



Agenda item: 10
Intervention on the Issue of Environmental Externalities
Delivered by Ambassador Deiye, Republic of Nauru
20 March 2024

Thank you, Chair.

First, we express our appreciation to Germany for convening and hosting last night's discussion on how we deal with the issue of environmental externalities for future exploitation activities in the Area as well as their introducing a concept note on integrating Environmental Costs into the Payment Mechanism. We also thank the discussants for sharing their expert knowledge and wisdom on this issue, and to Dr Brander for his presentation.

To say this is a complex area is an understatement. My delegation considers this is a field that requires our continued consideration as it is of a common concern. We are, however very much at the starting point. We have jumped into an area that requires far more detailed understanding including whether the approaches and concepts presented are the best policy instruments as well as the legal foundations we are presented with by the Convention and the Agreement. Some of the challenges and hurdles was also raised by last night's discussion.

Chair, we appreciate your listing the open and substantive issues raised by this topic in your briefing paper and would make the following observations.

First, as to considering economic externalities when devising the royalty system and determining royalty rates, we consider that Article 13 of Annex III of the Convention and Section 8 of the 1994 Agreement establish clear parameters on what can be taken into account when devising the royalty system and determining royalty rates. Neither of these provisions reference economic externalities or to environmental externalities.

These provisions require that the Authority's rates of payments be "within the range of those prevailing in respect of land-based mining...in order to avoid giving deep seabed miners an

artificial competitive advantage or imposing on them a competitive disadvantage". As we heard yesterday an objective measure for this lies in a comparison with effective tax rates for land-based mining jurisdictions. This has been discussed at length by the intersessional working group and experts and we concur with this comparative and measurable concept.

At this stage, no land-based mining payment system imposes additional royalties for environmental externalities, and it would be challenging for the Authority to attempt to impose additional payment requirements on contractors for such externalities on top of the royalty payment system currently under discussion.

We would also highlight that the use of externalities to inform the royalty system, would not be compatible with other principles and objectives that the Convention and the Agreement set for the Authority's payment system, including ensuring optimum revenues for the Authority, attracting investment and technology to activities the Area, the system being fair and having adequate means of determining compliance, and the system not being complicated or imposing major administrative costs on the Authority or contractor.

While the Council is free to consider a range of factors in determining what the appropriate royalty rate is for activities in the Area, the ultimate rate must comply with these principles and objectives. Explicitly increasing a proposed royalty rate by reference to a supposed 'externality' does not comply with these requirements.

As to an agreed methodology, there appears no internationally agreed methodology to value the environmental externalities associated with activities in the Area. Indeed, we are not aware of any land-based jurisdiction that economically values environmental externalities for the purpose of determining mining royalty rates. As such, and as previously mentioned, it would be contrary to the Convention and the 1994 Agreement for the Authority to attempt to construct such a methodology and use it to increase the royalties payable by contractors, at least for now.

As to the implications of incorporating environmental externalities into the royalty mechanism, this cannot override the obligation to meet the principles and objectives set out in the Convention and the Agreement. Consequently, whatever the final royalty figure is, it must still ensure deep seabed miners are in a comparable position to land-based miners. We highlight again that terrestrial mining has not yet internalised the externalities under discussion so

there is no comparable for terrestrial mining to reflect in the effective tax rate calculation measure.

Chair, we must continue this discussion and draw on global expertise in this matter and an informed discussion over the optimal policy choices and instruments available to us as well as the information and data required to advance this discussion. There is much to consider including the considerable uncertainty over the value and size of the potential environmental externalities, potentially better policy instruments and the best methods used to value the externalities, and the point at which the externalities are to be considered in the value chain to name but a few. We note the different ways presented to measure the externalities such as opportunity cost and contingent valuation. While my delegation are not experts in this field, we anticipate the need to understand the different and best methods to be used to value the externalities.

As a Council we are seeking to future-proof the exploitation regulations. Such futureproofing includes necessary review mechanisms. For financial terms this is housed in regulations 81 and 82 relating to the review of the system and rates of payment. At this point of the discussion, we consider it premature for the Authority to include a further royalty obligation to reflect the environmental externalities of future exploitation activities and incompatible with the requirements of the Convention and the Agreement as we have outlined.

Nevertheless, a payment system, and the rates under a system may evolve later to reflect such externalities when there are comparable fiscal mechanisms in place in a land-based context that the Authority must consider in establishing payments “within the range”. We welcome continued exploration of this complex topic.