

# **ADVANCED UNEDITED VERSION IN ENGLISH ONLY**

## **Thirty-second Meeting**

New York, 13 to 17 June 2022

Item 9 of the agenda

### **Information reported by the Secretary-General of the International Seabed Authority**

#### **Letter dated 16 June 2022 from the Permanent Mission of Chile to the United Nations**

The Permanent Mission of Chile to the United Nations presents its compliments to the Secretary-General of the United Nations, Division for Ocean Affairs and the Law of the Sea, in its capacity of Secretariat of the Meeting of States Parties of the United Nations Convention on the Law of the Sea, and, in accordance with rules of procedure of the Meeting, kindly requests to circulate to all parties of the Convention as advanced document the English version of the attached “Position paper on the period established in paragraph 15(b) of the Annex to the Agreement on the Implementation of Part XI of UNCLOS”.

The Permanent Mission of Chile also requests to register the document as a document of the thirty-second Meeting.

The Permanent Mission of Chile to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations, Division for Ocean Affairs and the Law of the Sea, in its capacity of Secretariat of the Meeting of States Parties of the United Nations Convention on the Law of the Sea, the assurances of its highest consideration.

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## **Annex to the Letter dated 16 June 2022 from the Permanent Mission of Chile to the United Nations**

### Position paper on the period established in paragraph 15(b) of the Annex to the Agreement on the Implementation of Part XI of UNCLOS - Submitted by Chile

Chile shares the vision of the importance of the ocean and the need for a sustainable ocean economy, preserving biodiversity and the ecosystem services it provides. When the United Nations Convention on the Law of the Sea was concluded in 1982, it embodied in its Part XI, one of the principles contained in Resolution 2749 of the United Nations General Assembly, which establishes that the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction, hereinafter the Area, as well as its resources, are the Common Heritage of Mankind.

In this sense, the Convention creates a framework for both developed and developing States to benefit from the resources of the seabed and subsoil, under the premise that such management shall be orderly, safe and rational, including the efficient conduct of activities in the Area and in accordance with sound principles of conservation and the avoidance of unnecessary waste (art. 150 UNCLOS).

There are very relevant provisions in the Convention that ensure and safeguard the conservation of the marine environment, stating that, with respect to activities in the Area, all necessary measures shall be taken in accordance with the Convention to ensure the effective protection of the marine environment from harmful effects which may result from such activities (art. 145 UNCLOS). This is in addition to the general obligation of all States to protect and preserve the marine environment (art. 192 UNCLOS).

States Parties are obliged to ensure that activities in the Area, whether conducted by themselves, by state enterprises or by natural or juridical persons possessing their nationality or under their effective control or that of their nationals, are carried out in conformity with Part XI (art. 139 UNCLOS).

However, the deep seabed is one of the most sensitive ocean ecosystems, for which there is insufficient scientific knowledge and limited understanding of the potential impacts of ocean activities, especially in relation to its role as a carbon sink.

The preamble refers to the difficulties encountered by States Parties in exploring and gathering sufficient scientific information and understanding of deep sea ecosystems.

In this regard, Chile expresses its concern about the activation of the deadline established in paragraph 15(b) of the Annex to the Agreement on the Implementation of Part XI of the Convention. This concern is based on the fact that, in order to develop all the necessary regulations to facilitate the exploitation of the seabed, large investments in research are required to carry out the necessary activities such as data collection, collation and analysis of a large amount of bathymetric, geophysical and biochemical information.

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While recognising the independent character of the International Seabed Authority, this body was established by the Convention, of which all States Parties are the custodians, and where the principle of good faith is upheld as a guiding principle in the implementation of international obligations. Whereas, the legitimate right of other States Parties to receive the benefits of ecosystem services and the conservation of the Common Heritage of Mankind should not be prejudiced.

In addition, the legal effect of the above-mentioned paragraph 15, regarding the computation of the 2-year time limit, did not predict a submission under the current pandemic context. As a result, the aforementioned activation of paragraph 15 could lead to the development or application of insufficient regulatory standards for exploitation in the Zone. This is also in view of the health situation worldwide, which prevents a thorough discussion on the matter, and the relevance of the activity in question, as well as the common heritage of mankind of the Area, whose marine environment could be damaged if the necessary measures are not adopted in accordance with UNCLOS to ensure its effective protection against the harmful effects that may result from its exploitation (art. 145 of UNCLOS).

The evolution of international law and the link between UNCLOS and other international instruments must also be taken into account. In this regard, the Precautionary Principle, which emerged in 1992, in the framework of the Rio Declaration on the Environment, is relevant. This principle is also reflected in the opinion of the Seabed Disputes Chamber, in the framework of the 2011 advisory opinion to the International Tribunal for the Law of the Sea, which states that one of the most important obligations of the sponsoring States is the application of the Precautionary Approach, on the understanding that this obligation should also be an integral part of the obligation of "due diligence" of the sponsoring State and applicable beyond the scope of the two Regulations.

Chile confirms the value given by the Convention to the exploration and prospecting of the seabed as the way forward agreed by the Parties and within a process leading to its exploitation, but with the foreseen safeguards. However, due to the unpredictability of assessing the extent of the harmful damage that may be caused to the marine environment, without ruling out the possibility that the economic benefits that may be achieved should be used to mitigate the damage and try to restore an ecosystem that has been formed thousands of years ago and for which we lack sufficient scientific information.

Considering the above, Chile strongly urges the following: That States Parties agree to extend the deadline for the elaboration of such rules, regulations and procedures, contained in subparagraph b of the aforementioned paragraph for a period of 15 years, in order to obtain more evidence and scientific certainty to ensure the protection of the marine environment.