

ISA 29th Session, Part II – Reading of the Draft Consolidated Text

Oral Statement by the Federal Republic of Germany

Delivered in March 2024

Regulation 18bis - Obligations of the Contractor

As for substantive comments on DR 18.bis, Germany strongly argues for reinserting text in **paragraph 1** to ensure that the Contractor shall comply with the rules, regulations, and procedures of the Authority as amended from time to time. This wording is crucial to enable the Authority to update the regulations over time, particularly if an exploitation contract lasts for 2 to 3 decades. For example, it would be absurd to fix annual fees for the next decades. Instead, it will be necessary for the Authority to increase fees in line with inflation and for those changes to be applicable to all Contractors.

Let me now request another change to **paragraph 1**. Germany argues that REMPs are legally binding documents which set out regionally-specific environmental goals and objectives as well as environmental management measures, which Contractors need to comply with. We therefore urge the President to re-insert the language on REMPs. Given there are differing views of states in this matter, we suggest we include all views in the draft regulations and then seek a compromise, in the spirit of multilateralism.

Germany also argues strongly for reinserting the **previous version of paragraph 2**, from October 2023. The current version significantly alters the provision in several ways. First, the previous version established a responsibility to comply with all aspects of the Contract, not only to prevent damage. For example, not paying fees or royalties should be covered here, again to ensure we act in the best interest of humankind as a whole. Second, we strongly support the re-inclusion of strict liability. This is to respond to a liability gap identified by the Seabed Disputes Chamber in its 2011 Advisory Opinion. As the Chamber noted in para 211, the Convention allows for the ISA to impose a strict liability regime to ensure no gaps in liability are left, particularly as the minerals are the common heritage of humankind. Indeed, as the Advisory Opinion highlights in para 194, strict liability regimes exist with respect to other international law regimes, including oil pollution. Third, we wish to reinsert the reference to *“unforeseen damage arising from permitted activities”* to align the provision

with DR 55 which covers both damage from non-permitted activities, such as mining outside of a contract area, and unforeseen damage from permitted activities, such as exceeding environmental thresholds for noise/light pollution etc.

Germany is also surprised that the **previous paragraph 4** was deleted and not placed in the Suspense Document. We would be open to moving it elsewhere in the Regulations but do not support its deletion. The paragraph elaborated on the obligations on sponsoring States and was thus directly in line with Annex III Art 4 of the Convention which states: *“The criteria and procedures for implementation of the sponsorship requirements shall be set forth in the rules, regulations and procedures of the Authority.”* Omitting such detail from the Regulations does not appear to be in line with the Convention. We also note that the previous ISA expert working group on liability raised the need to elaborate on the responsibilities of sponsoring States and in this regard, this regulation was a step in the right direction. We request reinsertion of the original paragraph 4.

On a positive note, we support the inclusion of **paragraph 1.ter** on compliance with national laws. We also support **paragraph 1.quat**, which requires Contractors to only use flag states and port states that are ISA member states, or non-members that accept to be bound by the ISA’s rules regarding inspections and enforcement. This is to ensure that the ISA’s Mining Code applies to the flag states of mining vessels and that ISA inspectors can board those vessels and can also inspect mining vessels in ports. We consider this essential to ensure a comprehensive inspection and enforcement regime, whereby the ISA can rely upon (and require) the cooperation and support of States where domestic investigation or enforcement may be required.