

Twenty-Eight Session

Council session, part I
Kingston,
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Item 10 of the provisional agenda*

Consideration, with a view to adoption, of the draft regulations on exploitation of mineral resources in the Area.

Draft regulations on exploitation of mineral resources in the Area

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. The Informal Working Group on Inspection, Compliance and Enforcement held three meetings during the twenty-seventh session on Part XI of the draft regulations on exploitation of mineral resources in the Area (“the Draft Regulations” [ISBA/25/C/WP.1](#)). At the first meeting of the Working group, in March 2022 ([ISBA/27/C/21](#)), the Working group undertook a first reading of Part XI. Delegations thereafter sent proposals from which I prepared a facilitator’s text ([ISBA/27/C/IWG/ICE/CRP.1](#)). This text formed the basis of discussion during the second meeting of the working group in July 2022 and the text was made available for a second round of proposals. Using the proposals received, I prepared a revised facilitator’s text ([ISBA/27/C/IWG/ICE/CRP.1/Rev.2](#)) against the backdrop of the November meetings.
2. During the November meetings, it was agreed that delegations would send proposals on the latest version of [ISBA/27/C/IWG/ICE/CRP.1/Rev.2](#) by 15 January 2023. A total of eleven delegations, comprising Council and non- Council members submitted proposals by this date and three others after this date. Using submissions and proposals received, I have prepared the further revised text (“the Facilitator’s further revised text”) in the enclosure to assist discussions in the Informal Working Group and with a view to finalising Part XI of the Draft Regulations.
3. I have adopted a similar approach to the revisions as with the previous versions as follows:
 - a) The mark-ups in [ISBA/27/C/IWG/ICE/CRP.1/Rev.2](#) have been accepted where there have been no objection on the content. Where square brackets existed in earlier versions of the text and there were no further proposals or suggestions opposing these proposals, these brackets have been removed. Where new alternative proposals have been put forward, I have added square

brackets using tracks. Where some delegations have requested the deletion of an existing paragraph in its entirety, but others have proposed amendments, I have also placed these in square brackets.

- b) Proposals in respect of which there have been no express opposition are reflected as is. Proposals with similar ideas and direction have been incorporated in some cases, the text I have presented is an attempt at reflecting a compromise and harmonisation of ideas and proposals.
 - c) Subparagraph references in proposals have been removed, taking into account that with the existence of *bis*, *ter*, *alt*, it is likely that new regulations and paragraphs will be required. These suggested proposals have been noted and will be reincluded as soon as these regulations are finalised.
 - d) Boxes contain explanations of revisions and/or my comments, where necessary, are included under the relevant regulations.
4. I wish to remind delegations that the core task of the working group is to decide on an appropriate mechanism for directing and supervising a staff of inspectors who shall inspect activities in the Area as envisaged by Article 162(2)(z) of the Convention. Whilst there appears to be general understanding on the activities to be performed by inspectors, there are different views as to whether the appropriate mechanism to be used should be an independent inspectorate or a compliance committee and, if so, the structure and mandate of such a committee. Since proposals have been made for both approaches, there are places in the text where different proposals appear side-by-side in square brackets. Those that have proposed a compliance committee are invited to provide more detail on how such a committee would be established, how its membership would be determined and the limits of its mandate, given that there is no provision in the Convention or Part XI Agreement for such a body. It is my hope that the Working Group could resolve on a single approach during this session. The relationship between the mandate and functions of the Legal and Technical Commission (Article 165(2)(m) and the Secretary-General's responsibilities also needs to be more clearly articulated. I would like to emphasize that, in my view, consideration should be given to using the most efficient mechanism for the Authority with respect to inspection, as well as to avoid the risk of duplication with existing functions under the Convention.
5. I request that delegations consider with topmost importance, the goal of developing a mechanism of compliance and enforcement that is most time efficient and reduces bureaucracy. It is also important to bear in mind that Part XI of the draft regulations should be fully consistent with the provisions of the Convention and the 1994 Agreement. Finally, I would like to reiterate that nothing is agreed until everything is agreed.

