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Draft regulations on exploitation of mineral resources in the Area

The Facilitator's third revised draft text on Part XI

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Explanatory note

1. I have prepared this third revised text (“the Facilitator’s third revised text”) in the enclosure to assist discussions in the Informal Working Group on Inspection Enforcement and Compliance, with a view to advancing the finalisation of Part XI of the Draft Regulations.
2. I have adopted a similar approach to the revisions as with the previous versions of the text, and I refer to the Facilitator’s further revised text in respect of the working modalities ([ISBA/28/C/IWG/ICE/CRP.1](#)). The views expressed and the textual proposals made during and after the meeting in March 2023, either by individual participants or the result of group discussions, were considered in the preparation of this third revised text.
3. The content of the third revised text is without prejudice to the position of any participants on any of the matters referred to therein and does not preclude the consideration of matters not included in the document.
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.
5. In this regard, I have received valuable input from the intersessional working group on the development on an Inspection, Compliance and Enforcement mechanism (ICE mechanism) and the group has conducted three virtual meetings, where many participants have contributed. I am grateful for these efforts and wants to thank the group for its hard work. The objective of the intersessional working group was primarily to discuss and identify an optimal structural arrangement for an ICE mechanism consistent with the Convention and to align common approaches. It was reported to me that the facilitator of the group had proposed a hybrid model that takes

different approaches into consideration. The model proposes that a Compliance Committee is established within the LTC (the “LTCCC”) and that the LTCCC will be responsible for overall compliance and enforcement issues.

6. I understand that the group came far, but that during the meeting in July 2023, it will be necessary for the group to conduct further discussions. The group have highlighted that it is necessary to consider the following non-exhaustive list of questions – and I encourage participants to consider these and have them in mind during our discussions in July:

a. The relationship between the various organs, including the LTC as a whole and the LTCCC in particular, in order to avoid duplication of work and ensure cost-effectiveness and responsiveness in the ICE mechanism;

b. The utility of a Chief Inspector. It was suggested as an alternative to a Chief Inspector to establish a Standing Committee within the LTC which would be responsible for managing the Roster of Inspectors. Others characterized the LTC, at least in its current arrangement, as not suitable to manage day to day operations of the inspectors, in large part due to a lack of capacity, and that a Chief Inspector was a necessary component of an effective ICE mechanism;

c. The development of Standards and operating procedures to ensure that the LTC and the LTCCC handle ICE issues with due attention to transparency in reporting, accountability and inclusiveness.

d. In line with the evolutionary approach, any ICE mechanism solution should be reviewed every 2-3 years and attention must be given to the constraints/limitations of current institutional functioning (infrequency of organ meetings, capacity) particularly as regards the LTC.

7. I refer to the reporting of the intersessional working group which is available at the Authority’s [website](#). Furthermore, at the commencement of our meeting in July, the facilitator of the intersessional working group will give a status of the work of the group before we conduct the reading of this text.

Enclosure

Part XI Inspection, compliance, and enforcement

Section 1 Inspections

Regulation 96 Inspections: general

1. The Council shall ~~[on the basis of]~~ [taking into account] the recommendations of the Commission, establish ~~[an independent Inspectorate]~~ [a Compliance Committee], ~~[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). ~~[alt. 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 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)]~~ [of independence, transparency, accountability, fairness, proportionality and precaution] and includes provisions on identifying and managing conflicts of interest, and on information management and confidentiality. [The Council shall ensure inclusivity, gender equality, equitable geographical representation and health and safety, in recruiting and managing its Inspectors]. [The Council, through the Compliance Committee, shall exercise oversight over the Inspectors].

