

Report of the Friends of the President Group on the Environmental Compensation Fund

The Friends of the President group on the Environmental Compensation Fund (ECF) held two informal meetings, on 11 and 15 July 2025, with the support of the Secretariat. During the intersessional period, additional comments were also received from delegations. We thank all delegations for their active and constructive participation.

Draft Regulations 54, 55, and 56 aim to operationalize the ECF as a last-resort mechanism to address environmental damage, consistent with paragraph 205 of the 2011 ITLOS Advisory Opinion. The approach adopted focuses exclusively on the operational aspects of the ECF and deliberately set aside the issue of liability, which will require further consideration in another regulation or potentially a dedicated section within the Regulations.

It is acknowledged that what has been proposed represents only the initial framework or skeleton of what will become the Environmental Compensation Fund. Its actual operation and effectiveness will depend on the rules and procedures to be developed in due course, pursuant to Draft Regulations 54 and 56. The current draft was deliberately endowed with a sufficient degree of flexibility, allowing the Fund to adapt over time to evolving circumstances and to the specific needs that may arise in the context of an industry that has yet to be fully developed. Many of the details are likely to require further definition as practical experience accumulates.

Based on the discussions, and with respect to the specific draft regulations:

- **Draft Regulation 54.** There was broad support for the establishment of the Fund and for the elements to be addressed in the future rules and procedures. A delegation highlighted that, depending on the eventual scope of the Fund, its establishment may require a separate decision of the Council—for instance, if the Fund were to cover damage arising from activities conducted under exploration contracts, such as test-mining (pending consideration of Draft Regulation 48ter/alt). Some delegations also raised the need to incorporate guiding principles, either directly in the regulation or during the development of the implementing rules.
- **Draft Regulation 55.** Delegations generally agreed on the purpose of the Fund: to provide compensation when a Contractor does not meet its liability in full and all other remedies have been exhausted, while the Sponsoring State is not liable under Article 139(2) of the Convention. Further discussion may be needed on the scope of compensable damage.
- **Draft Regulation 56.** Many delegations expressed support for applying the polluter-pays principle. At the same time, some delegations raised concerns about relying primarily on this principle for the financing of the Fund and emphasized the need to consider a broader range of potential sources. In addition, a delegation noted the need to clarify the relationship between the one-time contribution and the annual levy. To reflect the diversity of views expressed, a possible approach could involve maintaining the polluter-

pays element while also including flexible language that would allow the Council, upon the recommendation of the Finance Committee, to consider additional sources of financing, provided that any such decision remains within the mandate of the Authority. Voluntary contributions were also acknowledged as a supplementary source.

Please note that, while progress has been made, several aspects still require further discussion. Accordingly, the draft does not represent consensus; rather, it aims to reflect the inputs received from delegations thus far. In any case, we would respectfully suggest that the revised version of the text be included in the revised President's consolidated texts, so that it may serve as the basis for further discussions.

Finally, there was general recognition that a broader discussion on the liability regime—including the role of insurance mechanisms—will be required at a later stage. In this regard, it is suggested that a placeholder be inserted in the draft Regulations to allow the Council to return to this issue as discussion progress.

DR 54

Establishment of an Environmental Compensation Fund

1. The Authority hereby establishes the Environmental Compensation Fund, referred to as “the ECF” for the purposes of these Regulations.
2. [Prior to the approval of the first Plan of Work for an Exploitation Contract under these Regulations,] [T][t]he rules and procedures governing the ECF shall be approved by the Assembly upon the recommendation of the Council. Those rules and procedures falling within the scope of its mandate shall be formulated by the Finance Committee and submitted to the Council for that purpose. These rules and procedures shall include, *inter alia*:
 - a) The requirements and modalities governing contributions to the ECF in accordance with Regulation 56, including modalities for replenishment upon disbursement;
 - b) The minimum size of the ECF;
 - c) A description of how the ECF and any interest generated will be managed and by whom;
 - d) The modalities for administering claims against the ECF, including determining entities eligible to access the ECF, which may include, among others, States Parties to the Convention, potentially most affected States and the Authority;
 - e) The types of damage and purposes eligible for claims, in accordance with Regulation 55.
 - f) A prioritization of categories of damage to be applied in assessing claims;
 - g) Financial safeguards to ensure a long-term viability of the ECF;
 - h) The standard of proof required for claims; and
 - i) A process for determining disbursements from the ECF.
3. The Secretary-General shall, in consultation with the Finance Committee, prepare an independently audited statement of the income and expenditure of the ECF within 90 days of the end of a calendar year for submission to the Assembly and publication on the Authority’s website.

