

*Twenty-seventh session*

Council session, part I

Kingston, 21 March-1 April 2022

**Item 11 of the provisional agenda\***

**Draft regulations on exploitation of mineral resources in the Area**

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**Part XI: 96 and 97**

Drafting proposals submitted by delegations as compiled on 28 March 2022

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## Part XI

### Inspection, compliance and enforcement

#### Section 1 Inspections

##### Regulation 96 Inspections: general

1. The Council shall establish appropriate mechanisms for inspection, as provided for in article 162 (2) (z) of the Convention.
2. The Contractor shall permit the Authority to send its Inspectors, who may be accompanied by a representative of its State or other party concerned, in accordance with article 165 (3) of the Convention, aboard vessels and Installations, whether offshore or onshore, used by the Contractor to carry out Exploitation activities under an exploitation contract, as well as to enter its offices wherever situated. To that end, Members of the Authority, in particular the sponsoring State or States, shall assist the Council, the Secretary-General and Inspectors in discharging their functions under the Rules of the Authority.
3. The Secretary-General shall give reasonable notice to the Contractor of the projected time and duration of inspections, the names of the Inspectors and any activities that the Inspectors are to perform that are likely to require the availability of special equipment or special assistance from the personnel of the Contractor, save in situations where the Secretary-General has reasonable grounds to consider the matter to be so urgent that notice cannot be given, in which case the Secretary-General may, where practicable, exercise the right to conduct an inspection without prior notification.
4. Inspectors may inspect any relevant documents or items which are necessary to monitor the Contractor's compliance, all other recorded data and samples and any vessel or Installation, including its log, personnel, equipment, records and facilities.
5. The Contractor and its agents and employees shall facilitate the actions of the Inspectors in the performance of their duties, and shall:
  - (a) Accept and facilitate the prompt and safe boarding and disembarkation of vessels and Installations by Inspectors;
  - (b) Cooperate with and assist in the inspection of any vessel or Installation conducted pursuant to this regulation;
  - (c) Provide access to all relevant areas, items and personnel in offices or on vessels and Installations at all reasonable times;
  - (d) Provide access to monitoring equipment, books, documents, papers, records and passwords which are necessary and directly pertinent to verify the expenditures referred to in the Plan of Work or necessary to determine compliance with the financial payments due under the exploitation contract and these regulations;
  - (e) Answer fully and truthfully any questions put to them;
  - (f) Accept the deployment of remote real-time monitoring and surveillance equipment, where required by the Secretary-General, and facilitate the activities of Inspectors in deploying such equipment and having access thereto; and

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(g) Not obstruct, intimidate or interfere with Inspectors in the performance of their duties.

6. Inspectors shall:

(a) Follow all reasonable instructions and directions pertaining to the safety of life at sea given to them by the Contractor, the captain of the vessel or other relevant safety officers aboard vessels and Installations; and

(b) To the maximum extent possible, refrain from any undue interference with the safe and normal operations of the Contractor and of vessels and Installations, unless the Inspector has reasonable grounds for believing that the Contractor is operating in breach of its obligations under an exploitation contract.

## **I - Members of the International Seabed Authority**

### **Canada**

Canada suggests the deletion of Regulation 96, paragraph 4 as elements are captured more appropriately in Regulation 96, paragraph 2 and Regulation 98.

If Regulation 96, paragraph 4 is kept, we suggest that it be edited in the following manner:

4. Inspectors may, in order to monitor the Contractor's compliance, inspect any relevant documents, ~~or items which are necessary to monitor the Contractor's compliance~~, ~~all other recorded data~~ or ~~and~~ samples and any vessel or Installation, including its log, personnel, equipment, records and facilities.

### **Rationale**

Regulation 96, paragraph 4 is worded so broadly that it allows inspectors to inspect practically anything. As such we suggest its deletion as its elements are adequately captured in Regulation 96, paragraph 2 and Regulation 98. Inspecting personnel may also be problematic.

Should the decision be made to keep this paragraph, we would recommend to redraft as suggested to improve clarity.

