



INTERNATIONAL SEABED AUTHORITY

29TH SESSION 2024



Briefing paper on the consolidated text of the draft regulations on exploitation of minerals in the Area and associated modalities of work for the first part of the twenty-ninth session of the Council of the International Seabed Authority

Prepared by the President of the Council

I. Background

1. In its decision of 21 July 2023 (ISBA/28/C/24), the Council recognized that agreeing on a timeline and modalities for the work of the Council until July 2024 would provide predictability to all members of the Authority as well as other stakeholders. Furthermore, in its decision of 21 July 2023 (ISBA/28/C/25), the Council reaffirmed its commitment to the adoption of the rules, regulations and procedures relating to exploitation and that important progress has been made during the twenty-eighth session.

2. In issuing this Briefing Paper, the President's intent, with the support of the Bureau, is twofold. Firstly, to provide information on the consolidated text of the draft regulations on exploitation of minerals in the Area. Secondly, to provide guidance as to the working modalities for the upcoming first part of the twenty-ninth session. The President considers it is of the highest importance to describe the proposed organization of the work on the draft regulations on exploitation well in advance of the session so that delegations have the maximum possible time to prepare, have a clear understanding of when items will be discussed and are able to identify clearly the specific issues on which we need to find a consensus if we are to make progress in line with the timeline agreed by the Council.

II. Introduction to the consolidated text

3. The consolidated text will be provided at the Authority's website. It is being prepared under the leadership of the President of the Council with the technical assistance of the Secretariat.

4. The objective has been to compile various parts of the texts of the informal working groups into a single consolidated text of the draft regulations on exploitation of mineral resources in the Area. This consolidation has enabled us to identify and remedy areas of overlap, duplications and omissions. Also, it has enhanced the harmonization between the various provisions and related annexes, as well as harmonization of language with the Convention and the 1994 Agreement. Comment boxes have been removed to the extent possible, and definitions have been clarified and standardized. Comment boxes have been retained only where strictly necessary to aid the understanding of specific provisions.

5. The consolidated text attempts to translate ideas and proposals into a consensus-based text. While not every individual idea or proposal is expressed specifically in the text, the

options presented are an attempt to reflect the general thrust of those ideas and proposals. The consolidated text is not ready for adoption and is still subject to further negotiations and discussions.

6. The methodology used in revising the text is the same as previously used for the facilitators' texts and is thoroughly explained in the explanatory note to the consolidated text to be provided at the Authority's website.

III. Other documents

A. Suspense document

7. A "suspense document" will be provided at the Authority's website. It is a collation of the material removed from the main text based on the discussions during the third part of the twenty-eighth session and the subsequently received proposals on those Regulations. These sections are placed in suspense, and not discarded. Their content may inform in particular the forthcoming consideration of Standards and Guidelines. To recall, during the negotiations of the draft exploitation regulations, many delegations have asked for highly technical elements to be moved from the regulations to the relevant Standards and Guidelines. Since the revision of the Standards and Guidelines is still outstanding, the elements that are proposed to be so moved have been placed in the suspense document.

8. The suspense document contains explanations and indication of where the elements stem from and where the proposals are anticipated to later be placed.

B. Compilation of all comments

9. The consolidated text is a "consensus-based" text, and thus contains only the elements that delegations have agreed upon, or elements that via negotiations will be agreed upon. This also means that not all proposals have been inserted into the consolidated text, bearing in mind that more than 2,000 proposals have been received since the release of (ISBA/25/C/WP.1). Many of these proposals overlap or express the same thought in slightly different words or have been overtaken by subsequent proposals.

10. Therefore, in addition to the consolidated text, a compilation will also be uploaded to the Authority's website. This compilation contains all written proposals received from delegations and observers during and after the third part of the twenty-eighth session.

11. Other than that, and as usual, all proposals can be accessed at the Authority's website under the respective Council sessions.

C. Matrix of Environmental Standard and Guidelines

12. Several delegations have throughout the process of developing the draft regulations and annexes, underlined that some parts entail a high level of detail that would best be placed in Standards and Guidelines instead of in the draft regulations on exploitation.

13. Based on that, a matrix was prepared for the third part of the twenty-eighth session (ISBA/28/C/IWG/ENV/CRP.5), which shows examples of which parts of different regulations could be moved to relevant Standards and Guidelines.

