



Council

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Statement by the President of the Council on the work of the Council during the third part of the twenty-seventh session

Addendum

I. Resuming of the session

1. The third part of the twenty-seventh session of the Council was held from 31 October to 11 November 2022 at the Jamaica Conference Centre in Kingston.

II. Report of the Secretary-General on the credentials of members of the Council

2. At the 295th meeting, on 10 November, the Secretary-General informed the Council that formal credentials had been received from 26 members of the Council and that information concerning the appointment of representatives had been communicated by means of facsimile or initialled notes verbales from four members of the Council.

III. Report on matters relating to the Enterprise

3. At the 296th meeting, on 11 November, the representative of the African Group introduced a draft decision relating to the appointment of an interim director general of the Enterprise. The representative invited delegations to provide input for the draft, indicating that it would be tabled for adoption at the next meeting of the Council.

IV. Draft regulations on exploitation of mineral resources in the Area

4. The Council continued to consider the draft regulations on exploitation of mineral resources in the Area, in both an informal setting through its working groups and in plenary with respect to the President's text for all aspects that are not allocated to any of the working groups.



5. On 31 October and 1 November, the Informal Working Group on Inspection, Compliance and Enforcement held a third meeting under the leadership of the Facilitator, Maureen Tamuno (Nigeria), and completed the reading of her revised text. It was agreed that the Facilitator would prepare a further revised text for the next meeting in March 2023.

6. On 1 and 2 November, the Informal Working Group on the Protection and Preservation of the Marine Environment met for the third time and completed the resumed reading of the Facilitator's revised text. It was agreed that the Facilitator would prepare a further revised text for the next meeting in March 2023.

7. On 7 November, the Open-ended Working Group in Respect of the Development and Negotiation of the Financial Terms of a Contract under article 13, paragraph 1, of annex III to the United Nations Convention on the Law of the Sea and section 8 of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 held its sixth meeting, chaired by Olav Myklebust (Norway). The Open-ended Working Group completed the resumed reading of the Chair's text. It was agreed that the Chair would prepare a revised text for the next meeting in March 2023. The collaboration between the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development and Massachusetts Institute of Technology in supporting the work of the secretariat was welcomed.

8. On 8 and 9 November, the third meeting of the Informal Working Group on Institutional Matters was held under the leadership of the Co-Facilitators, Constanza Figueroa (Chile) and Gina Guillén-Grillo (Costa Rica). The Working Group reviewed the revised text in relation to draft regulations 1 to 5 and identified intersessional work to advance the drafting of provisions in relation to article 142 of the Convention and the effective control of an entity sponsored by a State party to the Convention (see annex I).

9. At the 296th meeting, on 11 November, the Council received oral reports from the Chair and the Facilitators with respect to the progress made within each working group, including proposed intersessional work. The oral reports of the Facilitators are reproduced in annex I to the present report. A deadline of 15 January 2023 was set for the submission of written proposals relating to all parts of the regulations.

Review of progress on the implementation of the road map for the twenty-seventh session in 2022, including discussion of alternative scenarios, and road map for the twenty-eighth session in 2023

10. On 4 November, the Council held an exchange of views on progress in the development of many components of the regulations, especially through the work carried out diligently in the working groups.

11. In relation to the status of the regulations, there was consensus among delegations that no exploitation should proceed until the legal framework for mining had been finalized, with the completion and adoption of the regulations on exploitation and the relevant accompanying standards, especially environmental standards. All delegations committed themselves to pursuing efforts in good faith, which they recognized was at the core of the mandate of the International Seabed Authority. However, divergent views were expressed as to the possibility of completing the regulations by July 2023.

12. Following the review of progress, the President of the Council presented a draft road map for the twenty-eighth session in 2023 for consideration. Discussion evolved around the balance of days allocated to the Legal and Technical Commission and the Council within the budget constraints for 2023, the importance of operationalizing

the Enterprise and the Economic Planning Commission, without which the process of adopting the regulations would not be complete, and the need to review the progress made.

13. Following the discussion on the road map, there was an exchange of views on the hypothesis that an application for exploitation might be submitted before July 2023, prior to the completion of the regulations and within the prescribed two-year time frame following the request by the delegation of Nauru pursuant to section 1, paragraph 15, of the annex to the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982. The delegation of Nauru stated that it did not intend to sponsor an application for exploitation before or by July 2023 or to prejudice the outcome of the Council's work in July 2023. However, some delegations expressed the need for legal certainty on the meaning and interpretation of the provision, including the procedural aspects, and the roles of the Council and the Legal and Technical Commission in that regard, without overshadowing progress on the regulations during the twenty-eighth session. A suggested approach was to determine areas of convergent and divergent interpretation in the Council.

14. On 11 November, the Council established an informal intersessional dialogue to further explore commonalities in possible approaches and legal interpretations for the Council to consider at the next meeting (see [ISBA/27/C/45](#) and below).

15. Also on 11 November, the Council endorsed the road map as contained in annex II to the present report.

Intersessional work

16. The Council adopted three decisions related to intersessional work, stressing the importance of such work for future negotiations, including on standards, guidelines and annexes to the regulations, namely:

(a) Decision of the Council relating to the development of binding environmental threshold values ([ISBA/27/C/42](#));

(b) Decision of the Council relating to the commissioning by the secretariat of a study on the internalization of environmental costs of exploitation activities the Area into the production costs of minerals from the Area ([ISBA/27/C/43](#));

(c) Decision of the Council relating to the possible scenarios and any other pertinent legal considerations in connection with section 1, paragraph 15, of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea ([ISBA/27/C/45](#)).

