



Republic of Nauru

Statement delivered by Her Excellency Margo Deiyé

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

Council meeting of the ISA's 29th Session in March 2024

Agenda Item 20: Report of the Secretary-General on incidents in the NORI-D contract area of the Clarion-Clipperton Zone

Introduction

Mr President,

Thank you for giving me the floor.

Nauru appreciates the serious manner in which the Authority's organs have treated the incidents that occurred in the NORI-D contract area late last year, including the actions taken by the Secretary-General and the statement issued by the Council's President and Vice-Presidents in December 2023. Nauru also acknowledges the Kingdom of the Netherlands' response to our request for an investigation into the matter, as the flag State of the *M/V Arctic Sunrise* and looks forward to further cooperation on any outstanding matters concerning the incidents and report in this regard.

Moreover, Nauru is pleased with the opportunity to discuss this issue in Council as we believe this is an issue that concerns all of us and requires us to finding solutions for the way forward.

Mr. President,

Nauru has submitted comments dated the 12 March 2024 to the Second Report on the Immediate Measures of the Secretary-General which is available on the ISA website regarding our intention of raising this matter and proposing a path forward for the consideration of the members of Council today.

Nauru will make available a non-Paper outlining the legal basis for the Authority to put in place our proposed measure. We hope the documentation made available and my remarks today

compels members of the Council towards a fruitful discussion that results in a durable solution that appropriately balances all interests and concerns regarding this matter.

Acknowledgement of the right to protest

Mr. President,

Nauru acknowledges and respects the right to protest under international law, including the right to protest at sea. However, this right is not without limits. The right to protest does not grant a license to ignore and disregard the sovereign and contractual rights of others, as made clear by the Arctic Sunrise Award.

The actions of Greenpeace

Before considering the limits on the right to protest, it is crucial to ensure that all Council members fully understand the facts regarding Greenpeace's actions.

Contrary to the suggestions that this was a mere 'peaceful protest', the actions taken by Greenpeace were far from safe and peaceful. Instead, they not only obstructed the scientific research campaign that NORI was mandated by this very Authority to undertake, but they also put the life and safety of NORI personnel at risk.

Greenpeace's protest activities included several intentional actions aimed at disrupting and endangering legitimate operations, such as:

1. 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);
2. Positioning of Greenpeace FRC's under the deployment points of research equipment;
3. Unauthorised boarding of the M/V Coco; and
4. Unauthorised and dangerous deactivation of maritime equipment on board of the M/V Coco.

Delegations are encouraged to view video footage that evidences these actions.

Mr. President,

Nauru considers these actions inappropriate for any person to undertake, especially for an observer of the Authority. Under the Authority's Guidelines for Observer Status of Non-Governmental Organizations, observers must have "*demonstrated their interest in matters under consideration by the Assembly*". Further, in determining whether this requirement is

met the Assembly may consider, among other things, “[w]hether the purposes or activities of the organization are related to the purposes and work of the International Seabed Authority”.

Greenpeace’s activities do not meet this standard. Instead of being related to the purposes and work of the Authority, Greenpeace’s actions run entirely contrary to the Authority’s objectives and mandate.

Moreover, Greenpeace’s actions in the Area were dangerous, unsafe, not peaceful, and indeed their boarding of the *M/V Coco* was found to be unlawful by the Dutch courts. This is clearly contrary to the foundational obligation in Article 88 of UNCLOS that the high seas are to be used for peaceful purposes.

In addition to these serious breaches of norms and law, which threaten the enjoyment of the freedom of the high seas in the Area by all States Parties, Greenpeace’s actions also specifically resulted in:

1. Undermining Nauru’s sovereign rights as a sponsoring State to have its sponsored entities undertake their exploration activities; and
2. Obstructing NORI, Nauru’s sponsored contractor, from completing its scientific research campaign, which was recommended by the Legal and Technical Commission and formed part of NORI’s contracted programme of activities.

To that end, Nauru seeks guidance from the Legal Counsel on how the Authority reviews an Observer’s rights to remain as an Observer to the ISA because of their unsafe and non-peaceful actions. We consider the need to review the Observer Status of Greenpeace in a timely manner and as appropriate.

The Netherlands’ response to the Immediate Measures

Mr. President,

With respect to the Immediate Measures of 27 November 2023, Nauru does not consider it necessary or useful to enter into an extended discussion on their underlying legal basis. However, putting aside that matter, the position of the Netherlands regarding the effect of the Immediate Measures is of concern.

