

Outcomes report of informal intersessional group related to the development of an Inspection, Compliance and Enforcement mechanism.

1. Introduction

During the first part of the 28th session Norway volunteered to facilitate an intersessional dialogue on the development on an Inspection, Compliance and Enforcement mechanism (ICE mechanism). The group conducted three virtual meetings before the second part of the 28th session.¹

Between the second and third part of the 28th session, Norway invited delegations to an additional virtual meeting on 27 September 2023. All meetings were open to member States and observers. Delegations represented included: Belgium, Brazil, Canada, Chile, China, Cook Island, Costa Rica, Fiji, France, Ghana, Germany, Jamaica, Mexico, Micronesia, Nauru, Netherlands, Norway, Portugal, Russia, Sierra Leone, Singapore, the UK, as well as the Pew Charitable Trusts and Nauru Ocean Resources Inc. (NORI).

2. Objective

The objective of the intersessional dialogue was to further discuss and identify an optimal structural arrangement for an ICE mechanism consistent with the Convention and to align common approaches.

3. Agreement on core principles

- There is consensus in the group that any ICE mechanism would need to be consistent with the Convention.
- There is also agreement that all ICE decision-making should be robust, operationally efficient, and independent of inappropriate influence, political or otherwise.
- Additionally, many continue to highlight the importance of avoiding duplication of work between the different organs of the Authority, notably the Legal and Technical Commission (LTC), the Secretariat and the Council, as well as the importance of expertise, integrity, transparency and responsiveness to any credible ICE mechanism.
- Several delegations confirmed that they see the utility of a Chief Inspector to manage a roster of inspectors and be in charge of day-to-day oversight operations.
- There was also broad agreement that in line with the evolutionary approach, any ICE mechanism solution should be reviewed at regular intervals (2-3 or 5 years were suggested), and the current wording of draft regulation 105 bis was supported by many.

4. The Hybrid Model

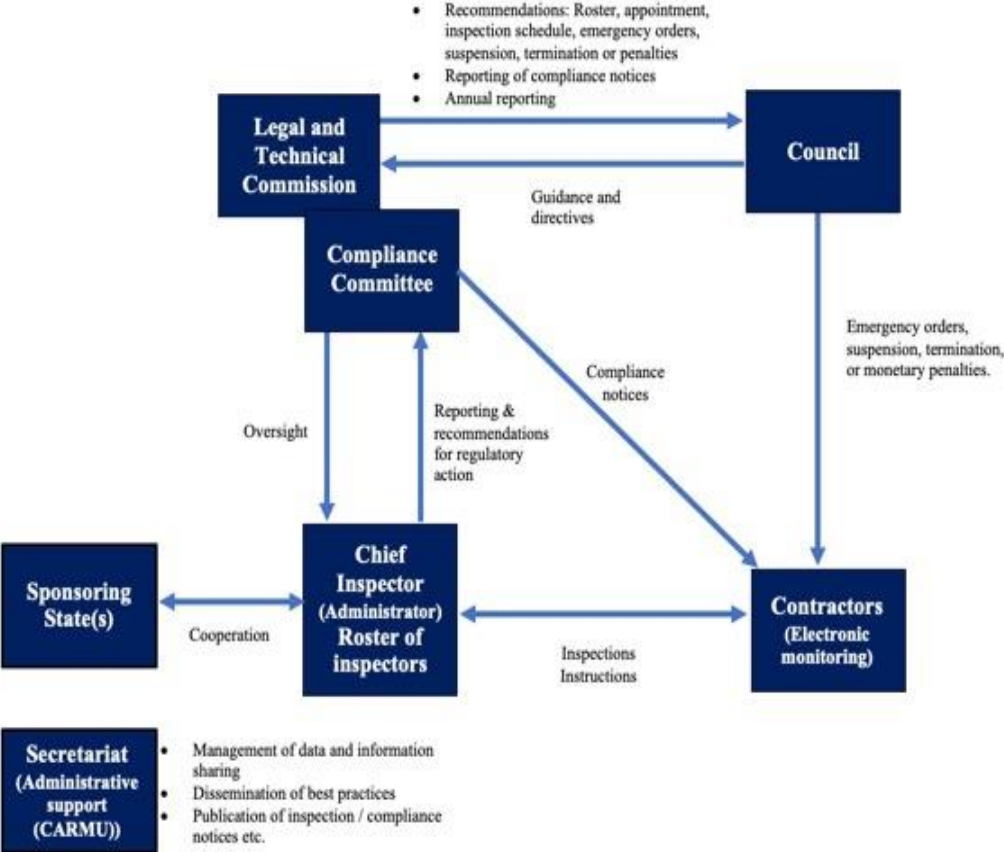
During previous meetings of the intersessional working group on Inspection, Compliance and Enforcement references were made to an (i) independent inspectorate body (ii) a self-standing compliance committee under the Council and (iii) a compliance committee situated within the LTC.

As outlined previously, the “Hybrid Model” is an attempt to reach a compromise between these different positions put forward by the facilitator of this intersessional working group (Norway).

