



Permanent Mission of the Republic of Nauru
to the International Seabed Authority

NV 24-01

The Permanent Mission of the Republic of Nauru to the International Seabed Authority presents its compliments to the Secretariat of the International Seabed Authority and has the honour to transmit the Republic of Nauru's comments as requested by Secretary-General's second report (which was issued on 27th November 2023), dated 12th January 2024.

The Permanent Mission has the further honour to request that the attached comments be brought to the attention of Council members for their further deliberation during the first part of the twenty-ninth session of the Authority.

The Permanent Mission of the Republic of Nauru to the International Seabed Authority avails itself of this opportunity to renew to the Secretariat of the International Seabed Authority the assurances of its highest consideration.

New York, 12th March 2024



Secretariat
of the International Seabed Authority
Kingston, Jamaica

12 March 2024

Comments by the Republic of Nauru to the Second Report on the Immediate Measures of the Secretary-General of the International Seabed Authority dated 27 November 2023

1. Nauru acknowledges the contents of the reports provided by the Secretary-General to the Council addressing the incidents that have occurred in the NORI-D contract area.¹
2. Nauru notes with appreciation the statement issued by the President and the Vice-Presidents of the Council for the 28th session of 15 December 2023 addressing these incidents.² Nauru further expresses its full support to the concerns and calls to action expressed in this joint statement.
3. The combination of incidents that took place in the NORI-D contract area are of common concern to all member States of the Authority, and Nauru welcomes the opportunity to hold a constructive dialogue at the forthcoming March 2024 meetings of the Council for the 29th session. Nauru is of the view that it is the responsibility of the Council to consider the facts and circumstances of the incident and the appropriate measures to be considered and adopted by the Council to prevent similar occurrences in the future.
4. As the sponsoring State of Nauru Ocean Resources Inc. (NORI), Nauru has a direct interest in ensuring that NORI's rights and obligations under its exploration contract with the Authority are effectively protected. This requires that NORI be provided with the ability to undertake exploration activities in compliance with its contract and without obstruction.
5. Furthermore, as a State Party to UNCLOS, Nauru also has an interest in ensuring that the integrity of UNCLOS is maintained and that all State Parties comply with the provisions contained in UNCLOS generally as well as in the rules, regulations and procedures of the Authority. This particularly includes ensuring that freedoms of the high seas are used only for peaceful purposes as per Article 88, and that the freedom of scientific research is preserved under Article 87(f). It also necessitates that the freedoms are exercised "*with due regard for the interests of other States in the exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area*" (Article

¹ Incidents in the NORI-D contract area, 23 November to 4 December 2023 Report of the Secretary-General, ISBA/29/C/4, Advanced Unedited Version, 28 February 2024.

² Statement by the President and Vice-Presidents of the Council on recent incidents in the NORI-D Contract Area, 15 December 2023.

87(2)), and that any exercise of high seas freedoms within the Area is conducted in compliance with the relevant provisions of UNCLOS Part XI (including that “*activities in the marine environment shall be conducted with reasonable regard for activities in the Area*” under Article 147(3)). Nauru acknowledges the statement of the President and Vice-Presidents of the Council of 15 December 2023 in this regard.

Incidents in the NORI-D Contract Area

6. Nauru supports the right of individuals and groups to protest peacefully, including on the high seas.
7. However, Greenpeace International’s protest activities conducted in the NORI-D contract area caused extensive interruptions, disruptions and obstructions to NORI’s exploration activities, resulting in aspects of NORI’s mandated work being left incomplete. More concerning, and also acknowledged by the President and Vice-President of the Council in their statement of 15 December 2023, Greenpeace’s actions caused a serious threat to the safety of the crews of the vessels and crafts connected with this incident. Nauru condemns such actions which are contrary to all international norms.
8. The protests conducted by Greenpeace were neither safe nor peaceful. These protest activities included several intentional actions aimed to disrupt and endanger legitimate operations, namely: (i) deliberate collisions between Greenpeace Fast Recovery Crafts (FRC) (deployed from the mother ship, the *M/V Arctic Sunrise*) and NORI’s contracted vessel (the *M/V Coco*); (ii) the positioning of Greenpeace FRC’s under the deployment points of research equipment; (iii) the unauthorised boarding of the *M/V Coco*; and (iv) the unauthorised and dangerous deactivation of maritime equipment on board of the *M/V Coco*. NORI has provided a full account of the incidents to the Secretary-General and has fully cooperated with the Authority in this matter.
9. Any form of protest or demonstration entails legal obligations. In this instance, this includes specific obligations to have due regard to other States exercising their freedoms of the high seas, and the rights derived from UNCLOS regarding the legitimate conduct of activities in the Area, as well as the primacy of safety and navigation at sea. The fact that the incidents took place in a very remote place with limited availability of search and rescue services is a factor of aggravating concern considering that all actions in this location requires a higher level of vigilance and responsibility to ensure that the lives of all crews of any vessel are protected.
10. Nauru notes with concern the “*marked escalation in terms of interference with contractors’ activities*”³ The more recent activities against NORI can be seen as a continuation of Greenpeace’s similar actions in the Area initiated in 2021, including against other ISA contractors. Nauru expresses further concern that in view of the history and pattern of Greenpeace’s activities, along with its public statements of intent, that without prompt and

