29th Session of the International Seabed Authority – Assembly

Agenda Item 16: Statement by the President of the Council on the work of the Council during the 29th Session

STATEMENT BY AUSTRIA

(Ambassador Helmut Tuerk)

Mr. President,

The Austrian delegation wishes to express its appreciation for the very informative Report of the President of the Council on its work during the 29th Session. We consider this Report as of particular value in apprising the members of the Assembly of the ongoing negotiations regarding the elaboration of rules, regulations and procedures for the exploitation of mineral resources in the Area.

We recognize that during the last few years the Authority has made an important leap forward in operationalizing its various obligations enshrined in the Convention and the 1994 Implementation Agreement, which according to Section 1 (5) (k) of the Annex to the Agreement include "the timely elaboration of rules, regulations and procedures for exploitation, including those relating to the protection and preservation of the marine environment".

The Authority has undoubtedly arrived at a critical juncture of its existence as it is now engaged in a further important phase of its work, which should, in our view, also be guided by a basic principle enshrined in the third preambular paragraph of the 1994 Agreement: "Mindful of the importance of the Convention for the protection and preservation of the marine environment and of the growing concern for the global environment". We have noted that important advances concerning the adoption of rules, regulations and procedures for deep sea mining have already been made due to the spirit of compromise displayed by the

participants in these highly complicated and multifaceted negotiations. Nevertheless, it has to be admitted that a considerable number of highly contentious issues still remains to be resolved.

Let me point out, that from a current perspective it is difficult to foresee whether Austria will one day participate directly in marine mining, but Austrian consumers may in the future benefit from the diversification of supply sources. We have consistently advocated that any benefit to be derived from the exploitation of mineral resources found in the Area should in the first place be granted to least developed countries, landlocked developing countries and small island developing States. In any case, in view of the ecological unity of the oceans and their marginal seas we consider their health, whether in areas beyond or within national jurisdiction, to be of major concern for the international community as a whole.

In this context, I also wish to refer to the Advisory Opinion unanimously delivered by the International Tribunal for the Law of the Sea on 21 May 2024 regarding the Request Submitted to the Tribunal by the Commission of Small Island States on Climate Change and International Law. The Tribunal, inter alia, stated that the obligation under Article 192 of the Convention to protect and preserve the marine environment has a broad scope, encompassing any type of harm or threat to the marine environment. The Tribunal also specified that Article 192 is an obligation of due diligence, which applies to all maritime areas and can be invoked to combat any form of degradation of the marine environment. Furthermore, the Tribunal confirmed the importance of the precautionary principle in interpreting the provisions of the Convention. It stated that such approach is implicit in the very notion of pollution of the marine environment, which encompasses potential deleterious effects, and that in the absence of scientific certainty, States must apply the precautionary approach.

The basic position of Austria with respect to the regulations for exploitation of mineral resources in the Area has already been stated in December 2022 on the occasion of the Plenary Meeting of the UN General Assembly devoted to the commemoration of the fortieth anniversary of the adoption and opening for signature of the Convention. That is, that these regulations will have to take into account the serious environmental concerns that have been expressed in this context. Minerals in the Area should thus not be exploited before the effects

of deep sea mining on the marine environment, biodiversity and human activities have been sufficiently researched, the risks are understood and technologies and operational practices are able to demonstrate that the environment is not harmed - in accordance with Article 145 of the Convention. In line with the precautionary principle and the ecosystem approach, we believe that a precautionary pause in deep sea mining should apply until these conditions are met.

Let me add that Austria shares the view that without adequate rules governing exploitation of the deep seabed being in place, Article 137 (2) of the Convention on the legal status of the Area and its resources - as the common heritage of humankind - does not allow the start of deep sea mining on a commercial scale.

We have noted that according to the current draft of the exploitation regulations, these shall, inter alia, be guided by intergenerational equity - which we consider as of particular importance -, the precautionary principle or precautionary approach as applicable, the ecosystem based management approach, the polluter pays principle and the use of best scientific information. It, however, remains to be seen how these fundamental principles regarding deep sea mining will in the end find their expression in the detailed provisions of the rules, regulations and procedures.

