

29th Session of the International Seabed Authority – Assembly

Agenda Item 12: Report and Recommendations of the Finance Committee

STATEMENT BY AUSTRIA

(Ambassador Helmut Tuerk)

Mr. President,

The Austrian delegation wishes to commend the Finance Committee for its hard work, in particular for the untiring efforts to deal with the development of rules, regulations and procedures regarding equitable sharing of financial and other economic benefits derived from activities in the Area as well as the distribution of payments or contributions made through the Authority pursuant to Article 82 (4) of the Convention. At the 26th session of the Authority Austria has already had the opportunity to comment on both of these highly important issues. We are pleased to be able to do this once more at the present session.

Let me first address the question of benefit sharing under Articles 140 (2) and 160 (2) (i) of the Convention. At the 26th session the Austrian delegation already pointed out, that if it all possible, it was very hard to determine when revenues derived from deep seabed exploitation would be available for distribution to States parties. Even as the Authority is now progressing well with the elaboration of rules, regulations and procedures for exploitation of mineral resources in the Area that situation has basically not changed. Let me recall in this context, that at the first substantial session of the Third United Nations Conference on the Law of the Sea, when the negotiators were made to believe by experts that deep sea mining would start in about twenty years, it was stated in a highly renowned newspaper that the benefits to be expected from the exploitation of the deep seabed have either been described as fantastic, marginal or non-existent, depending with whom you talked to. Let us hope that in the end the truth will be somewhat closer to the first of these three possibilities than to any of the other two. In any case, it may safely be assumed, that such benefits will in all probability be rather

limited for a foreseeable future and that it will take quite some time until at least the financial burden now borne by the member States of the Authority will noticeably begin to shift to contractors.

The Austrian delegation has already indicated its agreement with the statement of the Finance Committee that in case of direct distribution of benefits to State parties the benefits of the common heritage of humankind may be dissipated. As we had the occasion of pointing out before, it would, in our view, make no sense at all to hand out token sums of money to a large number of countries. We were thus highly pleased that the Committee also suggested the establishment of a seabed sustainability fund, to be based on an evolutionary approach, using existing institution capacity wherever possible, as a viable alternative to simple financial distribution of funds to States parties. We further wish to agree with the rationale given by the Committee that such a fund by aiming "to seek a balance between environmental protection and development of global public goods", would be more in line with the precautionary approach than simple distribution of the net financial benefits of activities in the Area.

Austria is happy to note that in the meantime work by the Finance Committee on the establishment of such a fund has progressed well and that it is now referred to as the "Common Heritage Fund". We concur with the suggestion of the Committee that with the establishment of that fund the financial benefits from activities in the Area would be used to invest in people, also by financing activities building capacity on ocean issues for members of the Authority, and in preserving and developing the Area sustainably, thus creating and maintaining inherent value for generations to come. We have also positively taken note that the focus of the Common Heritage Fund should be the ocean and that in light of the ocean as an ecological unit, it would be difficult to limit it to the Area and that the high seas should be included in its scope. We further welcome the draft financial regulations of a common heritage fund, which in our view provide a good basis for a future decision on its establishment by the Authority.

As regards the question as to whether a common heritage fund should exist in conjunction with, or as an alternative to the direct distribution of funds from activities from the Area, the

Austrian delegation would once again like to indicate a clear preference that at least in the first years of deriving revenues from such activities, that fund should be the alternative. The creation of a dual system of a fund and direct distribution to States parties might, however, be considered at a later stage in light of the experience gained with the operation of a common heritage fund and above all on the basis of the actual net amount of monetary benefits derived from activities in the Area after the required deductions, which altogether may amount to quite substantial sums of money. As we are all aware, first of all, the administrative expenses of the Authority will have to be covered, the Enterprise will have to be provided with the required funds and last but not least, developing States will have to be compensated through an economic assistance fund.

Mr. President,

Let me now turn to the issue of operationalizing Article 82 of the Convention. Having participated in the drafting of its provisions at the Conference, let me recall that these represent a political compromise which was only grudgingly accepted by a number of important coastal States. Its implementation may therefore only be successful if potential contributors are being adequately consulted in the course of such a process. It should in any case be borne in mind that the Authority would not have any other leverage than reliance on Article 300 regarding the fulfillment in good faith of the obligations assumed under the Convention by States parties in order to actually obtain the contributions as required under Article 82. The Finance Committee has rightly pointed out some significant differences between Article 82 (4) and Article 140 as regards the beneficiaries for the distribution of benefits as well as the fundamentally different role of the Authority in this context. Its function is only to serve as a conduit for the transmission of payments and - the rather unrealistic - contributions in kind under Article 82 and it has thus a very limited and only administrative role. It is, however, obvious that any additional costs incurred by the Authority in connection with the implementation of Article 82 (4) would have to be recovered from the contributions received.

The Austrian delegation is not convinced that a formula, based on geometric criteria, developed for the equitable sharing of benefits under Article 140, even if adapted accordingly,

would truly be suitable for being applied to Article 82 (4). We have therefore suggested the establishment of a fund similar to a common heritage fund. A fund providing targeted benefits, would in our view, undoubtedly be a more effective and efficient way to consider equitable distribution of payments received under Article 82 (4). It is true that Article 82 does not provide for the creation of an investment fund or any fund as an alternative to direct distribution. There is, however, nothing in the Convention that would prohibit its establishment, if this were to be considered a sensible approach by the Authority and potential contributors. Once payments under Article 82 will be received by the Authority we have consistently advocated that these should in particular be used in favour of least developed landlocked countries, other least developed countries as well as small island developing States. The financing of infrastructure projects in developing landlocked countries, improving their access to and from the sea and thus their connection to world trade, would for instance, seem particularly worthwhile.

Mr. President,

let us not forget that the Convention does not give any indications as to how and at what point in time the Authority is to get involved in the implementation of Article 82. An unresolved question is its role in the process of determining the value of resources and the amount of payments, which may be considered a "gap" in the Convention. Nevertheless, the entire process, must at the very least be completely transparent as regards other States parties. The Austrian delegation considers that as least as important as dealing with the question of distribution of payments received under Article 82 (4) would be to reflect on a procedure under which conditions and according to which criteria these payments will have to be made through the Authority. We concur with the suggestion that has already been made that a model agreement between coastal States intending to exploit resources of the continental shelf beyond 200 nautical miles and the Authority should be negotiated. In this context potential contributors should also be convinced that the payments transmitted by them will be put to good use in order to ensure an effective system of operationalizing Article 82.

Mr. President,

Let me finally emphasize that to continue focusing solely on the distribution of payments that may be received under Article 82 (4) without at the same time devising the necessary procedures for actually obtaining these monies would, in our view, not seem to be an efficient approach in implementing the provisions of Article 82. It could rather be considered as putting the cart before the horse.

Thank you, Mr. President.