

**Twenty-seventh session**

Council session, part II

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**Item 11 of the provisional agenda\***

**Draft regulations on exploitation of mineral resources in the Area**

**Draft regulations on exploitation of mineral  
resources in the Area**

**Part XI: Regulations 96 to 105**

**Prepared by the Facilitator, Ambassador Maureen Tamuno (Nigeria), of the  
Informal Working Group on Inspection, Compliance and Enforcement**

1. During the twenty-sixth session of the Authority, the Council decided to establish three Informal Working Groups, with the mandate and working modalities set out in the annex to its decision (ISBA/26/C/11). In accordance with that decision, I was appointed as Facilitator of the Informal Working Group on Inspection, Compliance and Enforcement.

2. It was agreed during the meeting in March 2022 (ISBA/27/C/21), that I would prepare a proposed text for Part XI of the Draft regulation on exploitation of mineral resources in the Area (“the Draft Regulations”, ISBA/25/C/WP.1).

3. Based on the discussions and proposals provided during the March 2022 session and after the session, I have prepared this text (“the Facilitator’s Text”) to assist in the discussions in the Informal Working Group.

4. The revisions are reflected as marked-up text. I implemented the following approach to the revisions:

(a) Only those proposals in respect of which there has been no express opposition to, are reflected in the text. This is without prejudice to their future consideration or the possibility for delegations to re-introduce textual proposals not incorporated in the present text.

(b) Ideas that reflected a general direction in the discussions have been incorporated, although the precise textual formulations proposed by delegations may not always have been utilized. While not every individual idea or proposal is necessarily reflected, the text presented is an attempt at reflecting the general thrust of those ideas and proposals.

(c) Where general comments were made but no drafting suggestions were provided or where several drafting suggestions were made going in a similar direction without being identical, I am proposing wording for the consideration of delegations.

(d) Square brackets are introduced for proposals for which conceptual discussion are expected and where further work might be

requested by the Council. The absence of square brackets does not imply agreement on the ideas, content or specific language reflected in a provision. The absence of brackets around new ideas which are reflected for the first time in the draft text should not be taken as a *fait accompli* as to their inclusion. Equally, the fact that regulations have not been revised should not be taken to indicate agreement on the unrevised regulations.

(e) Options have been used throughout the text to present alternative conceptual approaches. The order in which options appear in the text should not be taken as indicating any suggested order of priority, nor as indication of the level of support for any particular option.

(f) Boxes containing explanations of revisions and/or my comments, where necessary, are included under the relevant regulations.

5. Please bear in mind that the work and results of the Informal Working Group should be fully consistent with the provisions of the Convention and the 1994 Agreement, and the process and its result should not undermine existing relevant legal instruments and frameworks and relevant global, regional, and sectoral bodies.

# Part XI

## Inspection, compliance and enforcement

### Section 1

#### Inspections

##### Regulation 96

##### Inspections: general

1. The Council shall establish appropriate mechanisms for inspection, as provided for in articles ~~[153 (5)] and~~ 162 (2) (z) of the Convention.

1.bis The Council shall approve and maintain a code of conduct for Inspectors and inspections, that takes into account the principles in paragraph (1) and includes provisions on identifying and managing conflicts of interest, and on information management and confidentiality.

2. The Contractor shall permit the Authority to send its Inspectors, who ~~may~~ shall upon request by sponsoring States or other party concerned be accompanied by a representative of ~~the~~ sponsoring -State or other party concerned, in accordance with article 165 (3) of the Convention, aboard all vessels and Installations whether offshore or onshore, used by the Contractor to carry out Exploitation activities under an exploitation contract as well as to enter its offices wherever situated. To that end, Members of the Authority, in particular the sponsoring State or States, shall assist the Council, the Secretary-General and Inspectors in discharging their functions under the Rules of the Authority.

2.bis Nothing in these regulations shall be construed in any way inconsistently with the exclusive jurisdiction of the flag State over its vessels on the high seas as reflected in article 92 of the Convention; nor the enforcement rights of port States as reflected in article 218 of the Convention.

