

The Ocean Foundation
RE: President's Text 18bis
19 July 2023

Thank you, Mr. President. As it is my first time taking the floor under your facilitation, let me thank you for leading the work on this text.

As drafted, proposed Regulation 18bis is imprecise, particularly as it relates to the allocation of liability, as mentioned earlier by Costa Rica, amongst Contractors and their affiliates, as well as the obligation of Sponsoring States to demonstrate that their domestic legal regimes cannot be used to limit the liability of Contractors for damages arising from Exploitation activities. The exploitation regulations should ensure that a Contractor and all related entities can be held jointly and severally liable for their actions or inactions to the maximum extent permissible under Part XI (11) of UNCLOS.

Regulatory clarity and consistency is essential as we discuss the unknowns of a brand new potential extractive industry. All affected parties, including would-be Contractors, Sponsoring States, Coastal States and other stakeholders, have a common interest in ensuring that clear, consistent, and enforceable regulations have been put into place before any mining is allowed to occur.

We've proposed language, reflected in our textual proposal posted on the website, that is intended to remove ambiguities in the realization that deep seabed mining would be an extractive industry on par with the largest extractive industries globally. As a result, the liability provisions should be at least as stringent as those for analogous industries.

Other international conventions embrace clear and consistent language around the allocation of liability for damage to the marine environment and the obligations of State parties to enforce those conventions. These include the International Convention on Civil Liability for Oil Pollution Damage, the 1992 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, and others under the IMO.

Uncertainty benefits no one. In addition, and as seen in the report from the LTC, contractors themselves are also concerned about operating without appropriate regulations and the legal uncertainty that follows. Clear risk management and liability provisions are foundational for many cross border industries with international footprints, including shipping and air travel as they ensure that all parties are playing on a level playing field and bad actors cannot circumvent the rules to the detriment of the industry as a whole.

We'd also like to note that our submitted comments are currently compiled under 18bis on the website, but also pertain to 22, 23, 24, 25, Annex 1 Sections 1 and 6, and the schedule. We will not walk through each of our submissions during this session and will resubmit as necessary and appropriate in advance of the next session.

Thank you.