

Briefing Paper on the work on the draft regulations

Prepared by the President of the Council

I. Background

1. This Briefing Paper seeks to address how the Council can organize and progress its work on the draft exploitation regulations during the third part of the twenty-eight session and the first and second part of the twenty-ninth session.

2. The Council will recall that during the second part of the twenty-eighth session, the Council decided (ISBA/28/C/24) on a timeline following the expiration of the two-year period pursuant to section 1, paragraph 15, of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea (the "Convention"). The working modalities for the third part of the twenty-eight session are set out in the road map annexed to the decision, and it is stated that discussions on the working modalities would continue at the end of the meeting in November 2023.

3. Therefore, this note is aimed at providing some suggestions on the work to be carried out during the third part of the twenty-eighth session (section II.A.) and suggestions for the working modalities after the twenty-eighth session (section II.B).

II. The way forward

A. Before and during the third part of the twenty-eighth session

4. I suggest, and in line with the Council's decision (ISBA/28/C/24), that the current working modalities within the respective working groups is continued for the third part of the twenty-eighth session.

5. I would like to remind delegations and observers that the facilitators and the chair will provide the respective texts in the usual way. Furthermore, ahead of the meeting in November, a collation of the current texts of the informal working groups will be provided. This collation is a copy/paste document of the texts and does not contain anything different from the texts to be released by the groups.

6. During the negotiations of the draft exploitation regulations in November 2023, I again suggest avoiding a paragraph-by-paragraph reading but instead identifying the conceptual elements that need to be resolved section by section and only provide actual textual proposals. I believe that this proved to be a fruitful approach during the meetings in July 2023. In this regard, I would encourage proponents of specific issues to meet with those who require further clarification or wish to advance alternative proposals to attempt to resolve the differences and report the outcomes of the work at each forthcoming informal meeting of the respective groups.

7. Furthermore, I would encourage more focus on working horizontally and attempting to identify throughout the draft exploitation regulations where the work of particular groups may have an impact on other sections of the draft exploitation regulations.

B. After the third part of the twenty-eighth session

8. During the meetings in March and July 2023, several delegations expressed an interest, at this stage of the negotiations, in making available a consolidated negotiating text of the draft regulations which would identify areas of overlap, duplications, omission and address the need for harmonization between the various provisions and related annexes. My hope is thus that the outcome of the twenty-eighth session will be the issuance of a consolidated negotiating text that will be released before the commencement of the twenty-ninth session.

9. To prepare such a consolidated negotiating text, I recommend that no further round of substantive submissions will be provided for, and that the continued negotiations will be based on the current text with a focus on harmonizing and streamlining the draft regulations.

10. I would suggest that the consolidated negotiating text will be a document that comprises all the work that have been carried out so far by the informal working groups and in the President's text, including the present revised standard and guidelines for phase I. In this way, we will have one single document that includes all the elements that so far has been developed in respect of the draft exploitation regulations. I would suggest that the consolidated negotiating text is prepared as a "clean" text without any mark-up or comment boxes.

11. I would further suggest that the informal working groups meet for the last time in November 2023, and that the facilitators and the chair deliver a report to the Council on the status and possibly also indicate any issues they were unable to resolve and require further work.

12. The negotiations of the consolidated negotiating text should still be conducted in an informal manner, in plenary and be led by the President of the Council. Where outstanding issues are identified, the President could get assistance from a coordinator that have previously been involved with the issue. This could for example be one of the former facilitators, a coordinator of an intersessional working group, or a person that by profession has a special insight with the given issue. I would still at this stage of the textual negotiations, encourage delegations for breakout sessions during the council meetings, where smaller groups of delegations can work on drafting and refinement of specific elements of the overall package.

13. For the twenty-ninth sessions, I would suggest commencing the reading of the consolidated negotiating text from the preamble and onwards, but only with a focus on cross cutting issues and where further harmonization would be needed.

[We could consider adopting the Intergovernmental Conference on an international legally binding instrument under on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ) working methods, and in particular the President's consultations, which are held only with delegations on some identified topics and the "*Informal informals*" on specific topics such as Environmental Impact Assessment (EIA) and cross-cutting issues, which could be held in parallel. Many delegations seem to accept things as long as it is in line with BBNJ negotiations. However, these are more "radical" changes of the working methods, and we might risk to many discussions].

13. The above is, of course, without prejudice to any work being carried out by the Council and the working groups and in that regard, I shall recall that "*nothing is agreed until everything is agreed*" and should solely be seen as a proposal for a way forward during this session.

Kingston, 28 September 2023