

German Statement on Item 12: Draft regulations for exploitation of mineral resources in the Area (Roadmap)

7 December 2021

- Germany would like to **thank the Secretary General** for his report and the proposal of a roadmap for the work of the ISA Council.
- In our view, this proposal is a good starting point for our discussions on the work to come in the next one and a half years. And I can assure Council Members that we are committed to working constructively towards a timely adoption of the necessary exploitation regulations, standards and guidelines.
- As the Secretary General pointed out at the beginning of this meeting the task of the Authority and of this Council is to regulate. So, in the spirit of fulfilling the tasks entrusted upon us by the Convention, **let us regulate!**
- That being said, I would like to make two further points in my following intervention.
 - **First**, I will outline the aspects of the road map that, in our view, need further specification.
 - **Second**, I would like to suggest that the Council prepares itself for the undesirable but possible situation that by July 2023 no exploitation standards and guidelines have been adopted.
- **Coming to my first point:** We are convinced that there are still many aspects in the draft exploitation regulations, and accompanying regulatory components that require further in-depth discussion.
- Several issues such as the payment mechanism, the benefit sharing mechanism, standardized requirements for regional

environmental management plans, a conceptualization of test mining, the inspectorate as well as the question of liability, need to be further specified and negotiated.

- In particular, as expressed in our written comments submitted in July 2021, we consider the ten draft standards and guidelines that went through consultation in 2020 and 2021 to be still in a preliminary status, requiring substantial further work.
- Therefore, we suggest that the proposed roadmap as contained in ISBA/26/C/44 be revised and further specified.
- The road map should include clear steps regarding the development of standards and guidelines, and as a first step a thorough discussion on the selection of those priority standards and guidelines that should be developed before adoption of the regulations. Unlike implied in the document and unlike it was stated yesterday, we do not recall any decision by the Council so far according to which the selection and timelines for standards have been agreed.
- Furthermore, the conceptual setup of standards and guidelines and their role in the future permitting process needs further discussion. Germany would like to highlight that the draft standards/guidelines submitted up to now have primarily been formulated as process-oriented instructions for contractors. None of the considered standards or guidelines contain normative requirements, for example in the form of threshold values as part of binding requirements for Environmental Impact Assessments.
- Germany regards the latter as a prerequisite for establishing an effective environmental protection regime in the permitting process and therefore believes that they should constitute the

core of environmental standards in the future mining code. The roadmap should therefore incorporate provisions for further developments in this respect.

- Having noted the indicative work schedule for the Council, as part of the proposed roadmap, we are concerned that the proposed minimum six weeks of Council meetings in 2023 are unrealistic in view of the limited personal capacities of our delegation and the many ocean-related processes that need our attention during the next year. Instead, we propose that the envisaged ad-hoc working groups are eventually established, holding meetings - if necessary - on a virtual basis to facilitate continuous exchange and substantial progress in the development of the draft regulations.
- I will now **come to my second point**.
- Mr. President, Mr. Secretary-General, distinguished Council Members. When I argue that we should prepare for the undesirable situation that no exploitation regulations are adopted by July 2023, I have **neither given up hope** in our ability to regulate **nor do I want to distract** the Council from its already difficult tasks.
- **But let us be honest here.** Whose mind has not been crossed by the thought that a plan of work may be submitted before the adoption of exploitation regulations?
- In our view, we as Council should at least have a preliminary understanding of what we think will happen in this situation.
- The legal consequences on the relevant provision in the Agreement are – at least in our view – far from clear; so there should be debate about them in the Council. Maybe we arrive at

a common understanding **fast** – all the better. But we should not ignore the elephant in the room and place ourselves in a position where we need to decide hastily when time is up.

- Therefore, we propose that the road map be amended by an item under which we try and reach a common understanding on this point. If done right, this need not distract from working vigorously and determined towards a timely adoption of the mining code.
- In summary, we suggest that an amended roadmap contains a clear perspective on developing a common understanding of the implications of the invoked 2-year rule as well as all necessary steps and arrangements for the Council's priority work.
- Thank you, Mr. President.