

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

Oral Statement by the Federal Republic of Germany

Delivered in March 2024

Regulation 5 - Qualified applicants

Germany supports the inclusion of paragraph 3(b.bis) and 3(e) as well as the changes in paragraph 6.

Para 3(e) requires Contractors to only use vessels flagged to registries of ISA member States, and only to use ports in countries that are ISA Members, for the purposes of their Exploitation and associated activities. This would be consistent with UNCLOS. Indeed, some domestic seabed mining laws require the use of vessels that are flagged to specific states. There is nothing in UNCLOS that would prevent the ISA from doing the same. Moreover, the 2011 Advisory Opinion also discussed the obligation of member states to cooperate with the ISA in order to ensure conformity with Part XI, which could be taken to mean that requiring the usage of flag states and port states that are ISA member states is consistent with UNCLOS. Also, given that the vast majority of states are indeed ISA members, this provision may be fairly easy to comply with.

We consider it important to ensure the regulations will be applicable to all flag states and port states involved in seabed mining. That means ISA inspectors will be allowed to inspect vessels used for activities in the Area. It also means that the ISA can rely on the assistance, cooperation and support of the flag state and port state where domestic investigation or enforcement may be required. We have suggested similar changes to DR 13 and 18bis to ensure consistency across the regulations.

We are open to other proposals in this respect - as the one just heard from Canada - or any options that could achieve the same goal, for example requiring non-member states to accept to be bound by the ISA's Regulations and give explicit consent to cooperate with the ISA if they wish to act as a flag or port state for activities in the Area. What we need to avoid is a situation where activities in the Area are carried out from vessels that operate entirely

outside of the multilateral regime we are negotiating. The ISA has no jurisdiction to inspect a seabed mining vessel from a non-member state or a vessel that is at port in a non-member state. We need to ensure that the ISA's compliance and enforcement regime is applicable to, and enforceable against, all vessels used for activities in the Area. That also means that any government vessels involved in activities in the Area should not exercise their immunity but should instead allow ISA inspectors to the vessel. These are important but somewhat complex jurisdictional matters which we need to discuss in order to ensure that the Authority's compliance regime applies to all vessels used for activities in the Area.

As a last point, Germany also supports the suggested changes to paragraph 6, which require sponsoring states to have domestic legislation on seabed mining in the Area before they can become a sponsoring state. That is not only in line with the convention but also follows the guidance from the Seabed Disputes Chamber as set out in its 2011 Advisory Opinion.