³ Incidents in the NORI-D contract area, 23 November to 4 December 2023 Report of the Secretary-General, ISBA/29/C/4, Advanced Unedited Version, 28 February 2024 at para. 25.

meaningful intervention by the Council, such actions are only likely to continue and escalate thus potentially jeopardizing the safety of crews, together with any persons who come to their assistance because of a situation arising from a dangerous confrontation or vessel collision.

Communication with the Kingdom of the Netherlands

11. Nauru recognises the Netherlands as a prestigious and responsible flag State and its capacity and capability to uphold its obligations under UNCLOS as a flag state, including of the *M/V Arctic Sunrise*.
12. To this end, the President of the Republic of Nauru, H.E. Hon. David W.R. Adeang wrote to the Netherlands on 28 November 2023 to express Nauru's concern and regret at Greenpeace's activities in the Area, and to request the Netherlands to take immediate measures in relation to the situation.
13. On 22 December 2023, Nauru received a response from the Prime Minister of the Netherlands confirming (i) that the actions of *M/V Arctic Sunrise* had the full attention of the Dutch maritime authorities, (ii) that the matter will be investigated, and Nauru would be informed regarding the outcome, and (iii) that the Netherlands condemns dangerous and unlawful behaviours at sea. At the same time, the same response reiterated that the Netherlands attaches great importance to the right to protest at sea and referred to the judgement of the Amsterdam District Court dated 30 November 2023.
14. Nauru appreciates the Netherlands' confirmation that it "*condemns dangerous and unlawful behaviour at sea*" and stands ready to "*deal with unlawful activity undertaken from vessels that are flying the flag of the Netherlands in accordance with applicable domestic and international law.*"⁴
15. As of today, Nauru has not received any further updates on any investigations conducted by the Dutch authorities and is unaware if any persons were subjected to any sanctions or regulatory action from the Netherlands as a flag State.
16. Accordingly, Nauru welcomes any further updates from the Netherlands and stands ready to cooperate with the Netherlands and other interested States to ensure that any protest on the high seas that presents a risk to human life and that unduly interfere with the rights and obligations of other States is properly addressed.

Decision of Amsterdam District Court

17. Nauru took note of the outcomes of the decision of Amsterdam District Court of 30 November 2023 and welcomed the order given to Greenpeace activists to disembark from the *M/V Coco*.

⁴ The Netherlands, *Note Verbale*, p. 8.

18. Nauru recognises the importance of domestic court jurisdiction to help enforce certain international rights and obligations on the high seas flowing from UNCLOS and other applicable international law. This is paramount where it relates to natural persons and entities, including taking action against such persons or entities to prevent or suppress activities that imperil the safety of life at sea and ensuring that masters of all vessels engaged in protest activities take responsibility for ensuring the safety of human life at sea.
19. Nevertheless, Nauru notes that the Court reflected on matters that are solely within the mandate and competence of the Authority given its remit to organize and control activities in the Area, including the issue of and compliance with legal measures by a duly empowered organ of the Authority.
20. Nauru notes that these incidents highlight some ambiguity and inconsistency within the current legal regime as regards safety zones. Nauru considers this to be unsatisfactory, as it puts at risk the Authority's ability to effectively control activities in the Area and in ensuring the safety of navigation and life at sea.
21. Consequently, Nauru thinks there is merit in the Council giving due consideration to enabling the establishment of safety zones around vessels undertaking activities in the Area.