V. Report of the Chair of the Legal and Technical Commission on the work of the Commission during the twenty-seventh session

17. The Council recalled that the Chair of the Legal and Technical Commission, Harald Brekke (Norway), had presented the reports and recommendations of the Commission ([ISBA/27/C/16/Add.1](#)) at the second part of the twenty-seventh session in July 2022. The Council had deferred the following recommendations of the Commission for consideration at the third part of the session:

(a) Draft procedure and criteria for consideration of a request for the transfer of rights and obligations under a contract for exploration ([ISBA/27/C/35](#), annex I). The Council decided to request the Commission to further review the draft procedure

and criteria, considering the fee, the functional transfer of rights and obligations, the explicit consent of the sponsoring State, the format of the certificate of sponsorship, the notification to the sponsoring State and the liabilities in the case of transfer. Some delegations considered that the procedure and criteria should be considered only after the Council had addressed the question of effective control in the context of the regulations (ISBA/27/C/44, para. 12);

(b) Recommendations on a standardized approach for the development, approval and review of regional environmental management plans in the Area, including a template with indicative elements (ISBA/27/C/37). Recalling the proposals made by the delegations of Germany and the Netherlands in 2019 (ISBA/26/C/6 and ISBA/26/C/7), the Council decided to request the Commission to further develop a standardized approach, considering, inter alia, the role of the Commission, the role of an expert committee and the period for consultation, with a view to ensuring that the standardized approach ensured transparency, inclusiveness and accountability. The Council set a deadline of 15 January 2023 for the submission of written comments on matters to be reviewed by the Commission at its next meeting (ISBA/27/C/44, para. 13);

(c) Draft regional environmental management plan for the Area of the northern Mid-Atlantic Ridge with a focus on polymetallic sulphide deposits (ISBA/27/C/38). Comments were made in relation to the contractor's rights to exploration, the precautionary principle versus the precautionary approach, the nature and scope of impacts, the zoning scheme, consultation with coastal States and the annex that would be converted into a comprehensive road map. The Council expressed its appreciation for the development by the Commission of a draft regional environmental management plan for the Area of the northern Mid-Atlantic Ridge. The Council requested the Commission to review the draft plan following the adoption by the Council of a standardized procedure for the development, review and approval of regional environmental management plans and the template, in the light of the Council's comments (ISBA/27/C/44, para. 14).

18. At the 294th meeting, on 10 November, the Chair of the Legal and Technical Commission presented the supplementary report and recommendation of the Commission concerning the review of the environmental impact statement submitted by Nauru Ocean Resources Inc. (NORI) and its incorporation into the programme of activities of the NORI contract regarding the testing of components of a polymetallic nodule collector system in the NORI-D contract area of the eastern Clarion-Clipperton Zone, in the Central Pacific Ocean (ISBA/27/C/16/Add.2).

19. Members of the Council requested clarification on certain matters, including the working modalities of the Commission, the reporting and publication process and the issue of transparency, such as in the use of the silence procedure for the adoption of recommendations by the Commission on 2 September 2022.

20. The Chair clarified that the Commission had followed the environmental impact statement review process as described in the recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area that existed at the time of the submission of the environmental impact statement by NORI (ISBA/25/LTC/6/Rev.1 and ISBA/25/LTC/6/Rev.1/Corr.1). The Commission found that it was unfair to follow the latest revised review process as described in the recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area (ISBA/25/LTC/6/Rev.2) after the Commission and the contractor had entered the final phase of the environmental impact statement review process. In addition, the Chair explained that the recommended period for providing additional information had been respected by

NORI and that such information had been received after the meetings of the Commission held in July. For that reason, the Commission had agreed that, following the adjournment of the July meeting, an open-ended working group would be tasked with continuing the review and reporting to the full Commission for its consideration, with a view to issuing recommendations to the contractor through the Secretary-General.

21. The Council requested the Commission to clarify the criteria for use of the silence procedure in the adoption of recommendations and to review the latest version of the recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area ([ISBA/25/LTC/6/Rev.2](#)). The Council's request is reflected in paragraphs 16 and 17 of [ISBA/27/C/44](#).

22. At the 296th meeting, on 11 November, the Council adopted a decision relating to the reports of the Chair of the Legal and Technical Commission ([ISBA/27/C/44](#)).

VI. Report of the Secretary-General concerning the operationalization of the Economic Planning Commission

23. At the 292nd meeting, on 3 November, the Secretary-General resumed consideration of the report on the operationalization of the Economic Planning Commission ([ISBA/27/C/25](#)). The Council welcomed the report, including its financial implications, and decided to keep the matter under review at the twenty-eighth session.

VII. Dates of the next session

24. The dates of the next session are provided in annex II.

Annex I

Reports on progress made by the working groups and by the Council as a whole regarding the President's text

I. Oral reports

A. Oral report by the Facilitator of the Informal Working Group on Inspection, Compliance and Enforcement, Maureen Tamuno (Nigeria)

