ISA, Assembly, 26th Session, Agenda Item 13, Report and recommendations of the Finance Committee

Statement by Ambassador Helmut Tuerk (Austria)

Mr. President,

First of all, let me not only congratulate you on your election as President of the Assembly, but above all express my sincere appreciation for the way that you and your colleagues on the Bureau as well as the Secretary-General, whose re-election was so well deserved, and his faithful and highly dedicated collaborators have been conducting the deliberations and the decision-making process in the course in the current 26th Session of the International Seabed Authority. Gratitude is also due to the Government of Jamaica for having made possible these first in-person meetings and as before we are once again enjoying the generous hospitality of this wonderful country.

Thanks to the untiring efforts of all of those involved some progress regarding the manifold activities of the Authority could be made despite the severe constraints regarding its working methods imposed by the Covid-19 pandemic. This was certainly a unique situation which has been admirably handled under your leadership and that of the Secretary-General. Let us hope that the present session, although shortened, will provide a solid foundation and the necessary guidance on the way towards resolving - in the course of subsequent meetings - some of the major issues confronting us.

Mr. President,

Among the issues that require further in-depth reflection as well as the courage to make clear choices between different options are certainly those outlined in detail in the Report of the Finance Committee contained in document ISBA/26/A/24 – ISBA/26/C/39. The Austrian delegation wishes to express its gratitude to the members of the Committee for their hard work and the really excellent Report now before the Assembly. Let me make a number of comments on behalf of my delegation, also based on my experience as former delegate to the Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction and the Third United Nations Conference on the Law of the Sea.

The question of the equitable sharing of financial and other economic benefits to be derived from the exploitation of minerals from the Area beyond national jurisdiction has since the beginning of the deliberations of the UN Seabed Committee been very much on the mind of the negotiators. It is true, as stated by the Finance Committee in para. 3 of its Report, that although the principle of equitable benefit-sharing was broadly agreed, the detailed mechanics of the issue did not receive significant attention during the Conference on the Law of the Sea. This was, however, due to the fact that the negotiators thought that such details should better be agreed upon at a time when the prospect of obtaining benefits from the exploitation of the deep seabed would seem a realistic possibility in a foreseeable future. Now, the time for endeavouring to achieve a consensus on these mechanics has clearly

arrived, which makes the present debate even more important in order to provide the guidance sought by the Finance Committee for its further work on this issue.

The Report of the UN Secretary-General issued in 1971 for the Seabed Committee, included, as outlined by the Finance Committee, a list of non-financial benefits, among those the protection of the marine environment, as well as of financial benefits remaining after deduction of expenditure by the international machinery to be established – now the International Seabed Authority. Alternative criteria for the distribution of benefits were also listed – that is direct distribution to Governments and allocation to programmes of particular interest to developing countries. These listings clearly show that direct distribution to Governments was only considered as one among several possibilities for sharing the benefits to be derived from the deep seabed. In addition, the Report of the UN Secretary-General had suggested that during the initial period there might be „some advantages to concentrate available proceeds in programmes of high priority, such as the promotion of development in the least developed countries" as direct distribution to all Governments „might lead to a fragmentation of financial resources which would result in benefits of modest significance to the receiving countries".

This assessment, made 50 years ago, perfectly describes the situation in which we find ourselves today. I have to admit that this wise and cautious approach to benefit-sharing was largely overshadowed in subsequent years, in particular during the Conference on the Law of the Sea itself, by the enthusiasm engendered by the prospect that deep seabed mining would already take place in about 20 years and rather rapidly provide substantial revenues for the international community – even after the deduction of the administrative expenses of the Authority and the funds to be allocated to an economic assistance fund benefitting developing countries that suffer serious adverse effects on their export earnings or economies, as they may have to compete with minerals extracted from the deep seabed. These assumptions – as we all were to find out - turned out to be highly unrealistic, but led to a focus on the distribution of expected funds directly to States parties, as this was at the time mostly considered to be the best way of remaining true to the great idea of the common heritage of mankind.

