

DSCC intervention morning 17 July 2018 Day 2 - Regulations - Overall Structure

Thank you Mr Chair, and good morning delegates

As is clear from the LTC observations in ISBA/24/C/20, there are many outstanding issues, including an overarching Environmental Policy Framework. We agree. We have a briefing which analyses the May version of the draft regulations and have prepared an updated comment which we will make available to delegations.

Firstly, one important matter relevant to structure is that public participation, including comments and having the comments taken into account, needs to be operationalised throughout the process, from the EIA, which currently is undefined, to the EIS, to the EMMP, and including reports, reviews and amendments, dispute resolution processes and issues related to the confidentiality of data.

Secondly, another overall observation on structure relates to the bodies which are involved in the process. The LTC has added some further opportunities for Commission recommendations and Council review, and we believe that the number of reviews and processes underline the necessity for an Environment Committee to assist the LTC and Council in the process. The 1994 Agreement called for an evolutionary approach to bodies and we believe this should be followed, and an Environment Committee introduced as part of the structure of the regulations.

Mr Chair, there are many issues which also apply throughout the draft regulations and they will be discussed later this week. One is that overarching environmental goals and objectives should be developed, incorporated in the Fundamental Principles, as well as in the overall Environmental Policy Framework to be developed, and operationalised throughout the regulations. These should apply across the entire Area, and be put into place only after full consultation with all stakeholders. The development and operationalisation of REMP's for all areas, as a precondition to any application, which are one example of an issue to be further developed.

Another is those Fundamental Principles need to be operationalised throughout the document, and the LTC observes that the new suggested para 8 in DR 2 is circular. For instance, we suggest that the environmental review of proposals currently specified in DR 14 specifically measures proposals against the Fundamental Principles, as do future reviews.

There are also some areas missing or needing further elaboration, including liability and dispute resolution.

Likewise, the principle of the common heritage for the benefit of mankind as a whole needs to be operationalized. In this connection, there is a crucial outstanding question as to whether DSM will benefit humankind as a whole, taking into account all environmental issues. This needs to be resolved before any DSM begins. We associate ourselves with observations of the Holy See in its call for further and prior examination of these issues and of a broader perspective, including socio-economic issues.

Thank you
[ends]

**DSCC intervention 2, 17 July 2018 Day 2
On Part I and Preamble**

On Part 1:

As we said in our intervention earlier, it is essential to develop environmental goals and objectives, and incorporate them in Fundamental Principles.

Also in DR 2.5 (d) in regard to public participation, this paragraph really covers two separate points: access to information, and public participation. So public participation should be split into a separate sub paragraph and should read that “ensure effective public participation:” instead of “encourage public participation” as a fundamental principle.

Secondly, we need to operationalize common heritage of mankind further, along the lines explained by the Holy See including socio-economic matters

Thirdly, the Fundamental Principles need to be operationalized, such as being explicitly included in the review in Draft Regulation 14. At present they are somewhat stranded.

REMPs need to be binding and fully integrated into the regulations – an a precondition, as Australia said

Similarly to Australia’s intervention, it needs to be made clear that the standards are binding and we believe the Belgium non-paper.

In DR 4, it is too stringent to require that there are grounds for believing that serious harm to the marine environment of coastal states is likely to occur. Instead of likely, reasonable grounds should be enough.

On the issue of precautionary approach versus principle, we agree with Algeria and UK - a principle is specific and binding, so being included in the regulations, we support the use of the word ‘principle’.

Support Norway’s intervention on the issue of the polluter pays principle and recommend that it be incorporated into DR 2

Finally on on the preambular paragraphs, we would like to question whether the phrase in the 4th paragraph “the objective of these regulations is to provide for the Exploitation of the Resources of the Area” prejudices the outcome of the regulations. We would recommend that this paragraph be at least amended to include “ensure effective protection for the marine environment”

[ends]

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

[ends]