



Assembly

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Note verbale dated 25 July 2022 from the Permanent Mission of Chile to the International Seabed Authority addressed to the secretariat of the Authority*

The Permanent Mission of the Republic of Chile to the International Seabed Authority has the honour to transmit herewith a proposal for a new item to be included in the agenda of the twenty-seventh session of the Assembly (see annex).

* The note verbale was received by the Secretariat on 28 July 2022. The annex is being issued without formal editing.



Annex to the note verbale from the Permanent Mission of Chile to the International Seabed Authority addressed to the secretariat of the Authority

Proposal by Chile for a new Assembly agenda item

Discussion of the issues relating to the triggering of the two-year timeline

I. Introduction

1. By letter dated 25 June 2021, submitted to the Secretary-General of the International Seabed Authority, it is requested that the Council of the International Seabed Authority complete the necessary rules, regulations and procedures for the facilitation of the approval of plans of work for exploitation in the Area, in accordance with the provisions of annex I, paragraph 15, of the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.

2. Paragraph 15 (c) of the above-mentioned annex establishes that, if the Council has not completed the development of the rules, regulations and procedures within two years, it will proceed to consider and provisionally approve the exploitation work plan, referred to in paragraph 15 (b), on the basis of the provisions of the Convention and of all the rules, regulations and procedures that the Council has provisionally approved, or on the basis of the rules contained in the Convention. In other words, the rules for commencing deep-sea mining would be approved on the basis of a time limit or on the basis of the rules contained in the Convention. In other words, the rules to start deep-sea mining would be approved on the basis of compliance with a specific deadline and not on the basis of a gradual rule-making process on the best available scientific evidence.

3. Chile believes that full compliance with the provisions regulating the seabed includes the proper and complete development and adoption of rules governing activities in the Area, including rules to protect the marine environment, especially considering the content of article 145 of the Convention, which provides that “necessary measures shall be taken in accordance with this Convention with respect to activities in the Area to ensure the effective protection for the marine environment from harmful effects which may arise from such activities”. However, they can hardly be negotiated and adopted within two years with all the difficulties that the pandemic has brought to the meeting of the Authority’s member States.

4. The Authority, in accordance with article 153 of the Convention, relating to the system of exploration and exploitation, is the organization called upon to exercise such control as may be necessary to comply with the provisions of this part (XI) and the other regulations indicated. The Authority must ensure the full application of the rules governing the seabed, including those relating to the proper protection of the marine environment.

5. Likewise, article 157 of the Convention, regarding the nature and fundamental principles of the Authority, establishes: “(1) The Authority is the organization through which States Parties shall in accordance with this Part, organize and control activities in the Area, particularly with a view to administering the resources of the Area. (2) The powers and functions of the Authority shall be those expressly conferred upon it by this Convention. The Authority shall have also such incidental powers, consistent with this Convention, as are implicit in and necessary for the exercise of

those powers and functions with respect to activities in the Area. (3) The Authority is based on the principle of the sovereign equality of all its members. (4) All members of the Authority shall fulfil in good faith the obligations assumed by them in accordance with this Part in order to ensure to all of them the rights and benefits resulting from membership”.

6. In relation to the administration of the resources of the Area, article 150 of the Convention, concerning the policies relating to activities in the Area, insofar as relevant, provides that: “Activities in the Area shall, as specifically provided for in this Part, be carried out in such a manner as to foster healthy development of the world economy and balanced growth of international trade, and to promote international cooperation for the over-all development of all countries, especially developing States, and with a view to ensuring: (b) orderly, safe and rational management of the resources of the Area, including the efficient conduct of activities in the Area and, in accordance with sound principles of conservation, the avoidance of unnecessary waste;”

7. Article 160, in relation to the powers and functions of the Assembly of the Authority, reads as follows: “(1) The Assembly, as the sole organ of the Authority consisting of all the members, shall be considered the supreme organ of the Authority to which the other principal organs shall be accountable as specifically provided for this Convention. The Assembly shall have the power to establish general policies in conformity with the relevant provisions of this Convention on any question or matter within the competence of the Authority. (2) In addition, the powers and functions of the Assembly shall be: (k) to consider problems of a general nature in connection with activities in the Area arising in particular for developing States, as well as those problems for States in connection with activities in the Area that are due their geographical location, particularly for land-locked or geographically disadvantaged States;”. In accordance with the provisions of this article, the Assembly is the supreme organ of the organization, composed by all the member States, and is empowered to establish the general policies related to the activities in the Area, which must be established with a view to the orderly, safe and rational administration of the resources of the Area.

8. Based on the aforementioned articles, the Assembly has the obligation to establish the general policies with respect to activities in the Area that are consistent and coherent with environmental conservation principles, considering the current state of the art, i.e. the marine environmental protection rules of the Convention must be interpreted in harmony with the system of international environmental protection that has evolved more strongly since 1994.

9. Fundamental is the content of paragraph 2 (k) of the aforementioned article 160, which provides that the Assembly has the power to consider problems of a general nature arising in connection with activities in the Area. It is indeed on this basis of those provisions that Chile seeks to generate that the member States of the Assembly initiate a discussion on the consequences of the activation of the two-year period established in paragraph 15 of section 1 of the annex to the Agreement relating to the Implementation of Part XI of the Convention, an issue that for Chile constitutes a problem of a general nature, since it affects all extractive activities in the Area and, therefore, all member States of the Authority, since what is to be exploited is the common heritage of mankind and the Authority is the first to ensure exploitation that safeguards the marine environment.

II. Reason for the presentation

10. Chile wishes to express its concern regarding the aspects related to the activation of the deadline established in paragraph 15 (b) of the annex to the Agreement relating to the Implementation of Part XI of the Convention. This concern is based, in order to the best available scientific evidence is required to be able to elaborate all the necessary regulations to facilitate the exploitation of the seabed. This, with the objective of guaranteeing the applicability of the precautionary principle in the activities carried out within the framework of the Authority and thus be able to fully comply with the provisions that must be considered by the States parties to the Convention, which have the general obligation, under article 192, to protect and preserve the marine environment and under article 145, which mandates to adopt all necessary measures to ensure the effective protection of the marine environment against the harmful effects that may result from the activities in the Area.

11. In this sense, it can be stated that there is a lack of knowledge regarding the seabed, and the real repercussions of an extractive activity on the marine environment and the ecosystem services provided by the ocean. The above should be related to the precautionary principle, by virtue of which the absence of information should not be an excuse for not making decisions that go towards the protection of the marine environment.

III. Objective

12. Based on the foregoing, and the reasons for the presentation, it is intended to state that the activation of the two-year time limit raises an issue in relation to activities in the Area and it is within the competence of the Assembly to consider issues relating to the activation of this time limit.

13. Chile, based on the provisions contained in this document, wishes to generate a discussion among members of the Assembly to analyse all the implications and actions to be taken, as supreme and competent organ in the matter.

Addendum on the proposal for a new Assembly agenda item

Discussion of the issues relating to the triggering of the two-year timeline

In accordance with the Chilean requirement in order to include a new agenda item during the next Assembly of the International Seabed Authority, the Republic of Chile, would do the following.

Addendum

The request is based on the dispositions of article 12 of the rules of procedure of the Assembly.

The Republic of Chile would appreciate to make part this addendum to the presentation made on July 26.