Mr. President,

Let me now turn to the recent deliberations of the Finance Committee as presented in a detailed manner in its Report. These discussions, to a great extent, focussed on the problem of an equitable sharing of financial, that is monetary, benefits from deepsea mining among States parties. At the same time it is admitted that such mining will likely start on a relatively small scale, however, coupled with the expectation of an increase over time. In this context, the Committee – as set forth in para. 29 of its Report - developed three alternative formulae for the fair and equitable allocation of a given sum of royalties available for distribution. The basic concept underlying each of these formulae is to calculate each country´s population as a percentage of the world´s total and to adjust this distribution through a social distribution

weight in such a way as to redistribute income from higher-income States parties to developing countries, with a preference being expressed for a geometric formula as contained in Annex I of the Report.

I wish to point out that such formulae are not entirely new and were, at least in principle, also advocated by most delegations at the Conference on the Law of the Sea, including my own. Czechoslovakia, for instance, on behalf of the Group of Landlocked and Geographically Disadvantaged States submitted a working paper, which I had the privilege of drafting, suggesting a distribution of revenues derived from deepsea mining to all States parties on the basis of certain criteria, such as population, level of development and geographical location. This paper was, however, never discussed by the Conference as negotiations on such details were considered as premature.

Although the Authority is at present undeniably moving to the exploitation phase it is nevertheless still uncertain when exploitation will actually start. Unfortunately, due to the pandemic quite some time has been lost in finalizing the exploitation regulations. It should also be borne in mind that, in the view of many countries, including Austria, minerals in the Area should 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 seriously harmed - in line with the precautionary principle and the ecosystem based approach.

Even after exploitation has commenced it is still uncertain how many contractors there will be in the first few years and when their payments to the Authority will actually begin to flow. It thus seems obvious that, if at all possible, it is very hard at the present time to determine the amount of seabed revenues that would be available for distribution to States parties. In any case, one may safely assume that these will in all probability be rather limited for quite some time. As the Finance Committee in its conclusions and recommendations has convincingly stated in this context: „the benefits of the common heritage may be dissipated“. Sharing that view expressed by the Committee it would thus in our opinion make no sense at all to hand out token sums of money to a large number of countries.

As the current situation with respect to deepsea mining is substantially different today from what had been thought several decades ago, a fresh look needs to be taken at the issue of benefit-sharing. The Austrian delegation is thus highly pleased that the Finance Committee in Chapter VI of its Report is also suggesting a viable alternative to simple financial distribution of funds to States parties - that is the establishment of a seabed sustainability fund. Such a fund could, as stated in para.33 of the Committee´s Report „be used to support global public goods, investment in human and physical capital or deep-sea research and conservation“. In particular, we also share the view expressed in the following paragraph „that better scientific knowledge about the deep-sea environment contributes to sustainable mining, minimizing the impairment of any ecosystem services that may adversely affect the

global population“. As recommended by the Committee,the establishment of such a fund should be based on an evolutionary approach, using existing institutional capacity wherever possible. We also concur with the opinion expressed in the Council that such a sustainability fund shoud be kept separate from any liability fund that may be established, as this is quite a different matter.

As to the question posed by the Finance Committee whether a seabed sustainability fund should be an alternative or an adjunct to direct distribution, my delegation is clearly in favour of an alternative for the reasons already mentioned. The creation of a dual system of fund and direct distribution to States parties might be considered at a later stage in light of the experience gained with the operation of the 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 may be quite a lot.

The proposition by the Committee that, from 2023, increases in the administrative budget of the Authority beyond zero real growth are needed to allow it to cope with additional tasks in connection with exploitation activities - which could be treated as advances against future revenue to be repaid pro rata and progressively once revenue from deepsea mining begins to flow - will certainly not please Ministries of Finance. Such increases may, however, be unavoidable if an effective regulatory system for deepsea mining is to be created. In any case, the Finance Committee should prepare a more detailed proposal for consideration at the next session of the Assembly. Finally, we agree with the suggestion that, as an interim measure, the Legal and Technical Commission performs the functions of the Economic Planning Commission in order to address the criteria for access to the future economic assistance fund.