Safety Zones Around Vessels Undertaking Activities in the Area

22. The establishment of safety zones is an established international practice around ocean installations and vessels conducting exploration and exploitation of natural resources at sea.
23. The establishment of safety zones is also specifically contemplated in Articles 60, 147(2)(c) and 260 of UNCLOS. Thus, it is usually foreseen that the safety zones shall not exceed 500 metres around the relevant structures or installations.
24. UNCLOS places emphasis that such safety zones shall be reasonable and not interfere with essential international navigation, while also strictly requiring that all ships must respect the established safety zones. Safety zones around installations are also recognized by the International Maritime Organisation (IMO) as legitimate tools to help guarantee the safety of these operations and life at sea.⁵ Research vessels are like ocean installations as they are unable to manoeuvre freely when deploying research equipment. Research of the deep seabed in particular involves the vessel being attached to equipment located on the seafloor. Such equipment covers a radius beyond the vessel. Any potential impact or harm to such a research vessel carries a risk of equipment being damaged and disconnected from the vessel which may lead to harm to marine environment.
25. As noted in the Second Report released by the Secretary-General, "*a radius of 500m is often prescribed as best practice in the case of vessels conducting exploration of natural resources*

⁵ See, e.g., IMO Assembly, *Safety Zones and Safety of Navigation around Offshore Installations and Structures*, 19 October 1989, Resolution A.671(16), available at: [https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.671\(16\).pdf](https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.671(16).pdf).

at sea.”⁶ In addition to the national regulations of Canada and Australia referred to in the Second Report, Nauru notes that New Zealand’s Crown Mineral’s Act foresees the possibility of establishing a non-interference zone “up to 500 metres from any point on the outer edge of the structure or ship [conducting permitted prospecting, exploration, or mining activity].”⁷

26. To avoid similar confusion in the future, and to better safeguard the marine environment and human life and safety, Nauru proposes for the Council to enable the establishment of a 500-metre safety zone around vessels and installations conducting activities in the Area. Nauru considers the following are reasonable elements for Council’s consideration in establishing such safety zones:
 - a. A 500-metre safety zone around vessels and installations conducting activities in the Area;
 - b. The need for all Member States to ensure that vessels flying their flags respect the safety zone; and
 - c. The ability for the Secretary-General and the Council to review any complaints from Member States or contractors to ensure that such safety zones do not unreasonably restrict the freedom of navigation or other activities in the Area.
27. Nauru considers that such a decision by the Council aligns with the obligation of the Authority to “adopt appropriate rules, regulations and procedures to supplement existing international law” to ensure the effective protection of human life under Article 146 of UNCLOS.
28. Nauru also notes, given the primacy of the IMO on safety at sea, that any decision should request the Secretary-General to cooperate with the IMO as regards appropriate practices and procedures pursuant to the Agreement of Cooperation between the International Maritime Organization and the International Seabed Authority dated 1 March 2016.

Conclusion

29. The safety of human life at sea is of the highest priority.
30. Nauru supports a right to peaceful protest at sea.
31. However, protests at sea are not a lawless area. Such protests must be conducted with due regard for the rights and obligations of other States, in compliance with the obligations that apply under UNCLOS and other areas of international law, and in a manner that fully safeguards human life and the marine environment (especially operations occurring in remote regions in the Area).
32. Greenpeace’s obstruction activities went beyond peaceful protests by posing a serious threat to the human life at sea.

⁶ Second Report, para. 17(g).

⁷ *Crown Minerals Act 1991* (NZ), s 101B(2),(6) and (7), available at: <https://www.legislation.govt.nz/act/public/1991/0070/latest/DLM5237809.html>.

33. Greenpeace's obstruction activities negatively impacted NORI's operations and the rights of Nauru as NORI's Sponsoring State. In that context, Nauru supports the Immediate Measures taken by the Secretary General and the content of the statement made by the President and Vice-Presidents of the Council for the 28th session. These were essential and necessary measures until such time as the Council had opportunity to deliberate on this matter.
34. Nauru welcomes further cooperation with interested member States on this matter, and to this end recalls the International Maritime Organization's Maritime Safety Committee resolution encouraging governments "*consistent with international law and their domestic laws and regulations, to cooperate, as appropriate, to ensure that actions that intentionally imperil human life, the marine environment or property on the high seas are adequately addressed*".⁸
35. Nauru looks forward to receiving an update from the Netherlands regarding its own investigations into Greenpeace's obstruction activities against NORI and what consequences have resulted, to reduce the risk of similar such activities taking place in the future, and to assist other member States in their consideration of this matter.
36. To address any future harm that may be caused by similar events and to fulfill the obligation of the Authority to exercise control over activities in the Area, protect the marine environment and human life, Nauru proposes the Council enable, via adoption of a decision, the establishment of a 500m safety zone around vessels undertaking activities in the Area.
37. Nauru looks forward to the Council's swift consideration and resolution of these matters.
38. Nauru requests that this letter be circulated to all members of the Council and be made publicly available on the Authority's website.

⁸ Resolution MSC.303(87) (adopted on 17 May 2010), Assuring safety during demonstrations, protests or confrontations on the high seas.