

**Co-Facilitators' Note on the Webinar on 30 May 2023
in the context of the informal international dialogue established under
Council decision ISBA/27/C/45 and Council decision ISBA/28/C/9**

Background

1. On 25 June 2021, the Republic of Nauru invoked section 1, paragraph 15, of the annex to the Part XI Agreement, with an effective date of 9 July 2021, and informed the Authority that Nauru Ocean Resources Inc. (NORI), a Nauruan entity sponsored by Nauru, intends to apply for the approval of a plan of work for exploitation. In the light of this, the prescribed **'two-year' timeline** under the above-mentioned provision will expire on 9 July 2023. Subparagraph (c) of the above-mentioned provision stipulates: ***"If the Council has not completed the elaboration of the rules, regulations and procedures relating to exploitation within the prescribed time and an application for approval of a plan of work is pending, it shall none the less consider and provisionally approve such plan of work 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."***

2. By Council decision ISBA/27/C/45 dated 11 November 2022, the Council of the International Seabed Authority decided to establish an informal intersessional dialogue to facilitate further discussion on the possible scenarios foreseen in 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 'Part XI Agreement') and on any other pertinent legal considerations with a view to exploring commonalities in possible approaches and legal interpretations for the Council to consider in this respect. The Council further decided that the dialogue shall be convened using virtual means and be open to all members of the Authority, observers and their designated experts.

3. Based on the above-mentioned Council decision, the two Co-Facilitators of the dialogue, Mr Hugo Verbist (Belgium) and Mr Tan Soo Tet (Singapore), co-hosted a Webinar on 8 March 2023 and presented a briefing note to the Council on 24 March 2023, during the March 2023 meeting of its 28th session. The objective of the briefing note was to summarise and objectively reflect the views expressed by all delegations and participants through the oral interventions made at the Webinar and the written responses to the Co-Facilitators' questions. In line with the Co-Facilitators' mandate, the briefing note further identified issues where there is commonality and consensus based on the views expressed, as well as key issues and questions on which there remain significant divergences in views. The briefing note, along with all written responses submitted, can be found on the webpage created for the dialogue on the ISA website: <https://isa.org.jm/event/informal-intersessional-dialogue>.

4. Following the Council deliberations pursuant to the Co-Facilitators' presentation of the briefing note, the Council decided, by Council decision ISBA/28/C/9 dated 31 March 2023, *"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 of 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?"*

Follow-up Webinar

5. In accordance with the modalities for the continuation of the informal intersessional dialogue as set out in Council decision ISBA/28/C/9, and as notified in the Secretariat's Note No. ISA/OLA/2023/107 dated 28 April 2023, the Co-Facilitators of the Dialogue **will co-host a follow-up Webinar on 30 May 2023 which will be held from 9am to 12pm Jamaica time (GMT-5) via Microsoft Teams platform.**

6. Within the framework set out in Council decision ISBA/28/C/9, the Co-Facilitators propose that at the Webinar on 30 May 2023, delegations focus on discussing the **two most pressing areas of divergence** as set out in paragraph 25 of the Co-Facilitators' briefing note to the Council presented on 24 March 2023, namely:

- (1) **Is there a legal basis for the Council to postpone (i) the consideration and/or (ii) the provisional approval of a pending application of a plan of work under subparagraph (c), and if so, under what circumstances?** *[paragraph 25a of the briefing note]*
- (2) **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)?** *[paragraph 25c of the briefing note]*

7. All members of the Authority, observers and their designated experts are invited to send written responses on the above questions prior to the Webinar to the Secretariat (insert_emailola@isa.org.jm). The written responses, which will be uploaded at the webpage dedicated to the intersessional dialogue ([insert webpage](#)), may then be supplemented by oral remarks made during the Webinar. The written and oral responses will feed into a further briefing note to be prepared and presented by the Co-Facilitators to the Council for further consideration during the July meeting of its 28th session, in accordance with Council decision ISBA/28/C/9. In this regard, the Council decided in ISBA/28/C/9 that at least two half-day sessions will be allocated at the July 2023 Council meeting "to discuss the outcome of the intersessional dialogue, [and] the briefing note of the co-facilitators, with a view [to] adopting a Council decision".

8. We are very much looking forward to your participation.

9 May 2023