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

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

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**Part XI: Regulations 96 to 105**

**Prepared by the Facilitator, Ambassador Maureen Tamuno (Nigeria), of the Informal Working Group on Inspection, Compliance and Enforcement**

1. According to the mandate and working modalities set out in the annex to the Council's decision during the twenty-sixth session of the Authority ([ISBA/26/C/11](#)), the Informal Working Group on Inspection, Compliance and Enforcement has been working on Part XI of the draft regulations on exploitation of mineral resources in the Area ("the Draft Regulations", [ISBA/25/C/WP.1](#)).

2. During the meeting in March 2022 ([ISBA/27/C/21](#)), having undertaken a first reading and considered proposals made during and after the meeting, I prepared the facilitator's text ([ISBA/27/C/IWG/ICE/CRP.1](#)) to assist discussions in the Informal Working Group meetings in July 2022.

3. Based on the negotiations during the meeting in July 2022 and the proposals submitted, it was agreed that I would prepare a revised text of the Facilitator for the meeting in November 2022 ([ISBA/27/C/21/Add.1](#)). I have prepared this revised text ("the Facilitator's revised text") to assist discussions in the Informal Working Group, with a view to facilitating the finalization of the work of the group which I am confident is at reach given the constructive exchange of views which enabled to close many gaps. In the Facilitator's revised text, I have also attempted to capture the outcomes arising from the discussions during the meeting of the group in July 2022.

4. The enclosure represents a revised draft version of Part XI of the Draft Regulations in document [ISBA/25/C/WP.1](#). I have adopted the same approach to the revisions as follows:

(a) Only those proposals in respect of which there has been no express opposition to, are reflected in the text. This is without prejudice to their future consideration or the possibility for delegations to re-introduce textual proposals not incorporated in the present text.

(b) The mark-up text in the version of 8 July 2022 has been accepted to the extent that there has been no objection on the content. Where I was in doubt as to whether there was consensus, I have added square brackets.

(c) The revisions are reflected as marked-up text against the version that was provided on 8 July 2022.

(d) Ideas that reflected a general direction in the discussions have been incorporated, although the precise textual formulations proposed by delegations may not have been reflected verbatim, the text presented is an attempt at reflecting a compromise of those ideas and proposals.

(e) Where general comments were made but no drafting suggestions were provided or where several drafting suggestions were made going in a similar direction, I have proposed wording for the consideration of delegations.

(f) Square brackets are introduced for proposals for which conceptual discussion are expected and where further work might be requested by the Council.

(g) Options have been used throughout the text to present alternative conceptual approaches. The order in which options appear in the text should not be taken as indicating any suggested order of priority.

(h) Boxes contain explanations of revisions and/or my comments, where necessary, are included under the relevant regulations.

5. We should all bear in mind that the work and results of the Informal Working Group should be fully consistent with the provisions of the Convention and the 1994 Agreement, and the process and its result should not undermine existing relevant legal instruments and frameworks and relevant global, regional, and sectoral bodies.

# Enclosure

## Further revisions to part XI of the Draft Regulations

### Part XI Inspection, compliance and enforcement

#### Section 1 Inspections

##### Regulation 96 Inspections: general

1. The Council shall establish [an independent Inspectorate as the appropriate mechanisms [mechanism]] for inspection as provided for in articles 153 (5) and 162 (2) (z) of the Convention. [Inspections performed shall be undertaken by Inspectors who meet the qualification set out by the Council pursuant to Regulation 97(1)].

1.bis The Council shall approve and maintain a code of conduct for Inspectors and inspections, that takes into account the principles in paragraph (1) and includes provisions on identifying and managing conflicts of interest, and on information management and confidentiality.

2. The Contractor shall permit the Authority to send its Inspectors, who [shall upon request by sponsoring States, [any other State Party] or other party concerned] be accompanied by a representative of the sponsoring State, [any other State Party] or other party concerned, [in accordance with article 165 (3) of the Convention], aboard all 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, [States Parties] [Members of the Authority], in particular the sponsoring State or States, shall assist the [Council, the Secretary General] [Authority] and Inspectors in discharging their functions under the Rules of the Authority.