1. The Informal Working Group on Inspection, Compliance and Enforcement held its fourth meeting on 31 October 2022. To continue its work, it was agreed that the Working Group would continue the reading of the Facilitator's revised text on 1 November.
2. In the morning of 31 October, the work of the Informal Working Group was introduced, including the Facilitator's revised text for the regulation on inspection, compliance and enforcement (ISBA/27/C/IWG/ICE/CRP.1/Rev.2).
3. Recalling the discussions held in previous sessions, it was suggested that the Informal Working Group focus its work on the draft revised text prepared by the Facilitator for part XI of the draft regulations, including overall discussions on the appropriate inspection mechanism. The Facilitator reminded participants that nothing would be considered agreed until everything had been agreed.
4. Participants provided their general comments on the Facilitator's revised text, and discussions were conducted on the appropriate inspection mechanism. Participants agreed that it was vital to create a strong, robust, operational, independent and transparent institutional framework through which effective inspection, compliance and enforcement could be ensured in compliance with the United Nations Convention on the Law of the Sea, applying an evolutionary approach in a cost-effective manner.
5. Several participants expressed support for developing a compliance committee subordinate to the Council to oversee compliance with the regulations on exploitation. Textual proposals to that effect were provided by some participants during the meeting. Several other participants were comfortable with the inspectorate model or expressed the view that it would be beneficial to have the Legal and Technical Commission oversee compliance with the regulations on exploitation to avoid duplication and overlap of functions with existing organs. Some participants remained to be convinced by the two conceptual approaches regarding inspection, which needed to be determined, as the choice would be determinant for the drafting of part XI (in relation to the method, geographical scope, sanctions, scope of inspection and timelines, bearing of costs, reporting line and type of monitoring equipment).
6. Thereafter, the Informal Working Group commenced its specific reading of the Facilitator's revised text in relation to part XI of the draft regulations.
7. During the afternoon session of 31 October, participants expressed their views on draft regulations 96 to 99. In relation to those draft regulations, there was support for the proposed introduction of a code of conduct. Furthermore, there was also broad support for the proposed roster of inspectors. Discussions were held in relation to how the roster of inspectors should be regulated, how appointments should be made, including reference to geographical representation and gender balance, the qualifications required and who should administer the roster. It was suggested by some participants that those elements be regulated in the standards and guidelines. The suggestion that the roster be made publicly available on the website of the International Seabed Authority was welcomed by many participants. Discussions

were also conducted in relation to the geographical scope of inspection, the period of inspection and the role of inspectors. In paragraph 4 of draft regulation 96, entitled “Inspections: general”, reference was made to the phrase “Inspectors may inspect during the whole lifecycle of the activities in the Area”. Several participants were in favour of extending the inspection period to include the period after the activities had ended. General clarification was suggested by some participants, for example in terms of a definition of the inspectorate and what international principles should apply in relation to inspection.

8. The specific reading of the revised text resumed in the morning of 1 November, and discussions on the draft regulations continued with regulations 100 to 105. In relation to draft regulation 100, on reports, general comments were provided in terms of the deadlines for reporting, including the use of the term “promptly”. Several participants suggested inserting the specific number of days instead of using a general term. With regard to regulation 100, many participants suggested deleting the reference to “admissible evidence” in paragraph 2 bis, as the power to decide what was admissible evidence was to be assessed by national courts and tribunals. A suggestion was also made that there would be merit for discussion on the institutional framework related to inspection, to be cross-referenced or considered in the context of the work of the Institutional Working Group on Institutional Matters. In that regard, it was suggested that a flow chart be prepared to clarify aspects under discussion and to represent the interplay of entities.

9. Participants successfully finalized the reading of the Facilitator’s revised text. It was agreed by some delegations that intersessional work would be carried out, including continued debate on the proposed compliance committee and the flow chart.

10. The Facilitator encouraged participants to provide their proposals in writing and to exchange ideas on the conceptual approach to inspection. To advance work on the draft regulations, the Facilitator would collate the written textual proposals of participants as well as joint proposals, with a view to producing a further revised text for the meeting in March 2023. Participants were requested to provide their comments no later than 15 January 2023 to allow for their consideration and inclusion in the further revised text.

B. Oral report by the Facilitator of the Informal Working Group on the Protection and Preservation of the Marine Environment, Raijeli Taga (Fiji)

11. The Informal Working Group on the Protection and Preservation of the Marine Environment held its meetings on 1 and 2 November.

12. During the third part of the twenty-seventh session of the Council, the Informal Working Group resumed the reading of the Facilitator’s revised text (ISBA/27/C/IWG/ENV/CRP.1/Rev.1), with continued strong support for the importance of setting the highest standard for the protection and preservation of the marine environment, as reflected in article 145 of the Convention. The reading resumed from draft regulation 56, on funding of the environmental compensation fund, as set out in the Facilitator’s briefing note of 3 October 2022.

13. Negotiations on draft regulation 56 commenced on 1 November. Most participants were satisfied with the revised wording of the provision and the insertion of the reference to the polluter pays principle. Several participants asked for further clarity on how contributions were to be made and initiated and the percentage of the fee to be paid, including whether the fees were the same whenever referenced in the provision. Some participants also suggested clarifying the applicability of the regulation with regard to the Enterprise.

14. In the discussion on part VI of the draft regulations relating to closure plans, several participants welcomed the changes in terms of the review period in draft regulation 59, on the closure plan, including the suggestion that the plan be updated each time there is a material change in a plan of work, or every five years. Several participants provided textual proposals and suggestions to refine the text of draft regulation 59. The Facilitator welcomed the submission of written proposals in that regard.

15. Participants suggested that the wording “if any” in paragraph 1 of draft regulation 60, entitled “Final closure plan: cessation of production”, and throughout the text, should be deleted as there was consensus that regional environmental management plans must be in place before the Legal and Technical Commission considered an application for a plan of work. It was also suggested by several participants that stakeholder consultation must be provided in relation to the final closure plan.

16. With regard to draft regulation 61, on post-closure monitoring, the introduction of an independent auditor to conduct the final performance assessment was well received by most participants. A few suggested including a roster of qualified auditors for the conduct of the assessment. It was also proposed by some participants that a final performance assessment report should be published on the website of the Authority.

