

Inspection, compliance and enforcement (ICE) – International Seabed Authority

September 24, 2024

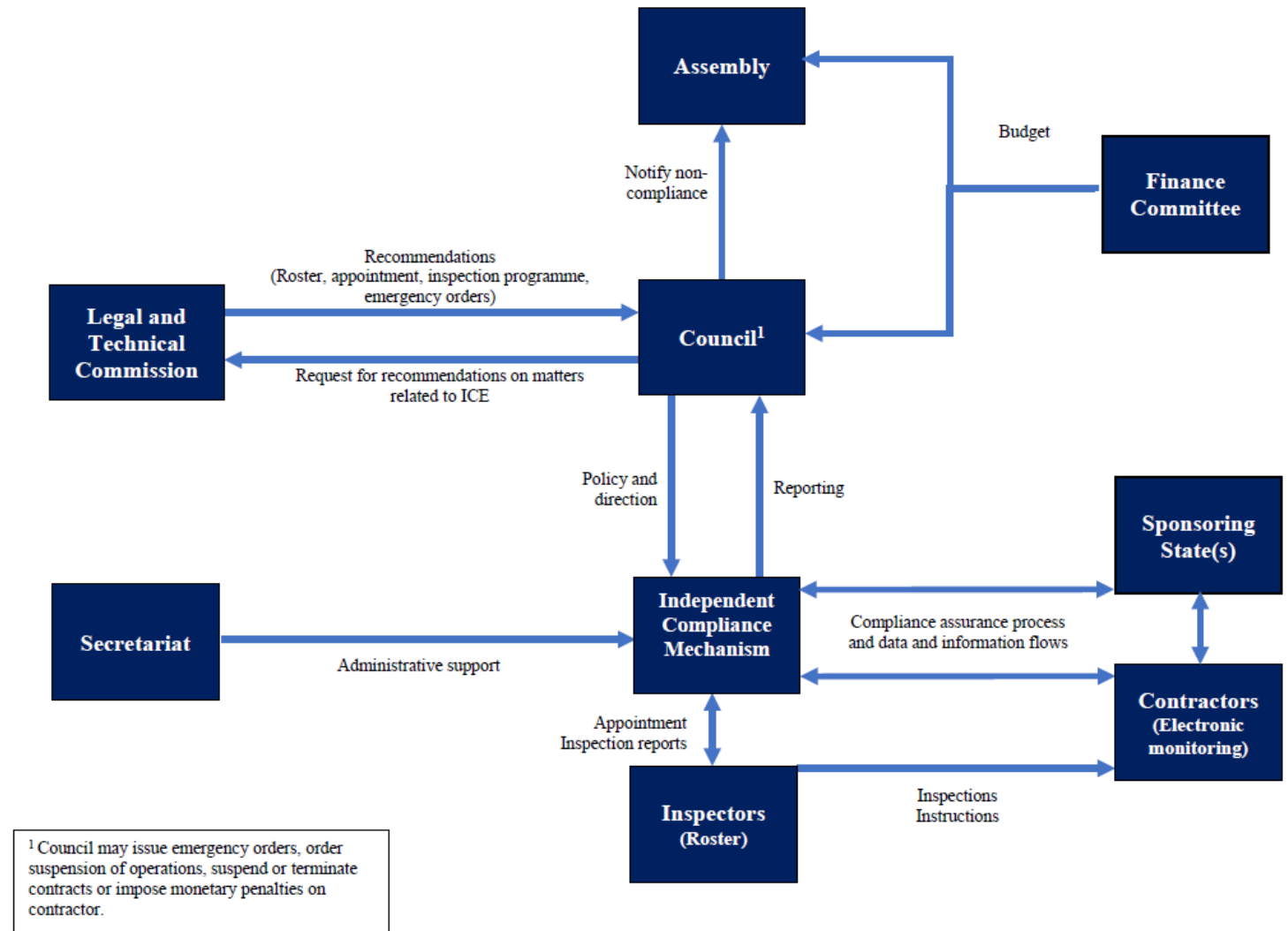
Deciding on the governance and institutional placement of the ISA's compliance mechanism