[2.bis Nothing in these regulations shall be construed in any way inconsistently with the exclusive jurisdiction of the flag State over its vessels on the high seas as reflected in article 92 of the Convention; nor the enforcement rights of port States as reflected in article 218 of the Convention.]

3. The [Inspectorate] shall give reasonable notice to the Contractor of the projected time and duration of inspections for a period as necessary, the names of the Inspector(s) and any activities that the Inspector(s) 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 [Inspectorate] has reasonable grounds to consider the matter to be so urgent that notice cannot be given, in which case the [Inspectorate] may, where practicable, exercise the right to conduct an inspection without prior notification, [pursuant to Regulation 4(5)].

4. Inspectors may inspect during the whole lifecycle of the activities in the Area any relevant documents, data or sample and any vessels or Installations used in the Area in connection with activities in the Area, including its log, personnel, equipment, records and facilities.

[4. ~~Alt 1~~ Inspectors may inspect any relevant documents or items which are necessary to monitor the Contractor's compliance under the exploitation contract and the Rules of the Authority, 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]~~ [shall cooperate with the Inspectors and give full assistance to] 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;

[(a).bis Keep the Secretary-General and sponsoring State or States notified of proposed vessel schedules including support and supply vessels, and inform the Secretary-General at least 30 Days before any vessel commences its voyage to a Contractor's Contract Area to facilitate the conveyance of Inspectors and representatives of the sponsoring State or States, where appropriate];

(b) Cooperate with and assist in the inspection of any vessel or Installation or equipment conducted pursuant to this regulation [and comply with the reasonable requests of an Inspector];

(b bis) Provide reasonable facilities, including where appropriate, food and accommodation, to Inspectors;

(c) Provide access to all relevant areas, items and personnel [] or on vessels and Installations at all reasonable times, [including access to and use of communication equipment for the purpose of the transmission and receipt of messages];

(d) Provide access to [relevant] monitoring equipment, books, documents, papers and records ~~[which are necessary and directly pertinent]~~ to [determine compliance with terms and conditions of a contract and these Regulations including with] the financial payments [terms and to verify the expenditures referred to in the Plan of Work];

(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]~~ [Inspectorate], and facilitate the activities of Inspectors in deploying such equipment and having access thereto; and

(g) Not obstruct, intimidate or interfere with Inspectors in the performance of their duties, [or representatives of sponsoring States, any other State Party, or other party concerned who accompany these Inspectors, as identified in paragraph 2 of this Regulation].

6. Inspectors shall:

(a) [Carry out inspections in accordance with internationally accepted principles of good seamanship to avoid risks to the safety of life at sea and where appropriate] ~~Follow~~ instructions and directions pertaining to the safety of life at sea given to them by the Contractor and the [master] of the vessel; and

(b) ~~[Refrain from any undue interference]~~ [Not unduly interfere] 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.

(b).bis ~~[An Inspector shall]~~ adhere to the Authority's code of conduct for inspectors and inspections established pursuant to draft regulations 96 (1) bis.

(c) Indicate in their reports all vessels, installations, equipment, facilities, data and samples monitored or otherwise examined, all documents reviewed or copied, all questions posed to the Contractor or any personnel.

#### Comments/remarks

- I noted that there were many proposals to include an Inspectorate in the inspection mechanism. I also noted that a few delegations proposed to establish a Compliance Committee as a subsidiary organ. Some delegations raised concern that a Compliance Committee might be inflexible in terms of inspection and other delegations noted that there was no need for the establishment of a subsidiary organ as the Legal and Technical Commission already possessed the required qualifications that such a committee should oversee (other than what an inspectorate would manage). It was also noted that a Compliance Committee is not envisaged by either the Convention or the 1994 Agreement. Based on the discussions and my impression of an overall consensus in favour of an Inspectorate, I have inserted my suggestion for an Inspectorate in the text.
- In para 2, I have deleted the reference to Article 165(3) of UNCLOS, as the article concerns the members of the Legal and Technical Commission undertaking inspections and not the inspections of the inspectorate.
- In paras 2 and 5(g) language has been added to reflect the content of article 165(3) of UNCLOS.

