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.

Part XII

Settlement of disputes

Regulation 106

Settlement of disputes

1. Disputes concerning the interpretation or application of these Regulations and an Exploitation Contract shall be settled in accordance with section 5 of Part XI of the Convention.~~[Part XV and Annex 6 of the Convention. [and the rules of procedure adopted by the International Tribunal for the Law of the Sea for the conduct of expedited hearings concerning the Rules of the Authority.]~~

~~1. bis Nothing in this Regulation shall prejudice the ability of the Authority or a Sponsoring State to act pursuant to Section 3 of Part XI of these Regulations.~~

~~2.~~ Any final decision rendered by a court or tribunal having jurisdiction under the Convention and the Rules, 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 each State party to the Convention as if it were a final judgment of a court in that State ~~affected thereby~~.

Comments

- Several delegations suggested the removal of the second part of paragraph 1 and of the entirety of 1 bus, as being redundant.
- It has been suggested to provide some further specificity on the enforcement mechanisms under the applicable local laws, to clarify how the enforcement of the decisions would be ensured. Language is proposed to this effect based on analogous wording of other international conventions concerning enforcement of the decisions of international courts of tribunals.

DR106 requires any disputes arising to be settled in accordance with UNCLOS Part XI, which means either binding commercial arbitration, or the Seabed Disputes Chamber of ITLOS. These may not be the appropriate track for some of the types of disputes expressly envisioned in the Regulations and referred to DR105 for resolution e.g. a Contractor disputing the ISA's handling of a complaint about an Inspector, (DR101) or a disagreement about whether or not specific data should be classified as 'Confidential Information' (DR89).

We recall during the third part of the twenty-eighth session that a few member States wished to consider further the merit of establishing (a) an interim opportunity for administrative review of the ISA organ decisions, and (b) negotiation and alternative dispute resolution, before going to an ITLOS proceeding (and without prejudice to the right to access ITLOS). We agree that this merits further discussion, recognising that contentious ITLOS proceedings may be onerous, expensive and long drawn-out. In addition, we note that the relevant provisions of UNCLOS do not permit recourse to dispute resolution by Stakeholders who are neither Contractors nor member States. Best practice in resource governance suggests an opportunity for Stakeholders to appeal decisions by a regulator to a neutral arbitrator.

With this in mind, **we suggest a new DR105 bis to provide an administrative review process internally to the ISA, whereby Contractors, as well as other Stakeholders, could raise points of contention. Such a process would be in addition to, not a substitute for, the formal dispute resolution mechanisms as stipulated in Part XV of UNCLOS.** A similar administrative review process ins has already been included to an extent in the regulations (e.g. DR 76 and 77) concerning financial matters, so this proposal merely seeks to make such appeals consistent and applicable to all decisions, not only one category of decisions.

Standards would be needed to flesh this process out. These can include timeframes, rules for selection of Committee members, procedures for receiving evidence, examples of when decisions will not be reviewed (e.g. where the same matter has been reviewed before, where the person bringing the objection is not directly affected, where the specific subject matter is better suited to a complaint to the ISA's Ombudsperson, etc.)

Our proposed insertion is as follows:

"DR 105 bis

Administrative Decision Review

1. Where a Contractor or a person directly affected by a decision of a subsidiary organ of the Authority considers that the decision has been:

(a) taken outside the legal powers conferred upon the decision-maker, or

(b) taken without adherence to the rules, regulations, procedures, and Standards of the Authority,

that person may apply in writing within three months of notice of the decision to the Secretary-General for an administrative review of the decision in question, providing an explanation of the grounds for objecting to the decision.

2. Upon determining in accordance with the applicable Standard that an application made pursuant to paragraph (1) is not frivolous, vexatious or made in bad faith, the Secretary-General shall refer such matter to [the President of the Council] without delay.

3. Upon receipt of a referral from the Secretary-General pursuant to paragraph (2), [the President of the Council] shall convene a Review Committee comprising a representative from one member State from each of the chambers of the Council, none of whom shall have a conflict of interest in the matter in question, who shall in accordance with the applicable Standard review the decision and whether it was lawfully and properly taken.

4. The Review Committee shall examine any referral and related evidence and decide either that the original decision was correct and appropriate in the circumstances, or that the original decision should be referred back to the relevant decision-maker for further deliberations in accordance with the findings of the Review Committee.

5. The Secretary-General shall provide the decision of the Review Committee to the applicant, and shall publish the decision or a summary of it on the website of the Authority."

We further propose in DR106 to include provision for negotiation and alternative dispute resolution, where mutually agreed, as an option before (and without prejudice to) proceeding to litigation before ITLOS or commercial arbitration. This would read as follows (additions underlined):

"1. Where a dispute arises concerning the interpretation or application of these Regulations and an Exploitation Contract,

(a) the disputing parties [may / shall] enter into good faith negotiations with a view to resolving the dispute including through any alternative dispute mechanisms mutually agreeable to the parties; and

(b) should the dispute remain unresolved despite best efforts undertaken in accordance with paragraph (1), the matter shall be settled in accordance with section 5 of Part XI[Part XV and Annex 6 of the Convention."

In terms of the drafting presented in this Consolidated text, we support deletion in **paragraph (1)** of DR106 of the reference to the rules of procedure of ITLOS. We believe those rules will apply to an ITLOS proceeding as appropriate, without the ISA needing to legislate for it. We also note that Article 188 of UNCLOS allows that disputes concerning

the interpretation or application of an ISA Contract can "be submitted, at the request of any party to the dispute, to binding commercial arbitration, unless the parties otherwise agree". Such proceedings would not be subject to the ITLOS procedural rules, contrary to this DR106 wording.

We would like to see reinstatement of **paragraph (1)(bis)**. This would ensure that the ISA's compliance powers, including suspensions, may continue without prejudice to ongoing dispute procedures. Otherwise, it would be unclear to us whether the ISA retains powers to require a Contractor to cease operations during a dispute, for example where the dispute is related to the Contractors' environmental performance. If the deletion is continued, then we would propose a new insertion expressly to require the Council upon the recommendation of the Compliance Committee to determine whether to suspend Exploitation activities upon commencement of any dispute proceedings under DR106, pending their resolution.

We agree with the importance that international tribunal or arbitral decisions take in accordance with DR106 are enforceable within the national jurisdiction of ISA member States. This may require individual States to take domestic legislative and administrative measures. We are unsure whether **paragraph (2)** - which simply states the judgement will be enforceable - achieves the aim. We do not think the ISA has the legal power to decide what judgements 169 national courts will or will not enforce. This provide may work better if amended to require States to take the necessary steps to render such judgements enforceable