews, etc. against clear and measurable goals, objectives, thresholds and other concrete measures, standards and/or guidelines established in the regulations to ensure the effective protection of the marine environment, including vulnerable marine ecosystems (VMEs).

We have two additional observations. Firstly, independent reviews do not avoid the need for the LTC to have open processes, as called for by the Assembly at the conclusion of the Article 154 review in 2017, and well documented evaluation procedures and explicit rationales for reaching conclusions. This is an essential aspect of good governance, transparency and accountability. [We might add that more transparent LTC procedures, including open sessions of the LTC, do not have to wait for the adoption of exploitation regulations. They can, and should, begin now and be mandated by Council. We reiterate our suggestion from last year that LTC meetings could be webcast as the meetings of the Council and Assembly now are.

Moreover, independent reviews as envisioned in the Secretariat document and as proposed by Belgium should not be seen as a substitute for, but a complement to, a broad public, transparent, inclusive review process for EIAs, EMMPs, environmental performance assessments etc. We see value in both

approaches and would urge that the Belgium paper make this clear. That is, that the evaluations by three independent experts as proposed AND the posting of the Environmental Impact Statements, the Environmental Management and Monitoring Plans, and the Closure Plans as well as performance reviews on the Authority's website, and the invitation to members of the Authority and Stakeholders to submit comments in writing as envisioned under Draft Regulation 11.1 both be done. They are not mutually exclusive. Moreover, under 11.1, submissions by other interested members of the public should also be invited, especially considering that the ISA is charged with operating for the 'benefit of mankind' as a whole. We would also make the point here that no one individual has the expertise to effectively evaluate all aspects of potential or actual environmental impacts likely to occur. A broad consultative process is necessary, including to obtain the best scientific information and advice available.

In terms of timing, we would suggest that the evaluations by the independent experts be conducted first and then posted together with the EIAs, the EMMPs and closure plans etc. on the ISA website prior to the public comment period envisioned under DR 11.1 to provide members of the Authority, stakeholders and other interested members of the public to take advantage of the information provided by the 3 experts as part of the broader ISA consultative process. On the question of potential delays mentioned by some delegations as a concern regarding the review process, we would emphasize that given the ISA is discussing the issuance of 30 year contracts to mine, sufficient time to ensure a broad-based consultative review should be required.

Secondly, we welcome independent assessment and continue to believe that an Environmental or Scientific Committee the reports to both the LTC and Council is needed to do facilitate independent expert review and public consultation and review. Belgium's paper and the Secretariat paper are important step forward in this regard.

As we noted yesterday, the 1994 Agreement calls for an evolutionary approach: To quote, "The setting up and the functioning of the organs and subsidiary bodies of the Authority shall be based on an evolutionary approach, taking into account the functional needs of the organs and subsidiary bodies concerned in order that they may discharge effectively their respective responsibilities at various stages of the development of activities in the Area." And it is clear that subsidiary bodies can be set up under Articles 158, 160 and 162 of the Convention.

We will have a side event this evening to share our views in greater detail on this. But put simply, public independent scientific advice and expert examination of all environmental documents is essential. This needs to occur or be heard in public, with stakeholder participation. Along the lines we heard yesterday, remote meetings such as video conferencing facilities would could facilitate obtaining and airing scientific advice and make this more accessible and affordable for remote States and stakeholders.

To answer the question posed by the Secretariat in para 11, both independent scientific appraisal and expert review of relevant documents is needed. The Secretariat suggests that "Specifically, the views of independent experts should not be a substitute for decisions of the Commission." We agree: they would add additional expertise and competence to assist the secretariat, LTC and Council.

Finally, Norway posed interesting questions which reinforce the need to ensure open and transparent procedures throughout the review process. We agree with FSM on the importance of traditional knowledge and consultation with indigenous peoples and coastal communities and related stakeholders.

We agree with Algeria on behalf of the African Group, Brazil and many others on the issue of avoiding conflict of interest and Germany's intervention with regard to the establishment of independent review processes for the REMPs. We would further urge that the Council maintain oversight and ultimate decision-making authority as we understood was stated by Italy, over the review processes.

Thank-you