3. The ~~[Secretary-General]~~ [The Inspector] shall give reasonable notice to the Contractor of the projected time and duration of inspections for a period as necessary, the names of the Inspector(s) and any activities that the Inspector(s) are to perform that are likely to require the availability of special equipment or special assistance from the personnel of the Contractor, save in situations where the ~~[Secretary-General]~~ [the Inspector] has reasonable grounds to consider the matter to be so urgent that notice cannot be given, in which case the ~~[Secretary-General]~~ [the Inspector] may, where practicable, exercise the right to conduct an inspection without prior notification, [pursuant to Regulation 4(5)].

4. Inspectors may inspect [during the whole lifecycle of the activities in the Area] any relevant documents, ~~or items, which are necessary to monitor the Contractor's compliance, all other recorded data and or~~ samples and any vessels or Installations used in the Area in connection with activities in the Area, including its log, personnel, equipment, records and facilities.

5. The Contractor and its agents and employees shall facilitate the actions of the Inspectors in the performance of their duties, and shall:

(a) Accept and facilitate the prompt and safe boarding and disembarkation of vessels and Installations by Inspectors;

(a).bis Keep the Secretary-General and sponsoring State or States notified of proposed vessel schedules including support and supply vessels, and inform the Secretary-General at least 30 Days before any vessel commences its voyage to a Contractor's Contract Area to facilitate the

conveyance of Inspectors and representatives of the sponsoring State or States, where appropriate;

(b) Cooperate with and assist in the inspection of any vessel or Installation or equipment conducted pursuant to this regulation [and comply with the reasonable requests of an Inspector];

(b bis) Provide reasonable facilities, including where appropriate, food and accommodation, to Inspectors;

(c) Provide access to all relevant areas, items and personnel ~~[in offices]~~ or on vessels and Installations at all reasonable times [including access to and use of communication equipment for the purpose of the transmission and receipt of messages];

(d) Provide access to monitoring equipment, books, documents, papers and records ~~and passwords~~ which are necessary and directly pertinent to [determine compliance with terms and conditions of a contract and these Regulations including with] verify the expenditures referred to in the Plan of Work or necessary to determine compliance with the financial payments ~~due under the exploitation contract and these regulations~~ [terms and to verify the expenditures referred to in the Plan of Work];

(e) Answer fully and truthfully any questions put to them;

(f) Accept the deployment of remote real-time monitoring and surveillance equipment, where required by the Secretary-General, and facilitate the activities of Inspectors in deploying such equipment and having access thereto; and

(g) Not obstruct, intimidate or interfere with Inspectors in the performance of their duties.

6. Inspectors shall:

(a) Follow [all reasonable] instructions and directions pertaining to the safety of life at sea given to them by the Contractor and the captain of the vessel ~~or other relevant safety officers aboard vessels and Installations;~~ and

(b) ~~[To the maximum extent possible,]~~ Refrain from any undue interference with the [safe and] normal operations of the Contractor and of vessels and Installations, unless the Inspector has reasonable grounds for believing that the Contractor is operating in breach of its obligations under an exploitation contract.

(b.bis An Inspector shall adhere to the Authority's code of conduct for inspectors and inspections established pursuant to draft regulations 96 (1) bis.

(c) Indicate in their reports all vessels, installations, equipment, facilities, data and samples monitored or otherwise examined, all documents reviewed or copied, all questions posed to the Contractor or any personnel.

#### Comments/remarks

- In relation to some general remarks and background information on the implementation of an inspection mechanism for activities in the Area, I would like to draw the attention to ISBA/25/C/5.
- Some delegations have suggested for the Council to develop an inspection plan and for the Council to decide on monitoring and surveillance equipment. In my understanding, it is vital to have an

efficient inspection mechanism and that the inspection plan is supposed to be a risk based supervisory tool. There are several factors that continuously will influence on what is supposed to be expected and at what time. Furthermore, I understand that flexibility and a high degree of technical expertise is required. Based on that, I have decided to keep the original wording.