~~[I 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 shall upon request by sponsoring States, any other State Party ~~[or other party concerned]~~ be accompanied by a representative of the sponsoring State ~~[or States]~~, any other State Party ~~[other State Party or other party concerned]~~, [or any person reasonably required to assist an Inspector including an interpreter] aboard all vessels and Installations used in the Area by the Contractor to carry out Exploitation activities under an exploitation contract [as well as to enter its offices]. To that end, ~~[States Parties]~~ [Members of the

Authority], in particular the Sponsoring State or States [and States] in whose national jurisdiction or on whose vessel the Authority wishes to conduct inspection activities, shall assist the [Authority], [Council] [Inspector-General] 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] [the Inspector-General] shall give reasonable notice in the circumstances, of not less than [x Days] 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 where 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 alt1. The 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.]~~ reasonable notice and to provide notice as soon as practicable].

~~4.— Inspectors may inspect 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 recorded data and samples and any vessel or Installation, including its log, equipment, records and facilities, as well as interview personnel.]

5. The Contractor, [its subcontractors] 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]~~ [of States parties, where appropriate and to immediately inform the Inspector-General if there is a change to proposed vessel schedules due to operational, logistical or unforeseen circumstances]~~[-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;

I 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 [and provide passwords where that is needed];

I 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 to observe [and inspect the Contractor's monitoring operations, including access to monitoring and surveillance equipment 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]~~ [or any persons accompanying an Inspector pursuant to paragraph 2].

[(g).bis. Ensure that the Master of the vessel or Installation puts in place procedures to ensure the personal safety, security and general welfare of Inspectors and any persons accompanying an Inspector pursuant to paragraph 2.]

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. Comply ~~[to]~~ [with] the Authority's code of conduct for inspectors and inspections established pursuant to draft regulations 96 (1) bis.

I 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.

[7. In the event of Harm to the Marine Environment and the livelihood of any coastal community, adjacent coastal States which have grounds for believing such harm is caused by activities in the Area, shall notify the Secretary-General in writing through appropriate channels of the grounds upon which such belief is based and request an inspection.]

[8. The Secretary-General, upon the notification of a Member State, shall promptly initiate inspection, and invite representatives of coastal States to participate in the inspection, no later than 24 hours after such notification was made by the States to assess whether pollution the harm is attributable to activities in the Area.

Alt. Regulation 96 **Inspections: mechanism**

1. The Council, hereby establishes a roster of Inspectors on the basis of the recommendations of the Commission, as the appropriate mechanism for the independent inspection, of activities conducted in the Area to determine whether the Rules of the Authority, and the terms and conditions of any contract with the Authority are being complied with.

[1 bis 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.]

1 bis The Commission shall establish a Compliance Committee pursuant to regulation 96 bis to assist the Council in carrying out its responsibility to exercise control over activities in the Area, including directing and supervising the roster of Inspectors and inspection programme.

1 ter The Compliance Committee shall, subject to the approval of the Council, appoint an officer with suitable qualifications and appropriate experience in compliance assurance, and health, safety and environment in marine mining or other related marine extractive industries, to be Chief Inspector. The Chief Inspector shall report to the Compliance Committee and shall undertake the day-to-day management and administration of the roster of Inspectors and inspection programme under the direction of the Committee and other related duties set out by the Committee in writing.

1. quarter. The Council 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.

2. A Contractor shall permit the Authority to send its Inspectors, who shall upon request by sponsoring States, any other State Party or other party concerned be accompanied by a representative of the Sponsoring State, other State Party or other party concerned, aboard all vessels and Installations used in the Area by the Contractor to carry out Exploitation activities under an exploitation contract. To that end, States Parties, in particular any State or States in whose national jurisdiction or on whose vessel the Authority wishes to conduct inspection activities, shall assist the Compliance Committee, the Chief Inspector 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.]

Regulation 96 bis

Compliance Committee

1. The Commission shall establish a Compliance Committee comprising of ten members with appropriate expertise within the Commission to carry out the functions of the Compliance Committee in accordance with this regulation.

