September 2025

THE PEW CHARITABLE TRUST'S COMMENTARY

ON THE REVISED CONSOLIDATED TEXT: DRAFT REGULATIONS ON EXPLOITATION OF MINERAL RESOURCES IN THE AREA, DATED 29 NOVEMBER 2024 (ISBA/30/C/CRP.1)

Key

Black font, red font, and grey text-boxes are replicated from the Draft Regulations text.

Blue font represents commentary or edits proposed by The Pew Charitable Trusts.

Regulation 103

Non-c~~C~~ompliance N~~n~~otice, S~~s~~uspension, and T~~t~~ermination of Exploitation Contract

1. At any time, if it appears to the Compliance Committee based on reasonable grounds, ~~including~~ which may include a report from an Inspector, or failure to comply with a written instruction under Regulation 99, that a Contractor is in breach of, the terms and conditions of its Exploitation Contract, provisions of the Convention related to activities in the Area, the Agreement or the rules, regulations and procedures of the Authority, the Compliance Committee shall issue a C~~c~~ompliance N~~n~~otice to the Contractor requiring such action [necessary to remedy the breach] as may be specified in the C~~c~~ompliance N~~n~~otice and shall report immediately to the Council on the issue of such notice.[The Compliance Committee shall, through the Secretary-General provide a copy of the C~~c~~ompliance N~~n~~otice to the Sponsoring State or States within 24 hours].

2. A C~~c~~ompliance N~~n~~otice shall:

   (a) Describe the breach and the factual basis for it; and

   (b) Require the Contractor to take remedial or corrective action or other such steps as the Compliance Committee considers appropriate to ensure compliance within a specified time period and may include:

   (i) the implementation of an improvement plan setting out actions to be taken to return to compliance, how the actions' effectiveness will be monitored and reported, the time permitted for action, and subsequent steps should the actions be unsuccessful, or should non-compliance continue; or

   (ii) agreeing with the Contractor a modification to the Plan of Work in accordance with Regulation 57.

2. bis Actions specified in the C~~c~~ompliance N~~n~~otice should be commensurate with the gravity, frequency or other circumstances of the breach.

3. For the purposes of Article 18 of Annex III to the Convention, a C~~c~~ompliance N~~n~~otice issued under this Regulation constitutes a warning by the Authority.

4. The Contractor shall be given a reasonable opportunity not exceeding 30 Days to make representations in writing to the Secretary General concerning any aspect of the C~~c~~ompliance N~~n~~otice, who shall transmit same to the Compliance Committee. Having considered any such representations and taking account of any enforcement action taken or to be taken by the Sponsoring State or States, the Compliance Committee may make recommendations to the Council to confirm, modify or withdraw the C~~c~~ompliance N~~n~~otice.

5. If a Contractor, in spite of one or more warnings by the Authority, fails to implement the measures set out in a Ce~~o~~mpliance N~~n~~otice and has conducted its activities in such a way as to result in [serious, persistent and wilful] violations of the fundamental terms of the Exploitation Contract, provisions of Part XI of the Convention, the Agreement or the rules, regulations and procedures of the Authority, the Council [may] suspend or terminate the Exploitation Contract, pursuant to regulation 29 ~~ter~~quater], by providing written notice of the suspension or termination to the Contractor [and notification of such suspension or termination to the sponsoring State or State in accordance with the terms of the Exploitation Contract.

[5. bis~~Alt~~. The Secretary-General shall, ~~[subject to the confidentiality requirements of Regulation 90]~~ make public any Ce~~o~~mpliance N~~n~~otice issued to a Contractor, any response received from the Contractor or Sponsoring State or States. The Compliance Committee shall include in their annual report to the Council a summary of any Ce~~o~~mpliance N~~n~~otices issued.]

6. In the case of any violation of an Exploitation Contract not covered by paragraph 5 above, or in lieu of suspension or termination under paragraph 5 above, the Council may impose upon a Contractor monetary penalties proportionate to the seriousness of the violation which must be in line with indicative penalties set out in the applicable Standards, and which will include any administrative costs incurred by the Authority as a result of the violation.

7. Except for emergency orders under Article 162(2)(w) of the Convention, the Council may not execute a decision involving monetary penalties, suspension or termination until the Contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to it pursuant to section 5 of Part XI to the Convention.

7. bis The Council shall invite the attention of the Assembly to cases of non-compliance in accordance with Article 162(2)(a) of the Convention.

Th terminology change made in the title, to '***non-compliance notice***', has not been followed throughout the rest of DR103, nor elsewhere in the regulations. If the name of then measure is being changed, then it needs to be amended consistently throughout.

