

**Brazil. 28 Session. Part I. Final Statement. Draft Decision**  
**on two-year rule (ISBA/28/C/CRP.2)**  
**31<sup>st</sup> March 2023**

Thank you, Mr. President

Mr. President, first and foremost allow me to thank you, on behalf of GRULAC and on my own, for your leadership and stewardship ahead of Part I of the 28th Session of the Council. These are challenging times for the ISA and its member States, as we strive to advance in the discussion of regulations whilst dealing with other important questions. I'd also like to thank each of the facilitators for all the hard work and convey my very special thanks to the Secretary General and the whole ISA staff, who did a truly remarkable job in making this meeting happen.

Mr. President,

On behalf of the Brazilian delegation, I wish to express that significant progress has been made in the negotiations of regulations. It pleases me to see this environment of collaboration and constructive discussions. As we all know, much remains to be done, including further advancing with the manifold regulations for environmental protection in the Area. The eight (8) inter-sessional groups on issues that need further agreement, streamlining and assuring greater consistency of language is a demonstration of what needs to be addressed, whilst bearing testimony to the commitments of member-states to achieve consensus and fully comply with the mandate provided by the Convention. The same applies to other working groups, for example, regarding inspection, compliance, and enforcement as well as institutional matters. Other issues, however, like the need of a benefit sharing mechanisms were barely discussed.

In our view, the present exercise must continue to be conducted in an environment of openness, good will and harmony among member States, as this dynamic is expected to repeat itself over the years on a number of issues, including after we approve the regulations. Consensus must continue to be our preferred course of action, as it entails, from the onset of negotiations, a predisposition of all parties to seek common ground, as recommended by the Convention itself.

As previously stated, our domestic position on deep-sea mining in the Area is still evolving, as is the case with many other delegations. We can say, however, that we do want the negotiations of regulations to continue moving forward and we want, above all, independent science to continue advancing, so we can all take appropriate and well-informed decisions regarding deep-sea mining and the protection of the environment.

Mr. President,

The untimely activation of the two-year rule, during the pandemics, has brought us to a point where we all know: the deadline will not be met.

The July deadline will represent, one way or another, an unprecedented situation, so we would prefer to see a much higher degree of legal certainty regarding the next steps following its expiration. We want to safeguard the Authority and prevent it from a dive into the unknown, which could potentially have detrimental effects to the ISA, including reputational damage, financial and legal liability, and internal division, among others.

In line with a precautionary approach - and, quite frankly, with the world that surrounds us in 2023 -, our next steps must continue to reflect what we have seen so far in the plenary sessions: a clear-cut, well-defined commitment to our obligations of protecting and preserving the marine environment. I do not recall a single delegation advocating for a rushed beginning of exploitation, in particular in the absence of the appropriate rules and regulations. There is therefore a consensus in the room that the possibility of exploitation without proper rules in place would not be consistent with the full scope of the Convention, and as such should be kept off the table.

I'd like to ask the distinguished delegates to take a small step back from all the articles, regulations and interpretations, so we can remind ourselves and reconnect to the fact this Council, although bound by the Convention, is the Executive body of the ISA, and as such is political by nature. We are here as member-States, to take decisions that are consistent with the Convention, but that are, ultimately, political in nature, especially if we are confronted with a "legal gap".

If the Council so decides to not act on the two-year situation, we will be deferring to a subsidiary, technical body, whose members act on a personal

capacity, a decision that may have profound effects for the future of this organization. I don't mean that Brazil would expect the LTC to take any unreasonable decisions, given the high level of technical knowledge and integrity of its members. Far from that. But it's a matter of institutional responsibility for the Council taking up our role as an executive and political body and bring about legal certainty when the situation so requires. This would be in the best interests of the ISA at this critical juncture. We also believe upholding the Convention is of the essence, in particular relating to our obligation of protecting and preserving the marine environment.

After the conclusion of the BBNJ negotiations, the eyes of the world are once again being turned to the ISA. The approval of the draft decision of the Council of the ISA 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 is a great step. In this context, I want to express our gratitude to the Co-Facilitators, Ambassador Hugo Verbist, from Belgium, and Mr. Tan Soo Tet, from Singapore, for the highly productive work of the Informal intersessional Dialogue, as well to Mr. Patrice Laquerre, from Canada, for proposing a draft decision and working hard to bridge our differences and find the common ground.

Mr. President,

Distinguished delegates,

We express our confidence that, through the continuation of the Intersessional Dialogue, our different views can be discussed more in depth, and we will be able to address our concerns about what is now a "legal limbo".

Thank you.