2. Without limiting the powers and functions conferred upon another organ of the Authority the Compliance Committee shall:

(a) Administer and manage the roster of Inspectors and matters relating to inspection, compliance and enforcement in accordance with relevant policies or directions issued by the Council;

(b) Provide recommendations to the Council on matters relating to inspection, compliance, and enforcement including clarifying what constitutes non-compliance;

(c) Appoint Inspectors as required from the approved roster of inspectors, according to the approved inspection programme and schedule or as may be required;

(d) Establish procedures and routines for investigation of possible instances of non-compliance;

(e) Review the annual reports of Contractors and consider any instances of non-compliance;

(f) Examine reports and recommendations from the Chief Inspector and Inspectors, and other relevant data and information and consider any instances of non-compliance;

(g) Report to the Council the results of inspections and resulting recommendations for enforcement action, in a timely and comprehensive manner and coordinate compliance matters with other organs of the Authority that play a role in inspection, compliance and enforcement;

(h) Investigate allegations from members of the Authority, members of the Commission, relevant coastal States or the Secretary-General, as well as from observers of the Authority and other Stakeholders on possible instances of Contractor non-compliance, including through any whistle-blowing procedures under regulation 101 bis.;

(i) Convene, with the support of the Secretary-General, a process to liaise with Contractors in cases of non-compliance or complaints, including conducting oral hearings and conduct an inquiry into any Incident;

(j) Consult and cooperate, through the Secretary-General with sponsoring States, flag States, port States and competent international organizations as regards compliance and enforcement measures;

(k) Issue compliance notices under regulation 103, and in urgent cases, take any appropriate interim measures where necessary;

(l) Examining complaints under regulation 101 and making any recommendations to the Council;

(m) Make recommendations to the Council for the issue of emergency orders and appropriate penalties; and

(n) Undertake in collaboration with the Secretary-General compliance promotion activities to promote understanding of and compliance with the Rules of the Authority, including dissemination of best practice arising from inspection activities;

(o) Appoint, where time is of the essence, a competent independent person to perform any or all of the functions of an Inspector where the nature or subject matter of an inspection requires specialist knowledge or experience that is not available on the approved roster of Inspectors; and

(p) Perform any other duties that the Council directs in writing.

3. The Compliance Committee shall develop its own rules of procedure, including for the convening of hearings, which shall be approved by the Council.

4. Decisions of the Compliance Committee shall be taken by consensus. If all efforts to achieve consensus has been exhausted, decisions shall be taken by a majority of members present and voting. In the case of a tie, the Chair of the Compliance Committee shall have the decisive vote.

5. The Compliance Committee shall meet at regular intervals, and in urgent cases involving possible instances of non-compliance, shall convene virtually and on short notice. Members of the Compliance Committee shall rotate among themselves on a monthly basis in order to ensure that one member is always available "on call" in cases of non-compliance that require urgent action. In addition, the Compliance Committee shall appoint its own chair and vice chair. The Secretary-General shall facilitate the meetings of the Compliance Committee.

6. Within 3 months of the end of a Calendar Year the Compliance Committee shall complete an annual inspection, compliance and enforcement report, together with a non-technical summary, and submit the report and summary to the Council for its consideration.

7. The report shall include details of any regulatory action taken by a sponsoring State or States as advised in writing to the Chief Inspector or Secretary-General, any corrective action undertaken by a Contractor and any recommendations as to any enforcement action to be taken by the Council to which regulation 100(2) refers. The report shall also include any findings and recommendations arising from inspections that may contribute to the development of Good Industry Practice, Best Environmental Practices and Best Available Techniques.

8. The Secretary-General shall make publicly available a copy of the Committee's report and summary on the Authority's website, with any Confidential Information redacted.

9. The Council shall review and ratify any interim measures imposed by the Compliance Committee, and consider any of its recommendations as soon as practicable or at its next meeting. A member of the Bureau of the Council shall be on-call and shall convene a virtual meeting of the Council in the case of matters for urgent consideration, including the issue of emergency orders by the Council on the recommendation of the Committee.

10. The Secretary-General shall provide such administrative support to the Compliance Committee and the Chief Inspector as is required, including the processing of all formal communications and notifications to or from the Compliance Committee. All notifications to the Committee shall be addressed to the Secretary-General who shall promptly transmit them to Chair of the Compliance Committee.