Summary of IWG Inspection, Compliance, Enforcement (ICE) discussions

- Differing views with respect to the appropriate model for the compliance and inspection mechanism – several proposals put forward
- Key considerations among proposals:
 - Structure
 - Mandate
 - Composition / membership
- General agreement that the ICE mechanism must be:
 - Fully consistent with provisions of the Convention and the 1994 Agreement
 - Non-duplicative of existing organs / functions
 - Free from inappropriate influence
 - Efficient, responsive, transparent
 - Have expertise and integrity

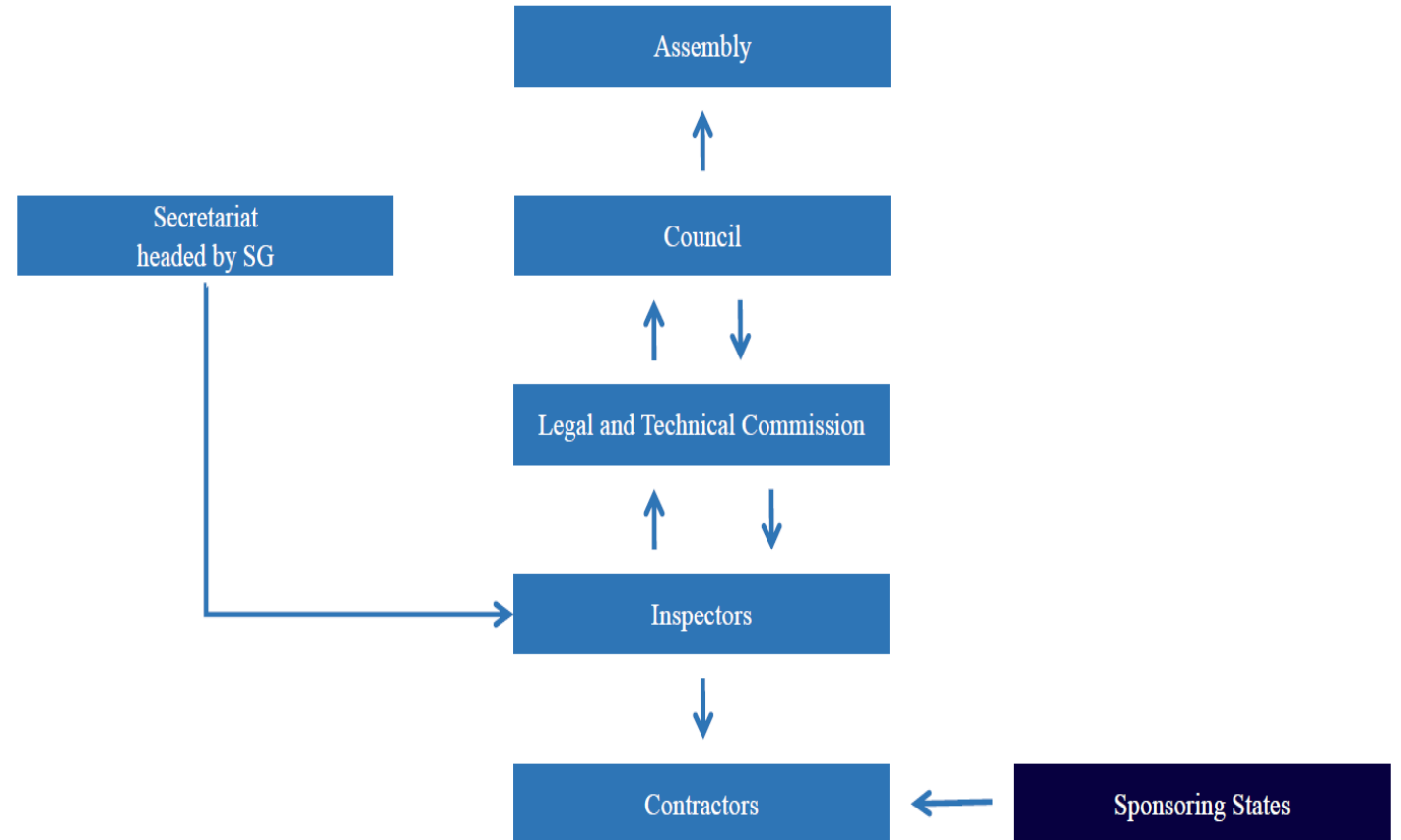
Original proposal (Norway), Part I of the 28th session – March 2023