Note by the facilitator

This draft regulation does not appear to be particularly controversial among delegations. The content outlined for the rules and procedures to be developed seems to be sufficient to allow for the operationalization of the Fund. In any case, the use of the term *inter alia* ensures flexibility, allowing for the inclusion of additional elements as needed during the elaboration of the rules and procedures.

We have taken note of the concerns expressed by some delegations regarding the need to establish guiding principles that could inform the development of the rules and procedures. There are two possible approaches to address this concern:

1. **Inclusion of principles within the draft regulation itself**, building on the proposal already put forward. This approach would require delegations to submit concrete written proposals regarding those principles. Without such contributions, it will not be possible to advance this option in a meaningful way; or
2. The **consideration of such principles in the context of a Council decision mandating the relevant subsidiary bodies of the Authority to develop the rules and procedures necessary for the operationalization of the ECF**. Such a decision could provide guidance and establish the principles that should inform the development of those instruments.

Both options remain open for further discussion.

We have also taken note that a delegation highlighted that, depending on the eventual scope of the Fund, its establishment may require a separate decision of the Council—for instance, if the Fund were to cover damage arising from activities conducted under exploration contracts, such as test-mining (pending consideration of Draft Regulation 48ter/alt).

Guiding questions

1. Which organs of the Authority should be tasked with developing the rules and procedures necessary for the operationalization of the ECF for approval by the Assembly upon the recommendation of the Council?
2. If a decision of the Council is required to mandate the competent organs of the Authority to develop the rules and procedures governing the ECF, would that decision constitute the appropriate moment and instrument to provide guidance and establish principles for the operationalization of the Fund?

DR 55

Purpose of the Environmental Compensation Fund

1. The purpose of the ECF is to provide adequate compensation for any damage arising from activities conducted under an Exploitation Contract in cases where a Contractor does not meet its liability in full, and where all other options under these regulations for claiming compensation from the Contractor have been exhausted, while the Sponsoring State is not liable under Article 139, paragraph 2, of the Convention. Compensation includes the costs of reasonable measures undertaken to prevent, limit, or remedy damage to the marine environment [, as well as those related to restitution, restoration and rehabilitation].
2. The operation of the ECF shall be subject to periodic review.

Note by the facilitator

Paragraph 1. Most delegations appear to share a common understanding regarding the purpose of the Fund. However, further discussion may be needed with respect to the scope of compensable damage. We suggest building on the proposal already put forward.

Paragraph 2. There appears to be general agreement among delegations regarding the periodic review of the operation of the Fund. A delegation noted that additional guidance from the Council regarding the nature and procedure of the review could be helpful.

Guiding questions

1. Do delegations have any views regarding the scope of compensable damage?
2. Are there suggestions regarding the additional guidance that could be provided concerning the nature and procedure of the review of the operation of the ECF?

DR 56

Funding of the Environmental Compensation Fund

1. Consistent with the polluter-pays principle, the ECF shall consist of a one-time contribution paid by Contractors and/or the Enterprise following the approval of a [Plan of Work] and prior to [commercial production] [the commencement of activities under an Exploitation Contract], as well as an annual levy paid to the ECF by Contractors and/or the Enterprise, both as determined by the Authority.
2. The Council may further decide, based on the recommendations of the Finance Committee, that additional monies be paid to the ECF [from any appropriate source, including, where consistent with the Authority's mandate, contributions from entities that benefit from activities in the Area].
3. The ECF may also receive voluntary contributions.

Note by the facilitator

Further discussion is required regarding the basis for financing the Environmental Compensation Fund. While many delegations expressed support for the application of the polluter-pays principle, some delegations raised concerns about relying primarily on this principle for the financing of the Fund and emphasized the need to consider a broader range of potential sources.

In order to reflect the diversity of views expressed, a possible two-pronged approach could be considered:

1. **Application of the polluter-pays principle**, reflected through a one-time contribution and an annual levy paid by Contractors and/or the Enterprise; and
2. **Inclusion of flexible language** that would allow the Council, based on the recommendations of the Finance Committee, to decide on the possibility of receiving contributions from other entities that benefit from activities in the Area, provided that such decision remains within the mandate of the Authority.

This proposal is intended solely to help capture the range of views expressed and does not prejudice the development of the discussions or the outcome of future deliberations. Delegations wishing to explore a broader approach to potential sources of financing are invited to provide specific text proposals for consideration in the next stage of the discussions.

In addition, a delegation noted the need to clarify the relationship between the one-time contribution and the annual levy.

Guiding questions

1. If the polluter-pays principle is not the sole basis for financing the ECF, what alternative basis could be considered?
2. If appropriate, which other entities should contribute to the ECF?
3. What should be the relationship between the one-time contribution and the annual levy?