17. With respect to the annexes, participants welcomed the content of the newly proposed annex III bis on the scoping report. Some indicated that it might be more useful to include it in a standard or a guideline that would allow for adaptability over time. It was suggested by several participants that clarification be provided on the timing of the scoping report and that the new annex needed to be harmonized with draft regulation 46 bis, on environmental impact assessments, and the relevant standards and guidelines.

18. Discussions continued in the negotiations on annex IV on environmental impact statements, focusing on the mandatory or recommendatory nature of the template. Many delegates were in favour of making the template mandatory, stating that it should be kept as the minimum requirement while further specifications were set out in the standards and guidelines. One participant suggested that the template should be recommendatory. Some reiterated the importance of including recovery rates and stressed the importance of the inclusion of mandatory threshold values. Most participants agreed that, to be able to specify thresholds, more data would be required. One participant suggested including the thresholds in the standards and guidelines.

19. On specific sections of the template, suggestions were provided in relation to technical specifications and to improve clarity and consistency, and a request was made to update the definitions. For example, several participants highlighted the need for consistency in the wording of environmental conditions, including in the use of “oceanographic”, “physical”, “chemical” and “biological” throughout the text. A few participants pointed out that some sections, such as sections 4.5 and 4.8, were redundant. In terms of technical suggestions, a few participants suggested that biological communities should include “composition and structures” and “microbial communities” as part of the biological environment.

20. In the afternoon of 2 November, discussions on annex IV continued in the Informal Working Group. Suggestions were made to further streamline the text of the annex and avoid repetition. Several participants welcomed the newly added section 9 bis on the assessment of uncertainty. A number of participants agreed, in relation to section 13, that stakeholder consultation would be beneficial, and there was broad support for adopting a standardized approach to such consultation. Some participants asked for more clarity on the definition of stakeholders and on how the consultation

process was to be handled. Some suggested the need for peer review by independent experts, the qualifications of whom should be listed publicly.

21. Following the negotiations on annex IV, a proposal was made by a participant to add a new annex on the design criteria for impact reference zones and preservation reference zones. The proposal was supported by several participants, and discussions on the application of such zones during the exploitation phase ensued.

22. The afternoon of 2 November closed with discussions on appendix VII on environmental monitoring and management plans and annex VIII on closure plans.

23. In relation to intersessional work, several participants offered to work in smaller groups to make further progress and provide a consensus-based text on relevant matters, including on the standards and guidelines and a standardized approach for stakeholder consultation. Furthermore, several participants suggested conducting intersessional work on establishing definitions of cumulative impact.

24. The Informal Working Group successfully completed the reading of the Facilitator's revised text, and it was agreed that the Facilitator would provide a further revised text before the meeting in March 2023. The Facilitator requested that all comments and suggestions on the revised text – negotiated in both July and November – be submitted by 15 January 2023.

25. The Facilitator thanked the secretariat for its support and the members of the Authority and observers, without whose support, assistance and contribution work on the regulations would not have advanced.

26. On behalf of the Government of Fiji, the Facilitator thanked the participants for their work.

C. Oral report by the Chair of the Open-ended Working Group in Respect of the Development and Negotiation of the Financial Terms of a Contract under article 13, paragraph 1, of annex III to the United Nations Convention on the Law of the Sea and section 8 of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, Olav Myklebust (Norway)

27. The Open-ended Working Group in Respect of the Development and Negotiation of the Financial Terms of a Contract under article 13, paragraph 1, of annex III to the United Nations Convention on the Law of the Sea and section 8 of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 held its sixth meeting on 7 November. The Chair's report on the meeting is set out below.

28. In the morning of 7 November, the Chair introduced a briefing note dated 20 October 2022. As suggested in the note, the Open-ended Working Group focused on the resumed reading of the Chair's draft text of 13 June 2022 on a first payment system.

29. Some participants presented views on general topics and various issues related to the payment mechanism, such as the valuation of metals other than the four main minerals and the focus first on polymetallic nodules for the regulations. On behalf of the African Group, one participant introduced a submission dated 22 August 2022 proposing an amended text for the payment regime provided for in the draft regulations on exploitation of mineral resources in the Area. The submission was welcomed by several participants.

30. Thereafter, the Open-ended Working Group resumed and completed its first reading of appendix IV on the determination of a royalty liability and of the relevant

draft standards and guidelines (item 4 (a) of the briefing note). Some specific textual proposals were made.

31. After completing the reading, Richard Roth of Massachusetts Institute of Technology made a presentation on issues related to the valuation of manganese in the nodules (item 4 (b) of the briefing note), using ore as a basis or other processed manganese (electrolytic manganese metal or medium carbon ferromanganese) or using a weighted average, as in the current financial model. Discussions were conducted in relation to the specific nature of manganese, and a proposal was made in relation to the manganese breakdown and how a simpler approach could be taken using a single benchmark price. A more simplified valuation of manganese would be reflected in the next revised text, with further calculations by Massachusetts Institute of Technology for the next meeting.

32. In the afternoon of 7 November, Mr. Roth gave a presentation on the possible deduction of domestic and sponsoring State tax from (higher) royalty rates (item 4 (c) of the briefing note), introducing issues raised by the African Group in its position paper of June 2022. The presentation and the proposals of the African Group were welcomed by two participants and no opposing views were stated. The Chair suggested that the revised draft text would attempt to reflect the suggestions of the African Group while addressing concerns related to possible overtaxation, forum shopping and similar issues.