#### Regulation 97

##### Inspectors: Appointment and supervision

1. The Council, shall on the basis of the recommendations of the Commission, determine the relevant qualifications and experience appropriate to the [areas of duty] of an Inspector under this Part. [Based on that the Secretary-General will establish a roster of Inspectors.]

[1. Alt 1. The Council shall establish a roster of inspectors, based on the recommendations of the Commission on the relevant qualifications and appropriate experience required to perform their duties under these Regulations. [The roster shall be administrated by the Inspectorate].

[1.bis [States Parties] ~~[Each Member of the Authority]~~ may, subject to the requirements of this regulation, ~~[designate]~~ [nominate] its nationals as Inspectors for inclusion in the roster. [The roster of Inspectors shall be made publicly available on the Authority's website.]

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]~~ [for the Inspectorate] established by the Council in regulation 96 (1) and in accordance with the Standards and taking into account the Guidelines.

3. The ~~[Secretary General]~~ ~~[Inspectorate]~~ shall manage and administer such inspection programme, including the appointment of Inspectors at the direction of the Council.

[4. The Inspectors shall be independent in the fulfilment of their tasks.

5. ~~[Without prejudice to their enforcement under international law, measures adopted by the Inspectors shall be effectively enforceable by Sponsoring States in their national legal orders. Inspectors shall report to the [Secretary General] in writing any difficulties relating to the enforcement of their measures under national law.]~~

6. Inspectors may be required to undertake relevant training programmes at the request of the Council, based on the recommendations of the Commission.

7. The Council may, for reasonable cause, remove an Inspector from the roster, based on the recommendations of the Commission or on the recommendations of the Secretary-General under regulation 101(2).]

#### Comments/remarks

- I have attempted to capture the outcomes arising from the discussions during July and have amended the regulation to reflect my understanding of the overall consensus amongst delegations on the appointment of Inspectors. Paras 4-7 is existing text from different alternatives that have been merged to fit with the reading and content of regulation 97. Other parts have been moved to other appropriate places or deleted, where inconsistent with the Convention.
- I have refrained from adding text as to the inspectors' right to exercise control over activities in the Area, as proposed by one delegation because this would appear potentially to conflict with the responsibility of the Council under Article 162(2)(m).
- I have suggested to refrain from inserting para 5 as this para seems to be legally incoherent with the Convention. To my understanding, a sanction imposed by the Council, following a non-compliance, is already enforceable under Annex III to the Convention. Furthermore, only the Council can impose sanctions, and only after all remedies have been exhausted.

#### Regulation 98 Inspectors' powers

~~[1.bis Inspectors shall:~~

~~— (a) follow all reasonable instructions and directions pertaining to the safety of life at sea given to them by the Contractor or the captain; 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 Inspectors have reasonable grounds for believing that the Contractor is operating in breach of its obligations under an exploitation contract.]~~

1. An Inspector may, for the purposes of monitoring or enforcing compliance with the Rules of the Authority and the terms of the exploitation contract:

(a) Question any person engaged by the Contractor in the conduct of Exploitation activities on any matter to which the Rules of the Authority relate;

(b) Require any person who has control over, or custody of, any relevant document, whether in electronic form or in hard copy, including a plan, book or record, to produce that document to the Inspector immediately or at any other time and place that the Inspector requires;

(b).bis 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 used in connection with activities in the Area including its log, personnel, equipment, records and facilities

(c) Require from any person referred to in subparagraph (b) above an explanation of any entry or non-entry in any document over which that person has custody or control;