In our opinion, the adoption of regulations on the exploitation of the deep seabed is not only of relevance for the Area. Let me recall that the general obligations contained in Part XII of the Convention regarding the protection and preservation of the marine environment apply to all States in all maritime areas, both within and beyond national jurisdiction. Bearing that in mind, the provisions of the regulations on exploitation of minerals in the Area can also set an example for coastal States considering to exploit resources of the deep seabed in areas where they enjoy resource jurisdiction. It seems that currently more than a dozen countries are in the process of elaborating deep sea mining regulations. Exploitation activities in areas within national jurisdiction might therefore start in a foreseeable future. In case that such activities should be envisaged, we have every reason to assume that the pertinent national regulations would in no case be less strict than those adopted by the Authority, as the States concerned would already have committed themselves to their observance as members of the

Authority. Let me recall that under Article 208 paragraph 3 of the Convention coastal States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction and that such laws, regulations and measures shall be no less effective than international rules, standards and recommended practices and procedures. In addition, even non-parties to the Convention might be encouraged to rely upon the provisions of the exploitation regulations relating to the Area in case of engaging in deep sea mining activities in areas within their jurisdiction.

Let me add that whenever and wherever deep sea mining may start we should, however, rather not expect an immediate sort of "goldrush" to exploit the deep seabed. This in light of the considerable costs of deep sea mining infrastructure and operations, the great financial risks involved in such ventures as well as technological challenges.

Mr. President,
At the present stage of continuing negotiations on exploitation regulations the Austrian delegation only wishes - without going into too much detail - to make a few suggestions regarding the following issues of particular interest:

We have noted that the draft regulations provide for a review after five years following their approval by the Authority. The Council is to be mandated to conduct the review in respect of the manner in which the regulations have operated in practice. As this is a highly important provision we would consider it useful to add that the regulations will also be open to review in light of advancements in scientific knowledge regarding the deep seabed. In this context it should be recalled that, for instance, the regulations regarding exploration for polymetallic nodules have been amended in light of the later adopted regulations concerning polymetallic sulphides.

Austria is of the view that as important as the laying down of substantial regulations for deep sea mining in the Area is the establishment of appropriate mechanisms for directing and supervising a staff of inspectors, as required under Article 162 (2) (z) of the Convention in order to ensure that Part XI of the Convention, the rules, regulations and procedures of the

Authority and the terms and conditions of any contract with the Authority are being fully complied with by the contractors. We agree with the opinion that has also been expressed in the course of the negotiations that a compliance and enforcement mechanism, such as a Compliance Committee, should be independent, transparent and effective. Any such body should be focused on technical expertise and be non-political. It should, in our view, report to the Council, be advised by members of the Legal and Technical Commission (LTC), the Secretary-General and competent members of his staff and interact with a Chief Inspector. We would not consider it wise to include members of the LTC and the Council in such a body as we believe that rule-making should be clearly separated from compliance and enforcement. As regards the role of the LTC, let me also recall that the Final Report on the Periodic Review of the Authority under Article 154 has pointed out that the LTC is "undoubtedly overburdened" by its manifold tasks. It would therefore not seem useful to burden the Commission with additional duties.

With respect to the establishment of such a compliance mechanism an evolutionary approach should be followed, also for budgetary reasons, which might include interim arrangements. Whatever the final structure of a compliance mechanism may be, it should guarantee a strict enforcement of all the applicable rules, regulations and procedures of the Authority. This would also be a most important contribution to ensuring an effective protection of the marine environment. In any case, we should avoid creating a mere "paper tiger" roaming the oceans.

The Austrian delegation is with great interest following the ongoing discussions on the subject of an Environmental Compensation Fund (ECF) in light of the Advisory Opinion rendered by the Seabed Disputes Chamber of ITLOS in 2011 on the Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area. In the Advisory Opinion, the Seabed Disputes Chamber made a number of important pronouncements outlining the respective responsibilities of sponsoring States and contractors and the question of liability in case of damage.

In our view, that Advisory Opinion should constitute the principal guideline for dealing with these issues in the course of the ongoing negotiations, in particular with respect to the liability gap that may arise where a contractor does not meet his liability in full while there is no

liability of the sponsoring State. We consider that the establishment of an ECF, following an evolutionary approach, constitutes an essential aspect of exploitation regulations. Such a Fund should, in our view, serve as a last resort if a contractor is unable to compensate damage - a term, which, however, still needs to be clearly defined. We also agree with those delegations that an ECF must be set up prior to the first plan of work of an exploitation contract.

Mr. President,
it is obvious that the negotiations on the exploitation regulations will still take some more time, no one can tell exactly how much more – we have taken note of the target date 2025. Once there will be a final draft before us to comment upon we will be in a position to assess whether these regulations meet our expectations and would in our opinion provide a basis for allowing the Authority to further proceed. In any case, Austria strongly believes, that whenever deep-sea mining should commence that there must be a robust regulatory framework, which would also ensure the effective protection of the marine environment pursuant to Article 145 and Part XII of the Convention. The Austrian delegation hopes that in due course a consensus will emerge on all the relevant rules, regulations and procedures and wishes the negotiators all the best for the continuation of their most difficult task and its successful conclusion.

Thank you, Mr. President.