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 on the basis of the recommendations of the Commission, establish [an independent Inspectorate] [a Compliance Committee], [or an] [as an] appropriate mechanism for inspection, compliance, and enforcement for directing and supervising a staff of Inspectors, as provided for in articles 153 (5), 162 (2) (z) and 165 (2)(m) of the Convention [before the approval of the first application of a plan of work for exploitation] [before exploitation activities commence]. Inspections performed shall be undertaken by Inspectors who meet the qualification set out by the Council pursuant to Regulation 97(1).

[Ialt. The Council shall before the start of any mining operation, establish an independent staff of inspectors which shall inspect activities in the Area to determine whether the Convention, the Agreement and the Rules of the Authorities as well as the terms and conditions of any contract with the Authority are being complied with as provided for in articles 153 (5) and 162 (2) (z) of the Convention. Inspections shall be undertaken by Inspectors who meet the qualification requirements set out by the Council pursuant to Regulation 97(1). The Inspectors shall be guided by transparency, accountability, independence, and the precautionary approach. In their election, equitable geographical representation and gender balance shall be taken into account. The Council, through the Compliance Committee, shall exercise oversight over the Inspectors.]

1 bis. The [Council] [Secretary-General] shall on the basis of the recommendations of the Commission approve and maintain a code of conduct for Inspectors and inspections, prior to the approval of a plan of work, 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.

[1 ter The Authority's Inspectorate is hereby established. The inspectorate shall be independent]

2. The Contractor shall permit the Authority to send its Inspectors, who [may] [shall] [upon request by sponsoring States, any other State Party or other party concerned be accompanied by a representative of the sponsoring State, other State Party or other party concerned] , aboard all vessels and Installations ~~whether offshore or onshore~~, used in the Area 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, in particular ~~the sponsoring any~~ State or States in whose national jurisdiction or on whose vessel the Authority wishes to conduct inspection activities, shall assist the [Council], [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] [Compliance Committee] [The Inspector] shall give reasonable notice in the circumstances, of not less than (x) 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] [Compliance Committee] [Inspector] has reasonable grounds to consider the matter to be so urgent that notice cannot be given, in which case the [Inspectorate] [Inspectors] [Compliance Committee] may, where practicable, exercise the right to conduct an inspection without prior notification, such as when a compliance notice under regulation 103 has been issued to the Contractor in question or pursuant to Regulation 4(5) applies.

3 alt. The Secretary- General 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.

3 bis. Where the Secretary-General or the Inspector have reasonable grounds to consider the matter to be so urgent that notice cannot be given, the Secretary-General shall instruct the Inspector to conduct an inspection without prior notification.

4. Inspectors may inspect ~~during the whole lifecycle of the activities in the Area until completion of the final Closure Plan~~ 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. 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 inter alia, all ~~other~~-recorded data and samples and any vessel or Installation, including its log, ~~personnel,~~ equipment, records and facilities, as well as interview personnel.]

5. The Contractor and its agents and employees 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 [used in the Area and in connection with activities in the Area] 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;]

(a) ter Within seven days of the Secretary-General informing the Contractor that the Inspector(s) would like to conduct an inspection of a Contractor's vessel or Installation, the Contractor shall inform the

Secretary-General of the next date a vessel will commence its voyage to the Contractor's Contract Area

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

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

(c) Provide access to [all] [relevant] areas, items and personnel or on vessels and Installations [used in the Area in connection with activities in the Area] 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 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 Inspectorate and facilitate the activities of Inspectors ~~in deploying such equipment and having access thereto~~ to observe the Contractor's monitoring operations.

(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 so as 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; with due regard to the observance of good seamanship and

(b) ~~[Refrain from any undue interference]~~ [Not to 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 Adhere Comply 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

