

Statement by the Institute for Advanced Sustainability Studies on Part III of the DER.

Madam President, thank you. We have four comments.

Beginning first with DR 17(1), which refers to the exploitation contract that will take the form prescribed in Annex IX of the Draft Regulations, we wish to point out that Annex IX in section C (on the Grant of Rights), paragraph (b) makes reference to Part XII of the Convention. This is, as far as we are aware, the only reference in the Draft Regulations that make specific reference to Part XII of the Convention (which is dedicated to the protection and preservation of the marine environment). We welcome this insertion. We wish to reiterate our comment yesterday that we deem it as imperative to have more references to Part XII of the Convention, such as in the Draft Preamble, DRs1-2, as well as other parts of the Draft Regulations (for example in Part IV for the Draft Regulations, which we will come to when we come to that Part later).

Second, with reference to DR 20, we are of the view that only DR 20(1) concerns the term of exploitation contracts. All the remaining paragraphs, i.e. paragraphs (2) to (10) concern the renewal of exploitation contracts. We suggest that these paragraphs come under a separate regulation by itself, with the heading 'Renewal of exploitation contracts', in order to provide more clarity.

Third, with respect to DR 20(10), the said provision stipulates that "an exploitation contract in respect of which an application for renewal has been made shall, despite its expiry date, remain in force until such time as the renewal application has been considered and its renewal has been granted or refused'. Because of the use of the term 'remain in force until such time as the renewal application has been considered', we suggest that although the exploitation contract can remain in force during this interim period, a contractor should not be permitted to continue or proceed with commercial exploitation until a decision to renew the exploitation contract has been made.

Finally, moving on to DR 25(1), the said provision makes reference to a 'Feasibility Study', which is defined as "a comprehensive study of a mineral deposit in which all geological, engineering, legal, operating, economic, social, environmental and other relevant factors are considered'. It is pertinent to note that a contractor may not proceed to commercial production until such a Feasibility Study is prepared, and considered by the SG, who determines if a Material Change should be made to the PoW. We have two comments on this 'Feasibility Study':

1. As the definition of 'Feasibility Study' includes terms such as 'engineering', 'operational' and 'environmental', we recommend that specific reference included here to require contractors to first conduct in situ test mining operations at a full scale, in order to demonstrate their ability to minimize, reduce and control the potential harm to the marine environment that arises from such activities. We recommend that if a contractor is not able to successfully and satisfactorily demonstrate the capacity to avoid any serious environmental harm that might arise from such activities, the said contractor should not be permitted to proceed with commercial production. Naturally, a separate set of binding rules (in the form of separate Regulations or through Standards) should be formulated for this purpose.
2. We feel that the decision on whether or not there should be a Material Change to the PoW based on a Feasibility Study is an important decision-making task that should not be left solely to the discretion of the SG. In particular, we believe that this process should involve the participation of the LTC, and perhaps even better, the Council, and should in any case involve the use of independent experts as well as stakeholder participation.

Madam President, thank you.