- An **independent inspectorate** to avoid conflicts of interest among inspectors, or political interference
- Rationale based on importance of independence of inspectorate and view that LTC lacks capacity to manage and oversee a roster of inspectors



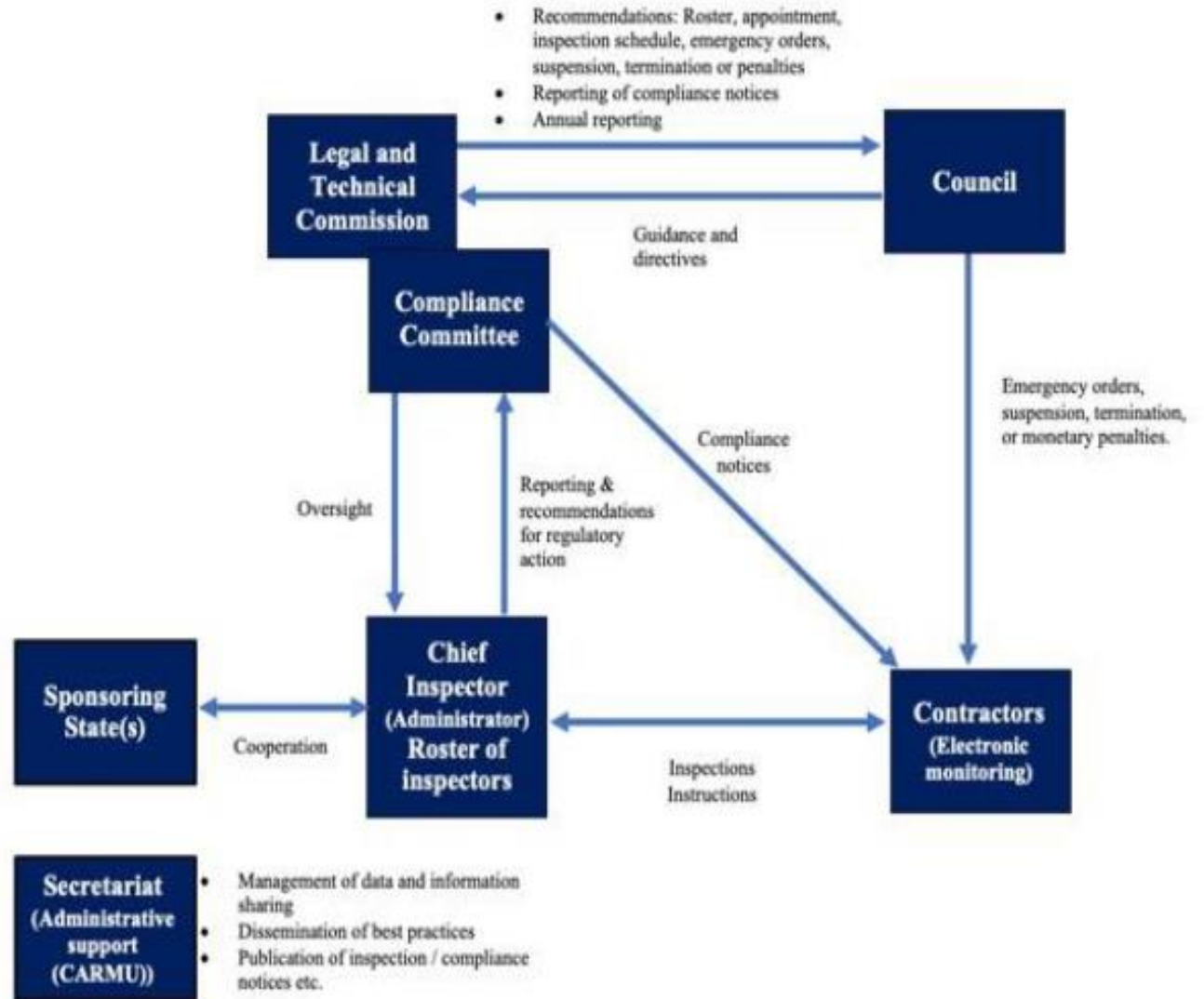
Proposal (China), Part I of the 28th session, March 2023