- In continuance, I noted that one delegation had suggested the inclusion of a Compliance Committee for inspection, compliance, and enforcement as a subsidiary organ and has furthermore suggested that this Committee, on several occasions, should take over the responsibilities that would otherwise be vested with the Secretary-General. I invite for discussions on such an inclusion and the further description of such a Compliance Committee, if adopted. For the time being, I have left the original text.
- One delegation suggested to include a mandatory obligation for representatives of sponsoring States to be present with the Authority during an inspection. According to article 165(3) of UNCLOS, it is a choice of a state if it wants to participate in the inspections. I have therefore, inserted the caveat that it is “upon request”.
- I noted different suggestions in relation to what should be inspected, including offshore/onshore and offices. To my understanding, it is crucial that it is possible to inspect both onshore and offshore as the system might be based on a process approach and that it for the same reason also is important to be able to inspect the management systems, records, capacities etc. I have therefore kept the text as originally proposed.
- In relation to para 3, there is a suggestion to replace the role of the Secretary-General with the Inspector(s). I have placed this in square brackets for further consideration and discussions. Also in para 3, I have refrained from changing the time limit and I have kept the original wording of ‘reasonable’, all in order to accommodate for flexibility and not being too specific.
- In para 4, I have clarified the scope as it is already accommodated for in Regulations 96, para 2 and 98.
- In para 5, I have attempted to reflect the general comments received from delegations and observers and to clarify the content.

## **Regulation 97**

### **Inspectors: ~~general~~ [Appointment and supervision]**

1. The Council, ~~based shall~~ on the basis of the recommendations of the Commission, ~~shall~~ determine the relevant qualifications and experience appropriate to the areas of duty [fields of action] of an Inspector under this Part. [Based on that the Secretary-General will establish a roster of Inspectors.]

1ter Each Member of the Authority may, subject to the requirements of this regulation, designate its nationals as Inspectors for inclusion in the roster.

2. The Commission shall make recommendations to the Council on the appointment, supervision and direction of Inspectors, and on an inspection programme and schedule, under the inspection mechanism established by the Council in regulation 96 (1) and in accordance with the Standards and taking into account the Guidelines.

Alt 2.

2. The Council, based on the recommendations of the Commission, shall appoint, supervise and direct the Inspectors, and adopt an inspection programme and schedule, under the inspection mechanism established by the Council in regulation 96(1).

3. The Secretary-General shall manage and administer such inspection programme, including ~~the terms and conditions of~~ the appointment of Inspectors at the direction of the Council.

Alt 1

4. The Inspectors shall be independent in the fulfilment of their tasks.

5. The Inspectors shall exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of Part XI of the Convention, the Annexes relating thereto, and the rules, regulations and procedures of the Authority, and the plans approved under Regulation 15. Sponsoring States shall assist the Authority by taking all measures necessary to ensure such compliance in accordance with Article 139 of the Convention.

6. Without prejudice to their enforcement under international law, measures adopted by the Inspectors shall be effectively enforceable by Sponsoring States in their national legal orders. Inspectors shall report to the [Secretary-General] in writing any difficulties relating to the enforcement of their measures under national law.

Alt 2

4. The Secretary-General shall maintain and update the roster of Inspectors.

5. The roster of Inspectors shall be made publicly available on the Authority's website.

6. The Secretary-General shall provide the Commission and the Council with a copy of the current roster of Inspectors on an annual basis. The Commission shall make any recommendations to the Council on the adequacy of the roster in terms of necessary qualifications, experience and training in the light of the proposed inspection programme.

7. Inspectors may be required to undertake relevant training programmes at the request of the Council, based on the recommendations of the Commission.

8. The Council may, for reasonable cause, remove an Inspector from the roster, based on the recommendations of the Commission or on the recommendations of the Secretary-General under regulation 101(2).

**Comments/remarks**

- I have noted that several different concepts and mechanisms as for Regulation 97 have been put forward, including suggestions of a roster of Inspectors. I would like to draw the attention to ISBA/25/C/5, where it is suggested to consider the mechanism adopted under the Convention on the Conservation of Antarctic Marine Living Resources ([https://www.ccamlr.org/en/system/files/e-pt9\\_3.pdf](https://www.ccamlr.org/en/system/files/e-pt9_3.pdf)). Under that system, the inspectors will be listed in a register of certified inspectors and the inspectors will report to the national authority, which in turn will report to the Commission. I have in the actual text inserted the wording that there, to my understand, is consensus about. Besides that,

I have left new suggested alternatives open and invite for a conceptual discussion of the structure of this general provision on Inspectors.

