

Australian Statement: Intersessional Dialogue on 'Two Year Rule'

Mr President

We join with others in expressing our gratitude to Ambassador Verbist of Belgium and Mr Tan Soo Tet of Singapore for their continued efforts to facilitate the ongoing Intersessional Dialogue on the 'two year rule'. We thank all for their contributions to the Dialogue and to the co-facilitators for their Briefing Note which comprehensively summarises the views expressed in written submissions and oral interventions during the Dialogue.

In the two years since Nauru requested, in accordance with Section 1, paragraph 15(a) of the Implementation Agreement that the Council elaborate the rules, regulations and procedures to govern exploitation, Members of the Authority have strived, in good faith, to finalise the Exploitation Regulations.

Our collective efforts have been productive: the Regulations are starting to look more settled and balance the disparate views expressed by Members and observers. Australia thanks the Facilitators of the Working Groups and you, Mr President, for guiding our work, with the support of our hardworking secretariat. And the good faith efforts of Members and observers to progress this work.

Despite our collective efforts and the considerable progress made over the past two years, the Exploitation Regulations have not been finalised and much work remains to be done.

It is clear that the draft Regulations will not be ready for adoption at this meeting of the Council, or even at the October-November meeting.

Yet progress to date shows that the Exploitation Regulations, and the accompanying Standards and Guidelines can be completed with continued constructive engagement by all. We look forward to our discussions on revising the Roadmap agreed at the end of 2021 and agreeing on our future program of work before the end of the 28th session of the Council.

With the expiration of the two-year deadline on 9 July, we are faced with the prospect that an application for approval of a Plan of Work to begin mining in the Area could be lodged soon.

In accordance with the two-year rule, unless the Council provisionally adopts the Exploitation Regulations, any application will be assessed against the provisions of the Convention, the Implementation Agreement and the principle of non-discrimination. This will be a difficult task, given the high-level nature of these provisions.

Australia's position is that mining in the Area should not commence without the detailed Exploitation Regulations and accompanying Standards and Guidelines in place.

Our position on this has not changed.

As a global leader in ocean conservation and protection, as demonstrated most recently through our roles in the negotiation of the BBNJ Agreement and the global agreement to protect 30 per cent of the world's coastal and marine areas by 2030 as part of the Kunming-Montreal Global Biodiversity Framework, Australia is very conscious that each and every State party to the United Nations Convention on the Law of the Sea is under a duty to protect the marine environment.

With respect to mining activities in the Area, Article 145 of the Convention requires all necessary measures to be taken to ensure the marine environment will be protected from harmful effects of mining activities.

As we have stated previously, the Exploitation Regulations must have robust provisions on the protection of the marine environment. Strong environmental protections are necessary if we are to fulfil our obligations in UNCLOS to ensure effective protection of the marine environment.

A robust regulatory framework and accompanying institutional arrangements are also necessary to ensure that if our common heritage in the mineral resources of the Area is to be exploited, this is done safely, sustainably and for the benefit of humankind as a whole.

The simple fact is we do not know what the long-term impacts of deep-sea mining in the Area will be on our oceans, marine ecosystems and biodiversity.

This lack of knowledge requires us to take a precautionary approach to assessing or deciding upon an application for approval of a Plan of Work to begin mining in the Area. And due to this lack of knowledge, precaution must inform the ongoing development and application of management measures to prevent the risk of serious harm to the marine environment.

We must also ensure that assessments and decisions regarding potential mining in the Area are informed by the best available scientific information, while acknowledging that there are considerable gaps and uncertainties in the available science.

The broad consensus around the provisions in the draft Exploitation Regulations that set out these and other general obligations and principles shows we all share a concern to protect the marine environment.

We understand and respect that other States are going to make their own decisions regarding deep sea mining, and that for some States deep sea mining offers the prospect of sustainably developing and diversifying their economies.

We also respect that States may decide to allow deep sea mining of the seabed within their jurisdiction. It is entirely within their rights under the Convention to do so.

However, when it comes to the Area, Australia urges any State considering applying to the International Seabed Authority for approval of a Plan of Work for exploitation, or sponsoring such an application, to wait until the Exploitation Regulations, including strong environmental protections, are in place.

Australia will continue to engage actively, constructively and in good faith in the ongoing negotiation of the Exploitation Regulations, as we continue to work towards finalising the regulations.

Turning now to the outcomes of the Intersessional Dialogue – despite the divergence in views, we consider there is room for all Members to find common ground. We appeal to all Members of the Authority to continue our discussions and approach these with flexibility and a willingness to compromise, with a view to adopting a consensus decision of the Council. Australia looks forward to working with other Members to this end. We join with others in supporting the co-facilitators taking on the role of facilitating a Council decision, if they so accept.