Regardless of whether the Netherlands agrees or disagrees with the making of the Immediate Measures, it may not unilaterally decide not to follow what were measures issued by the

Secretary-General acting on behalf of the Authority. Nor is it permissible for a domestic court of any country to purport to decide upon the validity of the Authority's orders or measures.

There are clear processes and steps that member States of the Council, including the Netherlands, could have taken if they have wished to object to the Immediate Measures.

The Netherlands had both the capacity and expertise to pursue either of these actions. Nauru regrets that the Netherlands chose to take neither action and instead disregarded the Immediate Measures. If other States adopted similar approaches to the rules and measures of the Authority, this has the potential to undermine international cooperation among Member States and the rule of international law over activities in the Area.

Given that the Netherlands did not properly challenge the Immediate Measures, pursuant to Regulation 33 they remained in force for 90 days. In our view, the Netherlands had the responsibility for ensuring that vessels flying its flag – including the *M/V Arctic Sunrise* – were in full compliance with the Immediate Measures during that time.

Protecting human life and safety, and the rights of sponsoring States and contractors

Mr. President,

Regardless of past events, the NORI incidents demonstrate the urgent need for further action by the Authority to safeguard human life and safety and respect the rights of sponsoring States and contractors.

While aspects of these matters remain subject to litigation, limiting Nauru's comments, it remains undisputed that certain actions of Greenpeace were unsafe and dangerous, as confirmed by the investigation report provided by the Netherlands.

Protests that involve such dangers to human life and safety cannot be a recurring event. Nauru considers that it is the Authority, given its exclusive mandate to control and manage activities in the Area that is best positioned to address this issue.

The Authority is uniquely mandated under Article 146 of the Convention to take measures to ensure the “*effective protection of human life*” with respect to activities in the Area. It is also the Authority and no other body that is mandated under Articles 153(4) and 153(5) of the Convention to:

1. Exercise control over activities in the Area as necessary for the purpose of securing compliance with Part XI of UNCLOS, the relevant Annexes of UNCLOS, the rules, regulations and procedures of the Authority, and approved plans of works; and
2. Take measures to ensure compliance with Part XI and the exercise of the Authority's functions of control and regulation under contracts.

This makes the Authority uniquely placed to institute measures to respond to potential further actions against sponsoring States and contractors, to safeguard human life and safety, and to uphold the rights and obligations set out in UNCLOS and in the Authority's contracts.

The need for safety zones

Mr. President,

In addition to the Authority having the powers and being uniquely placed to address this issue, it is also clear there is a pressing need to ensure action is taken to prevent future obstruction of activities in the Area.

Nauru notes that this is not the first protest by Greenpeace against activities in the Area. This incident is at least the fourth attempt by Greenpeace since 2021 to target vessels undertaking activities in the Area.

Greenpeace has also stated its intent to continue its obstruction activities until it has achieved total disruption of the work that UNCLOS requires us to complete.

Specifically, on 6 December 2023, Greenpeace announced it would continue to "*disrupt [NORI's] plans until deep sea mining is off the table*" and boasted that "[t]his doesn't end here." Such statements cannot be ignored. They demonstrate Greenpeace's intent to undermine and stop the important work of the Authority and all member States. They show Greenpeace's disregard for both the legal mandate established under UNCLOS and also the scientific work being undertaken by contractors to inform our understanding of the deep seabed.

Greenpeace is fixated on stopping the full implementation of Part XI of UNCLOS, regardless of the science and regardless of the impact this has on developing States, including small island developing States such as my own country, Nauru.

In light of this, the ISA must take action to ensure that human life and safety are protected, that Nauru can continue its exercise of its sovereign rights as a sponsoring State, and that NORI can enjoy its rights and comply with its obligations under its contract.

Consequently, Nauru requests that the Council consider adopting a decision to establish a safety zone of up to 500m around vessels and installations conducting activities in the Area. Such a decision could establish such a rule as an interim measure until appropriate amendments to the draft regulations on exploitation and exploration regulations can be made and adopted. To this end, Nauru will a draft decision in this regard and will be guided by the President on how to proceed to further discussions.

Reservation of rights

Mr. President,

Finally, Nauru underlines the critical importance of this matter. The frustration of our sovereign rights to benefit as a sponsoring State is a significant concern, as is the threat posed to human life and safety.

In the absence of immediate action by the Council, Nauru reserves its rights to bring and pursue all claims available to it under the Convention.

We, of course, welcome continued discussion of this matter and its swift resolution.

I thank you.