13 November 2026

BRIEFING NOTE AND PROPOSAL ON MONOPOLIZATION

Submitted by Trinidad and Tobago as Friend of the President

1. The present briefing note and the annexed revised proposal draw on the discussions on monopolization during the second part of the thirty-first session of the Council and on the additional written proposals received from participants in the Group. This note should be read in conjunction with the previous briefing note summarising the outcomes of the intersessional work between March and July 2026.

2. The discussions and written proposals indicate broad convergence among participants in the Group on the Facilitator's proposed approach: to set out the substantive criteria for assessing monopolization in the relevant Standards and Guidelines, while addressing the relevant procedures for preventing monopolization in the Regulations.

3. Most delegations supported addressing the prevention of monopolization at the stage of consideration and approval of a Plan of Work for exploitation, in particular through amendments to draft regulations 13 and 15. There was also support for corresponding safeguards in the event of a change of control or a change of nationality of a Contractor.

4. The discussions also indicated general support for deleting the definition of the term "Monopolize" from the Schedule. The definition is therefore omitted from the Annexed revised proposal.

5. In light of this convergence, the annexed revised proposal provides a consolidated basis for incorporating the Group's work into the Advanced Negotiating Text. Any remaining formal or linguistic adjustments, principally to draft regulations 13 and 15, can be addressed within the Council's consideration of that text, without further meetings of the Group.

6. The development of substantive criteria for the relevant Standards and Guidelines is a distinct technical task. Those criteria will need to take account of the scope of the Regulations, including the categories of resources covered, on which discussions in the Council remain ongoing. This technical task need not be undertaken by the Group in order for it to conclude its work on the regulatory provisions.

7. It is suggested that Standards or Guidelines on monopolization will be applied at the stage of approval of a plan of work. It is also anticipated that, in the case of the first few plans of

work submitted, the application of the criteria established in the relevant Standard or Guideline may be of limited practical relevance, as the first plans of work may necessarily account for a substantial share of exploitation activities in the Area, given the limited number of plans of work against which their respective shares could be assessed. These considerations suggest that the relevant Standards and Guidelines should be developed by the Legal and Technical Commission, potentially as phase 2 instruments.

8. At the level of the Regulations, the scope for further work by the Group is therefore limited. Accordingly, it is suggested that no further meeting may be necessary and that the issue of monopolization should no longer be treated as an outstanding matter.

9. In this context, for the purpose of the preparation of the Advanced Negotiating Text, a revised proposal is annexed to the present briefing note, consolidating the suggestions received by delegations – both from the floor during the second part of the thirty-first session and in writing during the intersessional period.

Annex

Regulation 13

Assessment of Applicants and application

[…]

~~[11. The Commission shall assess, in accordance with the applicable Standard, whether the proposed Plan of Work, individually or in combination with any existing Contracts held or controlled by the Applicant, [by the applicant, its sponsoring state, controlling national, holding companies, subsidiaries, affiliates, ultimate parent companies, beneficial owners, or associated entities] [or associated arrangements], would result in a concentration of control by any State or entity over activities in, or the resources of, the Area that is inconsistent with the anti-monopolisation provisions of UNCLOS Part XI.]~~

[11.~~Alt~~ The Commission shall assess, in accordance with the applicable Standard, whether the proposed Plan of Work would permit a State or entities sponsored by it to monopolize the conduct of activities in the Area or to preclude other States Parties from activities in the Area.]

Comments

- During the second part of the thirty-first session, most delegations supported the idea of having a paragraph on monopolization in draft regulation 13. However, several of them suggested that the scope paragraph 11 was too broad and vague, especially as regards the references to "concentration of control" and "associated arrangements". A participant also questioned whether the scope of the paragraph might be inconsistent with the provisions of the Convention on monopolization.
- As all the relevant requirements to define monopolization will be placed in Standards and Guidelines, some delegations suggested reflecting in paragraph 11 the language of the Convention. The proposal has been included as 11.Alt.
- Based on the latest discussions, the original version is for now suggested deleted, without prejudice to any further discussion in the Council.

Regulation 15

Commission's recommendation for the approval or disapproval of a Plan of Work

[…].

2. The Commission shall not recommend approval of a proposed Plan of Work if:

[…]

[(e) such approval would permit a State Party ~~[Alt.1~~ or entities sponsored by it~~]~~ ~~[Alt.2 submitting or sponsoring the concerned Plan of Work]~~ to monopolize the conduct of activities in the Area or preclude other States Parties from activities in the Area, in accordance with ~~[Article 6, paragraphs 3(c) and 4 of Annex III to the Convention (where applicable),]~~the applicable Standards and taking into account Guidelines.]

~~[(e)Alt. [it would contravene article 6(3)(c)(i) or (ii) of Annex III to the Convention, and the Authority has not, in accordance with article 6(4) [the applicable Standards and taking into account Guidelines], determined] that such approval would not permit a State Party or entities sponsored by it to monopolize the conduct of activities in the Area or to preclude other States Parties from activities in the Area.]~~

Comments

- During the second part of the thirty-first session, most delegations seemed to favor the original version of paragraph 2(e). It was also suggested that the reference to Article 6 of Annex III to the Convention might be superfluous, as such reference will be more comprehensively made in the relevant Standards and Guidelines.
- The alternative version of paragraph 2(e) is proposed for deletion, without prejudice to any different determination that the Council might wish to make.
- In the previous briefing note, it had been suggested to delete paragraph 3(a) on monopolization (the content of which was moved to paragraph 2(e)). As no objection was received, for the purpose of the Advanced Negotiating Text paragraph 3(a) can be deleted.

Regulation 24
Change of Control

[…]

1.bis Where there is a proposed Change of Control of a Contractor, regulation 15, paragraph 2(e), regulation 21, paragraph 1, regulation 21, paragraph 3, regulation 21, paragraph 3.bis, regulation 21, paragraph 4 and regulation 21, paragraph 7 shall apply *mutatis mutandis* and the Contractor shall have the appropriate sponsorship in place prior to the Change of Control. Failure to have the appropriate sponsorship in place results in the automatic termination of the Exploitation Contract upon the Change of Control, unless a State Party or States Parties have submitted a certificate or certificates of sponsorship and the Commission or Council, as applicable, is still reviewing whether the Contractor has the appropriate sponsorship.

Regulation 24 bis
Change of Nationality

[…]

2. Where there is a proposed Change of Nationality of a Contractor or a Controlling National, the State Party or States Parties, as applicable, that become the new State of nationality of the Contractor or the Controlling National shall submit a certificate or certificates of sponsorship in accordance with regulation 6 as if the Contractor were an Applicant. Regulation 15, paragraph 2(e), regulation 21, paragraph 1, regulation 21, paragraph 3, regulation 21, paragraph 3.bis, regulation 21, paragraph 4 and regulation 21, paragraph 7 shall apply mutatis mutandis to this situation.