- For this regulation, I noted one suggestion to include details on the criteria and conditions for the members of a proposed inspectorate. I have streamlined some of these suggestions, taking into account that these issues can be better addressed in a subsequent framework such as guidelines and other rules and procedures of the Authority.
- Under paragraph 1, I request delegations consider the two alternatives for paragraph 1 and indicate their preference. I have left in bracket two proposals on whether the establishment of the inspectorate should be prior to the approval of a plan of work or before exploitation activities commence for further consideration. There is a new 1ter for consideration as proposed by one delegation.
- For paragraph 3, delegations are welcome to indicate a preference between the two alternatives provided. As well as the new 3 bis.
- One delegation sought to emphasise the importance of limiting the inspection specifically to activities in the Area, whilst at the same time preventing/restricting inspection of offices, I have included these suggestions in square brackets, as I understand that some delegations have strong views on this. I would kindly ask that during the meetings, delegations discuss their position so that there can be useful exchange of views on this point.
- In paragraph 6(a), I have taken the suggestion of one delegation to revise the paragraph which deletes the reference to internationally accepted principles, which some delegations had in the past, raised some concerns about. I also noted some delegations expressed the preference to change 'master' to 'captain'. I have chosen to use 'master' guided by the wording the Convention which references 'master' in several provisions.
- On para 6(b), I have left the first two phrases for discussions, as views appear to be divided. I would like to request that delegations share their views in this respect so that there can be consensus to remove the square brackets from one of the phrases in this text. Furthermore, one delegation has proposed the deletion of the last three lines, I welcome this delegation to advocate their reasons for further discussions.
- With respect to para 6(c), there is a suggestion to replace adhere with comply as a stronger alternative. This is open for further discussion.

Regulation 97

Inspectors: Appointment and supervision

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

1 alt. The Council shall establish a roster of inspectors, based on the recommendations of the [Commission] [Compliance Committee] on the relevant qualifications and appropriate experience required to perform their duties under these Regulations. The roster shall be administered by the [Inspectorate] [Secretary-General] [Compliance Committee] with the support of the Secretariat and reviewed annually.

1 bis. States Parties may, subject to the requirements of this regulation, nominate its nationals as Inspectors for consideration, and for inclusion in the roster. Nominees will be considered against the qualification and experience requirements. [Equitable geographical representation and gender balance will also be considered, in line with the Convention principle]. The roster of Inspectors shall be made publicly available on the Authority's website.

2. The [Commission] [Compliance Committee] shall make recommendations to the Council on the appointment, supervision and direction of Inspectors, and on an inspection programme and schedule, for [the Inspectorate] [the Compliance Committee] and for the staff of Inspectors established by the Council in regulation 96 (1) and in accordance with the Standards and taking into account the Guidelines.

3. The [inspectorate] [Compliance Committee] [Secretary-General] 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. alt 1 [The Authority will work with the relevant sponsoring State to ensure that inspections performed by Inspectors are aligned with enforcement at the national level]

alt 2 [Measures adopted by the Inspectors shall be effectively enforceable by Sponsoring States in their national legal orders. Inspectors shall report to the Compliance Committee in writing regarding any difficulties relating to the enforcement of the measures].

6. Inspectors may be required to undertake relevant training programmes at the request of the Council, based on the recommendations of the [Commission] [Compliance Committee]. The Secretariat shall facilitate the requisite training.

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).

7 alt. [The Compliance Committee shall keep the roster of Inspectors under review and updated. The Council may, for reasonable cause, remove an Inspector from the roster, based on the recommendations of the Compliance Committee.]

Comments/remarks

- With respect to paragraph 5, I received two alternative proposals, and have placed them in the text as alt 1 and 2. I invite delegations to consider both alternatives and decide which is preferred.
- On point 7, I noted there were varying views on how the process for removal of an inspector from a roster should be couched. I therefore would open up the floor on views between 7 and 7 alt.

Regulation 98

Inspectors' powers

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 and question relevant personnel.

(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;

[(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,

(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 and the terms of the exploitation contract 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 shall~~ 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

- I noted that views have been expressed in this regulation to broaden the scope of the powers of the inspectors and have reflected comments accordingly for consideration by delegations. One delegation has proposed the deletion of paragraphs 1 (f) and (g), as well as paragraphs 3 and 4 as such, I have kept these in square brackets for further discussion.

Regulation 99 Inspectors' power to issue instructions

1. If, as a result of an inspection, an Inspector has reasonable grounds to determine ~~or anticipate~~ 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, ~~including Underwater Cultural Heritage or is otherwise in breach of the terms of its exploitation contract,~~ the Inspector shall give any instruction ~~of a temporary nature he or she considered~~ reasonably necessary to remedy the situation, in accordance with the Standards, including:

(a) 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~~ 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 written instruction requiring a suspension in ~~mining some or all~~ activities for a specific period [upon written authorization from the Council, as its representative].