(d) Examine any document produced under subparagraph (b) and make a copy of it or take an extract from it;

(e) Inspect or test any machinery or equipment under the supervision of the Contractor or its agents or employees that, in the Inspector's opinion, is being or is intended to be used for the purposes of the Exploitation activities, ~~[unless such inspection or testing will unreasonably interfere with the Contractor's operations in the Area];~~

[(f) Seize any document, article, substance or any part or sample of such for examination or analysis that the Inspector may reasonably require;]

[(g) Remove any representative samples or copies of assays of such samples from any vessel or equipment used for or in connection with the Exploitation activities;]

[(h) Require the Contractor to carry out such procedures in respect of any equipment used for or in connection with the Exploitation activities as may be deemed necessary by the Inspector: ~~[and, unless such procedures will unreasonably interfere with the Contractor's operations; and]].~~

(i) Upon written authorization from the Council, perform any other prescribed function of the Authority [as its representative].

2. An Inspector may instruct any Contractor, its employees or any other person who performs an activity in connection with an exploitation contract to appear before the Inspector to be questioned on any matter to which the Rules of the Authority relate.

[3. Before an Inspector may seize any document under paragraph 1 (f) above, the Contractor may copy it.]

[4. When an Inspector seizes or removes any item under this regulation, the Inspector shall issue a receipt for that item to the Contractor.]

5. An Inspector [shall] document any site visit or inspection activity and may use any reasonable means to do so, including video, audio, photograph or other form of recording.

6. An Inspector shall be bound by strict confidentiality provisions and must have no conflicts of interest in respect of [all] duties undertaken, and shall conduct his or her duties in accordance with the Authority's code of conduct for Inspectors and inspections approved by the Council.

#### Comments/remarks

- 1.bis has been deleted as the description of the inspector's appointment is addressed in Regulations 96 and 97.
- Based on the discussions during the July 2022 meeting and proposals submitted by some delegations, I have re-included the original text of paras 1(f) –(h) and paras 3 and 4 with few amendments, this is to have a more thorough description of the Inspectors' powers.
- In para 1(i) "as its representative" has been reinserted. This to underline that the Inspectorate under article 162(2)(z) of UNCLOS is mandated by the Council to perform its functions.

### Regulation 99

#### Inspectors' power to issue instructions

1. If, as a result of an inspection, an Inspector has [reasonable grounds] [to determine] that any occurrence, practice or condition endangers or may endanger the health or safety of any person or poses a threat of Serious Harm to the Marine Environment, or is otherwise in breach of the terms of its exploitation contract, the Inspector [shall] give any instruction he or she considers reasonably necessary to remedy the situation, in accordance with the Standards, including:

(a) ~~[A written instruction requiring a suspension in mining activities for a specified period, or until such time and date as the Authority and Contractor agree;] [A requirement to undertake specific tests or monitoring and to furnish the Authority with the results or report of such tests or monitoring within a set period];~~

(b) A written instruction placing conditions on the continuation of mining activities [including a requirement] to undertake a specified activity in a specified way, and within a specified period or at specified times or in specified circumstances;

(c) A written instruction that the Contractor must take the steps set out in the instruction, within the specified period, to rectify the occurrence, practice or condition; and

(d) ~~[A requirement to undertake specific tests or monitoring and to furnish the Authority with the results or report of such tests or monitoring.] [A written instruction requiring a suspension in mining activities for a specified period.]~~

2. An instruction under paragraph 1 above must be given to the person designated by the Contractor or, in his or her absence, the most senior employee available aboard the vessel or Installation to whom the instruction can be issued.

