



Council

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Kingston, 16-31 March 2023

Agenda item 10

Draft regulations on exploitation of mineral resources in the Area

Decision of the Council of the International Seabed Authority relating to the understanding and application of section 1, paragraph 15, of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea

The Council of the International Seabed Authority,

Recalling that pursuant to Article 145 of the United Nations Convention on the Law of the Sea of 10 December 1982¹ (Convention), necessary measures shall be taken in accordance with the Convention with respect to activities in the Area to ensure effective protection for the marine environment from harmful effects which may arise from such activities and that to this end, the Authority shall adopt appropriate rules, regulations and procedures (RRPs),

Reaffirming its commitment to the completion of the adoption of the RRP's relating to exploitation in accordance with the Convention and the Agreement relating to the Implementation of Part XI of the Convention (Agreement),

Considering that the commercial exploitation of mineral resources in the Area should not be carried out in absence of such RRP's,

Recalling that according to Article 2, paragraph 1 of the Agreement, the provisions of the Agreement and Part XI of the Convention, shall be interpreted and applied together as a single instrument,

Considering that Section 3, paragraph 5 of the Annex of the Agreement provides that in taking decisions the Council shall seek to promote the interests of all the members of the Authority,

Recalling that activities in the Area shall be carried out for the benefit of humankind as a whole, irrespective of the geographical location of States, whether coastal or land-locked, and taking into particular consideration the interests and needs of developing States,

Bearing in mind the invocation of section 1, paragraph 15, of the Annex (paragraph

¹ United Nations, *Treaty Series*, vol. 1836, No. 31364.

15) to the Agreement by the Republic of Nauru in June 2021, with an effective date of 9 July 2021,

Conscious that the prescribed time under subparagraph (b) of paragraph 15 will expire on 9 July 2023,

Recognizing the existence of a variety of views among members of the Council regarding the interpretation and application of paragraph 15,

Noting with appreciation the informal intersessional dialogue on paragraph 15 co-facilitated by Ambassador Hugo Verbist (Belgium) and Mr. Tan Soo Tet (Singapore), as well as the webinar held on March 8, 2023 and the briefing note of the facilitators to the Council identifying areas of commonality and consensus based on the views expressed during the dialogue, as well as issues and questions on which divergences in views remain,

Recognizing the expertise in various relevant fields of the Legal and Technical Commission (Commission) and its independent role in reviewing and providing appropriate recommendations to the Council in assessing an application for a plan of work for exploitation, in accordance with the Convention and the Agreement,

Also recognizing that a common understanding on paragraph 15 and its application would be beneficial for the Authority, its members, contractors and other stakeholders,

1. *Recalls* that pursuant to Article 153, paragraph 3, of the Convention, activities in the Area shall be carried out in accordance with a formal written plan of work drawn up in accordance with Annex III of the Convention and approved by the Council after review by the Commission;

2. *Also recalls* that pursuant to article 165, paragraph 2(b) of the Convention, the Commission shall review formal written plans of work for activities in the Area in accordance with article 153, paragraph 3 of the Convention, and submit appropriate recommendations to the Council based solely on the grounds stated in Annex III to the Convention and shall report fully thereon to the Council;

3. *Emphasizes* that in submitting appropriate recommendations to the Council, the Commission is under no obligation to recommend approval or disapproval of a plan of work, pursuant to section 3, paragraph 11(a), of the Annex to the Agreement, which provision also envisages a scenario in which the Commission does not make a recommendation;

4. *Recalls* that pursuant to article 163, paragraph 9, of the Convention the Commission shall exercise its functions in accordance with such guidelines and directives as the Council may adopt;

5. *Understands* that upon receiving appropriate recommendations from the Commission as well as its report pursuant to article 165, paragraph 2, subparagraph (b), of the Convention, the Council has the obligation to consider a plan of work but has the capacity to decide whether or not to provisionally approve it, consistent with paragraph 15, subparagraph (c), of the Annex to the Agreement;

6. *Requests* the Secretary-General to inform members of the Council, within three business days, of the receipt of an application for a plan of work for exploitation by the Secretariat;

7. *Decides* to continue the informal intersessional dialogue, building on the emerging consensus on some of the issues, as identified in paragraph 24 of the briefing note of the co-facilitators, and with a view to continuing making progress in the areas of divergence, as identified in paragraph 25 of said note:

(a) Is there a legal basis for the Council to postpone (i) the consideration and/or (ii) the provisional approval of a pending application for a plan of work under subparagraph (c), and if so, under what circumstances?

(b) Is article 165(2)(b) applicable and is the LTC therefore required to review a plan of work and submit appropriate recommendations to the Council as part of the process of consideration of such plan of work under subparagraph (c)?

(c) What guidelines or directives may the Council give to the LTC, and/or what criteria may the Council establish for the LTC, for the purpose of reviewing a plan of work under subparagraph (c)?

(d) What considerations and procedures apply after a plan of work for exploitation has been provisionally approved and leading up to the conclusion of a contract for exploitation?

8. *Also decides* on the following modalities for the continuation of the dialogue:

(a) The informal intersessional dialogue shall be open to all members of the Authority, observers and their designated experts and shall be co-facilitated by Hugo Verbist (Belgium) and Soo Tet Tan (Singapore);

(b) The dialogue shall be convened regularly between the date of adoption of the present decision and the next meeting of the Council, in July 2023, using virtual means, starting in April 2023;

9. *Further decides* that the Co-Facilitators of the above-mentioned dialogue shall prepare and present a new briefing note to the Council at its next meeting, in July 2023, for further consideration;

10. *Decides* to allocate at least two half-day sessions at the July 2023 Council meeting, to discuss the outcome of the intersessional dialogue, the briefing note of the co-facilitators, with a view of adopting a Council decision.

*301st meeting
31 March 2023*