33. On the topic of financial implications of direct and indirect transfer of rights, also raised by the African Group (item 4 (d) of the briefing note), a recorded presentation of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development was played. One participant suggested conducting further discussions of the feasibility of the proposal of the African Group to introduce taxation of transfer of rights. Several participants stated their appreciation for the fruitful intersessional work with the Intergovernmental Forum and the Massachusetts Institute of Technology and their wish for that work to continue. The Chair suggested that the Intergovernmental Forum further analyse that complex topic in collaboration with the Institute and present the outcome of its work at the following meeting of the Open-ended Working Group in Respect of the Development and Negotiation of the Financial Terms of a Contract.

34. With regard to the example of royalty calculation in the guidelines that had been worked on, several participants stated their views in July and in November 2022. On the basis of those views and discussions in the Open-ended Working Group, a new analysis and calculations would be provided by the Massachusetts Institute of Technology in advance of the meeting of the Open-ended Working Group in March 2023.

35. Written submissions might be submitted until 15 January 2023, with a view to preparing a revised text for discussion at the following meeting of the Open-ended Working Group, in March 2023.

D. Oral report by the Co-Facilitators of the Informal Working Group on Institutional Matters, Constanza Figueroa (Chile) and Gina Guillén-Grillo (Costa Rica)

36. As agreed at the meeting held in July 2022, the Co-Facilitators presented a revised text, on 8 November 2022 (ISBA/27/C/IWG/IM/CRP.1/Rev.1). The revised text was viewed as a solid basis for future negotiations.

37. In addition to the revised text, other relevant background material had been prepared to facilitate the negotiations, such as: (a) a document that contained a mapping that broke down each of the mandates stipulated in the Convention, the

Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 and other agreements already in effect for the different bodies of the Authority; and (b) a summary of the proposals received in 37 templates for amendments to regulations 1 to 5 and a summary with templates submitted by the delegations in 2019 for parts V and VIII.

38. The Informal Working Group commenced its reading of the draft text, which was projected onto a screen where the various suggestions made by participants were shown directly.

39. With regard to draft regulation 1, on use of terms and scope, there was consensus among participants that it was crucial to clearly set out what terms were referred to throughout the regulations, and the suggested modifications were, in general, accepted. Discussions were held in relation to the proposed reference to the regional environmental management plans, in paragraph 6, which satisfied the majority of the participants; a few of them, after recognizing the relevance of such plans, agreed to the desirability of including them in that section, as there was no clarity in respect of their legal status. A delegation expressed concern about the reference to “international law” in paragraph 8, in cases of members not being parties to the same international treaties. A participant suggested to use “applicable” international law. Participants were reminded that the original wording was identical to paragraph 5 of regulation 1 of the regulations on prospecting and exploration. A participant made the suggestion to move paragraph 9 to draft regulation 2, as a more suitable place, which met with no objection.

40. With regard to draft regulation 2, on principles, approaches and policies, a new draft proposal was introduced. Regarding paragraph 2, participants discussed whether language should be added on reaching a reasonable balance between exploitation and the protection of the marine environment. Most participants did not agree to the proposed amendment, saying that the protection obligation in article 145 of the Convention was absolute. Several participants stressed that care must be taken when paraphrasing the Convention. Discussions were also held on the phrase “including biological diversity and ecological integrity” in paragraph 2. There was broad consensus to simplify the text by deleting that phrase and simply referring to article 145 of the Convention. The Co-Facilitators explained that paragraph 4 was a summary of various views put forward in July 2022. Many participants supported the content of the paragraph in principle. However, some stressed that the wording was not necessary and not sufficiently precise or properly placed in the regulations on exploitation. Most participants were in favour of deleting the paragraph. Few participants provided alternative text. The Co-Facilitators welcomed further textual proposals.

41. Discussions were held on draft regulation 3, on duty to cooperate and exchange of information. Several suggestions aimed at refining the text were welcomed by participants. A question was raised as to whether the port State should be included, and no objection to its deletion was made. Regarding paragraph (c), on public information and participation, one participant mentioned that an intersessional working group was working on text for standardized public consultation procedures and stressed the importance of having the same procedures in all circumstances. In relation to paragraph (d), some participants noted the lack of inclusion of the terms “relevant adjacent coastal State”. The Co-Facilitators referred to the broad consensus among participants in the meeting held in July 2022 not to support such an inclusion. The Co-Facilitators suggested the use of “close to the contract zone” to address the concerns of the proponents of the insertion of “adjacent”. Various views were expressed, and participants requested further consideration. The Co-Facilitators urged participants to engage with one another between the present meeting and

January 2023 and to submit a joint proposal. Concerning paragraph (f), one participant suggested that educational awareness programmes not be limited to stakeholders. There were no objections to the suggestion.

42. The reading of paragraph (g) of draft regulation 3 started in the morning of 9 November. Several textual proposals to the revised text were made. A new paragraph (h) was then introduced. Some participants expressed doubt as to the content, specifically in relation to paragraphs (c) to (f), stating that not all those points entailed the preparation and adoption of norms and directives. One participant supported the text in principle but highlighted the need for further work on the wording and for alignment with other relevant regulations. During discussions on draft regulation 3, it was suggested to replace “States members of the Authority” with “members of the Authority”, to allow for the inclusion of the European Union. While several delegations indicated their agreement, they requested that a definition be included in the schedule to define “members of the Authority” accordingly.