¹ Held on 5 May 2023, 23 May 2023 and 6 June 2023.

The September 2023 meeting confirmed a consensus in the group to continue deliberations based on the Hybrid Model diagram:²

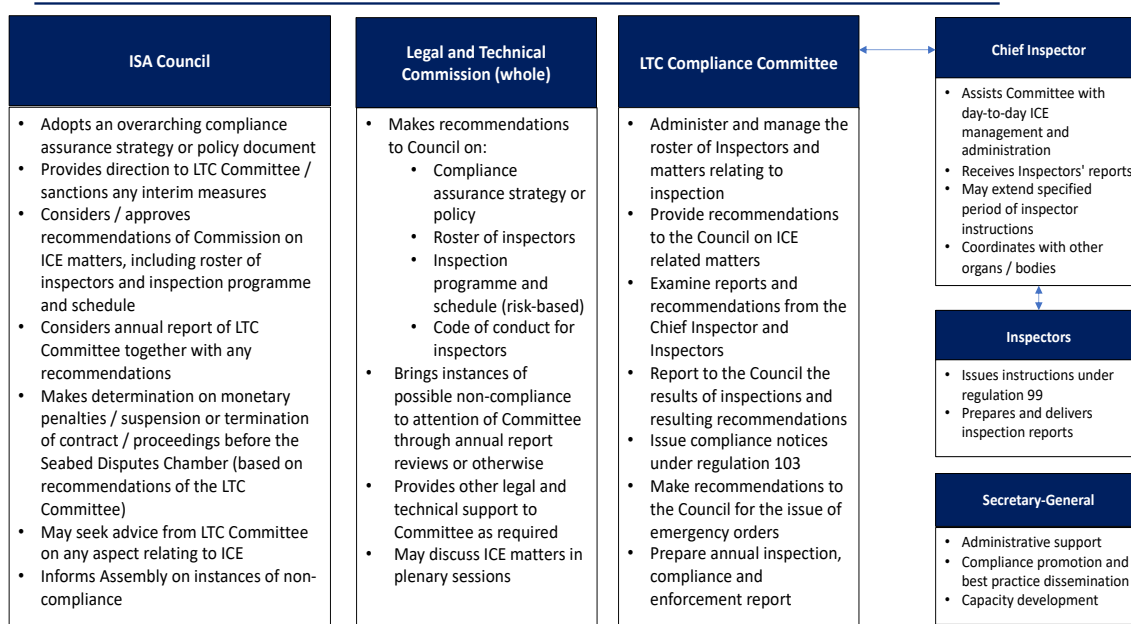
The Hybrid Model



An overview of the core functions by organ under the Hybrid Model is presented below:

² For a more in-depth explanation of the rationale behind the diagram, please see Outcomes Report for July 2023 (https://www.isa.org.jm/wp-content/uploads/2023/06/Inspection-Mechanism_ICE.-Intersessional-Report.docx)

Core functions by organ



5. Outstanding issues

The September 2023 intersessional meeting identified several questions that require further discussion, both in terms of the overarching ICE structure and the interplay between the various ISA organs involved. A non-exhaustive list of issues that need further consideration includes:

- (i) the *placement* of the organ. Some were of the opinion that the LTC Compliance Committee (LTCCC) is well placed within the LTC, highlighting that this will be in line with United Nations Convention on the Law of the Sea (the Convention) which envisages broad tasks for the Commission, including supervision of activities in the Area at the request of the Council, and because it will avoid duplication of work and associated costs. Others considered it would be problematic to have the same organ recommending the approval of a plan of work (and one that recommends rules, formulates guidelines and procedures) while also overseeing compliance. Some expressed concern that the LTC does not currently have the capacity to undertake compliance activity. Others considered that a compliance committee (or other terminology to be agreed) should be placed under the Council. **Based on the input received, the facilitator (Norway) wishes to highlight that a way forward for this discussion could be to address the possible *composition and expertise required of the organ in more detail*;**
- (ii) the *relationship between* the different organs, including the LTC as a whole and the proposed LTCCC, to avoid duplication of work and ensure cost-effectiveness and responsiveness in the ICE mechanism;
- (iii) the *core functions and powers* already allocated to the respective organs under the Convention, as well as identifying the processes and procedures already in place.

- (iv) the *development of operating procedures* to ensure that the LTC and the LTCCC (or an agreed alternative) handle ICE issues with due attention to transparency in reporting, accountability and inclusiveness.

6. Key recommendation and proposed way forward

The Group concluded its intersessional work by recommending that the Informal Working Group on ICE needs to continue its deliberations on a suitable ICE Mechanism at the 28th session's third part. The group further agreed to base such discussions on the Hybrid Model and diagram, even though there was no final agreement on this model within the intersessional working group.

The facilitator (Norway) proposes to call an open and informal lunch session on an optimal ICE mechanism Monday 30 October at 1:30pm to continue the consultations with a goal to achieve general agreement on a structure. At this meeting, and in light of the President's briefing note on the modalities of further negotiations and the proposed 1 December deadline, this should include any further actions required to reach consensus.