

DSCC Submission for Intersessional Working Group on 30 May 2023, following Council decision ISBA/28/C/9

The deep sea “constitutes the largest source of species and ecosystem diversity on Earth” and “supports the diverse ecosystem processes and functions necessary for the Earth’s natural systems to function”. Science has repeatedly demonstrated that deep-sea mining would cause irreversible damage and significant adverse environmental impacts. Ramifications could [extend to fisheries](#) and the [deep sea’s climate regulatory functions](#). Furthermore, scientific knowledge related to the deep sea and the impacts of mining is nowhere near sufficient to enable evidence-based decision-making. This is once again highlighted by [new research from the German research institute, AWI, which demonstrates the high radioactivity of manganese nodules](#). According to their findings, in some cases the radioactivity in the nodules exceeds the safe limit defined in the German Radiation Protection Ordinance, therefore representing a serious health hazard to humans and wildlife and making the prospect of deep-sea mining all the more alarming. Meanwhile, the ISA forges ahead on its accelerated trajectory towards exploiting these nodules. Delegations have had to find resources to attend three Council meetings each year and must keep up with a slew of intersessional calls and an enormous amount of paperwork. As a species whose choices and actions can affect life on a massive scale, humans must act responsibly and with precaution. It is time for the ISA to step back from the brink, press pause and use the tools the Convention provides to ensure that its decisions account for new knowledge and serve the priorities of the 21st century, notably protecting and preserving our environment.

(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]

The Member States of the ISA have the ultimate control over the ISA’s processes and the decisions regarding the two-year rule are political in nature. The primary consideration is that there is currently no evidence that the marine environment can be effectively protected from the harmful effects of deep-sea mining. Therefore, allowing deep-sea mining to go ahead in the current context would be inconsistent with the international community’s obligations for environmental protection under UNCLOS.

In the case that the LTC issues a recommendation for disapproval or no formal recommendation at all, there is no defined period for Council to make a decision. In the case that the LTC issues a recommendation for approval of a plan of work, under paragraph 11(a) of Section 3 of the Annex to the 1994 Agreement, Council may provide for a longer period than the default 60 days. There is no limit on how much the prescribed period for consideration can be extended. We therefore suggest that the Council decides to postpone consideration and/or provisional approval, until:

- comprehensive scientific understanding of deep-sea ecosystems and the impacts of deep-sea mining, and;
- guaranteed protection of the marine environment and marine biodiversity.

(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]

States are bound by the requirement of effective protection of the marine environment under Article 145 of the Convention, including, inter alia, preventing harm to the fauna and flora. **To this end, the DSCC is supportive of the Council issuing a directive to the LTC not to issue a formal recommendation for approval of a plan of work.**

The possibility for the **Council issuing a directive** is clearly supported by Article 163, paragraph 9, of the Convention, which provides that “[e]ach Commission shall exercise its functions in accordance with such guidelines and directives as the Council may adopt.” In fact, Article 158, paragraph 1, of the Convention establishes (only) the Assembly, the Council and the Secretariat as “the principal organs of the Authority”. As such, the LTC, like the Economic and Planning Commission, is an organ of the Council and shall act in accordance with any such guidelines and directives. This is also clear from Article 165, paragraph 2 (a): The Commission shall “make recommendations with regard to the exercise of the Authority’s functions upon the request of the Council”.

The **nature and scope of guidelines and directives is not prescribed** by Article 163, but should be consistent with the Convention and the 1994 Agreement, including the *sui generis* provision in Paragraph 15(c) of Section 1 (the two-year loophole), which grants the Council the role of considering and provisionally approving or disapproving plans of work. Paragraph 15 provides for a special regime if regulations are not in place - this is why directives and guidelines are necessary.

This could include a **directive to the LTC not to issue a recommendation at all**, and a directive on the type of recommendation that may be issued. Council decision ISBA/28/C/9 of 31 March is an example of the form such a guideline and directive to the LTC may take. The decision emphasized in paragraph 3 that “in submitting appropriate recommendations to the Council, the Commission is under no obligation to recommend approval or disapproval of a plan of work, pursuant to section 3, paragraph 11(a), of the Annex to the Agreement, which also envisages a scenario in which the Commission does not make a recommendation.”

In addition to a directive to the LTC not to issue a formal recommendation, Council **could specify the nature of the input sought from the LTC**. For example, the Council could request the LTC to report back to the Council with its considerations on the application for the plan of work in accordance with the precautionary principle, obligations under Article 145 and international commitments to halt and reverse biodiversity loss and to maintain, restore or enhance ecosystem health and ocean resilience. In all of these matters, Article 145 applies, requiring that “[N]ecessary measures shall be taken in accordance with this Convention with respect to activities in the Area to ensure effective protection for the marine environment from harmful effects which may arise from such activities”. Under UNCLOS, States are bound by an obligation to safeguard against any situation that may permit exploitation to be undertaken if they cannot be confident of achieving the protective requirements central to the Convention.

The Council should use this power to provide clarity to the LTC and ensure that the ISA’s decisions are consistent with the Convention and other international commitments to halt and reverse biodiversity loss and maintain, restore or enhance ecosystem health and ocean resilience.

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