

FRIENDS OF THE PRESIDENT – DRAFT REGULATION 103

Agenda

1. Introduction
2. Scope of the FOP proposal
3. Measures at the disposal of the Compliance Committee to ensure compliance
4. Planning until the first part of the 31st session

1. Introduction

Disclaimer: this Friends of the President initiative (“FOP”) does not pertain to Draft Regulation 102 on the establishment of the Compliance Committee. Where matters in this FOP overlap with those covered by the Informal Working Group on the Inspection, Compliance and Enforcement Mechanism, the organizers of this FOP will coordinate with the facilitators of that IWG.

Note: please see the Annex to this discussion paper for relevant UNCLOS provisions to this topic.

2. Determining the scope of the FOP proposal

This FOP primarily focuses on Draft Regulation 103. In addition to Draft Regulation 103, the participants could consider whether other sections of the Draft Exploitation Regulations should also be included. For example:

- Section 12 of the Standard Clauses for Exploitation Contract (Annex X of the consolidated version of the Draft Regulations) pertains to the suspension and termination of Contract and penalties.
- Furthermore, among others, Draft Regulations 29bis, 40, 80, and 104 arguably also relate to the compliance by a Contractor with the regulatory framework.

→ **Guiding question: Do participants wish for this FOP initiative to also cover the Standard Clauses for Exploitation Contracts and other relevant Draft Regulations? Do participants wish to draw the FOP’s attention to other DRs which should be taken into account?**

3. Measures at the disposal of the Compliance Committee to ensure compliance

Article 153(4) UNCLOS provides that the Authority “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 UNCLOS, the Annexes to UNCLOS, the RRP of the Authority and the plans of work.

UNCLOS contains little guidance on which exact measures the Authority is to take in order to “exercise such control over activities in the Area” to secure compliance. Annex III to UNCLOS merely provides limitations to the circumstances under which a contractor’s rights under a contract may be suspended or terminated. Additionally, in cases of non-compliance, the Council may institute proceedings before the Seabed Disputes Chamber, as stipulated in Article 162(2)(u) UNCLOS.

Draft Regulation 103 contains the following measures through which the Authority could secure compliance by a Contractor:

1. Issuance of a 'Compliance Notice', which may require action – remedial, corrective or otherwise – such as (i) the implementation of an improvement plan or (ii) agreeing a modification of the Contractor's Plan of Work;
2. Suspension or termination of an Exploitation Contract (under circumstances); and
3. Imposing a monetary penalty (under circumstances).

→ **Guiding question: Do participants agree that Article 153(4) and (5) UNCLOS provides the basis for the future Compliance Committee to take enforcement measures?**

→ **Guiding question: What principles must Draft Regulation 103 be based on? Do certain principles weigh heavier than others?**

Potential examples: (a) flexibility for the Compliance Committee; (b) legal certainty for Contractors; (c) proportionality, i.e. measures being taken commensurate to a breach; (d) precautionary approach or precautionary principle; (e) information-based decision-making; (f) independence; (g) expertise; (h) simplicity; etc.

→ **Guiding question: What measures can participants think of through which the Compliance Committee could secure compliance with Part XI UNCLOS, the Annexes to UNCLOS, the RRP and the plans of work?**

Potential examples: (a) issue warnings; (b) issue written instructions; (c) compel a meeting for Compliance Committee; (d) issue a non-compliance notice; (e) assign temporary zones in which to cease operations; (f) modifications of Plan of Works; (g) remedial payments; (h) penalty payments; (i) cessation of a particular activity; (j) suspension of rights under an Exploitation Contract; (k) termination of rights under an Exploitation Contract; etc.

4. Planning until first part of the 31st Session and the next meeting

Participants to discuss the 1 December 2025 deadline for FOP proposals.

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Annex I – Relevant provisions

UNCLOS :

Article 153. System of exploration and exploitation

[...]

4. The Authority shall exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of this Part and the Annexes relating thereto, and the rules, regulations and procedures of the Authority, and the plans of work approved in accordance with paragraph 3. States Parties shall assist the Authority by taking all measures necessary to ensure such compliance in accordance with article 139.

5. The Authority shall have the right to take at any time any measures provided for under this Part to ensure compliance with its provisions and the exercise of the functions of control and regulation assigned to it thereunder or under any contract. The Authority shall have the right to inspect all installations in the Area used in connection with activities in the Area.

Annex III to UNCLOS:

Article 3. Exploration and exploitation

[...]

4. Every approved plan of work shall:

(b) provide for control by the Authority of activities in the Area in accordance with article 153, paragraph 4;

[...]

Article 4. Qualifications of applicants

6. The qualification standards shall require that every applicant, without exception, shall as part of his application undertake:

[...]

(b) to accept control by the Authority of activities in the Area, as authorized by this Convention;

Article 18. Penalties

1. A contractor's rights under the contract may be suspended or terminated only in the following cases;

(a) if, in spite of warnings by the Authority, the contractor has conducted his activities in such a way as to result in serious, persistent and wilful violations of the fundamental terms of the contract, Part XI and the rules, regulations and procedures of the Authority; or

(b) if the contractor has failed to comply with a final binding decision of the dispute settlement body applicable to him.

2. In the case of any violation of the contract not covered by paragraph l(a), or in lieu of suspension or termination under paragraph l(a), the Authority may impose upon the contractor monetary penalties proportionate to the seriousness of the violation.

3. Except for emergency orders under article 162, paragraph 2(w), the Authority 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 him pursuant to Part XI, section 5.