

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

Thematic discussion on Inspection and Compliance

Delivered on 22 March 2024

Thank you for the floor,

We warmly thank the Delegation of Norway for successfully chairing this important intersessional working group in which Germany participated. We also thank all other colleagues who participated in the constructive and productive discussions of this group.

Germany is of the view that ISA Member States must take direct responsibility for ensuring compliance. We therefore believe that the establishment of a subsidiary body of the Council for the purpose of ensuring compliance, reporting directly to the Council, is the appropriate mechanism for Member States to fulfil their responsibilities under UNCLOS and the 1994 Implementing Agreement.

The establishment of such a body is timely as the ISA looks to moving from exploration to exploitation, which will require even closer scrutiny of the activities carried out by operators in the Area.

Germany's proposal, with the working title "mixed model/approach", is currently reflected in the new DR 102 in the consolidated text (formerly 96 bis).

In essence, Germany is proposing, as others have done before us, the establishment of a new subsidiary body of the Council called the "Compliance Committee". As noted in our textual proposal in the current Draft Regulation 102, the function of such a body would be to *assist the Council* in dealing with instances of non-compliance.

While agreeing with the need for an independent inspection mechanism, Germany believes that ensuring compliance goes beyond inspection and that it would be inappropriate for the same inspection mechanism to be entrusted with compliance responsibilities.

Germany believes that existing compliance mechanisms are well placed to support such a "compliance committee". This includes functions carried out by the Secretariat, the Legal and Technical Commission, as well as the inspection mechanism currently under negotiation.

For the Compliance Committee, we envision a committee of 15 members, but are open to discussing any number. For example, each regional group could nominate two members, while the remaining five members would be appointed by the Legal and Technical Commission from among its members with appropriate compliance expertise. Our proposal ensures that Member States retain control in cases of non-compliance, but does not undermine the role of existing compliance mechanisms, in particular the functioning of the Legal and Technical Commission in this respect, by involving LTC members in the process where non-compliance has been identified.

The Secretary-General and the Compliance Officer of the Secretariat, as well as the Head of the Inspection Mechanism, should also be invited to participate in the deliberations of the Compliance Committee.

The establishment of such a committee would send a strong message that the ISA and its Member States take our responsibilities under UNCLOS and the 1994 Implementing Agreement seriously. It will reassure our stakeholders and the public that any instance of non-compliance will be given due consideration by Member States. It enables the ISA to function better as a regulator.

This would also bring the ISA up to the standards of other international regimes with environmental responsibilities, where compliance committees led by member states are common.

Meetings or hearings of the Compliance Committee could take place through virtual means, in order to ensure that the members can meet under short notice and deal with urgent matters expeditiously.

Wherever possible, such meetings or hearings should be open to the public, particularly when the facts are being established. The Compliance Committee should be empowered to make interim orders in urgent cases, subject to subsequent approval by the Council.

A system should be in place for emergencies, with a small number of members permanently available for any given month (or shorter period).

In any event, the Council should be able to meet virtually in these emergency situations, if necessary, to ratify the interim measures ordered by the Compliance Committee. All findings of the Compliance Committee (such as records of proceedings, reports and recommendations) should be publicly available, comprehensive and reflect any dissenting views. The Council will receive and consider these reports and recommendations when exercising its functions to confirm or take decisions on non-compliance.

We have produced a non paper¹ on this approach for the intersessional work, containing the rationale of the proposal as well as the specific regulatory text. We are going submit this paper shortly.

I thank you Mr. Rapporteur.

¹ The non-paper has meanwhile been uploaded to the ISA website under https://www.isa.org.im/wp-content/uploads/2024/04/GER-non-paper-compliance-committee-mixed-model_revised.pdf