

## 25<sup>th</sup> Session of the International Seabed Authority

### Council session, part II

15 July 2019

#### Statement by Belgium

Item 11 of the agenda: Draft regulations on exploitation of mineral resources in the Area

Madam President,

We would like to express our appreciation to the work done by the Legal and Technical Commission on this latest version of the draft regulations on exploitation of mineral resources in the Area. We have some general remarks on the decisions of the Commission and the new draft regulation as reported in their note ISBA/25/C/18.

**First**, the principle of the creation of an « Independent review of environmental plans and performance assessments under the regulations on exploitation of mineral resources in the Area ») has been supported by a wide majority of delegations during last meeting of the Council, in February-March 2019.

The development of an economic activity possibly destructive impact of the marine environment cannot be envisaged without the highest guarantees to control and limit the damages that will be caused.

This idea entails the introduction of provisions in the draft regulation on exploitation of mineral resources in the Area that will render mandatory an independent expertise on environmental plans and performance assessments of applicants/contractors. This expertise will be **purely consultative** and will therefore not interfere with the competences assigned by UNCLOS to the different organs of the International Seabed Authority. To facilitate the nomination of experts, Belgium supports the creation of a roster of external experts, that would be established and maintained by the Secretariat, with the help of some international organization like UNESCO or GESAMP, taking due account of the principle of **equitable geographical distribution** and of special interests.

The reasons for the creation of such a mechanism, that were at the basis of the support to this idea by a majority of the members of the Council, are the following :

- **Expertise:** ensuring that all the organs of the International Seabed Authority are provided with the factual element they need to take a well-informed decision.
- **Independence:** given the colossal economic interests (we speak of investments of several billion dollars and revenues of the same order at least), a risk of external influence on the decision-making process relating to the contract of exploitation is not a theoretical risk. An independent

expertise, the content of which will be known by all organs of the International Seabed Authority and by the public is a minimal guarantee that the decision-making process will only be based on facts.

- **Transparency:** the independent expertise will be sent to all the organs of the International Seabed Authority, but also to the public, through a publication on the website of the Authority. This will strengthen the legitimacy of the process, whereas the Authority has sometimes been criticized for a lack of transparency.

The Legal and Technical Commission, despite the support given to this idea by a majority of delegations of the Council, has not inserted a provision in the draft regulation creating a mandatory independent review of environmental plans and performance assessments under the regulation on exploitation of mineral resources. The Commission considers that the possibility left – to its discretion – to seek an external input, combined with the public review and comment process foreseen in draft regulation 11, makes a mandatory external expertise unnecessary.

Belgium thanks the Commission for its consideration. In the same time, Belgium wishes to underline that the main issues related to the decision-making process at the International Seabed Authority, identified many times by a variety of stakeholders, the creation of which **an automatic independent expertise** aims to tackle – i.e. lack of expertise, of independence and of transparency –, will certainly not be solved if the status quo is maintained. Mindful of the fact that the competence to adopt the draft regulation, pursuant to UNCLOS, lies with the Council and ultimately with the Assembly, Belgium calls all delegations at the Council and at the Assembly, to invite formally the LTC to integrate in the next iteration of the draft regulation provisions that would **make it mandatory or necessary** to seek external independent expertise on the environmental plans and the performance assessment under the regulation on exploitation of mineral resources in the Area.

Belgium has heard concerns about the costs that such a mechanism would entail. We still think that it would be better to guarantee the independence of the scientific evaluation to have 3 separate evaluations, with experts working separately from one another, as this would reduce the risk of external influence on each of these evaluations. Nevertheless, to lessen the cost of such an independent review, we suggest that the draft regulation would contain provisions that render **mandatory or necessary** to seek just one such independent expertise, instead of the three initially suggested. The much lower budget of such a single mandatory expertise should then not be an obstacle for giving to the different organs of the Authority the necessary facts to take an informed decision on an activity having such an impact on the marine environment, as the importance of the ocean for everyone is clearer by the day.

Nevertheless, the provision of the resolution introducing the mechanism for such an independent review of environmental plans and performance assessments under the regulation on exploitation of mineral resources shall include at minimum the following elements:

- **the independent review is automatic;** by **automatic**, we mean that the Secretariat will have to seek an independent review of the environmental plans and performance assessments. **Let's be clear:** the fact of seeking an independent review will be a mandatory part of the procedure, but the content of the review will be transmitted to the LTC and the Council **which will receive it as a piece of information**, together with the information received by the applicant or the contractor and from all the stakeholder.

- the independent review and the comments by the Authority and Stakeholders, including the result of the public consultation, take place before the comments and consideration by the Commission of the environmental plans.

This is the only way allowing the decision-making process to be sufficiently informed.

Belgium would therefore invite delegations to the Council to support the creation of an obligation in the draft regulation to seek one external independent expertise on the environmental plans and the performance assessment under the regulation on exploitation of mineral resources in the Area.

**Second**, in order to achieve adequate protection of the marine environment, a fundamental principle within the context of deep sea mining, the Draft Exploitation Regulations should attach more importance to the development and implementation of REMPs. With the confusing wording of the previous Draft Exploitation Regulations in mind, it should be clearly stated that the development of strong and useful Regional Environmental Management Plans is a precondition to exploitation.

How these REMPs should best be reflected in the Draft Exploitation Regulations is still open for discussion. As REMPs cannot be considered binding legal instruments, it is difficult to require contractors to comply with these, but assessing environmental management and monitoring plans against the objectives of REMPs might be one of the valid options.

Belgium is looking forward to discuss all options aiming to make the REMPs mandatory and to put these on the right place in the procedure as regards the exploitation of mineral resources in the deep sea.

**Third**, the fundamental policies and principles provides a number of social and economic policies against which the application must be checked, such as the promotion of just and stable prices remunerative to producers and fair to consumers for minerals derived both from the Area and from other sources, and the promotion of long-term equilibrium between supply and demand.

This check should be carried out by the Economic Planning Commission, resulting in a separate recommendation to the Council. The current draft only refers to the Legal and Technical Commission.

**Last**, a gap-analysis revealed that the Contractors will need a Certificate of (non-preferential) Origin for each shipment that is send ashore. It is not clear to us weather this certificate should be provided by the Authority or by the Sponsoring State.

Thank you Madam President