- Also, in this section several suggestions have been put forward to require the Council to direct the inspection system. According to article 162(2)(z) of the Convention, the Council is required to design and put in place an appropriate inspection mechanism. However, the Council is not by the Convention required to perform the day-to-day functioning of the mechanism. The risk management system/process is, to my understanding, complex and based on risk ranking of the contractors, as a result of many factors. It should therefore, respectfully be considered by the delegates whether it would be more appropriate for the Inspectors, Secretary-General or a Committee to handle the program, in order to allow flexibility and faster resolutions, which could then later be endorsed and approved by the Council.
- I have noted a suggestion to make reference to Regulation 4(5) in this Regulation. However, I have refrained from that, as this provision, in my understanding, is supposed to regulate the qualifications of the Inspectors, and not what the Inspectors are supposed to do.

## **Regulation 98**

### **Inspectors' powers**

#### 1.bis Inspectors shall:

(a) follow all reasonable instructions and directions pertaining to the safety of life at sea given to them by the Contractor or the captain; and

(b) to the maximum extent possible, refrain from any undue interference with the safe and normal operations of the Contractor and of vessels and Installations, unless the Inspectors have reasonable grounds for believing that the Contractor is operating in breach of its obligations under an exploitation contract.

1. An Inspector may, for the purposes of monitoring or enforcing compliance with the Rules of the Authority and the terms of the exploitation contract:

(a) Question any person engaged by the Contractor in the conduct of Exploitation activities on any matter to which the Rules of the Authority relate;

(b) Require any person who has control over, or custody of, any relevant document, whether in electronic form or in hard copy, including a plan, book or record, to produce that document to the Inspector immediately or at any other time and place that the Inspector requires;

(b).bis Inspect any relevant documents or items which are necessary to monitor the Contractor's compliance, all other recorded data and samples and any vessel or Installation used in connection with activities in the Area including its log, personnel, equipment, records and facilities

~~(e)~~ Require from any person referred to in subparagraph (b) above an explanation of any entry or non-entry in any document over which that person has custody or control;

(d) Examine any document produced under subparagraph (b) and make a copy of it or take an extract from it;

(e) Inspect or test any machinery or equipment under the supervision of the Contractor or its agents or employees that, in the Inspector's opinion, is being or is intended to be used for the purposes of the Exploitation activities, unless such inspection or testing will unreasonably interfere with the Contractor's operations in the Area;

~~[(f) Seize any document, article, substance or any part or sample of such for examination or analysis that the Inspector may reasonably require;]~~

~~[(g) Remove any representative samples or copies of assays of such samples from any vessel or equipment used for or in connection with the Exploitation activities;]~~

~~[(h) Require the Contractor to carry out such procedures in respect of any equipment used for or in connection with the Exploitation activities as may be deemed necessary by the Inspector, unless such procedures will unreasonably interfere with the Contractor's operations and]~~

(i) Upon written authorization from the Council, perform any other prescribed function of the Authority as its representative.

2. An Inspector may instruct any Contractor, its employees or any other person who performs an activity in connection with an exploitation contract to appear before the Inspector to be questioned on any matter to which the Rules of the Authority relate.

~~[3. Before an Inspector may seize any document under paragraph 1 (f) above, the Contractor may copy it.]~~

~~[4. When an Inspector seizes or removes any item under this regulation, the Inspector shall issue a receipt for that item to the Contractor.]~~

5. An Inspector ~~may~~ [shall] document any site visit or inspection activity and may use using any reasonable means to do so, including video, audio, photograph or other form of recording.

6. An Inspector shall be bound by strict confidentiality provisions and must have no conflicts of interest in respect of duties undertaken, and shall conduct his or her duties in accordance with the Authority's code of conduct for Inspectors and inspections approved by the Council.

#### Comments/remarks

- I have noted that some delegations have suggested to delete Paras 1(f)–(h), 3 and 4 concerning seizure of documents. I invite for discussions of this matter and have left the suggested deletions in square brackets.
- One delegation suggested to insert a requirement in this Regulation concerning an Inspector's manual. In my understanding, this Regulation 98 should concern the powers vested with the Inspector and not the regulation of the actual work to be performed. Furthermore, I understand, that there will be developed operational procedures for the work performance of the Inspectors and also for that reason it is not necessary to have such details in the Regulations. I have therefore refrained from inserting this suggestion.
- Suggestions have been put forward to change “may” to “shall” in order to make it a mandatory enforcement programme. I invite for discussions on the programme and its status. For now, the suggestion has been put in square brackets through the entire Part.

