

Statement by the Federal Republic of Germany – ISA 29th Session, Part I

Thematic discussion on Environmental Compensation Fund

Delivered on 26 March 2024

(a) What kind of damage is to be compensated?

- The ECF should cover any and all environmental damage, as prescribed under Article 235, but subject of course to the scope and limitations as laid out in UNCLOS, in existing and future rules, regulations and procedures of the Authority, and in light of the views expressed in the 2011 Advisory Opinion.
- As per our previous written submissions, Germany is of the opinion that the Environmental Compensation Fund should cover not only damage arising from unlawful or negligent action but should also cover accidents and unanticipated damage arising from lawful activities. As Germany noted in relation to DR 18.bis, we support a strict liability regime for activities in the Area, as was highlighted by the Seabed Disputes Chamber in its Advisory Opinion and as is commonplace in other international liability regimes.

(b) How will the funds and any interest generated be managed and by whom?

- We will need some further time to develop a position on the question how and by whom the Environmental Compensation Fund should be managed. We will listen carefully to initial views by other delegations. At this stage, it seems obvious to us such a fund should not be managed by the Secretariat or the Finance Committee, and it is likely that an external fund manager would be more appropriate.
- In any case, Germany sees it as important that the rules and procedures for the Fund must be established before the approval of the first exploitation contract and not only before the start of commercial production. The simple explanation is that the Contractor, as well as the LTC and the Council, need to know the financial requirements for the fund when assessing an applicant's capabilities and financial resources. Without knowing how much a Contractor will have to pay into the Fund, the LTC will not be able to assess whether the applicant has sufficient financial resources. We therefore suggest that the Council could request the Finance Committee to start drafting rules of procedure for the Environmental Compensation Fund, once the Council has agreed on the broad parameters for the Fund.

(c) Who is to be compensated?

- The ISA should certainly be compensated through the ECF but we suggest that any State should also be able to access the Fund, given that the protection of the marine environment in areas beyond national jurisdiction is an obligation owed to the international community at large. That means, any State or the ISA can bring a case

against a Contractor causing environmental damage. Consequently, any such actor needs to have access to compensation from the Contractor that has been found liable. If the Contractor cannot pay, the Environmental Compensation Fund is available as a last resort.

- We will need further time to study the implications of the Fund covering damage to non-state actors, third parties and other users of the marine environment that are affected by activities in the Area. We will listen closely to the views of others on this matter.

(d) The standard of proof that will be required to access the fund

- Germany supports a strict liability regime, similar to that used for liability funds in other regimes. Strict liability provides for a simple regime of the ECF without the need for determining standards of proof. In general, liability should be channeled to the actor who is in the best position to minimize the risk of damage and accidents. For deep seabed mining, that is the Contractor. In other international regimes, this principle of channeling liability to the operator is commonplace and often paired with strict liability. Examples for this combination can be found in the IMO's Convention on Civil Liability for Oil Pollution Damage, the UN Principles on the Allocation of Loss in the Case of Transboundary Harm, in EU law, as well as in UNEP Guidelines and other instruments.
- In any case, Germany believes that access to the ECF is only possible after the Council has considered the particular case and decided that such access is appropriate, and if so, to what extent.

(e) What happens if there is damage to the environment before the money is paid?

- The Regulations should ensure that this situation does not occur. That is why DR 56 should require the Contractor to pay into the ECF before starting any activities in the Area under an Exploitation Contract. The Authority needs to ensure funds are available in the ECF before activities begin that might cause environmental harm.

(f) What elements should be addressed in the Regulations and what parts should be covered in the Standard and Guidelines, or in rules and procedures of the fund?

- We suggest to first focus Council discussions on the parameters of the ECF before determining which details are retained in the Regulations and which ones can be moved to Standards or Guidelines. At present, we do not appear to have sufficient clarity on the purpose, scope, management, and funding of the ECF. We suggest to address this question at a later stage.