

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

Oral Statement by the Federal Republic of Germany

Delivered in July 2024

Regulation 55 – Purpose of the ECF

Germany has a preference for DR 55.ALT.2 though we feel the amendments by Australia to ALT.1 have in fact brought it closer to ALT.2, so the differences between the two alternatives are getting smaller, which is encouraging. We had suggested ALT.2 as a compromise, as it reflects discussions at the last Council meeting in October and merges elements from the previous versions of DR 55 and DR 55.ALT, which were supported by states.

We wish to note a few points which we feel DR 55 will need to reflect:

1. Several states wanted to stress that the Contractor is responsible for any damage arising from his activities and must pay for those directly, wherever possible. The Environmental Compensation Fund will only be used as a last resort and to fill the liability gap identified by ITLOS, namely where a Contractor is liable but unable to pay while the sponsoring State is not liable. **DR 55.Alt.2** clearly states those points in **paragraphs 1 and 2**.
2. The African Group had previously introduced a distinction between harm caused by non-consented activities, such as mining outside the Contract area, and harm caused by consented activities but exceeding approved levels, such as exceeding noise or light thresholds. We align ourselves with others who have stressed that both categories of harm need to be covered by the Environmental Compensation Fund. We note that Australia has proposed alternative wording to refer to damage *“not foreseen in the Plan of Work or that arises from a breach of any conditions of approval”*. We support this wording and would propose to reflect it in DR 55.ALT.2 as well. In this respect, we note that we do not agree with only referring to *“unlawful”* damage, as has been suggested by some Contractors.
3. We note there was disagreement during previous meetings of the Council, about whether or not to mention restoration and rehabilitation measures in DR 55, given

that neither of these are currently feasible. As a compromise, we suggest that the scope of the ECF could be reviewed periodically which would allow States to include restoration and rehabilitation measures, if and when these become scientifically and economically feasible in the future. This is reflected in **55.Alt.2, paragraph 5**.

4. Lastly, let me make an important but more general point. DR 55 rightly provides for compensation in response to environmental harm. In other words, when the Contractor causes environmental harm, he not only needs to mitigate the harm where possible, but the Contractor also needs to pay compensation, as required under UNCLOS and confirmed by the 2011 Advisory Opinion. Germany wishes to highlight that the draft regulations will still need a provision on compensation and liability more broadly, which sets out the detailed obligations and procedures on questions of liability and compensation.