## **Regulation 99**

### **Inspectors' power to issue instructions**

1. If, as a result of an inspection, an Inspector has ~~evidence~~ [reasonable grounds] that any occurrence, practice or condition endangers or may endanger the health or safety of any person or poses a threat of Serious Harm to the Marine Environment, or is otherwise in breach of the terms of its exploitation contract, the Inspector ~~may~~ [shall] give any instruction he or she considers reasonably necessary to remedy the situation, in accordance with the Standards, including:

(a) A written instruction requiring a suspension in mining activities for a specified period, or until such time and date as the Authority and Contractor agree;

(b) A written instruction placing conditions on the continuation of mining activities to undertake a specified activity in a specified way, and within a specified period or at specified times or in specified circumstances;

(c) A written instruction that the Contractor must take the steps set out in the instruction, within the specified period, to rectify the occurrence, practice or condition; and

(d) A requirement to undertake specific tests or monitoring and to furnish the Authority with the results or report of such tests or monitoring.

2. An instruction under paragraph 1 above must be given to the person designated by the Contractor or, in his or her absence, the most senior employee available aboard the vessel or Installation to whom the instruction can be issued.

3. Any instruction issued under paragraph 1 above shall be in force for a specified period, not exceeding seven Days, after which it lapses. The Inspector shall report immediately to the Secretary-General and to the Contractor's sponsoring State or States that an instruction has been issued under paragraph 1, and the Secretary-General may thereafter exercise the powers conferred upon the Secretary-General under regulation 103. [The Secretary-General shall exercise these powers to prevent probable imminent danger to the health or safety of any person or probable, imminent, and serious harm to the environment].

#### **Comments/remarks**

- It has been pointed out by some delegations that allowing the Inspector to issue instructions is a too far-reaching power to vest the Inspector with and it is suggested by that delegation that the Inspector issues recommendations to the Council, who can then decide on the actual instructions to the Contractor. Considering the highly technical expertise required, I have refrained from making any revisions in this regard.
- One delegations has suggested that the Contractor should be consulted about an envisaged instruction. I refer to my comments under Regulation 100.

## Regulation 100 Inspectors to report

1. [Immediately after] ~~At~~ the end of an inspection, the Inspector shall prepare a report, [in accordance with the template to be prescribed in the standards], setting out ~~the, inter alia, his or her general~~ findings and any recommendations for improvements in [performance], procedures or practices by ~~the~~ a Contractor. The Inspector shall send the report to the Secretary-General and the Secretary-General shall send a copy of the report to the Contractor and to the sponsoring State or States and, if appropriate, the relevant coastal State or States and the flag State.

1.bis The Contractor may within [7] Days of the date of the Inspector's report, provide comments to the Inspector on his or her findings and recommendations. The Inspector will forward the comments to the Secretary-General.

1.ter The sponsoring State or States shall provide to the Secretary-General details of any regulatory or other action taken or to be taken as a result of the Inspectors' findings or recommendations.

2. The Secretary-General shall report annually to the Council on the findings and recommendations following the inspections conducted in the prior Calendar Year, [as compiled in a report by the Inspectors] and shall make any recommendations to the Council on any regulatory action to be taken by the Council under these regulations and an exploitation contract. [taking account of any regulatory action taken by the sponsoring State or States or corrective actions taken by a Contractor to address the findings or recommendations.]

2.bis Inspection reports drawn up by Inspectors shall constitute admissible evidence in administrative or judicial proceedings.

3. The Secretary-General shall report acts of violence, intimidation or abuse against or the wilful obstruction or harassment of an Inspector by any person or the failure by a Contractor to comply with regulation 96. The Secretary-General shall:

(a) Report such acts immediately to the sponsoring State or States ~~and~~ the flag State of any vessel or Installation concerned [and the national State of the Inspector] for consideration of the institution of proceedings under national law; and

(b) Report such acts to the [Secretary-General] and consider the exercise of powers under regulation 103.

