STATEMENT BELGIUM IN ISA COUNCIL REGARDING THE

'WHAT IF' SCENARIO (HV / 04/11/2022)

Dear Mr. President,

First of all, from one Kingdom to another, we wish to congratulate the Kingdom of Tonga, and of course, we wish Gwen tomorrow a very happy birthday.

Despite the progress made in the negotiations of the exploitation regulations, and despite the plea that we should all work as diligently and efficiently as possible in order to make progress, given the amount of work still before us, the likelihood that the regulations and standards and guidelines will be finalized by July 2023 is close to zero. And let's be clear, that is not necessarily a bad thing. Indeed, the principle of the precautionary approach does not allow for artificial deadlines by which time the regulations should be finalized. Belgium therefore supported the intervention of Brazil earlier regarding the wording "adoption of the regulation" in the roadmap for July 2023, which should be changed to "further review of the progress".

In any case, we should be prepared for the likelihood that the regulations will not be adopted in July 2023. Legal uncertainty is indeed not in the advantage of any of the stakeholders involved. Therefore, already in December 2021, Belgium pleaded for asking ITLOS an advisory opinion about the implementation and the legal consequences of Section 1, paragraph 15, subparagraph C of the Annex of the Implementation Agreement. I would hereby like to reiterate this request.

In that context, I would like to draw your attention on some of the legal ambiguities with regards to the two-year rule. It is a non-exhaustive list of pressing legal questions:

- *Can the Council postpone or delay the consideration of an application received after the 2-year deadline but before the Regulations have been adopted?*

- *On what basis should the Council and Legal and Technical Commission "consider" and make a decision on such an application?*

- *What would be the relevant procedure and voting rules, for the consideration and provisional approval (or disapproval) of an application for a plan of work for exploitation received after the 2-year period?*

- *What is the role of the Legal and Technical Commission in the evaluation of such an application?*

- *Can the Council disapprove such an application?*

- *What are the legal effects of "provisionally" approving such an application? What provisions could be placed on an approval in this scenario?*

- *Are the Council's policy-making power, and power to issue directives to the LTC, useful here to establish relevant criteria and processes?*

- *Are there specific aspects of the Part XI regime which Council members consider would need to be in place as a condition before any exploitation contract could be issued in any event?*

It is possible for the Council to find consensus regarding the interpretation of some of the existing legal provisions and to take away some of the ambiguities; we therefore very much welcome the document shared by Germany and the Netherlands – and even to be found on Twitter in the meantime – to make sure that the Council stays in the driver seat if and when the regulations are not adopted when the deadline will expire. Other legal issues will however likely warrant a request for an advisory opinion of the Seabed Disputes Chamber of the International Tribunal of the Law of the Sea.

Belgium suggests therefore that an intersessional working group be established consisting of at least one representative, and open to all delegations, which would examine with the help of legal experts the different legal questions that should be answered. This working group could then provide input to the Council in March so that the Council can take an informed decision on the matter.

Thank you Mr. President.