- **Inspectorate** situated within the Legal and Technical Commission
- Rationale based strongly in **Articles 162** and **165** of the Convention that empowers **Council** to “*establish appropriate mechanisms for directing and supervising a staff of inspectors who shall inspect activities in the Area*” and the **LTC** to “*make recommendations to the Council regarding the direction and supervision of a staff of inspectors who shall inspect activities in the Area*”



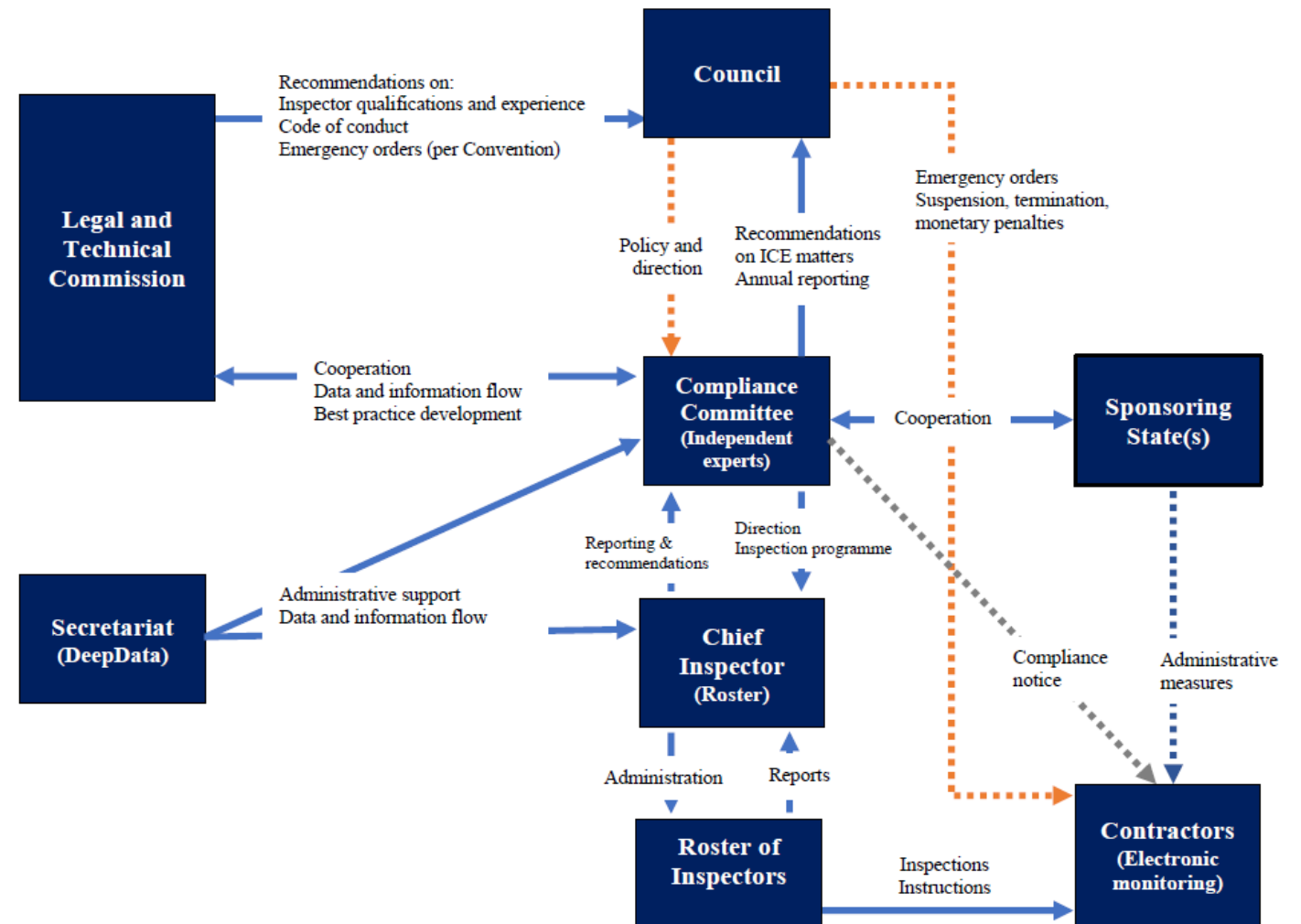
Second proposal (Norway), presented after Part I of the 28th session, May 2023 – the "Hybrid" model