(e) A written instruction prohibiting the Contractor from continuing or undertaking activities.

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. The Inspectorate shall also request the Secretary-General to provide a copy of the instruction, and notice that it has been issued, to the Contractor's sponsoring State or States.

3. Any instruction issued under paragraph 1 above shall be in force until the Contractor has executed the instruction and fulfilled all requirements. Upon receiving information from the Contractor about steps

taken to implement the instruction, the inspectorate [Compliance Committee] 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 and to the Contractor's sponsoring State or States and to coastal States adjacent to the contract area] [Compliance Committee] [the Commission] [the Council] -that an instruction has been issued under paragraph 1, and where the issue remains unresolved, the [Inspectorate] [Council] [Compliance Committee] may thereafter exercise ~~its the~~ powers conferred upon ~~the [Secretary General]~~ [Inspectorate] ~~it~~ under regulation 103. ~~[The Secretary General shall exercise these powers to prevent imminent danger to the health or safety of any person or serious harm to the environment arising out of activities in the Area.]~~

Comments/remarks

- I note that one delegation suggested to replace 'a written instruction' with 'a stipulation in writing', I understand that both phrases carry the similar meaning, hence I have reflected the former in the text.
- Some delegations have proposed that in paragraph 1, the risk of harm should be downgraded from serious harm to harm. On the other hand, I have also received counter proposals from other delegations on this proposal. I also noted that there were some proposals to delete completely the role of the Secretary- General powers to prevent imminent danger to health or safety of any person or serious harm to the environment arising out of activities in the Area. I have however left this in square brackets for further discussion by the proponents.

Regulation 100

[Inspection] [Reports]

1. ~~At Thirty days after~~ the end of an inspection, the Inspector shall ~~(prepare and~~ deliver a report ~~[promptly] [without delay]~~ to the ~~[Compliance Committee] [Inspectorate]~~ in accordance with the template ~~and other requirements prescribed in the applicable standards,~~ setting out the findings and any recommendations for improvements in performance, procedures or practices by a Contractor. The ~~[Inspectorate] [Inspector(s)] [Compliance Committee]~~ shall send the report to the ~~[Secretary General, the Commission and the Council] [Contractor and its sponsoring State or States, as well as the Compliance Committee]~~ as soon as it is completed and ~~[the Secretary-General shall send immediately a copy of the report to the Contractor.] [The Compliance Committee shall ask the Secretary-General to send a copy of the report to any relevant coastal State or flag State, the Contractor and sponsoring State or States and, if appropriate, the relevant adjacent coastal State or States and the flag State and to publish a copy of the report in the Seabed Mining Register, excluding confidential information.]~~

1. bis The Contractor may within thirty days of the date of receipt of the Inspector's report, provide to the Secretary General, who shall transmit to the [Compliance Committee] [inspector], comments on ~~his or her~~ findings and recommendations.

~~[1 bis alt. The Contractor and the sponsoring State or States may within thirty days of the date of receipt of the Inspector's report, provide to the Secretary-General comments on the findings and recommendations.]~~

~~1.ter The sponsoring State or States shall within a reasonable period, provide to the Secretary General, who shall transmit to the Compliance Committee, details of any regulatory or other action taken or to be taken as a result of the Inspectors' findings or recommendations.~~

2. The ~~[Compliance Committee] [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 any compliance actions taken by the Compliance Committee 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. The Council shall invite the attention of the Assembly to cases of non-compliance in accordance with Article 162(2)(a) of the Convention.

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

3. The ~~[Compliance Committee] [Inspectorate] [Inspector]~~ shall report acts of violence, intimidation, or abuse against or the wilful obstruction or harassment by any person of an Inspector, or the representative of a sponsoring State, any other State Party, or other party concerned who accompanies the Inspector, as identified in regulation 96, in the course of their duty. ~~or the~~The failure by a Contractor to comply with regulation 96 shall also be reported to the [Secretary-General] [Compliance Committee].

3 bis. The ~~[Secretary-General] [Compliance Committee]~~ shall 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

4. Where a report is made under this regulation, the [Inspectorate] [Compliance Committee] [Council] [shall] [may] take the appropriate measures under Regulations 99 and 103 respectively.