Mr. President,

the Austrian delegation has with particular interest taken note of Chapter VII of the Finance Committee´s Report dealing with Article 82 para.4. Let me mention that I had the privilege, together with the delegate of Singapore, to represent the group of Landlocked and Geographically Disadvantaged States in a small negotiating group, chaired by the unforgettable Frank Njenga from Kenya, which finalized the current text of Article 82. The relatively low figure of 7 percent for contributions by coastal States, originating from an informal Austrian compromise proposal, was agreed upon in order to avoid a disincentive for the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles. It is certainly true, as has repeatedly been critically remarked, that in Article 82 there are textual ambiguities and process gaps. The negotiators were, however, aware that they were legislating for an unknown point in time in the future and were thus reluctant to try to insert more details in its provisions which might have upset an already highly complicated negotiating process.

The Finance Committee has rightly noted some significant differences between Article 82 para. 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. As rightly pointed out, the function of the Authority is only to serve as a conduit for the transmission of payments and contributions in kind under Article 82 and it may not use these payments for its own purposes. I believe that we do not need to further consider the question of contributions in kind as this does not seem to be a very realistic option. It would put the Authority in the extremely difficult position of having to deal directly with seabed resources and oversee their distribution or marketing and subsequent sale.

In view of that very limited, only instrumental and thus administrative role of the Authority, the question would seem to merit further study as to whether a formula developed for the distribution of benefits in relation to Article 140, even if adapted accordingly, would truly be suitable to be applied to Article 82 para.4. Let me in this connexion also recall that the suggestion made at the Conference on the Law of the Sea that the Authority should have the power to take appropriate measures if a State failed to comply with its revenue-sharing obligation encountered opposition by some States as soon as it was made. The international community is thus wholly dependent on the readiness of the coastal States concerned to faithfully discharge that legal obligation in line with Article 300 of the Convention. This, in our view might be easier to achieve if a voice were given to these States regarding the distribution and use of the payments they are making.

It should also be borne in mind that with respect to contributions to the budget of the Authority the Finance Committee in para. 9 of document ISBA/26/A/10 has expressed its concern over the amount of arrears and the large number of members – then 51 States - in arrears for more than two years. As we have heard from the Secretary-General when introducing his annual report this figure now stands at 53, being the lowest number for years, which is certainly a good sign. Nevertheless, any similar development that might perhaps occur with respect to payments under Article 82 should, however, as far as possible, be forestalled from the very beginning.

Let me now make some preliminary suggestions which are to be considered as food for thought for the further work of the Finance Committee on Article 82:

As proposed as an alternative in the case of benefits derived from activities in the Area the Authority should establish a fund, administered by the Secretary-General, with the task of distributing the payments received from coastal States under Article 82. The Assembly would have to decide on priority groups of recipients from among developing countries. In our view, the least developed countries, which also comprise a number of landlocked States, and other developing landlocked countries, which are already particularly referred to in Article 82 para.4, as well as small island developing States should be on top of the list. This latter group of countries is facing especially severe problems which we are all aware of and of which I have some personal experience, as the distinguished representative of Micronesia can attest. Let me also thank the distinguished representative of Costa Rica for the support expressed in the Council with respect to developing landlocked States.

The monies paid into this new special fund could be used for specific projects in developing countries, such as, for instance, for infrastructure projects improving the access of developing landlocked countries to and from the sea. In addition, projects designed to safeguarding the global commons in the interest of humankind as a whole could also be envisaged.

Decisions regarding the distribution and use of payments under Artikel 82 para.4 could be made by the Secretary-General upon consultation with the contributing and the recipient States. In this process he might also seek advice from a small group of renowned experts hailing from all geographical regions, appointed by him in consultation with the Assembly. The Secretary-General would have to report on the payments received and their distribution and use in the context of his Annual Report to the Assembly, thus allowing Member States to express their views on the matter and, if so desired, make suggestions for the future.

Mr. President,

The Austrian delegation believes that further consideration of the implementation of Article 82 para. 4 by the Finance Committee, in respect of which many questions still require further clarification, is even more urgent than devising a system regarding benefits accruing from activities in the Area. Current indications are that the exploitation of non-living resources of the continental shelf beyond 200 nautical miles will commence well ahead of those in areas beyond national jurisdiction. In any case, the International Seabed Authority should not be caught off-guard when such a development should occur.

Thank you, Mr. President.