

THE PEW CHARITABLE TRUST'S COMMENTARY

***ON THE REVISED CONSOLIDATED TEXT: DRAFT REGULATIONS ON
EXPLOITATION OF MINERAL RESOURCES IN THE AREA,
DATED 29 NOVEMBER 2024 (ISBA/30/C/CRP.1)***

Key

Black font, red font, and grey text-boxes are replicated from the Draft Regulations text.

Blue font represents commentary or edits proposed by The Pew Charitable Trusts.

Part VII

Financial terms of an Exploitation Contract

Section 1

General

Regulation 62

Equality of treatment

The Council ~~shall~~, based on the recommendations of the Commission, apply the provisions of this Part ~~[in accordance with Article 13 of Annex III of the Convention.]~~ ~~in~~ on a transparent, uniform and non-discriminatory basis, and ~~shall~~ ensure equality of financial treatment ~~and comparable financial obligations for Contractors.]~~ ~~[to counter any disparity arising out of any grossly incomparable concentration of given resources].~~

DR 62 is unnecessary and **should be deleted**. UNCLOS stipulates that “*The Authority shall avoid discrimination in the exercise of its powers and functions, including the granting of opportunities for activities in the Area.*” and indicates that the ISA’s RRP’s will set forth “*uniform and non-discriminatory requirements*” for Contractors. The same principle is applied to all the Regulations via DR2(4). There is no need to repeat it again here, selectively, for this one part of the Regulations. The drafting also suggests that the LTC can recommend whether or not the Council apply this Part of the Regulations in a transparency, uniform and non-discriminatory basis, which is clearly incorrect!

What *is* exclusive to this Part of the Regulations, is Article 13(1) of Annex III of UNCLOS, which contains six paragraphs of objectives for the financial terms of contracts. We support the proposal by Brazil (but note that this is not reflected in this text) for an **alternate DR 62 called “Objectives of the financial terms of Contracts”, focused on implementing Article 13(1) of Annex III** which requires the ISA to be guided by various objectives, including ensuring optimum revenues for the ISA, and engaging the Enterprise.