43. A discussion then ensued in respect of draft regulation 4, on rights and legitimate interests of coastal States and duty to notify. Many comments were made. Many participants suggested deleting the phrase “duty to notify” in the regulation title, as it went beyond the requirement set out in article 142 of the Convention. At the same time, some delegations stated that the same article provided a very effective notification mechanism and, therefore, that there seemed to be a contradiction if the phrase was left in the title. One participant suggested making the draft regulation clearer by including “shall”. No one opposed that proposal. A new paragraph 2 was introduced. Participants welcomed the proposal. Some participants expressed concern about the specificity and procedures to be used in reference to the sentence “appropriate consultation and notification protocols will be developed”. Concern was also expressed in relation to the reference to the regional environmental management plans in the text proposed. One participant suggested inserting a time frame, and several participants welcomed the subsequent textual proposals in that regard. In relation to paragraph 3, many participants welcomed the reference to “harmful effects”, as used in article 145 of the Convention. Several proposals were put forward to improve the wording of the paragraph. A new paragraph 4 was introduced and welcomed by participants. Regarding that paragraph, and as a general note, several participants stressed the need for streamlining in respect of the different references to coastal State consultation and other elements. One participant offered to facilitate a smaller intersessional working group that would work on further advancing and refining the relevant regulations. Several participants expressed their willingness to assist in such work. The Co-Facilitators suggested that a group of countries organize themselves and propose a definition of the concept of a State adjacent, nearby, adjoining or other. The delegation of Mexico offered to lead the small intersessional working group to meet the concern of the proponents of the inclusion of “adjacent” and different and possible terms to use. The Co-Facilitators expressed their appreciation for the initiative of the delegation of Mexico and the interest shown by the other delegations in collaborating with it in preparing the proposals to present such a definition to the Informal Work Group. During the afternoon of 9 November, a new paragraph 12 was proposed. Some participants made textual proposals relating to the content and had reservations on the inclusion of the new paragraph, expressing the need for more time to review it.

44. A new draft regulation 4 bis was presented, concerning the duty of the member State to notify. Several questions were raised on the content of the regulation, including questions as to the type of notifications envisaged under the draft regulation and the geographical application. A participant said that cross references to other draft regulations should be avoided, as a list of obligations upon States must be established separately. Some participants suggested that, if the intent was to

establish a procedure whereby other States could express concern, it might be better dealt with under part XI, and in that regard a participant suggested that the mechanism for a more general public notification be established.

45. A reading of part II commenced with draft regulation 5, on qualified applicants. With reference to paragraph 2, many participants welcomed the revisions that integrated the concept of effective control. One participant suggested to integrate the elements needed in terms of submitting an application by adding the words “and all necessary information”. This suggestion was welcomed by many participants. Another delegation proposed the inclusion of a list with specific requirements, which was supported by various delegations. With regard to paragraph 3, two new subparagraphs (c) and (d) concerning sufficient information in the application were introduced. Several participants supported the inclusion of the new paragraphs and no one opposed it. In relation to paragraphs 4 and 5, one participant suggested harmonizing the references to associations, consortiums and groups, saying that they should be consistent. Lastly, regarding the new proposed paragraph 6, one participant expressed reservations, stating that an assessment of the national legislation on the same topic must be carried out.

46. The Co-Facilitators informed the participants that a provisional agenda for an intersessional webinar on the question of effective control had been prepared with the help of a group of countries that had expressed an interest in the topic. The provisional agenda was projected in the room for information and comments. The information was well received by the delegations. Participants were also informed that the webinar would be divided into three sessions: (a) legal aspects to determine effective control; (b) practical implications of effective control; and (c) legal implications in the regulatory framework. The Co-Facilitators invited delegations to suggest presenters for the webinar.

47. The Co-Facilitators commended the Informal Working Group for the progress made and welcomed written suggestions from participants, with a view to releasing a further revised text before the meeting of March 2023. The deadline of 15 January 2023 was set for the submission of written proposals.

48. The Co-Facilitators thanked the delegates for their participation and praised the valuable assistance provided by the secretariat, especially its Office of Legal Affairs, led by Mariana Durney. The Co-Facilitators also acknowledged the invaluable work of the President of the Council, the interpreters, the people in charge of conference services and, especially, the delegations, which had enabled the Informal Working Group to make progress.

II. Report on the review of the President’s text by the Council as a whole

49. In the afternoon of 10 November 2022, the Council met in an informal setting to draft and negotiate the President’s text. It was recalled that the parts of the draft regulations and standards for phase I that had not been allocated to an informal working group of the Council had been allocated to the Council in an informal setting, in accordance with the President’s briefing note of 31 March 2022.

50. It was also recalled that, during the meeting held July 2022, the President had agreed to compile all the proposals received from delegations and participants relating to the draft regulations not considered by the informal working groups.

51. The President introduced the President’s text (ISBA/27/C/WOW/CRP.1), explaining that the text comprised a full collation of the textual proposals received from delegations and observers.

52. The reading of the President's text commenced with the preamble. One regional group suggested aligning the preamble with that to the regulations on exploration, as the current version resembled more a preamble to a treaty. The same regional group suggested new text, including a reference to article 145 of the Convention and the protection of the marine environment. Other delegations suggested streamlining the preamble to avoid repetitions. Several delegations were in favour of the newly proposed alternative 2. In the last part, two delegations suggested deleting the reference to the Sustainable Development Goals, as those had a limited time frame.

53. The reading continued with part III, on the rights and obligations of contractors, and draft regulation 17, on the contract. One delegation suggested to replace "forthwith" with "without delay", stating that it might be more specific and clearer. In relation to that same issue, several delegations suggested including a specific time frame of seven days to provide legal certainty.

