

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH
SESSION: COUNCIL - PART III**

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council@isa.org.jm.

1. Name of Working Group:

Institutional Matters

2. Name(s) of Delegation(s) making the proposal:

The Pew Charitable Trusts

3. Please indicate the relevant provision to which the textual proposal refers.

DR 106

Red text is in original draft; magenta text indicates Pew's new textual proposals or support for a proposal from a range of options

4. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the "track changes" function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

1. Where a Contractor or an interested person directly affected by a decision of a subsidiary organ of the Authority considers that the decision has been:

(a) taken outside the legal powers conferred upon the decision-maker, or

(b) taken without adherence to the rules, regulations, procedures, and Standards of the Authority,

that person may apply within three months of notice of the decision to the Secretary-General for an administrative review of the decision in question, providing an explanation of the grounds for objecting to the decision. The President of the Council shall convene a Review Committee comprising a representative from one member State from each of the chambers of the Council who shall, in accordance with relevant Standards, review the decision and whether it was lawfully and properly taken. The Review Committee shall decide either that the original decision was correct and appropriate in the circumstances, or that the original decision should be referred back to the relevant decision-maker for further deliberations in accordance with the findings of the Review Committee. The Secretary-General shall provide the decision to the applicant, and except where it is not in the public interest to do so, shall publish the decision or a summary of it on the website of the Authority.

1bis Where a Disputes arises concerning the interpretation or application of these regulations and an exploitation contract,

(a) the disputing parties shall enter into good faith negotiations with a view to resolving the dispute including through any alternative dispute mechanisms agreeable to the parties; and

(b) should the dispute remain unresolved despite best efforts undertaken in accordance with paragraph (1), the matter shall be settled in accordance with section 5 of Part XI and Part XV of the Convention [and the rules of procedure adopted by the International Tribunal for the Law of the Sea [for the conduct of expedited hearings concerning the Rules of the Authority.]]

1 ter. Nothing in this Regulation shall prejudice the Authority's ability to issue a compliance notice under Regulation 103, including a notice pertaining to suspension of activities for a specific period or until such date as the dispute has been resolved.

5. Please indicate the rationale for the proposal. [150-word limit]

We are grateful for the co-facilitators' note and invitation to discuss the matter further. We consider paragraph 106 as drafted to be lacking an interim level of dispute resolution, focused firstly on administrative review of ISA organ decisions, and secondly on negotiation and alternative dispute resolution, before going to an ITLOS proceeding - which is likely to be more onerous, expensive and long drawn-out than the other mechanisms we've suggested as prior alternatives.

We also note that the provisions of UNCLOS do not permit recourse to dispute resolution by non-Contractors and non-State stakeholders. Yet best practice in resource governance suggests an opportunity for stakeholders to appeal decisions by a regulator to a neutral arbitrator. This can be an efficient measure for checking decisions have been reasonably and lawfully taken, before needing to proceed to expensive and time-consuming court proceedings.

With this in mind, we would like to suggest a new opening paragraph to establish an administrative review process, whereby Contractors, as well as other stakeholders, could raise points of contention. Such a process would be in addition to, not a substitute for, the formal dispute resolution mechanisms as stipulated in Part XV of UNCLOS. We have some wording to suggest here as a new paragraph at the start of DR106, to create this administrative review process, via review committee to be established on an ad hoc basis by the President of the Council. This process would be optional for the aggrieved party, and would focus on where a decision is alleged to have been taken outside the legal powers or the relevant rules of the ISA.

Standards could flesh this process out. These can include timeframes, rules for selection of Committee members, procedures for receiving evidence, examples of when decisions will not be reviewed (e.g. where the same matter has been reviewed before, where the person bringing the objection is not directly affected, where the specific subject matter is better suited to a different pathway - such as complaint to the ISA's Ombudsperson if such a post is established.)

For the same reasons of promoting efficiency, cost-effectiveness and access to justice, we would also like to propose a new sub-paragraph (a) to DR 106(1) to include a requirement to attempt alternative dispute settlement via mechanisms agreeable to the parties, rather than requiring immediate recourse to ITLOS. Sub-paragraph (b) could then indicate that the matter will be taken to ITLOS only if the dispute remains unresolved despite best efforts to negotiate in good faith, including via alternative dispute mechanisms.

Finally, we wonder whether it would be sensible to include in this DR106, a provision that indicates that the ISA's compliance powers, including suspensions, may continue without prejudice to ongoing dispute

procedures. Otherwise it may be unclear whether the ISA retains powers to require a Contractor to cease operations during the course of a dispute, for example where the dispute is related to the Contractors' environmental performance. We suggest a new sub-paragraph 1 ter. to address this.