- A **Compliance Committee** established within the LTC ("LTCCC"), responsible for overall ICE issues
- Delineation of core functions between the LTCCC, Council, LTC and Chief Inspector
- Council would retain overarching control of the ICE mechanism and would examine an annual ICE report prepared by the LTCCC.
- LTC would make recommendations to Council on compliance policy, inspection programme, roster of inspectors, code of conduct for inspectors
- LTCCC would administer and manage roster of inspectors; provide recommendations to Council on ICE-related matters; report on results of inspections to Council



New Proposal (Germany), Part II of the 28th session, July 2023 – the "Mixed- hybrid" model

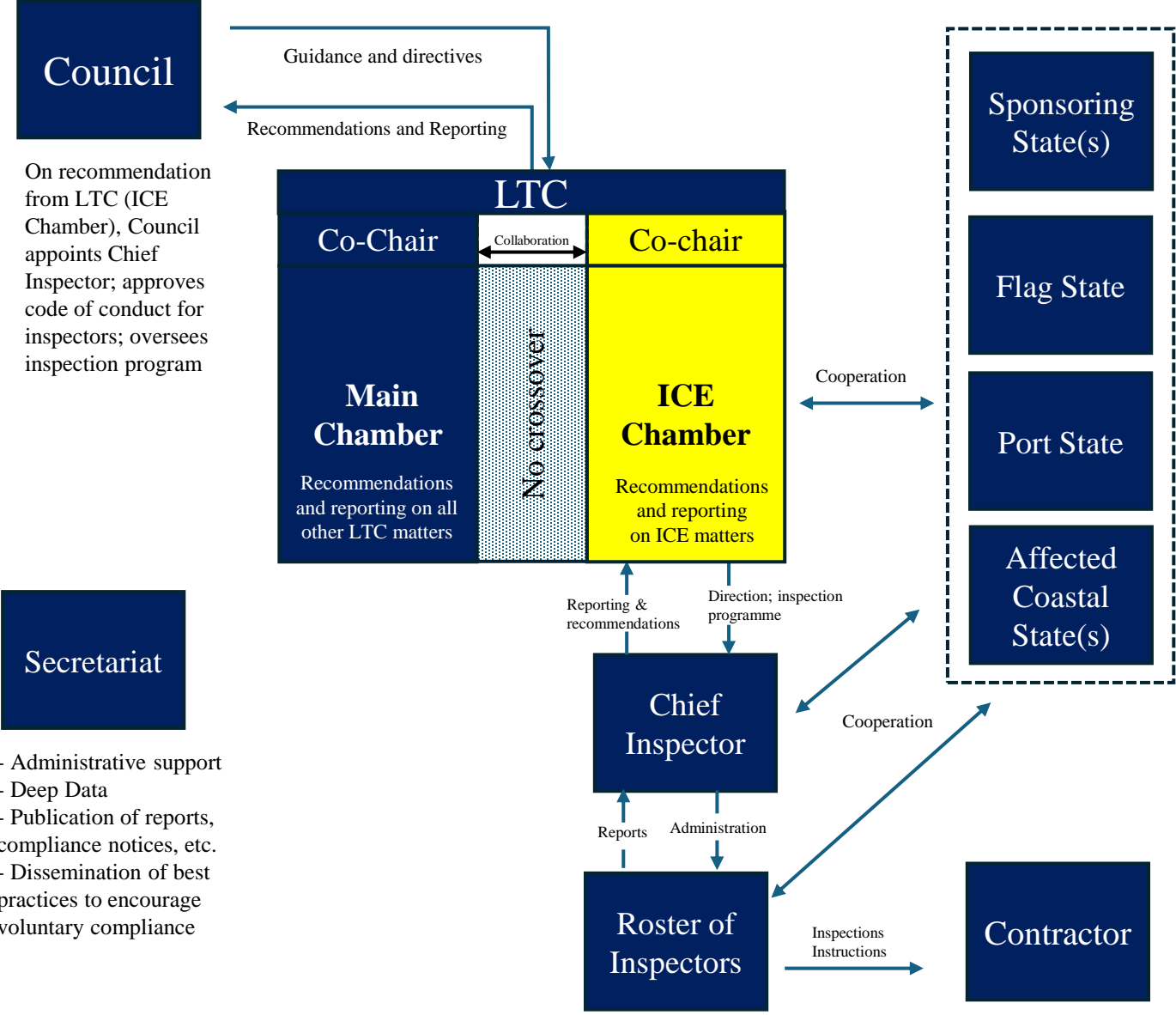
- **Member State-led Compliance Committee** as a new subsidiary body reporting directly to Council
- 15 members (each regional group nominates 2), plus 5 members from LTC
- Rationale:
 - member states must take direct responsibility for ensuring compliance
 - it would be inappropriate to entrust the same mechanism for inspection with compliance responsibilities
 - doubts that the functions of a Compliance Committee can effectively be carried out by the Secretariat and/or the LTC