54. With regard to draft regulation 18, on rights and exclusivity under an exploitation contract, one regional group supported the inclusion of the new text. In relation to the proposed alternative to the original title, several delegations expressed their preference for the original title, while others expressed flexibility as to the alternative titles. Some delegations also welcomed the amendments aimed at refining the text and suggested avoiding repetitions and unnecessary wording. Some delegations expressed concern about the insertion of the phrase "holding a contract with the Authority", as there seemed to be broad consensus that no one could undertake exploitation operations in the Area without a contract with the Authority. Some delegations and an observer expressed concern about the current language of paragraph 7 and the relationship between exploration and exploitation in the contract area. One delegation raised the question of the overlap of the two regimes and encouraged the other delegations to focus more on that issue.

55. With regard to draft regulation 18 bis, on obligations of the contractors, one regional group suggested including a general obligation for the contractor to comply with the best relevant practices and listing the obligations. It also suggested specifying that compensation for damages should not be all damages but damages for activities carried out outside the scope, and to move paragraph 4 in a more suitable place. Several delegations welcomed the new proposals and further discussion in respect of effective control. One delegation suggested to suspend the revision of the draft regulation until a full definition of effective control was in place and when it was clear which companies could enter into contracts with the Authority.

56. Draft regulation 19, on joint arrangements, was welcomed by one delegation, as it was a direct reference of article 11 of annex III to the Convention. The same delegation raised the questions of how to deal with the issue of joint arrangements between the Enterprise and other contractors and of how the idea of the sponsoring State was to be captured. One observer suggested to delete the draft regulation as the provision was already included in the Convention.

57. Several delegations welcomed the amendments aimed at refining the text of draft regulation 20, on term of exploitation contracts. One delegation suggested amending the title by including the word "renewal", as the regulation was proposed to also include that aspect. One regional group and many delegations preferred the original wording in relation to the reference to the time frame of 30 years instead of the suggested 50 years deadline for developing States, to avoid having several timelines and to comply with the non-discrimination principle among contractors. In relation to the deadline for the application for a renewal of a contract in paragraph 2, several delegations suggested a deadline of two years instead of one year, as originally proposed. One delegation also suggested that the revision of a plan of work

should be considered as a material change for the purpose of draft regulation 37, on training plan.

58. In the morning of 11 November 2022, one regional group and one delegation welcomed the changes to draft regulation 21, on termination of sponsorship, underscored the preference for the alternative texts provided and pointed out some overlaps between subparagraphs. One delegation and one observer proposed amending the title, suggesting as an alternative “Requirements for and termination of sponsorship”, saying that this was more in line with the content of the regulation. With regard to paragraph 4, one delegation encouraged the proponent of the inclusion of the wording “deprived of any rights” to explain the need for such inclusion.

59. With regard to draft regulation 22, on use of exploitation contract as security, many delegations welcomed the amendments and proposals inserted, and one delegation stated that the current drafting was very “solid”. One delegation stressed the need to insert “with the prior consent” in paragraph 1, as this was an important element for sponsoring States. One delegation suggested including the reference to the standards and guidelines.

60. With regard to draft regulation 23, on transfer of rights and obligations under an exploitation contract, two delegations expressed concern about and opposed the reference to the partial transfer of rights. Some delegations expressed concern about the content of paragraph 2, as consent of the Authority was required under the 1994 Agreement. In addition, some delegations suggested deleting “notification to sponsoring States”, saying that it was not sufficient. The same delegations therefore preferred to retain the original text and could not accept the proposed text in paragraphs 2 and 2 alt. One regional group introduced its proposals on the taxation of direct and indirect transfers of rights, which, among other things, included new proposed regulations 23 bis and 23 ter. The regional group suggested the inclusion of the payment of taxes on a transfer of rights and that the contractor pay the taxes due on the transfer before being able to transfer licences. One delegation suggested clarifying that the transfer did not restart the time frame of the contract.

61. With regard to draft regulation 24, on change of control, several delegations stated that it was an important regulation that needed focus, including in the context of discussions on effective control. Several delegations and an observer expressed their preference for alternative 1 in paragraph 1. One delegation suggested the deletion of the added text in paragraph 2, while other delegations made proposals to refine the wording. With regard to paragraph 2, some delegation also suggested that the contractor not only notify the Secretary-General but also the sponsoring State and that the Secretary-General transmit the information to the Legal and Technical Commission.

62. The participants then continued with the reading of section 2, on matters relating to production, including draft regulation 25, on documents to be submitted prior to production. One regional group and one delegation suggested deleting the suggested paragraph 3 bis relating to a renewal of a contract, as it seemed misplaced to them in a section that concerned documents to be provided prior to production.

63. With regard to regulation 26, on environmental performance guarantee, several views were expressed. One regional group suggested that the environmental performance guarantee be renamed “decommissioning bond”, to make a clear distinction between the environmental performance guarantee and the environmental compensation fund. For the same reason, the regional group could not support the newly proposed paragraphs 2 (a) bis and 2 (a) ter. One delegation suggested changing the timing, so that the guarantee would be presented before the start of any activities.

64. With regard to draft regulation 27, on commencement of production, several delegations supported the new language, saying that transparency was vital. One delegation stated that it would revert in relation to the description of coastal States. Several delegations stated that the text was close to achieving the intent of the regulation. One delegation reminded the Council that the date when production began should be indicated in the schedule.

65. Concerning draft regulation 28, on maintaining commercial production, some delegations and observers expressed concern about updated language in paragraph 1 and sought clarification from the proponents as to the rationale for the proposed changes. Some delegations suggested to keep the original wording of paragraph 1.

66. Few editorial comments were made on draft regulation 29, on reduction or suspension in production due to market conditions. Some delegations and observers stated that they could not accept the proposed alternative 1 and that the original wording should be maintained.

67. Some delegations provided general comments on the role and responsibilities of the Secretary-General as laid out in sections 1 and 2, and it was suggested to replace the reference to the Commission in several places. As a general comment, several delegations and observers also commented that several of the reviewed draft regulations must be aligned with the outcome of the workshop on effective control.