Regulation 100bis:

Contractor compliance report

The Secretary-General shall prepare an annual compliance report for each Contractor, which shall be made available in draft form for comment to the Contractor and the Sponsoring State, before being reported to the Council and published in the Seabed Mining Register. The Council shall invite the attention of the Assembly to cases of non-compliance in accordance with Article 162(2)(a) of the Convention.]

Remarks/comments

- I note that there are still divergent views on whether this regulation should be titled inspection or reports. I would welcome discussions and consensus from the floor on which phrase is best used.
- I wish to draw the attention of delegations to 1 bis and 1 bis alt, where have combined and grouped proposals received in to 1 bis and 1bis alt. I ask that we reach a consensus on which of the proposals to move forward with. Furthermore, 1ter and 2bis have been deleted as I did not note much support for their inclusion.
- There is also a proposal to include Regulation 100bis. I welcome delegations to provide their input on the placement of this new addition.

Regulation 101

Complaints relating to Inspections.

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 will transmit the complaint immediately to the [Compliance Committee] [report to the Commission to] who shall consider the complaint as soon as practicable.

1 bis. A person aggrieved by an action of an inspector or the outcome of an inspection under this Part may complain in writing to the [Inspectorate] [Secretary-General] [Compliance Committee], who shall report to the Commission to consider the complaint as soon as practicable.

2. The [Inspectorate] [Compliance Committee] [Council] shall on the basis of the recommendations of the Commission], may take such reasonable action as is necessary in response to the complaint, in accordance with applicable standards and Code of Conduct.

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

[Regulation 101bis

Whistle-blowing procedures

3. The Compliance Committee shall develop and implement:

a. whistle-blowing policy for the staff of the Authority, the Inspectorate, the Enterprise, and personnel of Contractors, and

b. a public complaints procedure to facilitate reporting to the Authority by any person of any concerns about the activities of a Contractor, or the Authority.

4. The whistle-blowing and complaints procedures under this Regulation must:

a. be publicly advertised.

b. be easy to access and navigate.

c. enable anonymous reporting.

d. trigger investigations of reports by independent persons, and

e. be proactively communicated by the Secretary-General to Contractors and their staff, and other Stakeholders.

5. A Contractor shall have in operation whistle-blowing and complaints procedures, which must be publicly advertised, and which should include details of the Authority's equivalent procedures to enable direct reporting to the Authority by a complainant where preferable.]

Comments/remarks

- With respect to paragraph 1, two views have been expressed over which delegations need to agree, the first is whether to report complaints to the Secretary- General and the Commission or whether to report to the compliance committee or inspectorate and thereafter the Council. For paragraph 1 alt, I have decided to change alt 1 to a bis, as the paragraph will benefit from the capturing of both ideas.
- I have included a proposal from two delegations to include a provision regulation 101bis for the introduction of a whistle blowing process, I invite delegations to provide comments on this paragraph, taking into consideration what powers are identified under the Convention with respect to the creation of such policies and who should promulgate them.

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 shall be fitted with:

(a) [an electronic monitoring system] [A device] 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 including Underwater Cultural Heritage; and

(b) The electronic monitoring system shall also encompass the monitoring of the environment, implementing the obligations under Regulation [46ter], allowing for adaptive management during the mining operation.

(c)- a satellite tracking system to enable identification of each vessel and determination of its position, navigation status, course and speed. 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 environmental and archaeological techniques to monitor in real-time and in the actual environment the mining impact, including the removal of mineral resources, plume dispersal, chemical emissions, introduction of pollutants including light and sound, [allowing for adaptive management during the mining operation]

2 ter. The electronic monitoring system [should][shall] also encompass the monitoring of mining impacts and be in accordance with the Environmental Monitoring and Management Plan, as well as include a survey of the seabed to identify Underwater Cultural Heritage implementing the obligations under Regulation 46, [allowing for adaptive management during the mining operation]

3. The [Inspectorate] [Compliance Committee] [Council] shall notify the sponsoring State and 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 received and transmitted to [the Authority] [Compliance Committee] [the Inspectorate] under this regulation shall also be transmitted to the ~~Secretary General Council~~ and the sponsoring State or States and be made publicly available in real time.