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## **France**

2. The Contractor shall permit the Authority to send its Inspectors, who may be accompanied by a representative of its State or other party concerned, in accordance with article 165 (3) of the Convention, aboard [all \(FR\) vessels](#), ~~and~~ Installations [and offices](#), whether [situated](#) offshore or onshore, used by the Contractor to carry out Exploitation activities under an exploitation contract, ~~as well as to enter its offices wherever situated.~~ [When the inspected premises constitute residential premises, visits can only be carried out in the presence of the occupant and with his agreement \(FR\).](#)

## **Rationale**

For the respect of privacy

## **Japan**

3. The Secretary-General shall give reasonable notice to the Contractor of the projected time and duration of inspections, the names of the Inspectors and any activities that the Inspectors are to perform that are likely to require the availability of special equipment or special assistance from the personnel of the Contractor, ~~save in situations where the Secretary-General may without prior notification direct an inspection of the Contractor's activities in accordance with regulation 4(5) where the Secretary-General has reasonable grounds to consider the matter to be so urgent that notice cannot be given, in which case the Secretary-General may, where practicable, exercise the right to conduct an inspection without prior notification.~~

## **Rationale**

Provisions under regulations 96, paragraph 3, needs to be consistent with Regulation 4 (5), which provides the Secretary-General shall direct an inspection in case where the Commission (not Secretary-General) considers there are clear grounds for believing that Serious Harm to the Marine Environment is likely to occur or has occurs, and it is attributable to the breach of the Contractor of the terms and conditions of the exploitation contract.

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## **II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly**

### **United States of America**

Regulation 96:

2. **The Authority's contract with t**The Contractor shall authorize ~~permit~~ the Authority to send its Inspectors, who may be accompanied by a representative of its State or other party concerned, ~~in accordance with article 165 (3) of the Convention~~, aboard vessels and Installations, whether offshore or onshore, used by the Contractor to carry out Exploitation activities under an exploitation contract, as well as to enter its offices wherever situated. To that end, Members of the Authority, in particular the sponsoring State or States, shall assist the Council, the Secretary-General and Inspectors in discharging their functions under the Rules of the Authority.
  
5. **The Authority's contract with the contractor shall require t**The Contractor and its agents and employees to ~~shall~~ facilitate the actions of the Inspectors in the performance of their duties, and shall:

### **Rationale**

In order to avoid any perceived conflict with the authority of the flag State to authorize the boarding of a flagged vessel, it would be preferable to place the inspection obligation in the contract between the Authority and the contractor. Likewise, duties of the contractor should be set forth in the contract so that breaches of duties can have contractual consequences.

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## **Regulation 97**

### **Inspectors: general**

1. The Council, based on the recommendations of the Commission, shall determine the relevant qualifications and experience appropriate to the areas of duty of an Inspector under this Part.
2. The Commission shall make recommendations to the Council on the appointment, supervision and direction of Inspectors, and on an inspection programme and schedule, under the inspection mechanism established by the Council in regulation 96 (1).
3. The Secretary-General shall manage and administer such inspection programme, including the terms and conditions of the appointment of Inspectors, at the direction of the Council.

## **I - Members of the International Seabed Authority**

### **Belgium**

Art. 97, para 2 – New text –

2. The Council, based on the recommendations of the Commission, shall appoint, supervise and direct the Inspectors, and adopt an inspection programme and schedule, under the inspection mechanism established by the Council in regulation 96(1).

### **Rationale**

In order to be in conformity with para 1 and to clarify which body shall take the decision.

### **Japan**

1. The Council, based on the recommendations of the Commission, shall determine the relevant qualifications and experience appropriate to the areas of duty of an Inspector under this Part **save in situations where the Secretary-General shall direct an inspection of the Contractor's activities in accordance with regulation 4(5). Based on the specified qualifications and experiences, a roster of candidates for Inspectors, including the members of the Commission as provided in article 165 (3) of the Convention, shall be made by the Secretariat.**

### **Rationale**

It needs to be consistent with provision under Regulation 4 (5), as it addresses the case where the Secretary-General shall direct an inspection of the Contractor's activities in accordance with regulation 4(5). Japan also suggests creating lists of professionals, from various fields such as marine geology, marine minerals, mining, marine biology, accounting, legal affairs, marine environment and so forth, who are considered by the Secretariat to be qualified. When inspection is required, the Secretariat, sponsoring states and other state parties concerned select an Inspector from the lists through consultation. As article 165, paragraph 3 of the Convention envisages members of the Commission carry out the function of supervision and inspection, members of the Commission may be registered on the list as well.