Regulation 96 ter

Inspections: General

1. The Chief Inspector shall give reasonable notice to a 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.

2. Where the Compliance Committee or the Chief Inspector have reasonable grounds to consider the matter to be so urgent that notice cannot be given, the Compliance Committee or the Chief Inspector shall instruct an Inspector to conduct an inspection without prior notification.

3. Inspectors may inspect any relevant documents necessary to monitor a Contractor's compliance under its exploitation contract and the Rules of the Authority inter alia, all recorded data and samples and any vessel or Installation, including its log, equipment, records and facilities, as well as interview personnel.

4. 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 Chief Inspector and sponsoring State or States notified of proposed vessel schedules including support and supply vessels, and inform the Chief Inspector 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 Chief Inspector 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 Chief Inspector 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 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.

(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 Compliance Committee and facilitate the activities of Inspectors 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 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. 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

- Very valuable intersessional work has been carried out by the participants since the meeting in March 2023. I understand that further discussions are needed to come to agreement on an appropriate inspection mechanism. I have retained the original draft regulation 96 and it contains many contradictions. I have also added a new proposed Alt. draft regulation 96, 96bis and 96 ter that seems to reflect a compromise between the different current suggestions for an Inspection model. I suggest that we continue the negotiations based on the new proposals (Alt 96, 96bis and 96ter), and open for discussion on that. In that regard, I also believe that it might be relevant to consider or have the questions posted by the intersessional working group (and placed in my introductory note above) in mind.

Comments to the original draft regulation 96:

- I have deleted para 1.alt as it contains several duplications. I have ensured that the content is reflected in either para 1 or 1.bis.
- I have suggested to delete 1.ter. as the first element is self-evident from the content of para 1 and 1.bis. The second part is repetition from 1.bis.
- In para 3 of the original draft regulation 96, I have suggested to delete the last lines, which are about the situations where inspection is required without prior notification and move those to the relevant Standards or Guidelines which may elaborate the scope and procedures of inspection. Those situations which are so urgent that notice cannot be given in advance shall be specified in the relevant Standards or Guidelines.
- Paras 7 and 8 were originally proposed in the IWG on protection and preservation of the marine environment. However, several delegations proposed to place these paras within this section 1 on inspection. I invite for discussion of the inclusion and the best placement. This is also the case if the negotiations continue based on the new proposals.

Regulation 97

Inspectors: Appointment and supervision

1. The Council, shall on the basis of the recommendations of the Commission, determine the relevant qualifications and experience [for Inspectors to be included on the roster of inspectors] 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] [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 inclusion in the roster. Nominees [and applicants] 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]. [Subject to considerations of protection of personal data]. 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 [included on the roster of Inspectors], and on an inspection programme and schedule [for the Authority] [the Inspectorate] [the Compliance Committee] and for the staff of Inspectors established by the Council in regulation 96 (1) and] in accordance with ~~[the]~~ [any applicable] Standards and taking into account ~~[the]~~ [any applicable] 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.]~~

[3.Alt. Such inspection programme shall be managed by the Council and administrated by the Compliance Committee.]

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

5. [The Authority will ~~[work]~~ [cooperate] with the ~~[relevant]~~ sponsoring State [or State] to ensure that inspections performed by Inspectors are aligned with enforcement at the national level] [Inspectors shall report to the Compliance Committee in writing regarding any difficulties relating to the enforcement of the measures].

~~[5.Alt. — [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 basis of the recommendations of the Compliance Committee.]