3. Any instruction issued under paragraph 1 above shall be in force [until the Contractor has executed the instruction] [-for a specified period, not exceeding seven Days, after which it lapses]. [Upon receiving information from the Contractor about steps taken to implement the instruction, the Inspectorate shall decide, as soon as possible and within no more than three Days, whether the instruction has been complied with by the Contractor]. The ~~[Inspector]~~ [Inspectorate] shall report immediately to the Secretary-General, [the Council] and to the Contractor's sponsoring State or States that an instruction has been issued under paragraph 1, and [where the issue remains unresolved], the ~~[Secretary-General]~~ [Inspectorate] may thereafter



exercise the powers conferred upon the ~~[Secretary-General]~~ ~~[Inspectorate]~~ under regulation 103. The Secretary-General shall exercise these powers to prevent ~~[probable]~~ imminent danger to the health or safety of any person or ~~[probable, imminent, and]~~ serious harm to the environment [arising out of activities in the Area].

#### Comments/remarks

- During the meeting in July 2022, it was suggested by one delegation to list the instructions in para 1 (a) – (d) according to the gravity of the instruction. I sensed that there was consensus amongst most delegations to follow that proposal. I have thus updated the list of instructions accordingly and made some amendments.

### Regulation 100 Reports

1. ~~[Immediately after]~~ ~~[At]~~ the end of an inspection, the Inspector shall ~~[prepare]~~ ~~[deliver]~~ a report [promptly to the Inspectorate], [in accordance with the template to be prescribed in the standards], setting out the findings and any recommendations for improvements in [performance], procedures or practices by a Contractor. The ~~[Inspector]~~ ~~[Inspectorate]~~ shall send the report to the Secretary-General, [the Commission, and the Council as soon as it is completed] and the Secretary-General shall send immediately a copy of the report to the Contractor and to the sponsoring State or States and, if appropriate, the relevant coastal State or States and the flag State.

1.bis The Contractor may within ~~[7]~~ thirty Days of the date of the Inspector's report, provide [to the Secretary-General] comments to the Inspector on his or her findings and recommendations. ~~[The Inspector will forward the comments to the Secretary-General]~~.

1.ter The sponsoring State or States shall provide to the Secretary-General details of any regulatory or other action taken or to be taken as a result of the Inspectors' findings or recommendations.

2. The ~~[Secretary-General]~~ ~~[Inspectorate]~~ shall report annually to the Council on the findings and recommendations following the inspections conducted in the prior Calendar Year, [as compiled in a report by the Inspectors] and shall make any recommendations to the Council on any regulatory action to be taken by the Council under these regulations and an exploitation contract. [taking account of any regulatory action taken by the sponsoring State or States or corrective actions taken by a Contractor to address the findings or recommendations.]

[2.bis Inspection reports drawn up by Inspectors shall constitute admissible evidence in administrative or judicial proceedings.]

3. The ~~[Secretary-General]~~ ~~[Inspectorate]~~ shall report acts of violence, intimidation or abuse against or the wilful obstruction or harassment of an Inspector [in the course of their duty] by any person or the failure by a Contractor to comply with regulation 96 [to the Secretary-General].

3.bis. The Secretary-General shall ~~R~~ report such acts immediately to the sponsoring State or States and the flag State of any vessel or Installation concerned, the national State of the Inspector [and the national State of the representatives of sponsoring States, any other State Party, or other party]

concerned who accompany the inspector] for consideration of the institution of proceedings under national law; and

~~[(b) Report such acts to the [Secretary General] and consider the exercise of powers under regulation 103.]~~

4. The [Inspectorate] [Inspector] shall ~~[also report acts referred to in para. 3 immediately to the [Secretary General] and shall]~~ take the appropriate measures under Regulation 103.

#### Remarks/comments

- One delegation had suggested that the heading be changed to “Reports”. Considering that the regulation currently contains information on other reporting than the Inspector’s Reporting, I suggest changing the heading accordingly.
- In para 1, “immediately after” was introduced in my text of 8 July 2022. However, several delegations have expressed the view that the insertion should be taken out as it is too stringent. Instead, it has been proposed to insert the requirement of the Inspector providing its report “promptly”. In order to reach consensus, hence, I have attempted to revise this para.
- Concerning the deadline in 1.bis., it might be recalled that I highlighted in my previous text that seven days might be too tight. One proposal is to change it to thirty days, and I understand that from an operational point of view that this would be an appropriate timeline.

