

Informal intersessional dialogue to facilitate further discussion on the possible scenarios and any other pertinent legal considerations in connection with 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

Japan's response:

(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?

Art. 6.1 of Annex III to UNCLOS provides that the Authority shall take up for consideration proposed plans of work six months after the entry into force of this Convention, and thereafter each fourth month. Therefore, our view is that there is no provision in UNCLOS or 1994 Agreement explicitly allowing the deferment of consideration of a plan of work.

Section 3.11(a) of 1994 Agreement provides that, with respect to the method of approval of 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. The prescribed period shall normally be 60 days unless the Council decides to provide for a longer period." In light of this, the Council may set a "longer period" for the consideration of a plan of work. However, as the details are not specified, such as under what circumstances the Council may set a "longer period" and how long such a period should be, it can be interpreted that the Council may decide on these matters.

(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)?

Since the LTC is an organ of the Council (Art. 163.1(b)) and shall exercise its functions in accordance with such guidelines and directives as the Council may adopt (Art. 163.9), it is our reading that the Council may provide the LTC with guidance on what it should refer to when reviewing a plan of work (i.e. specific provisions of UNCLOS, provisionally adopted exploitation regulations, relevant parts of exploration regulations and environmental guidelines, etc.) within the grounds stated in ANNEX III.

On the other hand, as each organ of the Authority shall avoid taking any action which may derogate from or impede the exercise of specific powers and functions conferred upon another organ (Art.

158.4), it is our view that the Council may not issue directives that would undermine the purpose of the LTC's function to review a plan of work and make appropriate recommendations to the Council (Art. 165.2 (b)). (For example, the Council may not direct the LTC to recommend disapproval of a plan of work.)