14. Several phase I Standards and Guidelines have already been drafted and have been inserted into the matrix and can be accessed via the Authority’s website (ISBA/27/C/3-12). Also, proposals have been put forward suggesting that further, specific Standards and Guidelines must be drafted.

15. During the third part of the twenty-eighth session, the matrix was presented, and it was agreed by the Informal Working Group on the Protection and Preservation of the Marine Environment that it could be used as a basis for the ongoing work. Therefore, a revision of the matrix will be made available at the Authority’s website ahead of the first part of the twenty-ninth session.

IV. Suggested working modalities for the first part of the twenty-ninth session

16. The consolidated text provides the opportunity to conduct detailed negotiations with the aim of closing gaps, erasing remaining divergences and finding consensus. The President and the Bureau believe that it is incumbent on the President to guide the negotiations of the consolidated text, section by section and invite delegations to actively strive to reach consensus on remaining aspects of the consolidated text.

17. For that purpose, the President, with the support of the Bureau, invite delegations to concentrate on thematic topics, which represent some of the key issues that require further discussions to narrow the remaining points and finalize the negotiations of the consolidated text. Therefore, the President and the Bureau have proposed that discussions will be organized around a number of thematic clusters, which for the first part of the twenty-ninth session are the following:

Negotiations of the consolidated text		
Matter	Topic for discussion	Setting
The Consolidated text	Section by section	Plenary in an informal setting. Guided by the President of the Council
Conceptual discussions of specific topics		
Financial matters	1. Royalty mechanism and review mechanism. 2. Ecosystem valuation	Open-ended Working Group on the Financial Terms of a Contract (Facilitated by Olav Myklebust) Reporting to the President

	Equalization measures	<i>Informal informals</i> (Rapporteur: Australia) Reporting to the President
Environmental matters	1. Environmental Compensation Fund (DR 54-56) 2. Test mining (DR 48bis) 3. The EIA/EIS process (Section II, Annex IIIbis and Annex IV) 4. REMPs	Informal Working Group on the Protection and Preservation of the Marine Environment (Facilitated by Raijeli Taga) Reporting to the President
	Discussion of intangible cultural heritage definition	<i>Informal informals</i> (Rapporteur: Federated States of Micronesia) Reporting to the President
Inspection, Compliance and Enforcement	The appropriate inspection mechanism	<i>Informal informals</i> (Rapporteur: Norway) Reporting to the President
Institutional Matters	Effective control	Informal Working Group on Institutional Matters (Facilitated by Gina Guillen-Grillo and Salvador Vega). Reporting to the President

18. We are all aware of the excellent progress made during consultations led by some delegations during the intersessional period. To maintain the momentum of these important and valuable efforts, the President believes it is timely and appropriate to use *informal informals* to conduct consultations with a focus on specific conceptual topics that have been identified or specific regulations that need special attention with the aim of providing a consensus.

19. Thus, the President proposes that some specific topics are discussed and handled through the use of *informal informals*. This informal setting is conducive to consensus-driven drafting and a rapporteur will steer the discussions to this end. This will also enable the Informal Working Groups to continue to make progress on reviewing other regulations in the consolidated text.

20. Negotiations between delegations of member States in *informal informals* will be open to both delegations and observers and meetings will not be held in parallel. As is the case in most other international organizations, including the United Nations, observers will be

restricted from making statements during *informal informals* but will be permitted to make general statements in plenary.

21. The Chair, the facilitators of the Informal Working Group and the rapporteurs should report back to the President during the second week of the first part of the twenty-ninth session. At that point, it would also be appropriate to take stock of the status of the work with the respective topics, whether more work is needed, and whether other topics need to be discussed. Thereafter, the plan for intersessional work and further *informal informals* can be made for the second part of the twenty-ninth session.

22. Finally, it is encouraged to introduce the *President's consultations*, where delegations meet informally with the President, in smaller groups, and to discuss specific identified topics.

23. The above, is of course, without prejudice to any work being carried out by the Council and the Informal Working Groups and, in that regard, it should be recalled that "*nothing is agreed until everything is agreed*".

24. It is recalled that the work and results of the negotiations should be fully consistent with the provisions of the Convention, and the process and its results should not undermine existing relevant legal instruments and frameworks.

Juan José González-Mijares, President of the Council, 15 February 2024,
Kingston, Jamaica.