#### Regulation 101

~~[Review of the Inspector’s decision]~~ [Complaints]

1. A Contractor who considers that an Inspector has acted unreasonably or outside of the scope of their powers under this Part may complain in writing to the [Secretary-General] [Council] [Inspectorate], who shall consider the complaint as soon as practicable.

~~[1 Alt A person aggrieved by an action of an Inspector under this Part may complain in writing to the Inspectorate, who shall consider the complaint as soon as practicable.]~~

2. The ~~[Secretary General]~~ [Inspectorate] may take may such reasonable action as is necessary in response to the complaint.

~~[3. The Inspectorate shall issue a report to the Authority describing the complaint and the action taken in response to such a complaint.]~~

#### Comments/remarks

- Some delegations have proposed to maintain the original title as the regulation concerns the handling of a complaint rather than review of the Inspector’s decision. Considering the present content of the provision, I have reinstated the original title.

## Section 2 Monitoring

### Regulation 102 Vessel notification, electronic monitoring and data reporting

1. A Contractor shall restrict its mining operations to the Mining Area.
2. All [Installations] ~~[mining vessels]~~ and mining collectors [involved in exploitation activities under the Exploitation contract ~~[activities]~~] shall be fitted with [an electronic monitoring system] ~~[a satellite positioning device]~~. Such system shall record ~~[where technically feasible]~~ in real time, inter alia, the date, time and position of all mining activities, and, where technically possible, shall also provide environmental data. The detail and frequency of reporting shall be in accordance with the Standards and taking into account the Guidelines.
  - [2.bis The Contractor shall use the best-available techniques to monitor in real-time and in the actual environment the mining impact, including the removal of mineral resources, plume dispersal, and sound, allowing for adaptive management during the mining operation.]
  - [2.ter The electronic monitoring system ~~[shall]~~ ~~[should]~~ also encompass the monitoring of mining impacts ~~[and be in accordance with the Environmental Monitoring and Management Plan]~~, implementing the obligations under Regulation [46ter], allowing for adaptive management during the mining operation.]
3. The ~~[Secretary-General]~~ ~~[Inspectorate]~~ shall issue a compliance notice under regulation 103, where [there is reasonable evidence to suggest based on] the data transmitted to the Authority that unapproved mining activities have occurred or are occurring.
  - 3.bis The plan shall include:
    - (a) a description of the monitoring technology and system to be implemented, including the types of data to be collected and monitored, and frequency of monitoring and data that can be collected and monitored in real-time;
    - (b) a description of how the monitoring data will be transmitted during operations, how the data will be labelled and monitored by qualified personnel, and how the data will be stored;
    - (c) the qualifications and proposed location of the personnel monitoring the data; and
    - (d) a description of the procedures for providing the Authority and the sponsoring State or States access to or receipt of the monitoring data for the purposes of monitoring compliance with the terms of an exploitation contract and collection of data.
4. A Contractor shall permit the Inspectors having access to any monitoring or surveillance systems and equipment.
5. All data transmitted to the Authority ~~[and the Inspectorate]~~ under this regulation shall be transmitted to the [Secretary-General and the] sponsoring State or States.

#### Comments/remarks

- In para 2, I have suggested to delete “a satellite positioning device” as I understand, from a technical point of view, that this device only record tools/ships/buoys on surface but not on the seabed.
- In relation to 2.bis, there was support for making the environmental data publicly available, including remote monitoring data. It has though been pointed out that there might be security concerns in relation to the release of data pinpointing the precise location of mining equipment. It has been suggested that it should be linked in a separate environmental regulation in Part IV, including Regs 46 ter and 48. I invite for further discussion on this matter.