4. The Inspector shall also report acts referred to in para. 3 immediately to the [Secretary-General] and shall take the appropriate measures under Regulation 103.

### Remarks/comments

- It has been suggested to insert a deadline of 20 Days for the Inspector to prepare a report. To my understanding, the Inspectors are experienced, prepared and online, when onboard the Installation/vessel. I would therefore suggest to insert "immediately after", instead of inserting a specific deadline.
- In para 1 it has been suggested that potential recommendations from the Inspectors may include a requirement for the Contractor to submit a performance improvement plan to the Secretary-General and the sponsoring State or States. If it is decided to request an item-by-item response to the Inspectors' findings, such a performance improvement

plan might not be necessary. I have therefore left out the suggestion for the time being.

- Several suggestions have been put forward in relation to the reporting by the Inspectors and the option of the contractors' being allowed to comment on the Inspectors' reporting. Different systems are adopted worldwide in that regard, and it is therefore a matter for discussion and decision of the delegations. I have in para 1 and in 1.bis. attempted to compile what I understand as a common wish of those who want contractor consultation. I note in 1.bis. that the deadline has been suggested to be 7 days. Such a deadline might be too tight and if the suggested para is to be accepted, I invite for discussion on the duration as an alternative could be a longer deadline or "within reasonable time".
- I have noted suggestions for the report to be made public available at the Authority's homepage. Before such suggestion is considered, it is necessary to understand exactly what the report will contain, as it might contain confidential information, such as production numbers etc. I therefore suggest deferring that discussions to a later stage.

## Regulation 101

### Review of the Inspector's decision -Complaints

1. A person Contractor aggrieved by an action of who considers that an Inspector has acted unreasonably or outside of the scope of their powers under this Part may complain in writing to the Secretary-General, who shall consider the complaint as soon as practicable.
2. The Secretary-General may take may such reasonable action as is necessary in response to the complaint.

### Comments/remarks

- Several suggested changes have been made to Regulation 101 in relation to whom should have the power, the Council, a Committee or the Secretary-General. I invite for discussions before this Regulation is generally updated in this regard. I would like to refer to my general comments above under Regulations 96 and 97 as it is important to take into account what expertise is required in relation to managing the inspections.

## Section 2

### Remote mMonitoring

## Regulation 102

### Vessel notification, ~~E~~lectronic monitoring and data reporting system

1. A Contractor shall restrict its mining operations to the Mining Area.
2. All ~~mining vessels~~Installations and mining collectors involved in exploitation activities under the Exploitation contract activities shall be fitted with an electronic monitoring system a satellite positioning device. Such system shall record in real time, inter alia, the date, time and position of all mining activities, and, where technically possible, shall also provide environmental data. The detail and frequency of reporting shall be in accordance with the Standards and taking into account the Guidelines.

2.bis The Contractor shall use the best-available techniques to monitor in real-time and in the actual environment the mining impact, including the removal of mineral resources, plume dispersal, and sound, allowing for adaptive management during the mining operation.

2.ter The electronic monitoring system shall also encompass the monitoring of mining impacts, implementing the obligations under Regulation [46ter], allowing for adaptive management during the mining operation.

3. The Secretary-General shall issue a compliance notice under regulation 103, where ~~[he or she determines from there is reasonable evidence to suggest based on]~~ the data transmitted to the Authority that unapproved mining activities have occurred or are occurring.

3.bis The plan shall include:

(a) a description of the monitoring technology and system to be implemented, including the types of data to be collected and monitored, and frequency of monitoring and data that can be collected and monitored in real-time;

(b) a description of how the monitoring data will be transmitted during operations, how the data will be labelled and monitored by qualified personnel, and how the data will be stored;

(c) the qualifications and proposed location of the personnel monitoring the data; and

(d) a description of the procedures for providing the Authority and the sponsoring State or States access to or receipt of the monitoring data for the purposes of monitoring compliance with the terms of an exploitation contract and collection of data.

4. A Contractor shall permit the Inspectors having access to any monitoring or surveillance systems and equipment.

4. All data transmitted to the Authority under this regulation shall be transmitted to the ~~[Secretary-General and the]~~ sponsoring sState or States.

