

**Informal Intersessional Dialogue established under Council decision ISBA/27/C/45 and Council decision ISBA/28/C/9**

**Written Comments submitted by New Zealand**

New Zealand thanks the Co-Facilitators for their continued leadership of the informal intersessional dialogue, their paper of 11 May 2023 and the questions highlighted for the forthcoming webinar of 30 May 2023. New Zealand submits the following comments on the two questions posed in the paper.

**(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?**

If the Council has not completed its work on the regulations within the two-year period and an application for approval of a plan of work for exploitation is pending, paragraph 15(c) of Section 1 of the Annex to the 1994 Implementing Agreement applies.

Paragraph 11(a) of Section 3 (Decision Making) of the Annex to the Implementing Agreement provides:

The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of the chambers of the Council, the Council decides to disapprove 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*. 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. (emphasis added)

The inclusion of the phrase “unless the Council decides to provide for a longer period” makes it clear that the Council can extend the “prescribed period” within which it will take a decision on a recommendation for approval of a plan of work. Paragraph 11(a) does not limit the reasons why the Council may wish to extend this period. Accordingly, the Council appears to have full flexibility on what the circumstances warranting an extension of the time period may be.

**(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)?**

Article 163(1)(b) of UNCLOS confirms that the LTC is an organ of the Council. Article 163(9) of UNCLOS further provides that the LTC “shall exercise its functions in accordance with such guidelines and directives as the Council may adopt.” Accordingly, the Council may establish guidelines and directives under which the LTC must conduct its work.

There is no reason why a paragraph 15(c) scenario would be an exception to this. Article 1(2) of the Implementing Agreement provides that the Annex forms an integral part of UNCLOS. Article 2(1) further provides that the provisions of the Implementing Agreement and Part XI shall be interpreted and applied together as a single instrument. In New Zealand's view, paragraph 15(c) of the Annex and Article 163 of UNCLOS can be read together consistently.

In this way, Article 163 would apply where the Council refers a plan of work to the LTC for review in a paragraph 15(c) scenario. In a 15(c) scenario, when the Council has a clear role in considering applications made before regulations are in place, and the role of the LTC is not specifically defined, the Council can and in New Zealand's view should provide directives or guidance to its subsidiary body on how it can appropriately exercise its functions.

In New Zealand's view, it would not be appropriate for the LTC, in the exercise of functions with respect to review of a plan of work received before regulations are concluded, to make a formal recommendation to the Council for approval of such a plan of work. New Zealand would be supportive of the Council issuing a directive to the LTC, to this effect. For example, the Council could direct the LTC to review such a plan of work but not make a recommendation, or to review and only make a recommendation once regulations have been concluded.