

FSM statement on standards/guidelines/key concepts and decision-making

Madame President,

Congratulations to you and your bureau on your elections. We pledge our full support for your important work during this anniversary year. Thank you as well to Jamaica as host. This is my first time in Jamaica--indeed, in the Caribbean--and this island boy feels quite at home.

Apologies, but I will discuss matters covered yesterday, as discussions have progressed faster than originally anticipated.

In terms of standards, guidelines, and key concepts, thanks to the Secretariat for its helpful and informative briefing notes, as well as to Mr. Brown for introducing them to us. For standards and guidelines, as contained in C/3, we think it is important to gain clarity amongst ourselves as to what normative value to assign to guidelines and standards that the ISA may adopt in the future with respect to exploitation of mineral resources. Also, if there is to be a hierarchy between standards and guidelines, then that should be made explicit. We listened with interest to the intervention of Japan about placing legally binding items in an annex to a future or decision or similar document for the Council, and we think that this can work as long as it is clear that such items are indeed legally binding. We also think that there is value in the argument that all standards and guidelines can and should be legally binding, in order to give them regulatory teeth, particularly those involving the protection and preservation of the natural environment as well the behavior of actors in the Area.

We are very much open to considering standards and guidelines of a similar nature in other international instruments, institutions, and processes, as noted by Italy, Tonga, Norway, and others. Referring to those other approaches can be a good way to, among other things, develop inter-linkages between these various fields. We see more and more of such inter-linkages developing in international environmental law, including through the BBNJ process, and we want to encourage them to the extent possible. At the same time, there is really nothing preventing the ISA from progressively enhancing existing standards and guidelines as well as breaking ground on new ones, as long as this is in line with the overall mandate of the ISA regarding the conservation and sustainable use of the mineral resources and natural environment in the Area. A roadmap for the development of these standards and guidelines can be a useful way to provide clarity as well as comfort to all actors involved and allow the broadest possible participation in their development.

Agree with many others that the development of standards should be open to all stakeholders--not just States and contractors, but also academia, civil society, scientists, and local communities in coastal States--and that the process must be transparent. We welcome Germany's future hosting of a conference or meeting focused on developing environmental standards as well as the holding of a workshop in Praetoria this May on the development of standards and guidelines, but we reiterate that these should be as inclusive as possible in terms of participation and input. It will be useful as well if delegations are invited to submit written input in advance of those gatherings if they are unable to

participate. The outcomes of such gatherings as well as all other similar gatherings to develop standards and guidelines should be subject to the review of the Council / all States Parties before they are finalized.

We take note of the views expressed by Singapore, Australia, and others about the possibility of prioritizing the development of certain standards and guidelines at the outset in order to ensure that the necessary framework is in place as soon as exploitation begins, while leaving the development of other standards and guidelines to a later stage. Toward this end, if this approach is to be taken, then my delegation would think that standards and guidelines for an environmental liability fund, for an assessment framework relating to environmental indicators and thresholds, for putting together a valid plan of work and exploitation contract, for environmental assessments, for environmental management and monitoring, for stakeholder participation in environmental decision-making, and for the practical application of reasonable or due regard for other activities in the marine environment could be priority areas.

On the key concepts, we agree with Tonga and others that there is value in incorporating the concept of best environmental practices into the concept of good industry practices, as well as treating best environmental practices as a standalone concept. All actors involved in the exploitation of mineral resources should engage in the best environmental practices, from States Parties to industry to scientists and other researchers, among others.

Finally, in terms of decision-making and how to make it more efficient, we think that clarity leads to efficiency, and so we support calls and efforts to produce a chart, or matrix, or something similarly visual to clarify the various decision-making routes and roles. A policy document can also be useful in this regard. We note Australia's concern about the SG or some other body in the ISA being essentially both legislator and executive, or legislator and judiciary, and this is a very real possibility unless we have some clarity about the various decision-making routes and roles. We also echo others about the need to ensure that the duties of the SG are in conformity with UNCLOS and the 1994 IA. When there is ambiguity in UNCLOS and 1994 IA as to whether certain duties can be delegated to the SG or Secretariat, my delegation wishes to err on the side of the Council retaining those duties, in order to ensure the fullest possible input of relevant stakeholders in the discharge of those duties.

We also caution that efficiency should not be a panacea, especially when not dealing with emergency situations; in other words, just because a process is efficient does not mean it is the proper regulatory approach, especially when dealing with the protection and preservation of sensitive and vulnerable elements of the marine environment. Stakeholder consultations, for example, might take an extended period of time, including when reaching out to affected adjacent coastal States and determining whether activities in the Area pose serious harm to the marine environments of those adjacent coastal States; as well as in terms of taking into consideration the views of other international instruments, institutions, and processes of relevance to Area activities, such as those in the BBNJ process and in the UNFCCC (and we join Chile in emphasizing the importance of climate change and the UNFCCC to activities in the Area). We should take the time to do things the right way.