

# **Briefing Paper on the negotiations of the draft regulations on exploitation of minerals in the Area and associated modalities of work for the second part of the twenty-ninth session of the Council of the International Seabed Authority**

Prepared by the President of the Council

## **I. Introduction**

1. This Briefing Paper seeks to review the status of the negotiations of the draft regulations on exploitation of minerals in the Area (the “Exploitation Regulations”) and address how the Council can progress its work during the second part of the twenty-ninth session.

## **II. Status on the negotiations of the Exploitation Regulations**

2. The consolidated text of the Exploitation Regulations was released on the website of the International Seabed Authority (the “Authority”) on 16 February 2024 ([ISBA/29/C/CRP.1](#)). During the first part of the twenty-ninth session, the Council, working in informal session with the participation of all members of the Authority and observers, managed to conduct a reading of the preamble and Regulations 1 to 34. Also, the Council managed to conduct a reading of regulations related to certain thematic clusters, including the regulations concerning the financial terms of a contract. This means that we will continue the negotiations of the consolidated text ([ISBA/29/C/CRP.1](#)) during the second part of the twenty-ninth session from Regulation 35, and when we reach regulations that already have been handled during the first part of the twenty-ninth session, I will highlight that, and we will refrain from conducting a repetitive reading thereof.

3. The Council will recall the decision of 21 July 2023 ([ISBA/28/C/24](#)), where 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. In the Annex to that decision, the working modalities were also set out, including the development of the consolidated text. The objective of preparing the consolidated text has been to compile various parts of the texts of the informal working groups into a single consolidated text of the Exploitation Regulations. This consolidation has enabled us to identify and remedy areas of overlap, duplication, and omission. Additionally, it has improved the harmonization between the various provisions and related annexes, ensuring consistency with the language of the Convention and the 1994 Agreement. I am grateful for this work, and I am looking forward to continuing our efforts.

4. I would like to remind delegations and observers that the consolidated text is a legal document that aims at translating ideas and proposals into consensus-attracting text. Since the first draft of the Exploitation Regulations, we have received over 1,500 proposals, making it impossible to implement every individual idea, but this does not prevent delegations and observers from addressing proposals as they may deem necessary, since all proposals have been consistently published. The objective has been, however, to present a workable text as

the springboard for discussions. In this legislative process, the options presented attempt to capture the general essence of those ideas and proposals and convert them into a legal framework. The methodology used in revising the consolidated text and incorporating additional proposals has been consistent with the methodology used for the facilitators' texts. Therefore, I refer delegations and observers to the explanatory note accompanying the consolidated text for further clarification ([ISBA/29/C/CRP.1](#)).

5. The consolidated text is not ready for adoption and is still subject to further negotiations and discussions. I remain open to proposals and new ideas for further refinement of the text, and they will all be taken into consideration during the revision of the consolidated text. The written proposals and the oral statements delivered in respect of the consolidated text, before, during and after the first part of the twenty-ninth session, have all been registered and will be considered in the next revision of the consolidated text. In that connection, I have also asked the Secretariat's assistance with compiling all additional written proposals received into the already existing compilation document that was issued for the first part of the twenty-ninth session. Also, I would like to refer all delegations to the Authority's website, and particularly the subpages for the twenty-seventh to the twenty-ninth session, where all written proposals are accessible.

### III. Suggested working modalities for the second part of the twenty-ninth session

6. To constructively continue our work towards the timely finalization of the consolidated text, I believe that it is incumbent on the President to guide the negotiations of the consolidated text. I will suggest continuing these negotiations in the manner followed during the first part of the twenty-ninth session; a regulation-by-regulation reading. I encourage delegations to actively strive to reach consensus on remaining aspects of the consolidated text, and to reflect on the respective proposals put forward by other delegations. It is an important element of this process to crystallize the extent to which newly introduced various proposals enjoy widespread support.

7. I suggest that the primary part of the time is allocated to the continued reading of the consolidated text, and with the aim of finalizing that reading during the second part of the twenty-ninth session. However, there are a number of topics that might be well suited for separate discussions. On this basis, I propose the below suggested schedule of work for the second part of the twenty-ninth session:

<b>Negotiations of the consolidated text</b>		
<b>Matter</b>	<b>Topic for discussion</b>	<b>Setting</b>
The Consolidated text	Regulation by regulation reading	Plenary in an informal setting. Guided by the President of the Council
Cross cutting issues	Coastal States rights and interests	Plenary in an informal setting

		Guided by the President of the Council, and with reporting from Portugal
<b>Conceptual discussions of specific topics</b>		
Financial matters	Equalization measures	Thematic discussion (Australia)  Reporting to the President
Environmental matters	1. The EIA/EIS process (Section II, Annex III bis and Annex IV)  2. EMP/EMMP (Proposed new Section III of part IV)	Informal Working Group on the Protection and Preservation of the Marine Environment (Facilitated by Dr Raijeli Taga (Fiji))  Reporting to the President
Institutional Matters	Effective control	Informal Working Group on Institutional Matters (Facilitated by Gina Guillen-Grillo (Costa Rica) and Salvador Vega (Chile)).  Reporting to the President

8. As it appears from the third row (in grey), I have suggested that we discuss coastal States obligations and interests as a cross-cutting issue. I have suggested that it is taken up when we reach the reading of Regulation 93 ter. In this respect the intersessional working group on coastal States will have the opportunity to report on the status of its intersessional work and potential outcomes.

9. The facilitators and the rapporteurs should report back to the President during the second week of the second part of the twenty-ninth session. At that point, it would also be appropriate to take stock of the status of the work on the respective topics, whether more work is needed, and whether other topics need to be discussed. Thereafter, the plan for intersessional work should also be assessed and updated at that point in time.

10. As the President of the twenty-ninth session, I would also like to make myself available for *President's consultations*, where delegations meet informally with me, in smaller groups, and to discuss specific identified topics. I encourage delegations to use this opportunity, as there might be topics or issues that would be more appropriate for resolution through such a setting.

#### IV. Continued work - Standard and Guidelines

11. The aim of this briefing paper is to address the work for the second part of the twenty-ninth session. However, I would like to use the opportunity to also ask delegations to consider the continued work on the Standards and Guidelines.

12. A matrix had been 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. The focus has been on the environmental Standard and Guidelines. Eleven phase I Standards and Guidelines have already been prepared and can be accessed via the Authority's website ([ISBA/27/C/3-12](#)). I also refer delegations to the Suspense Document ([ISBA/29/C/CRP.2](#)) that was prepared for the first part of the twenty-ninth session. That document is a collation of the material that is suggested to be removed from the consolidated text into the Standard and Guidelines and other rules, regulations and procedures.

13. Considering the progress made on the Exploitation Regulations since the release of the Standards and Guidelines in January 2022, I propose that we also focus on continuing this work. Specifically, I suggest updating the matrix for the next Council meeting (November 2024 or March 2025), and during that meeting conducts a high-level discussion on the preparation of additional guidelines, particularly for Phase I. We should initiate a discussion on which standards and guidelines the Council can review at this stage and which ones need to be updated by the Legal and Technical Commission before Council review. This consideration is necessary as some elements of the Exploitation Regulations might have changed so significantly, requiring substantial revisions. The updated matrix should reflect not only on environmental standards and guidelines but also on other standards and guidelines necessary for Phase I.

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

Olav Myklebust, 3 June 2024, Abu Dhabi