

DSCC 3rd intervention, 17 July 2018 Day 2

Thank you Mr President

Firstly, we support Germany's suggestion that DR 7(3)(a) should specifically require EIAs conducted during exploration be included.

As a second point on this matter, testing the environmental impacts of equipment should be mandatory, and the results should be part of the EIA information. This is because if we do not know the environmental impacts of the equipment used, we cannot properly assess the environmental impacts of the activity.

Our second comment concerns the DR 10 Preliminary review of application by the Secretary-General and DR 11 Publication and review of the Environmental Plans

Mr President, if an EIA is published before it is in fact complete, the whole process is tainted, because there is insufficient information, to the detriment of the applicant as well as to everyone else.

So we would join some other delegations in wishing to revisit the issue of scoping. The Pew Code Project, in reviewing earlier drafts, recommended that scoping provisions be mandatory, and we agree. But here they are missing. We understand that is due to the Commission considering that the scoping be carried out in the exploration regulations. We are concerned at this, and urge that the issue be revisited. It is the considered view of many experts that scoping is a critical part of an EIA process, and further, that public participation should be part of the scoping process. If this was done, we believe that it would result in a far more robust EIA where there is more assurance that the baseline information and other critical parts of the EIA are adequately presented. If scoping is separated from the EIA process, we believe that the EIA process will suffer.

For this reason, we suggest that scoping be re-introduced into the EIA process, that it be subject to public comment process and that only then are the documents submitted to the Secretariat for the completeness certificate under DR 11.

Turning to DR 12, this regulation contemplates that it is the contractor who "who may revise the Environmental Plans in response to comments made by members of the Authority, Stakeholders or the Secretary-General within a period of 60 Days following the close of the comment period."

There appears to be no further review of EIAs before the consideration by the Commission in DR 12. We believe that this misses a step.

What we believe needs to happen is that the EIAs need to be revised following public comment and the application of independent scientific assessment. This may result in

further studies being done, for instance. Only when all this is done should the documents be sent to the ISA for consideration. To leave this to the contractor we believe leaves the process liable to having incomplete EIAs and baseline information. We believe that it should be the ISA that makes the decision whether information is complete, in an iterative process.

Further to DR 12, there nowhere is a requirement for the Authority, such as the LTC, to take comments into account.

We propose an addition to DR 12.5 a new (e) to read “Comments received on the Environmental Documents”

DR 13(4)(a) requires the LTC to determine whether a Plan of Work is technically achievable and economically viable, but not environmentally sustainable. A specific reference needs to be added to ensure that this is remedied.

Turning to DR 14, there is no requirement to take the Fundamental Principles into account. At present the Commission must consider Article 145 and the precautionary approach, but these are not enough: it is here that they should be required to consider the Environmental Goals and Objectives to which DOSI referred earlier, as well as standards. This is a very important point as it relates to the overall assessment of the application with respect to environmental matters.

Moreover, and this is an important point, there should be a residual discretion under DR 16: approval should not be automatic.

Finally, with respect to the earlier discussions about principles, we draw our inspiration for reference to the precautionary principle (as opposed to approach) from article 174 of the European Treaty. We believe that it has stood the test of time. ITLOS in its advisory opinion of course drew on the language used in the exploration regulations. We note that this is also an open question in the BBNJ negotiations, due to start in the IGC in September.

Thank you Mr President

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