



27th PERIOD OF SESSIONS OF THE COUNCIL OF THE INTERNATIONAL SEABED AUTHORITY. THIRD PART

DECLARATION BY THE DELEGATION OF THE KINGDOM OF SPAIN.

Permanent Representative Diego Bermejo Romero de Terreros

**Item 11. Review of the progress of the "road map"**

Mr. President,

Esteemed delegates and representatives of interested parties,

Let me share with you some considerations.

**First of all**, it should be noted that the item on the agenda refers to the review of the progress of the "roadmap".

In our opinion, this Council has a clear mandate to regulate, and it has to continue working as it has been doing up to now in the most diligent way possible. But we cannot, because of haste, jeopardize legal security and quality. This has been referred to by the UK delegation and others.

With respect to the progress made and what remains to be negotiated, I would like to underline that, for my delegation, environmental norms and standards and guidelines, including environmental thresholds, are just as important as the inspection and compliance mechanism, which still needs a lot more study and reflection.

**Secondly**, my delegation has been indicating and stating in the last sessions of this Council that it is absolutely necessary for Spain that the exploitation activities of minerals in the Zone, that is, the beginning of DSM, should not commence until we can apply a legal regime that guarantees the effective protection of the marine environment as indicated in article 145 of the Convention. And that the "two-year rule", that is to say, that paragraph 15 (c) does not oblige us to move on to the exploitation phase if the necessary legal and environmental guarantees do not exist. We have called this "precautionary pause", but the name is the least of it. Costa Rica and others have referred to this.



**Thirdly**, today we want to add another argument to reinforce that "it cannot move on to the exploitation phase until the regulations and related norms are approved". And I will be brief.

Paragraph 2 of article 137 of the Convention, entitled "Legal status of the Area and its resources", indicates that:

2. All rights in the resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act. These resources are not subject to alienation. The minerals recovered from the Area, however, may only be alienated in accordance with this Part and the rules, regulations and procedures of the Authority.

This provision is clear and precise: **the minerals of the Zone, which are the common heritage of mankind, cannot be exploited without first approving the rules, regulations and procedures of the Authority.**

In our opinion, we are faced with a legal problem of treaty interpretation. We are not going to go into this analysis, we will only indicate the problem as we see it:

According to the principle of harmonization, we have to find a way to interpret and jointly apply the two provisions: article 137.2 and the "final" clause of paragraph 15 (c). If this is not possible, we would be faced with a "conflict of rules" or an "inconsistency" using the terminology of article 2 of the 1994 Agreement that regulates the relations between the Implementation Agreement and Part XI of the Convention.

I do not wish to dwell on this.

I just want to remind you that according to paragraph 2 of Article 2 of the Agreement, paragraph 6 of Article 311 is applicable, according to which the principles that govern the Zone, among which is Article 137, do not allow amendments and prevail over the provisions of the Annex.

Thank you very much.