In **sub-paragraphs (1) and (5)**, we suggest deleting reference to a Contractor's breach of UNCLOS and the 1994 Agreement. A Contractor (unless also a State) is not directly bound by UNCLOS. The ISA needs to include all relevant obligations in the regulations and the contract.

In **sub-paragraph (2)(b)(i)**, we suggest deleting '*the implementation of...*' as this provision is describing the content of the Compliance Notice (which is the plan and not the implementation of the plan).

Sub-paragraph (2)(b)(ii) should read '*agreeing that the Contractor will apply for a modification...*' otherwise it sounds like the Compliance Committee (abbreviated to CC in our comments below) can agree the modification via a Compliance Notice procedure, which it cannot.

We support the principle that the ISA must regulate proportionately and with a risk-based focus, however we are not sure **paragraph (2)(bis)** reflects a correct implementation of that principle. Compliance notices need to bring the contractor back to compliance. As such, the key consideration is: what is the breach and how can it be resolved? We consider (as per a previous draft) that the gravity, frequency, and other circumstances of the situation are more relevant to inform the CC's decision-making about what regulatory action to take e.g. a first minor offence might lead to a conversation and advice; whereas a repeated or grave breach would escalate the measure to something more formal and with greater repercussions such as a compliance notice. In line with this, we would like to see DR103 (or possibly a regulation before DR103) outline **an escalating hierarchy of interventions and a range of regulatory tools** at the CC's disposal, rather than defaulting to compliance notices, suspension and termination – all at the more serious end of the regulatory spectrum, and with resource-intensive evidence and procedural requirements. This could also be done by empowering the CC in DR103 also to take any other reasonable action in line with the Compliance Strategy. The Compliance Strategy can set out what types of response would be triggered by different types of issues or evidence.

The drafting in **paragraph (4)** has become awkward, as it tries to cover actions of the Contractor, the SG, the CC and the Council in one provision. It may work better to change this into (i) one paragraph giving the Contractor the opportunity to make any representations to the CC via the SG, and (ii) a separate paragraph covering the CC's report and recommendation to the Council and the Council's decision upon it.

In addition, **paragraph (4)** seems to lack the requirement for a specific decision from the Council; and we are unsure whether 'may' is the correct verb in relation to the CC making recommendations to the Council. Does this imply that the CC could exercise discretion not to make such recommendation – and in that case, there would be no decision from Council, and the CC's original compliance notice would stand on the CC's authority alone? We do not think that is the intention of paragraph (4). We understood that there should be a right of appeal of the CC decision, by the Contractor, to Council. Such a right should not be at the discretion of the CC. Some re-drafting would be helpful to clarify that the CC recommendation and a Council decision are mandatory. It would also be helpful to clarify in paragraph (4) that the Contractor is expected to comply with the compliance notice during the time that the Council's decision is awaited.

Paragraph (5) needs to refer to regulation 18ter (for termination) and regulation 29bis (for suspension). Those cross-references then trigger the relevant procedures set out in those regulations, so the final clause of paragraph (5) (starting '*by providing written notice*...') should be deleted, to avoid duplication and conflict with those procedures. Where paragraph (5) refers to a suspension we suggest describing this either as a suspension of 'operations' (as per UNCLOS Article 163(2)(w) and 165(2)(k)) or 'suspension of rights under the Contract' (as per UNCLOS Annex III Article 18(1)) rather than of the suspension of the Contract. We are not sure legally how the Contract itself could be suspended.

We suggest a new paragraph between (5) and (5 bis) that enables the ISA, **in the event of a 'serious, persistent and wilful violation' of the Contract, to bar the Contractor's principals** from direct or indirect involvement with any Contractor or subcontractor operating in the Area for a period of [10] years. We suggest this, as the same sanction is currently included in DR77 (on royalty avoidance), but we cannot see why it would be restricted only to such types of breach, and prefer to see all of the ISA's compliance mechanisms clearly and consistently covered in DR103. The same point can be included in the Regulations that relate to an application for Exploitation and the applicant's qualification criteria (namely DR5 on qualified applicants, as well as DR12 and Annex I on content of applications - which should require relevant track record information to be disclosed). This will also mean the track record of the principals can be considered in other situations, for example transfer of contract rights, covered by DR23.

Paragraph (6) repeats UNCLOS. It would be helpful to give some more operational detail – both substantive and procedural. For example: in what circumstances and on what criteria would it be appropriate to choose monetary penalties rather than a compliance notice, or suspension or termination? Does the Council take this decision directly, or should there be a recommendation from the CC? Does the Contractor have a right of reply or appeal within the ISA, before resorting to judicial remedies?