Comments/remarks

- I have attempted to refine and streamline this provision so that content that I understood was of importance to delegations and observers is included, but I have at the same time attempted to clean up the text to exclude duplicate provisions and combine them. Furthermore, I have proposed to continue the negotiations based on the idea of implementing the Compliance Committee in the way it is set out in the new draft regulation 96. I of course invite for view on this.
- Diverting views were presented in relation to para 7 and para 7.Alt. I have suggested to only retain original para 7 and I have attempted to accommodate for all views and has amongst other things placed the reference in 7.alt on the updating of the roster in 1.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] [interview] 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 [that the Inspector may reasonably require];]

(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,

[(h).bis. A "do not disturb notice", in writing, in order to allow the further inspection, examination or measurement of, or the conducting of tests concerning, any vessel, installation, equipment or facilities used in connection with activities in the Area.]

(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

- A few delegations have proposed the deletion of paragraphs 1 (f) and (g), as well as paragraphs 3 and 4 as such, I have thus kept these in square brackets for further discussion. Several delegations have suggested to retain the regulations, with the rationale that original documents or samples may be required for evidentiary purposes in national proceedings. In addition, samples may need to be seized for additional testing, such as checking metal content that is claimed for royalty purposes or to test environmental samples.
- I suggest deleting para 2, as the option of interviewing personnel already is covered in para 1(b).

Regulation 99 Inspectors' power to issue instructions

1. If, as a result of an inspection, an Inspector has reasonable grounds to determine [or anticipates] that any occurrence, practice or condition endangers or may endanger the health or safety of any person or poses a threat of Serious H[h]arm to the Marine Environment, including Underwater Cultural Heritage or a Contractor is otherwise in breach of the terms of its contract with the Authority the Inspector shall give ~~any~~ instruction of a temporary nature considered reasonably necessary to remedy the situation, in accordance with [the] any applicable Standards, including:

(a) An instruction requiring[ement] a Contractor to undertake specific tests or monitoring and to furnish the [Authority] Chief Inspector with the results or report of such tests or monitoring within a set period;

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

[(e) An [written] instruction prohibiting the Contractor from continuing or undertaking activities ~~[for a specified period].~~

2. An instruction may be issued either orally or in writing under paragraph 1 above which 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. [If the instruction is issued orally, the Inspector must confirm it in writing and give it to the person concerned at the earliest opportunity.]~~[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.]~~

2. bis. The Chief Inspector shall report immediately to the Compliance Committee, the Secretary-General and through the Secretary-General to the Contractor's sponsoring State or States and, if applicable to the relevant coastal State or States, that an instruction has been issued under paragraph 1.

2. ter. An instruction shall be for a specified period not exceeding seven days. The Chief Inspector may extend such period by an additional seven days and shall report any such extension to the Compliance Committee.

2. quater. An instruction shall specify the information to be provided to the Inspector by the Contractor to demonstrate the steps being taken to implement the instruction within the specified period.

2. sexies. The Compliance Committee may:

(a) Request the Chief Inspector to provide further information as to the facts and circumstances giving rise to the issue of an instruction under paragraph 1 for its consideration; or

(b) revise or set aside an instruction under paragraph 1 as soon as practicable; or

(c) invite the Council's attention to any cases of non-compliance with the terms of a contract.

[3. Any instruction issued under paragraph 1 above shall be in force until the Contractor has ~~executed~~ complied with 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 powers conferred upon it under regulation 103.]

[3.Alt. An instruction issued under paragraph 1 must either be confirmed, revised or set aside by the Inspector-General as soon as practicable.]

[3.Alt.bis An instruction shall be for a specified period not exceeding seven days. The Inspector-General may extend such period by an additional seven days.]

[3.Alt.ter An instruction shall specify the information to be provided to the Inspector by the Contractor to demonstrate the steps being taken to implement the instruction within the specified time.]

[3.[Alt.quater] septies An instruction is effective from the time fixed by the Inspector and remains in force [until] unless set aside by the [Inspector-General] Compliance Committee or until the Inspector's instructions have been complied with within the specified period or the instruction lapses at the end of the specified period.]

[3.Alt.sexies The Inspector-General shall report immediately to the Secretary-General, the Commission, the Council and to the Contractor's sponsoring State or States and, if appropriate, the relevant coastal State or States and the flag State that an instruction has been issued under paragraph 1. The Council may request further information as to the facts and circumstances giving rise to the issue of an instruction under paragraph 1 for its consideration.]

