



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

Tuesday 26 February 2019

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

Decision-Making(Tues morning)

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Thank you Madam President, and good morning delegates

Good decision-making and transparency goes hand in hand with good governance. We welcome the many comments supporting transparency and accountability, including those made this morning by FSM on standards and guidelines.

We think it is clear from this discussion that the institutional mechanisms of the ISA will need an evolutionary approach, which is specifically provided for in the 1994 Agreement. [1994 Agreement, Annex, Section 1.3. “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.”]

For instance, Singapore and the UK’s suggestions for remote meetings -including for subsidiary bodies - bear consideration, not least to save carbon and to allow broader participation from remote States, provided that transparency is maintained.

We welcome the emphasis in the Secretariat paper on transparency and accountability. This is important as we need to get the protection of the marine environment right, as Chile observed this morning, which needs a proper regulatory approach to protect the marine environment, as FSM observed.

In this connection, we reiterate that the LTC meetings should be open, to allow for greater transparency in its work, as was called for by the Assembly in 2017 in ISBA/23/A/131 This is crucial, given the LTC’s crucial role in the development and administration of the regulations.

In addition, the Council needs to take an important role, for example, as Australia said, in approving standards and guidelines, and as Italy said, in preventing serious harm to

the marine environment. The powers, and scope of their exercise, need to be clearly specified.

Other key factors to consider are how best to incorporate independent scientific expertise into ISA decision-making and to ensure transparency of the ISA's regulatory and decision-making processes which will be discussed later in the context of Independent Assessment of Environmental Plans and Belgium's paper, and we echo the African Group's comments in this respect.

These considerations are relevant throughout the draft regulations. For example, it is important that the Commission must retain discretion to refuse or alter the Plan of Work under DR 16 as part of a broad consideration of application. At present it does not. The Commission should, for example, not recommend the approval of a proposed Plan of Work if it determines that the Fundamental Principles would or may not be achieved. Another example may be climate change considerations, as FSM reminded us. A broad discretion is essential and considerations can not be a closed list.

Likewise, the extension of contracts in DR 21 need revisiting. Under the draft, neither the Commission nor the Council has discretion to deny a renewal after what may be 30 years, provided the stated criteria are met. There should be a broad discretion for the Commission and Council in view of the long time periods involved and many issues that may arise, not least being changes in the environment over up to 30 years. We must not bind future generations.

Reviews in DR 56 are another place where decision-making needs revision. The review should be able to result in changes being made: in the current draft, the only result is that the Contractor wishes to make any changes to a Plan of Work. The report should result in an organ such as an Environment Committee, or in its absence, the Secretary-General, recommending changes to the Plan of Work to the LTC and Council.

It is important, as Germany and the Netherlands observed, that responsibilities between the sponsoring State and Authority are specified, as well as clarified. We also welcome the observations by the Holy See of the importance of specifying compliance and enforcement regulation more completely.

This is seen in the context of environmental impact assessment, where there is no detail as to what the EIA entails and what procedures the Authority must follow. We believe that an Environmental Committee would be a logical place to conduct that process including assessing independent science and public comments, in order to better inform the LTC and Council.

We will be discussing this in a side event tomorrow evening.

Thank you Madam President