



Intervention 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
Precautionary approach
Kingston (Jamaica), 25 February – 1 March 2019

Madam President,

The International Tribunal for the Law of the Sea, in its advisory opinion #17, dated 1 February 2011, states that “the obligations of sponsoring States are not limited to the due diligence “obligation to ensure”. Under the Convention and related instruments, sponsoring States also have obligations with which they have to comply independently of their obligation to ensure a certain behavior by the sponsored contractor. These obligations may be characterized as “direct obligations”.” Among the most important of these direct obligations incumbent on sponsoring States, ITLOS says, is the obligation to apply a **precautionary approach**, based on Principle 15 of the 1992 Rio Declaration on Environment and Development, which reads:

“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

The ITLOS advisory opinion explains further that the provisions of the Nodules Regulations and the Sulphides Regulations transform this non-binding statement of the precautionary approach in the Rio Declaration into a binding obligation. The implementation of the precautionary approach as defined in these Regulations is thus one of the obligations of sponsoring States.

If sponsoring States and, consequently, the Authority are under an obligation to apply the precautionary approach in respect of activities in the Area, it is appropriate to point out that the precautionary approach is also an integral part of the general obligation of **due diligence** of sponsoring States, which is applicable even outside the scope of the Regulations. The due diligence obligation of the sponsoring States requires them to take all appropriate measures to prevent damage that might result from the activities of contractors that they sponsor. This obligation applies in situations where scientific evidence concerning the scope and potential negative impact of the activity in question is insufficient but where there are plausible indications of potential risks. A sponsoring State would not meet its obligation of

due diligence if it disregarded those risks. Such disregard would amount to a failure to comply with the precautionary approach.

As an example, Madam President, my Delegation would like to recall the 2017 report of The Royal Society¹ that acknowledged that marine genetic resources (MGRs) are found in the same places that it is likely that deep seabed mining will occur. The Royal Society states that in the event that the mining is done, these potentially valuable genetic resources could be lost altogether. Therefore, it seems imperative as commercially advisable in accordance with the common heritage of mankind principle, as well as required under the mandate of the Authority to manage the resources of the seabed responsibly, to require the contractor during the exploration phase to gather samples for further research of MGRs from the contract area. Since MGRs are collected and synthesized for later use, this would be a one-time harvest. These samples could then be offered for use on an open basis, including to developing countries, and would not be the property of the contractor. Rather they would be fully recognized as the common heritage of mankind, and subject to appropriate royalties.

Given the many calls for close cooperation with the BBNJ process and ultimate agreement, this would seem the most necessary and valuable integration of efforts and a practical application of both the precautionary approach and the due diligence obligation.

These issues were introduced by my Delegation during the first meeting of the IGC on the BBNJ agreement in September and have been mentioned as well by other delegations.

Thank you, Madam President.

¹ “Future Ocean Resources Metal Rich minerals and genetics” evidence pack, The Royal Society, pages 5, 51-54 (May 2017).