Parts I and II of the 29th session – views on the ICE mechanism

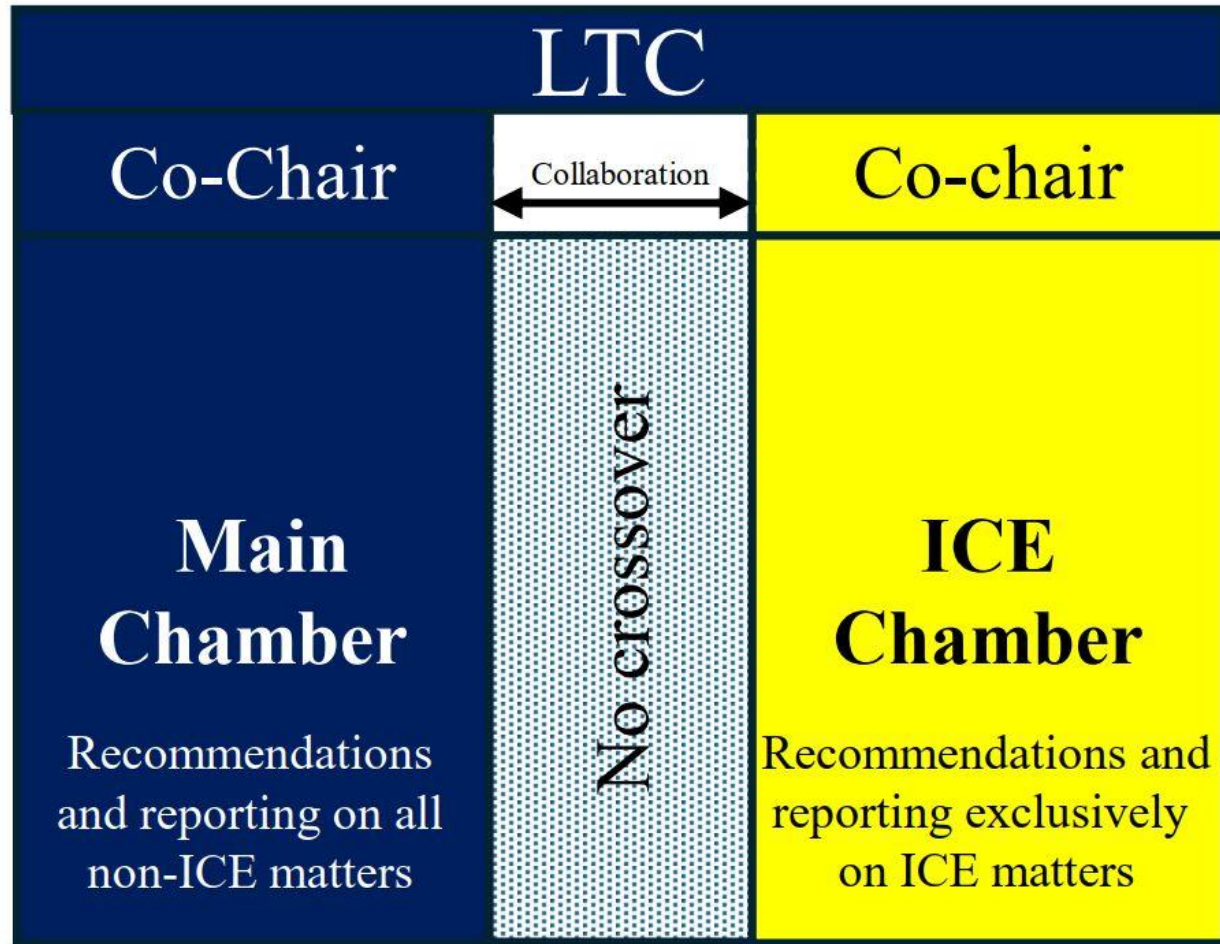
- Concerns raised about overlapping functions and the importance of respecting competences allocated by UNCLOS to the LTC.
- Differing opinions on institutional placement, with some advocating for a stand-alone body reporting directly to Council, while others favour placing under/within the LTC
- Strong emphasis remains on the need for transparency, independence and efficiency in the inspection mechanism.

