



General Statement of Msgr. Tomasz Grysa
Head of the Delegation of the Holy See to the First Part of the
Twenty-fifth Session of the Council of the International Seabed Authority
Kingston (Jamaica), 25 February – 1 March 2019

Madam President,

My Delegation congratulates you on your election to the Presidency of this Council session. Following closely the work of the Council, the Holy See is grateful for the progress made since last July on the issues regarding the regulatory, financial, technological, social and environmental challenges that deep seabed mining present. Building on this progress, my Delegation appreciates the opportunity to offer some thoughts on the development of **standards and guidelines and on some key concepts**.

Considering both the need for mineral resources and the uncertainties and risks that this need brings to the seabed environment, the Holy See would like to offer the following three observations.

First, with respect to **guidelines and process standards**, delegations have expressed various opinions regarding the appropriateness of the issuance of Guidelines by the Secretary General pursuant to Draft Regulation (DR) 63 and DR 93, voicing particular concern that no statutory basis exists for the exercise of direct authority, even if the guidelines are of a technical or administrative nature. “Guidelines,” however, by their very nature are not legally binding and are merely guiding principles. Process standards, moreover, as the Secretariat’s Note states, are also voluntary.

The Secretariat’s Note regarding Standards and Guidelines states that “the legal status of such guidelines will be determined by their content; some will be referenced in the regulations while others may be referenced in the Plan of Work.” As an example, the Note references that DR 7(3) requires an application to be prepared in accordance with the Guidelines. As a legal matter, however, this does not give the guidelines legally binding force in and of themselves – the binding nature to prepare the application in a certain way comes from the Regulation itself. Guidelines will not in any instance be more than legally persuasive to a court.

The non-binding legal effect and voluntary objectives of guidelines and process standards make a difference in how we view them in a commercial context. It is appropriate,

therefore, for the Secretary General to issue them in the ordinary course of business or regulatory administration.

Second, with respect to **performance standards** that assure measurable outcomes, my Delegation is cognizant of the concerns of Member States calling for a strengthening of the Legal and Technical Commission (LTC) and on the need for regulatory responsiveness. The process identified at the Berlin workshop, where the LTC proposed to organize a working group to study an issue, is useful, as we have seen in the work of the UN Commission on International Trade Law (UNCITRAL). In fact, the UNCITRAL rules of procedure and methods of work in creating legislative and non-legislative instruments for an improved international legal framework could be instructive, as they are well established and proven to work.

If this process involving working groups were adopted, my Delegation would suggest that the Council take appropriate advantage of the expertise within the Authority. The various Secretariat divisions of Contract Management, Environment Management and Mineral Resources, and Administrative Services, with advice from the Office of Legal Affairs, could each play an important role in their area of expertise. These groups are well suited to initiate recommendations, receive source knowledge from experts, and solicit comments from the public on standards, practices and procedures, including various alternatives and corresponding rationale. This is consistent with their mandate to support the Council, and, like the Secretariat for UNCITRAL, should facilitate these efforts.

If the LTC finds that more expertise is warranted, an expert working group and a public comment period could be initiated. With respect to public comments, an analysis of each comment or question should be published along with the proposed rule and the changes made for the final rule to ensure transparency and accountability.

Third, turning to **more specific observations**, some delegations have questioned whether the responsibility to issue “Guidelines on royalties,” which DR 63 gives to the Secretary General, should instead pertain to the Council.

My Delegation is unsure what the substance of these particular “guidelines” would be, given that payment of royalties is a contractual matter provided for in the exploitation contract. The process for developing standards and guidelines will most likely be impacted by our discussion on Tuesday afternoon on “decision-making” and the responsible organ of the Authority.

Madam President,

The Holy See would like to recall that every action taken by the Authority should flow from a **“responsibilities-based” approach**. Although the rights of all States are surely to be considered, a system based on ensuring rights and equitable benefit sharing without considering the commercial context and related obligations will not fulfill the Authority’s

most important goals: the conservation of our precious oceans with all their glorious biodiversity and the use of resources in a sustainable manner for the benefit of all mankind.

Thank you, Madam President.