[3.[Alt.septies] octies. Within three days of the expiry of the specified period or any extension thereto under paragraph [3bis] 2 the [Inspector-General] Chief Inspector shall [determine] assess whether the instruction has been complied with by the Contractor and shall report immediately to the Compliance Committee. Subject to paragraph 3 [octies] nonies, where a

Contractor has failed to comply with a written instruction or the circumstances giving rise to the instruction remain unresolved, the [Inspector- General] Compliance Committee [shall] may thereafter exercise the powers conferred upon [the Inspector-General] it under regulation 103.]

[3.[Alt.octies] nonies In the case of a written instruction issued under paragraph 1(d), where the circumstances giving rise to a suspension in some or all [mining] activities are not resolved or are unlikely to be resolved, the [Inspector-General] Compliance Committee shall notify the Council immediately together with any recommendation as to whether such suspension should continue. The Council shall decide if the suspension should continue, including the placing of conditions on any recommencement of activities, taking into account any recommendations of the Commission.]

[4. Nothing in this regulation shall preclude the Council from issuing emergency orders pursuant to article 162, paragraph 2(w), of the Convention.]

Comments/remarks

- I have retained the original para 3. However, I suggest to continue the negotiations based on alt 3 and new para 4.

Regulation 100

Inspection Reports

1. No later than thirty days after the end of an inspection, the Inspector shall prepare and deliver a report ~~[promptly] [without delay]~~ to the ~~[Compliance Committee] [Inspectorate] [Chief Inspector]~~ in accordance with the template and other requirements [of the relevant Standards and in accordance with relevant Guideline] contained in any applicable [applicable] Standard setting out the findings and any recommendations for improvements in performance, procedures or practices by a Contractor. The ~~[Inspectorate] [Inspector(s)] [Compliance Committee] [Chief Inspector]~~ shall send the report to the ~~[Compliance Committee and the] [[Secretary General, [who shall send a copy of the report to the Contractor and its sponsoring State or States] [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 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.] The Secretary-General shall transmit any comments to the Compliance Committee.

2. The [Compliance Committee] ~~[Inspectorate]~~ shall pursuant to regulation 96 bis paragraph 6, [in their annual] report [annually] to the Council [under regulation 96(1)(k) ter include details] 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 [enforcement] 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 may request the Legal and Technical Commission to review the findings and recommendations of inspection reports and provide recommendations to the Council on regulatory improvements]. ~~[The Council shall invite the attention of the Assembly to cases of non-compliance in accordance with Article 162(2)(a) of the Convention.]~~

3. The [Compliance Committee] ~~[Inspectorate]~~~~[Inspector]~~ shall report to the Secretary-General any acts of violence, intimidation, or abuse against or the wilful obstruction or harassment by any person of an Inspector, or [the] a 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. The failure by a Contractor to comply with regulations 96 or 96 ter shall also be reported to the [Secretary-General] ~~[Compliance Committee]~~. [Appropriate measures shall be taken in accordance with regulations 99 and 103 respectively.]

3 bis. The [Secretary-General] ~~[Compliance Committee]~~ shall report subject to regulation 100(3) 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 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.~~

Comments/remarks

- I have attempted to consolidate and streamline this provision in order to avoid overlaps.

[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 [within thirty Days] for comment to the Contractor and the Sponsoring State [or States], 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.]

Comments/remarks

- It has been suggested by one participant to delete this provision. I invite for views on this.

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]~~ ~~[promptly]~~ 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, [its subcontractors and their agents] 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

- The inclusion of draft regulation 101.bis. received support from several delegations and observers. I invite delegations to consider what powers are identified under the Convention with respect to the creation of such policies and who should promulgate them. I have received one proposal for the administration of these mechanisms to be independent from the ISA's general operations and have the whistle-blower report into a Compliance Committee (or inspector-general).