68. Participants moved on to the reading of section 3, on safety of life and property at sea. With regard to draft regulation 30, on safety, labour and health standards, one delegation stated that it was content with the additional language included. One observer suggested applying international standards, including standards already adopted by the International Labour Organization and the International Maritime Organization.

69. The President informed the delegations and observers that textual proposals must be submitted by 15 January 2023. An updated compilation would be provided before the meeting in March 2023, and the reading would resume at that meeting from draft regulation 31, on reasonable regard for other activities in the marine environment.

Annex II

Road map for the twenty-eighth session of the Council of the International Seabed Authority in 2023

1. The following road map has been prepared by the President of the Council and endorsed by the Council for the organization of its discussions in 2023 on the draft regulations on exploitation of mineral resources in the Area and on the associated standards and guidelines. The road map takes into account the progress made in the implementation of the road map for work on the draft regulations in 2022 ([ISBA/26/C/13/Add.1](#), annex) and the discussions on that matter held by the Council in November 2022, and it includes a tentative time allocation during the meetings of the Council scheduled for 2023.¹

2. The Council is currently working on the draft regulations in a format of informal meetings,² organized in the following manner:³

(a) Open-ended Working Group in Respect of the Development and Negotiation of the Financial Terms of a Contract under article 13, paragraph 1, of annex III to the United Nations Convention on the Law of the Sea and section 8 of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, chaired by Olav Myklebust (Norway);

(b) Informal Working Group on the Protection and Preservation of the Marine Environment, facilitated by Raijeli Taga (Fiji);

(c) Informal Working Group on Inspection, Compliance and Enforcement, facilitated by Maureen Tamuro (Nigeria);

(d) Informal Working Group on Institutional Matters (including the role and responsibilities of the various organs of the Authority, timelines and recourse to independent expertise and stakeholder participation), facilitated by Gina Guillén-Grillo (Costa Rica) and Constanza Figueroa (Chile);

(e) Council, plenary meetings⁴ on regulations not allocated to informal working groups, facilitated by the President of the Council, Tomasz Abramowski.

3. The facilitator of each informal working group presents an oral report in plenary at the end of each meeting of the Council. For the purposes of the road map for 2023, it is assumed that the aforementioned modalities will be continued and that the allocation of time to each informal working group and to the Council as a whole at each meeting will reflect the work still to be completed by the working groups, including any work required on relevant standards and guidelines. Once an informal working group completes its work, more time will be allocated to the remaining working groups. To enable delegations to organize themselves efficiently, an indicative schedule of work will be issued at least one month before each meeting, indicating the precise dates when each informal working group is expected to convene.

¹ The dates indicated are those scheduled for the meetings of the International Seabed Authority in 2023 and agreed with the Department for General Assembly and Conference Management, taking into account the schedule of law of the sea-related meetings and the calendar of conferences of the United Nations.

² See [ISBA/27/C/21](#).

³ See [ISBA/24/C/8/Add.1](#), annex II, and [ISBA/26/C/11](#).

⁴ See [ISBA/27/C/21](#).

<i>Organ</i>	<i>Date</i>	<i>Working methods</i>	<i>Tentative agenda</i>
Council (intersessional work between delegations as required)			
The deadline for submission of comments on facilitators' texts is 15 January 2023. Revised texts to be issued as soon as possible thereafter.			
<i>First part (March 2023)</i>			
Legal and Technical Commission	7–15 March 2023 (7 days)		
Council	16–31 March 2023 (12 days)	<ul style="list-style-type: none"> Formal meetings (2 days) 	<p>Standing items and items on the agenda requiring decisions by the Council, including decisions on the Enterprise and Economic Planning Commission</p> <p>(a) To continue its work on the basis of progress made at the Council's meeting in October/November 2022</p> <p>(b) To continue its work on the basis of progress made at the Council's meeting in October/November 2022</p> <p>(c) To continue its work on the basis of progress made at the Council's meeting in October/November 2022</p> <p>(d) To continue its work on the basis of progress made at the Council's meeting in October/November 2022</p> <p>(e) To continue its work on the basis of progress made at the Council's meeting in October/November 2022</p>
Council (intersessional work between delegations as required)			

<i>Organ</i>	<i>Date</i>	<i>Working methods</i>	<i>Tentative agenda</i>
<i>Second part (July 2023)</i>			
Legal and Technical Commission	28 June–7 July 2023 (8 days)		
Finance Committee	5–7 July 2023 (3 days)		
Council	10–21 July 2023 (10 days)	<ul style="list-style-type: none"> • Formal meetings (2 days) • Informal meetings of working groups and of the Council in plenary (subject to progress made by each group during the first part of the twenty-eighth session) (a) Open-ended Working Group in Respect of the Development and Negotiation of the Financial Terms of a Contract (2 days) (b) Informal Working Group on the Protection and Preservation of the Marine Environment (1.5 days) (c) Informal Working Group on Inspection, Compliance and Enforcement (1 day) (d) Informal Working Group on Institutional Matters (2 days) (e) Council, in plenary (1.5 days) • Plenary: review of progress and adoption of regulations in the event that they are ready for adoption 	Precise agenda to be agreed on the basis of progress made at the Council's meeting in March 2023
Assembly	24–28 July 2023 (5 days)		

<i>Organ</i>	<i>Date</i>	<i>Working methods</i>	<i>Tentative agenda</i>
<i>Third part (October/November 2023)</i>			
Council	30 October–8 November 2023 (8 days)	To be determined on the basis of progress made previously	