#### **Comments/remarks**

- It has been suggested that the data should be made available in real time. Furthermore, it has been suggested to limit/broaden to whom it should be made available. The appropriate use and role of remote monitoring and other safety-enhancing technology require investigation and discussion, including of the cost. I would like to draw the attention to ISBA/25/C/5, paras 15 and 16 and ISBA/25/C/21 and invite for discussion on what approach should be taken.
- Suggestions have been put forward in relation to the specific content of the monitoring plan. I suggest referring that regulation to the Standards.

### **Section 3 Enforcement and penalties**

#### **Regulation 103 Compliance notice and termination of exploitation contract**

1. At any time, if it appears to the Secretary-General based on reasonable grounds that a Contractor is in breach of the terms and conditions of its

exploitation contract, Part XI and the rules, regulations and procedures of the Authority, the Secretary-General shall issue a compliance notice to the Contractor requiring the Contractor to take such action as may be specified in the compliance notice.

2. A compliance notice shall:

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

(b) Require the Contractor to take remedial action or other such steps as the Secretary-General considers appropriate to ensure compliance within a specified time period.

3. For the purposes of article 18 of annex III to the Convention, a compliance notice 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 compliance notice. Having considered the representations, the Secretary-General may confirm, modify or withdraw the compliance notice.

5. If a Contractor, in spite of warnings by the Authority, fails to implement the measures set out in a compliance notice and continues its activities in such a way as to result in serious, persistent and wilful violations of the fundamental terms of the contract Part XI of the Convention and the rules, regulations and procedures of the Authority, the Council [shall] ~~may~~ suspend or terminate the exploitation contract by providing written notice of suspension or termination to the Contractor in accordance with the terms of the exploitation contract.

5.bis The Secretary-General shall make public any compliance notice and shall present an annual report to the Council on any compliance notices the Authority has 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 relevant Standards, and which will include any administrative costs incurred by the Authority as a result of the violation.]

7. ~~Save~~ 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 will bring to the attention of the Assembly instances of not compliance, as established in article 162 (2)(a) of the Convention.

8. The Secretary-General shall notify the Council as soon as reasonably practicable of any matter requiring the Council to issue an emergency order under article 162(2)(w) of the Convention, in accordance with regulation 4(4).

#### Comments/remarks

- Para 1 has been updated according to several suggestions made by delegations. When updating the para, I have had due regard to article

18 of Annex III to UNCLOS. Suggestions contradicting UNCLOS have been left out. In the same para, several suggestions were made as to whom should issue the compliance notice. I have refrained from making any updates and left the original wording.

- A list of examples of non-compliance constituting a breach of contract have been proposed. I suggest to refer such examples to the Standards and Guidelines.
- In para 5 some editorial suggestions were made. I have refrained from inserting these suggestions as the original wording stems from article 18(1)(a) of Annex III of UNCLOS and it would not be beneficial to change this wording.
- General comments to termination of contract are not regulated in this text as it strictly relates to the inspection and compliance regime.

#### **Regulation 104**

##### **Power to take remedial action**

1. Where a Contractor fails to take action required under regulation 103, the Authority may carry out any remedial works or take such measures as it considers reasonably necessary to prevent or mitigate the effects or potential effects of a Contractor's failure to comply with the terms and conditions of an exploitation contract.

2. If the Authority takes remedial action or measures under paragraph 1 above, the actual and reasonable costs and expenses incurred by the Authority in taking that action are a debt due to the Authority from the Contractor, and may be recovered from the Environmental Performance Guarantee lodged by the Contractor, [and thus extinguishing the Contractor's debt and putting an end to the dispute].

#### **Regulation 105**

##### **Sponsoring States**

1. Without prejudice to regulations 6 and 21, and to the generality of their obligations under articles 139 (2) and 153 (4) of the Convention and article 4 (4) of annex III to the Convention, States sponsoring Contractors shall, in particular, take all necessary and appropriate measures to secure effective compliance by Contractors whom they have sponsored in accordance with Part XI of the Convention, the Agreement, ~~the rules, regulations and procedures~~ Rules of the Authority and the terms and conditions of the exploitation contract.