

Written comments of the Intersessional Working Group on the "two-year rule"

China appreciates the work done by the intersessional working group and has the following preliminary comments on the issues listed in the decision:

(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?

Article 6 of Annex III to the United Nations Convention on the Law of the Sea (UNCLOS) provides that the Authority shall consider the proposed work plan six months after the entry into force of the Convention and every fourth month thereafter. All proposed work programs shall be dealt with in the order in which they are received. 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. 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".

According to the above-mentioned regulations, the Council shall consider or approve the application for a plan of work as soon as possible, but it also has a certain degree of discretion in the consideration period.

(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)?

China holds that Article 165(2)(b) shall apply in the absence of the rules, regulations and procedures ('RRPs') relating to exploitation, and the LTC should review the application for a plan of work and submit appropriate recommendations to the Council.

Article 153(3) of the UNCLOS provides that "Activities in the Area shall be carried out in accordance with a formal written plan of work drawn up in accordance with Annex III and approved by the Council after review by the Legal and Technical Commission". Article 165(2)(b) of the UNCLOS provides that, the LTC shall "review formal written plans of work for activities in the Area in accordance with article 153, paragraph 3, and submit appropriate recommendations to the Council. The Commission shall base its recommendations solely on the grounds stated in Annex III

and shall report fully thereon to the Council". Section 3, paragraph 11(a) of the annex to the Part XI Agreement also stipulates that the Council should approve or disapprove the recommendations made by the LTC on the application for a plan of work.

The above regulations do not set the conditions for the LTC to review a plan of work. According to the literal meaning, whether the exploitation regulation have been issued or not, and whether the Council has officially or provisionally approved a plan of work, the power of the LTC to review the application for a plan of work and make recommendations should not be derogated.

(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)?

China believes that in accordance with Article 163(9) of the UNCLOS, the Council can adopt guidelines and directives to the LTC. In the absence of the 'RRPs' relating to exploitation, the Council may provide guidelines and directives for the LTC on matters such as the basis or method for considering the application for a plan of work. In the meanwhile, respecting the functions and powers enjoyed by the LTC in accordance with the UNCLOS and the Part XI Agreement does not affect the decision of the LTC on whether to recommend the approval or disapproval of a plan of work.

(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?

China believes that Section 1, paragraph 15, of the annex to the Part XI Agreement stipulates the matters on the how to consider and provisionally approve the issue in the absence of the 'RRPs' relating to exploitation. Subsequent matters after provisional approval, including the conclusion of a contract with the applicant, should be resolved in accordance with the general procedures stipulated in the UNCLOS and other provisions of the Part XI Agreement. Given that the provisional approval was made in the absence of the 'RRPs' relating to exploitation and standard clauses in an exploitation contract, after provisional approval, priority should be given to drafting the terms of the exploitation contract and what the applicant can do to promote exploitation and deep sea protection before signing the contract matter.