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] ~~[which]~~ shall record, where technically feasible in real time, inter alia, the date, time and position of all mining activities, [and 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, [The electronic monitoring system shall be in accordance with the Environmental Monitoring and Management Plan] ~~[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 [or States] 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 [Environmental Monitoring and Management] Pplan 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 Council and~~ the sponsoring State or States] and [non-confidential data] be made publicly available in real time [on the Authority's website].

~~[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 have suggested to delete para 1 as this is already covered by draft regulation 18(1)(b).
- 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 discussions on this matter.
- Based on interventions during the March 2023 meeting, I have attempted to merge the original para 5 and the alternative.
- I have received a request for more clarity in respect of monitoring and how it will practically be handled. In this respect, I can refer to [Technical Study no. 29](#) on Remote monitoring systems in support of inspection and compliance in the Area. Furthermore, as reported by the Chair of the Legal and Technical Commission ([ISBA/26/C/12/Add.2](#), paras 30-33), the Commission has endorsed a set of terms of reference and requested the Secretariat to prepare a draft standard and/or guidelines on an electronic monitoring system as a part of the development of phase two standards and guidelines.

Section 3 Enforcement and penalties

Regulation 103

Compliance notice, suspension, and termination of exploitation contract

1. At any time, if it appears to the ~~[Inspectorate]~~ [Compliance Committee] ~~[Commission]~~ based on reasonable grounds, [including a report from an Inspector], or failure to comply with a written instruction under regulation 99, that a Contractor is in breach of, [or is at risk of breaching], the terms and conditions of its exploitation contract, ~~[Part XI]~~ [provisions of the Convention related to activities in the Area, the Agreement and] the rules, regulations and procedures of the Authority, ~~or these regulations,~~ the ~~[Commission]~~ ~~[Inspectorate]~~ [Compliance Committee] shall ~~[make recommendations to the Council to]~~ issue a compliance notice to the Contractor requiring such action as may be specified in the compliance notice and shall report immediately to the Council on the issue of such notice. ~~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.bis.Alt. The Authority should discuss the issue in detail with the Contractor to inform decisions of the Council.]

[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 may be issued only in case of breach of the terms and conditions of its exploitation contract, Part XI and provisions of the Convention related activities in the Area, the rules, regulations and procedures of the Authority, or these regulations] A compliance notice shall:

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

(b) Require the Contractor to take remedial or corrective action or other such steps as the ~~[Secretary-General]~~ ~~[Inspectorate]~~ [Compliance Committee] ~~[Council]~~ considers appropriate to ensure compliance within a specified time period and may include:

(i) the implementation of an improvement plan setting out 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; or

(ii) agreeing with the Contractor a modification to the Plan of Work in accordance with regulation 57.

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 violations of the fundamental terms of the exploitation contract, [provisions of the Convention related activity in the Area, the Agreement [Part XI] [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 summarizing any compliance notices the Authority has issued.~~

[5. bis Alt 1 The Secretary-General shall make public any compliance notice issued to a Contractor, any response received from the Contractor or Sponsoring State or States, subject to the confidentiality requirements of Regulation 90. The Inspector- General shall present in their annual report to the Council a summary of any compliance notices the Inspectorate 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 shall invite the attention of the Assembly to cases of non-compliance in accordance with Article 162(2)(a) of the Convention. [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).]~~

Regulation 104 **Power to take remedial action**

1. Where a Contractor fails to take action required under regulation 103, the Authority [through the Secretary-General] 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

- During the March 2023 meeting, there was consensus for deleting the three last lines of para 2.

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.

Section 4

Periodic review of inspection mechanism

Regulation 105 bis

Periodic review of inspection mechanism

1. Every 5 years from the date of establishing the Compliance Committee, the Council shall commission through the Secretary-General an independent review of the Authority's inspection, compliance and enforcement mechanism to ensure that the manner of its operation and activities accords to best international regulatory practice.

2. In the light of the review, the Council may, taking into account any recommendations of the Commission, recommend changes to improve the way the mechanism operates.