

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS
DURING THE 29TH SESSION: COUNCIL - PART I**

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.im.

1. Name of Working Group:

Informal Working Group on Institutional Measures

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

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd.

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

Draft Regulation 106(2)

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.

Regulation 106 [IWG IM]

Settlement of disputes

[...]

2. ~~In accordance with article 21 (2) of annex III to the Convention, A~~any final decision rendered by a court or tribunal having jurisdiction under the Convention ~~and the rRules, regulations and procedures of the Authority]~~ relating to the rights and obligations of the Authority and of the Contractor shall be enforceable in the territory of ~~{any}~~ each State party to the Convention ~~affected thereby.~~

Comments

Most delegations supported maintaining the original version of Regulation 106 during the third part of the twenty-eight session. Alternatives that are contradictory to the Convention have been omitted.

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

- We remain seriously concerned that Draft Regulation 106(2) is inconsistent with the Convention and inappropriately attempts to modify the availability and enforceability of dispute settlement options that contractors have access to.
- The comment suggests other alternatives to paragraph 2 that were “contradictory to the Convention” have been omitted from the text. Amendments are needed to the current text to ensure it also does not contradict the Convention.

- Jurisdiction over disputes regarding contracts with the Authority is governed primarily by the Convention not by the rules, regulations and procedures of the Authority. The Draft Regulations should not suggest that the jurisdiction established by the Convention could be amended through rules, regulations and procedures.
- Limiting the enforceability of dispute settlement decisions to only the territories of States Parties “affected” by such decisions would be inconsistent with:
 - Article 21(2) of Annex III of the Convention, which makes clear that any “final decision rendered by a court or tribunal having jurisdiction under this Convention relating to the rights and obligations of the Authority and of the contractor shall be enforceable in the territory of each State Party” (emphasis added). This requires each and every State Party to enforce such decisions.
 - Article 39 of Annex VI of the Convention, which requires that decisions of the Seabed Disputes Chamber are “enforceable in the territories of the States Parties in the same manner as judgments or orders of the highest court of the State Party in whose territory the enforcement is sought”. This applies to all States Parties not just those “affected” by the decision.
 - The usual enforceability regime associated with international arbitration, which may be used pursuant to Articles 187 and 188 of the Convention.
- We also query how this language would apply in relation to a dispute with the Authority, that is how would it be determined which States are “affected” by a final decision in such a dispute.
- Dispute settlement decisions may need to be enforced in a range of jurisdictions, depending on where relevant entities are located. This is recognized in the Convention and this right should not be abrogated by the Draft Regulations.