### Section 3 Enforcement and penalties

#### Regulation 103

##### Compliance notice, [suspension] and termination of exploitation contract

1. At any time, if it appears to the [Secretary-General] [Inspectorate] based on reasonable grounds that a Contractor is in breach of the terms and conditions of its exploitation contract, Part XI and the rules, regulations and procedures of the Authority, the [Secretary-General] [Inspectorate] shall issue a compliance notice to the Contractor requiring the Contractor to take such action as may be specified in the compliance notice [and report immediately to the Council].

2. A compliance notice shall:

(a) Describe the alleged breach and the factual basis for it; and

(b) Require the Contractor to take remedial action or other such steps as the [Secretary-General] [Inspectorate] considers appropriate to ensure compliance within a specified time period.

[2.bis Actions specified in the compliance notice should be commensurate with the gravity, frequency or other circumstances of the alleged breach.]

3. For the purposes of article 18 of annex III to the Convention, a compliance notice issued under this regulation constitutes a warning by the Authority.

4. The Contractor shall be given a reasonable opportunity [not exceeding 30 days] to make representations in writing to the [Secretary-General] [Inspectorate] concerning any aspect of the compliance notice. Having considered the representations, the [Secretary-General] [Inspectorate] may confirm, modify or withdraw the compliance notice.

5. If a Contractor, in spite of [one or more] warnings by the [Authority] [Inspectorate], fails to implement the measures set out in a compliance notice and continues its activities in such a way as to result in serious, persistent or wilful violations of the fundamental terms of the contract Part XI of the Convention and the rules, regulations and procedures of the Authority, the Council [shall] suspend or terminate the exploitation contract by providing written notice of suspension or termination to the Contractor in accordance with the terms of the exploitation contract.

5.bis The Secretary-General shall make public any compliance notice and shall present an annual report to the Council on any compliance notices the Authority has issued.

6. In the case of any violation of an exploitation contract [not covered by paragraph 5 above], or in lieu of suspension or termination under paragraph 5 above, the Council may impose upon a Contractor monetary penalties proportionate to the seriousness of the violation [which must be in line with indicative penalties set out in the relevant Standards, and which will include any administrative costs incurred by the Authority as a result of the violation.]

7. Except for emergency orders under article 162 (2) (w) of the Convention, the Council may not execute a decision involving monetary penalties, suspension or termination until the Contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to it pursuant to section 5 of Part XI to the Convention.

7.bis. The Council will bring to the attention of the Assembly instances of non compliance, as established in article 162 (2)(a) of the Convention.

8. The Secretary-General shall notify the Council as soon as reasonably practicable of any matter requiring the Council to issue an emergency order under article 162(2)(w) of the Convention, in accordance with regulation 4(4).

**Comments/remarks**

- I would like to invite delegations and observers to consider the practicalities of implementation of this provision, and specifically whether, to ensure consistency, the power to issue formal notices should be vested in a designated official position recognized under the Convention and 1994 Agreement.
- 2.bis. has been inserted to accommodate the process to be followed when a compliance notice is issued.

**Regulation 104**

**Power to take remedial action**

1. Where a Contractor fails to take action required under regulation 103, the Authority may carry out any remedial works or take such measures as it considers reasonably necessary to prevent or mitigate the effects or potential effects of a Contractor's failure to comply with the terms and conditions of an exploitation contract.

2. If the Authority takes remedial action or measures under paragraph 1 above, the actual and reasonable costs and expenses incurred by the Authority in taking that action are a debt due to the Authority from the Contractor, and may be recovered from the Environmental Performance Guarantee lodged by the Contractor, [and thus extinguishing the Contractor's debt and putting an end to the dispute].

**Regulation 105**  
**Sponsoring States**

1. Without prejudice to regulations 6 and 21, and to the generality of their obligations under articles 139 (2) and 153 (4) of the Convention and article 4 (4) of annex III to the Convention, States sponsoring Contractors shall, in particular, take all necessary and appropriate measures to secure effective compliance by Contractors whom they have sponsored in accordance with Part XI of the Convention, the Agreement, Rules of the Authority and the terms and conditions of the exploitation contract.