



REPUBLIC OF NAURU

Interventions in relation to Paragraph 15 of Section 1 of the Annex to the 1994 Agreement

14 July 2023

to be delivered by H.E. Margo Deiye

Permanent Representative of the Republic of Nauru to ISA

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Mr. President,

Thank you for giving me the floor,

Good afternoon colleagues,

Nauru takes this opportunity to thank the co-facilitators, namely Belgium and Singapore for their sterling leadership on this work during the intercessional session. We also thank members of the Council for the continued intersessional dialogue we have been having on the matters related to Paragraph 15 of Section 1 of the Annex to the 1994 Agreement and we look forward to participating in a constructive exchange of views during this meeting of the Council. Nauru reaffirms its support and commitment to the work on these matters.

Nauru has intervened on numerous occasions, that we hear the concerns of those member States for the need to have regulations in place before any commercial recovery activity takes place. We have listened and have acted in good faith that Nauru will not sponsor an application for an exploitation contract prior to the conclusion of this July session. We expect that members of Council are also listening; this good faith decision, however, does not mean that Nauru is withdrawing its decision to sponsor an exploitation contract soon.

Mr. President,

Nauru embarked on a journey more than a decade ago to become the first developing State to sponsor an application for a reserved area. This was with a view, and an expectation, to realize the rights, goals and objectives of Part XI of the Convention, specifically those for developing States. Our goal was and remains the diversification of our limited economic base and more importantly to help lead the pathway towards a net zero future with the use of much cleaner and renewable energy technologies with metals sourced from the responsible recovery of polymetallic nodules.

As custodians of the Pacific Ocean, as a State Party to the Convention and 1994 Agreement and as a Sponsoring State, Nauru's ambition is to move the international community towards a just energy transition that is highly dependent on the critical metals found on the seafloor. We cannot continue to stand by and watch as we kill our planet by our inaction or lack of meaningful ambition to reduce carbon pollution, so we are doing our part to safeguard our collective futures through the ISA by engaging in the development of a world-class, robust regulatory framework for the responsible use of polymetallic nodules in the Area. This entails the necessary completion and adoption of the draft exploitation regulations.

As we have said previously, Nauru is committed to the development of a safe, environmentally sound, and prosperous deep seabed mining industry for the benefit of all humankind. Realizing this promise which is set out in UNCLOS is of critical importance to Nauru and our peoples' future. It is also the obligation that we all signed up to when agreeing to UNCLOS all those years ago.

However, Nauru is deeply concerned at the apparent approach by some member States of this Council and Authority to their obligations under Paragraph 15 and UNCLOS. UNCLOS is a 'package deal' and it is not right for some States to now seek to pick and choose the provisions they will comply with based on their current self-interest. Commitment to the rules-based order means commitment to all the rules. Now is the time for member States to demonstrate their commitment to the rule of law by abiding by their very clear and explicit treaty obligations. As such, we consider that it is important that in this room we are clear on the requirements of UNCLOS and Paragraph 15 and how these will be complied with at this critical time.

Mr. President,

Nauru notes that the deadline set in Paragraph 15(b) of Section 1 of the Annex to the 1994 Agreement to elaborate and adopt rules, regulations, and procedures necessary to facilitate the approval of plans of work for exploitation expired on 9 July 2023.

While recognizing the Council's failure to adopt such rules, regulations and procedures within the prescribed timeline constitutes a direct breach of its obligation under the 1994 Agreement, Nauru acknowledges the significant inroads and efforts made by delegations over the last 2 years towards the adoption of the draft regulatory text, not least the time dedicated to intersessional work.

However, Nauru notes with concern the attempts by some Authority members in undermining the process and preventing the Council from considering and provisionally approving plans of work for exploitation in the absence of adopted exploitation regulations. This is evidenced by the efforts of some member States of this Council to have the Authority adopt a so-called "precautionary pause" or "moratorium" which would prevent the consideration and provisional approval of plans of work for exploitation under Paragraph 15(c). A recent statement from a member of the Council explicitly committed to "not support the provisional approval of a plan of work." Such a statement prejudices the merits of any application, ignores norms of due process and is not in accordance with explicit good faith obligations required by UNCLOS.

Such positions are in breach of member States' treaty obligations contained in UNCLOS and the 1994 Agreement. It would also be a violation of Nauru's sovereign right as a developing State to benefit from activities in the Area through the sponsorship of our sponsored entity, NORI.

Nauru emphasizes that the Council and the LTC has a legal obligation to consider and provisionally approve submitted plans of work for exploitation even in the absence of adopted rules, regulations, and procedures.

Mr. President,

Given the circumstance in which we find ourselves – we are no longer in a ‘what if’ scenario, but rather ‘what now’. As such, Nauru raises the following two questions for the Council’s consideration:

- First, how does the Council intend to realize its legal obligation to adopt rules, regulations, and procedures for exploitation? and
- Secondly, how does the Council intend to act in good faith to fulfill its legal obligations under the 1994 Agreement, including to consider and provisionally approve submitted plans of work for exploitation?

Mr. President,

To help forge a way forward, Nauru requests the Council direct that a consolidated version of the draft exploitation regulations is prepared and made available to the members of the Council in advance of the November meeting. This consolidated version should reflect the revised text produced by the Council’s various informal working groups following a final round of written submissions that will take place following the conclusion of this July meeting.

Additionally, Nauru also proposes that the Council requests the Legal and Technical Commission to;

1. Revise the Phase One standards and guidelines based on the Council’s revised consolidated text.
2. Deliver the revised Phase One standards and guidelines to the Council by the commencement of Part One of the Twenty-Ninth Session; and
3. As a matter of priority, commence the identification and preparation of all Phase Two standards and guidelines.

Finally, as the Council considers the schedule of the meetings of Council in 2024, it should be done with a view to adopting the exploitation regulations at the earliest opportunity.

Mwa tubwa kor, I thank you.