

The Pew Charitable Trusts Intervention on Inspection, Compliance and Enforcement Mechanism

Thank you Norway for leading this discussion and the work you have put in to progress these conversations. And thank you to Germany for the mixed model proposal.

We would like to center our comments around guiding questions (a) and (c) provided by the facilitator regarding the placement and composition of the Compliance Committee (CC).

The ISA cannot function as an effective regulator if it does not have the trust of its contractors or the public, which is unlikely to be achieved by allowing conflicts of interest (or perceived conflicts of interest) to remain unaddressed. While much of the Council's concern about structuring an ICE mechanism within the ISA has centred around how to preserve 'independence', our observation is that this may remain an issue.

A CC that is comprised of LTC members, Council members, or a mixture of these seems to us to have potential to blur, rather than clarify, the important point about separation of powers. By this, we refer to the principle whereby the body writing the rules and recommending contract awards, and the body policing the rules and the contract, should be distinct. Moreover, numerous Council members are also contractors or sponsoring States, but there is no mechanism in place of which we are aware to recuse those members from decisions that could present a conflict of interest.

It is also possible that, for political reasons, State representatives (as Council members) might be unwilling to hold other States, who may be contractors, to account. CC members appointed in a personal/individual capacity may have more freedom to do so. So we suggest that Council takes the time to consider the implications of whether appointment of CC members should be as State representatives or individual and independent experts. Independent experts might require a separate budget to pay for CC members, to provide for due separation from official duties, representing an additional, but necessary cost.

The fact that some contractors are States or State-owned entities, further compounds the issue: introducing an element of self-regulation by the sponsoring State (or the State in its role as an ISA member), which may disincentivize reporting or penalizing non-compliance. Consideration also needs to be given as to how the ISA can have arms-length dealings with the Enterprise, which will itself be a part of the ISA.

While the placement and composition of the Compliance committee remains a major challenge for Council to resolve. We think there are also wider issues requiring institutional reform that would be essential for ANY model selected to work appropriately. We are grateful for Singapore for raising similar points. Creating a new body, does not solve the problems that exist with existing organs. We consider a priority for the ISA needs to be bringing the institution into line with best standards or accountability, transparency and public trust and confidence that we expect from regulators and international organization, and which we do not consider the ISA currently enjoys. To take one example alluded to by Singapore, there are rules prohibiting LTC members from having financial interest in exploration activities, yet the LTC at times has members who are employees of ISA contractors. So, the principle and rule is in place, but it is not being implemented. Perhaps what we really need before anything else, is a compliance review looking inwards at the ISA as an institution. The forthcoming Article 154 review should prioritise such issues. But our main point is: unless the ISA is institutionally accountable and adopts basic good governance practices expected of international organisations around ALL of its organs, then the compliance committee may be set up to fail, whatever structure is selected.

We have other comments on DR102 should the mixed model be the preferred approach, but will reserve those for another time.

Again, we very much appreciate the work done by Norway, Germany, and many other member States who have helped progress discussions on this difficult but critical component of the ISA's regulatory framework. We look forward to continuing the discussions on this matter and supporting the work of the Authority to design an ICE regime that is not only independent, but also responsive, transparent, accountable, fair, and contains the necessary expertise.

Thank you.