Refining LTCCC/Mixed-hybrid models: Bicameral LTC



- The Legal and Technical Commission would be divided into two chambers with no crossover of duties or membership.
 - **Main Chamber:** solely responsible for all matters currently managed by LTC.
 - **ICE Chamber:** solely responsible for inspection, compliance and enforcement matters.
- Each Chamber has a Co-Chair. Co-chairs are not involved in decision-making within their Chambers and jointly report to Council.
- A State Party cannot have an LTC member in both chambers at the same time.
- LTC cannot make a recommendation or report to the Council on ant ICE matter without endorsement of ICE Chamber

Bicameral LTC: Membership and Composition



- ICE Chamber would include **10 members**, in addition to the number currently on LTC.
- Members of ICE Chamber would be elected from among individuals nominated by States Parties ensuring **relevant regulatory and compliance experience** is key consideration.
- Due consideration to be given to concept of **equitable geographic representation**

Proposal for Draft Regulatory Text (DR 102)

1. The Council shall amend the Rules of Procedure of the Legal and Technical Commission to establish the Inspection, Compliance, and Enforcement (ICE) Chamber consistent with the provisions of this regulation.
2. Within the Legal and Technical Commission, the ICE Chamber shall have the exclusive responsibility over all inspection, compliance and enforcement matters.
3. The ICE Chamber shall direct the Authority's Inspection Programme, in line with any relevant guidance and directives that the Legal and Technical Commission receives from the Council, and consistent with all applicable regulations and relevant standards and guidelines in this Part.
4. The ICE Chamber shall draft reports and develop recommendations on all matters regarding inspection, compliance, and enforcement that will be submitted to Council through a dedicated Legal and Technical Commission Co-Chair.
5. The Council shall only consider a recommendation or report related to inspection, compliance, or enforcement from the Legal and Technical Commission that has been endorsed by the ICE Chamber.
6. Pursuant to the Rules and Procedures of the Legal and Technical Commission, the Council shall elect ten members with appropriate expertise in regulatory compliance, inspection, and enforcement to serve in the ICE Chamber, giving due consideration to the principle of equitable geographic representation.
7. A State Party's representation in the ICE Chamber shall constitute its representation on the Legal and Technical Commission.

Questions/Feedback