

**China's written responses to
the questions mentioned in the Co-Facilitators' Note**

This written responses are only to facilitate the discussion of the relevant questions mentioned in the Co-Facilitators' Note and do not affect China's position on issues related to the "two-year rule", nor does it affect any further comments by China.

(1)What is the meaning of the phrase ‘consider and provisionally approve’ in subparagraph (c)? Can the Council disapprove a plan of work after having considered it?

Article 6, paragraph 3, of annex III to the United Nations Convention on the Law of the Sea (UNCLOS) provides that "the proposed plans of work shall comply with and be governed by the relevant provisions of this Convention and the rules, regulations and procedures of the Authority, including those on operational requirements, financial contributions and the undertakings concerning the transfer of technology. If the proposed plans of work conform to these requirements, the Authority shall approve them". Therefore, whether a plan of work can be approved depends on whether the plan meets the relevant provisions, rules, regulations, and procedures. Based on the above provisions and the practice of the Authority, "consider and provisionally approve" does not mean that the relevant work plan must be approved and adopted by the Council, but should be understood as the Council "shall consider", "may approve" and "may disapprove".

(2) Can the consideration of a pending application be postponed until certain conditions are met?

Article 6 of annex III to the UNCLOS provides that "Six months after the entry into force of this Convention, and thereafter each fourth month, the Authority shall take up for consideration proposed plans of work". Section 3, paragraph 11, of the annex to the Agreement relating to the Implementation of Part XI of the UNCLOS (the Part XI Agreement) provides that "If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation shall be deemed to have been approved by the Council at the end of that period. The prescribed period shall normally be 60 days unless the Council decides to provide for a longer period".

This means that the Council should make a decision on approval or disapproval as soon as possible, but it seems that it is also allowed to set a longer period for consideration. In particular, it is possible that the Council may choose to provide for a longer period for the consideration and defer the taking of a decision until the Draft regulations are in place if the Council considers the relevant environmental, financial,

production system, and other regulations are unclear.

(3) Does the use of the word ‘elaboration’ in subparagraph (c) carry any legal significance?

The first sentence in Section 1, paragraph 15, of the annex to the Part XI Agreement uses the words "elaborate and adopt". The subparagraph (b) uses the word "adoption". However, subparagraph (c) only provides for the legal consequences when the Council fails to complete the "elaboration", and does not address the issue relating to "adoption" of rules, regulations and procedures. This may raise a question: how to judge that the "elaboration" has completed? Does the completion of "elaboration" and "adoption" mean the same thing? It is suggested that the Secretariat can study and clarify it as soon as possible.

(4) What is the procedure and what are the criteria to be applied in the consideration and provisional approval of a pending application under subparagraph (c), in the light of, amongst others, article 145 of UNCLOS? In this regard, what roles do the Council and the Legal and Technical Commission (LTC) respectively play?

The Part XI Agreement sets out the procedure for approval of a plan of work. According to the procedure, the plan should be considered by the LTC first and then considered by the Council based on the recommendation of the LTC.

In accordance with section 3, of the annex to the Part XI Agreement, decisions by voting in the LTC shall be by a majority of members present and voting. The Council shall approve a recommendation by the LTC for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of the chambers of the Council, the Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation shall be deemed to have been approved by the Council at the end of that period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its rules of procedure for decision-making on questions of substance.

Consideration of a plan of work shall be conducted in accordance with the above procedures even in the absence of the draft regulations on the exploitation. In considering the plan of work, the LTC and the Council shall fulfill their respective duties in accordance with their respective functions.

For the criteria, the subparagraph (c) provides that the consideration shall be based on the provisions of the Convention and any rules, regulations and procedures that the Council may have adopted provisionally, or on the basis of the norms contained in the

Convention and the terms and principles contained in this Annex as well as the principle of non-discrimination among contractors. Clarification is needed as to whether "any rules, regulations and procedures that the Council may have adopted provisionally" include the regulations on exploration and the draft regulations on the exploitation.

(5) What are the consequences of the Council provisionally approving a plan of work under subparagraph (c)? Does provisional approval of a plan of work equate to the conclusion of an exploitation contract?

Article 5, paragraph 3, of annex III to the UNCLOS provides that "Upon its approval by the Authority, every plan of work, except those presented by the Enterprise, shall be in the form of a contract concluded between the Authority and the applicant or applicants". In view of this, an exploitation contract is required after the approval of the work plan. The Part XI Agreement does not provide for the legal effect of "provisionally approve". A further study is needed on whether an exploitation contract can be concluded under a provisionally approved work plan.