5 alt. All data received under this regulation, shall be transmitted to the Authority, and made available publicly on the Authority's website.

Comments/remarks

- I noted there is a proposal to divide paragraph 2 to have two sub-sections. There were also some proposals to delete the reference to an electronic monitoring system, as well as where technically feasible/possible. In which case I have deleted one reference and left the other for consideration. Discussions need to also be had as to whether it should be a device or a system. Additionally, 2 (b) and (c) are new inclusions coined and merged with the previous wording from proposals received from delegations for further consideration.
- In 2bis and ter, some delegations had suggested the deletion of adaptive management during mining operations whilst others have argued for a larger list to be included. Thus, I have left this in square brackets and welcome those delegations to express the best possible way revise this paragraph. This is also the case of the use of shall or should in 2 ter.
- Under paragraph 5 of this regulation, I would like to request delegations to consider and agree to proceed with either 5 or 5 alt.
- In the previous version of paragraph 2 (c), I had suggested the deletion of “a satellite positioning device”, however, I received another proposal in this light for a ‘satellite tracking system’ I welcome discussions on the appropriateness of this inclusion with respect to exploitation.

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] [Compliance Committee] [Commission] based on reasonable grounds, including a report from an Inspector, that a Contractor is in breach of, or is at risk of breaching, the terms and conditions of its exploitation contract, Part XI ~~and~~, the rules, regulations and procedures of the Authority, or these regulations, the ~~Secretary-General~~ [Commission] [Inspectorate] [Compliance Committee] shall make recommendations to the Council to issue a compliance notice to the Contractor requiring ~~the Contractor to take~~ such action as may be specified in the compliance notice and shall report immediately to the Council to:

(i) seek dialogue with the Contractor to discuss and attempt to resolve the issue;

(ii) issue written warnings, including warnings in relation to possible action the Authority may take in the event of failure to act or future breaches;

(iii) agree with the Contractor on an improvement plan, which shall include: actions to be taken to return to compliance, how the actions’

effectiveness will be monitored and reported, the time permitted for action, and subsequent steps should the actions be unsuccessful, or should non-compliance continue;

(iv) agree with the Contractor a modification to the Plan of Work, in accordance with regulation 57; or

(v) issue a compliance notice to the Contractor requiring the Contractor to take such action as may be specified in the compliance notice

[1 bis. Actions taken under this Regulation by the Authority should be commensurate with the gravity, frequency, and other circumstances of the actual or anticipated breach by the Contractor, which may include taking account of the Contractor's previous conduct under contract with the Authority.]

1 ter. Paragraph (1) bis. notwithstanding, where regulations 4(5), 36(3), 52(8), 99(3) and 102(3) apply, the Authority shall issue a compliance notice under paragraph 1(iv).

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] [Compliance Committee] [Council] 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 concerning any aspect of the compliance notice, who shall transmit same to the [Inspectorate] [Compliance Committee] [Commission]. Having considered the representations, the [Inspectorate] [Compliance Committee] [Commission] may make recommendations to the Council to confirm, modify or withdraw the compliance notice.

[4 bis. All measures imposed by the Compliance Committee shall be reviewed and ratified by the Council. In order to ensure a timely response from the Council, a designated member of the Bureau shall always be on-call in order to convey a virtual meeting of the Council.]

5. If a Contractor, in spite of one or more warnings by the [Authority] [Inspectorate] [Council], 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 exploitation contract Part XI of the Convention [and/or] 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 issued to a Contractor, as well as any response received from the Contractor [and Sponsoring State], subject to the confidentiality

obligations of Regulation 90, and shall present an annual report to the Council on summarizing 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 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. There is a proposal to delete paragraph 8 under this provision which removes the powers of the Secretary-General to issue emergency orders.

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].~~

Comments/remarks

- A number of delegations have proposed the deletion of the last three sentences of paragraph 2, on the premise that the Environmental payment Guarantee is not envisaged for the purpose of limiting the responsibility and liability of

contractors, in which case, liability should extend before during and after the completion of the exploitation. I invite delegations to discuss this in more detail.

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.