

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

Oral Statement by the Federal Republic of Germany

Delivered in March 2024

Regulation 18 - Rights under Contract

Germany is concerned about the changes that were made to DR 18 without any explanation. We will focus here on the most important issues but reserve the right to submit further comments at a later stage.

Germany strongly argues to reinsert **paragraph 5.bis**, which seems to have been deleted without an explanation. The provision states that “*adverse impacts from activities in the Area carried out under an Exploitation Contract must be limited to the Contract area*”. This provision is crucial to us for a number of reasons.

First, it protects neighbouring Contract Areas from impacts of mine sites nearby. For example, plume impacts or noise pollution from one Contractor could cause harm to the Contract Area of another Contractor. That could completely undermine a Contractor’s baseline studies, monitoring programme, and their spatial management, including the reliability of their Preservation Reference Zones. This, in turn, could trigger costly litigation between Contractors.

Second, cross-contaminating one contract area with harm caused by another Contractor will make it difficult for the ISA to ensure enforcement and compliance. How are the ISA’s inspection and monitoring efforts supposed to determine which Contractor caused what harm if environmental impacts from one Contractor are allowed to pollute the Contract Area of another Contractor? Similarly, it will be very difficult for Contractor A to demonstrate that their noise pollution is within threshold values, if their Contract Area is polluted with noise from Contractor B.

Third, requiring Contractors to limit environmental impacts to their Contract Areas will incentivise technological innovation to reduce the spread of noise and light pollution as well as plumes. This is in the interest of all of us and speaks to our collective obligation under Article 145 of the Convention to adopt regulations for the prevention, reduction, and control

of pollution. Clearly, allowing a Contractor to pollute the marine environment outside of his contract area would go against Article 145.

Fourth, limiting environmental impacts to the Contract Area will protect nearby coastal states, which is again in line with our obligations under the Convention. In fact, this is particularly important where the nearby states are developing states, which will likely be the case for mining in many of the current exploration areas. We note that Article 142 of the Convention specifically gives coastal states the right to take measures to prevent, mitigate, or eliminate pollution. Indeed, the article even allows the coastal state to take action if there is a threat of pollution or other hazardous occurrences resulting from activities in the Area.

Fifth, limiting environmental impacts to the Contract Area will also help sponsoring States fulfil their obligations under the Convention. Put differently, allowing a Contractor to cause harm to the marine environment outside his Contract Area may in fact breach Article 194. We note that Article 194 specifically requires all states to ensure that activities under their jurisdiction and control “*are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention*”. This obligation equally extends to areas beyond national jurisdiction, as highlighted in UNCLOS Commentaries. As such, Article 194 in effect prevents coastal States, sponsoring States, and flag States from causing pollution which spreads into maritime zones of other states or indeed into areas beyond national jurisdiction.

Lastly, limiting environmental impacts to Contract Areas will protect our global commons. The Seabed Disputes Chamber has confirmed that the obligation under Article 192 to protect and preserve the marine environment in areas beyond national jurisdiction is a so-called *erga omnes* obligation. That means it is an obligation owed to all states. It also means that any state can bring a case to claim compensation for pollution caused to areas beyond national jurisdiction. That exposes the Contractor and the Authority to legal and financial risks under Article 22 of Annex III to the Convention. We therefore believe it is in the interest of the Authority, and indeed the Contractor, to require environmental impacts to be limited to the Contract Area.

In closing, we strongly argue for keeping **paragraph 5.bis** of DR 18. Article 194 of the Convention requires all of us to take all measures necessary to prevent, reduce, and control marine pollution. The measure Germany is proposing will achieve just that. It will limit pollution to the spatial area over which a Contractor has rights and ensure that such pollution is reduced and controlled to stay within those boundaries so as to not interfere with the rights and interests of other Contractors, states, and the international community at large.

We have three brief additional comments on DR 18. In **paragraph 3**, we propose deleting the words “or otherwise” as the ISA’s jurisdiction is limited to activities in the Area. In paragraph 7, we wish to see **paragraph 7(d)** being reinserted, because it must be clear to everyone that a Contractor cannot simply expand exploitation activities beyond the area that was covered in the Plan of Work. Lastly, in **paragraph 7**, we argue that the exploration regulations should NOT apply during the lifetime of an exploitation contract as there are inconsistencies between the exploration and exploitation regulations and it will be important to ensure legal clarity as to which rules are applicable. For example, there will be differences with respect to annual fees, reporting, and transparency of environmental data. It is therefore important that all activities under an exploitation contract are regulated by the exploitation regulations and accompanying Standards and Guidelines.