



Republic of Nauru

Statement delivered by His Excellency David Aingimea
Permanent Representative of the Republic of Nauru to the International Seabed Authority
Council meeting of the ISA's 29th Session in July 2024

Agenda Item 10: Underwater Cultural Heritage

Thank you for giving me the floor, Mr Facilitator.

We thank the Federated States of Micronesia for the Briefing Note for Thematic Discussion on Underwater Cultural Heritage, as well as the Kingdom of Spain for their third Non-Paper on a draft text of Regulation 35 and the representatives of various Indigenous Peoples for their submission on intangible underwater cultural heritage. Further, we thank the Kingdom of Spain for hosting last night's side event and our appreciation to Dr. Aznar and Dr Underwood for sharing their invaluable insights, knowledge and perspectives. We found the side event very helpful and informative to our deliberations.

We hope that the Council can soon resolve the high-level policy issues associated with this important topic to then allow for the finalisation of appropriate regulatory text.

The two specific questions provide proposed by the Federated States of Micronesia provide a useful framework for our discussion. In that context, Nauru has carefully considered these questions and provides the following comments.

With respect to the first question posed in the Briefing Note, Nauru expresses in-principle support to the general approach taken proposed by Spain in regard to the material scope of draft Regulation 35.

The proposed focus of draft regulation 35 on tangible cultural objects is clear. We note that draft regulation 35 relates to *finds* of cultural objects, including archaeological or historical objections and human remains. It implements Article 149 of the Convention, which again is focused on "*objects* of an archaeological and historical nature". To avoid confusion and ambiguity, we consider it sensible and appropriate that the draft regulation similarly

focuses on tangible objects – given it is only tangible objects that can be “*found*” whilst activities are conducted in the Area.

With respect to the procedural scope of draft regulation 35, Nauru considers the proposed procedures to be clear and appropriate, although reserves its right to make further specific text submissions on the proposed drafting. For example, the specification of what the Council is to decide regarding the found objects may need to be broader than just whether or not activities are to be terminated around the object. Further, we should also consider incorporating language such as that in the existing draft regulation 35 to allow contract areas subject to such a ban on activities to be replaced or compensated for.

Nauru also considers that aspects of the procedures may need to be further detailed in Standards and Guidelines. For example, there may be a need for a more detailed outline of the procedures that need to be followed in order to ascertain the views of non-Member States, UNESCO, other international organizations and stakeholders.

With respect to the second question posed by the Briefing Note regarding intangible underwater cultural heritage, Nauru has carefully considered the position expressed in the submission of representatives of Indigenous Peoples. Nauru considers it important for the Indigenous People to be part of the Authority’s decision making and to have their cultural rights protected in all respects.

Nauru notes that further work is required to achieve an appropriate and effective approach to the protection of intangible cultural heritage. With that objective in mind, Nauru would like to provide several comments on the detailed proposal of the select representatives of Indigenous Peoples and local communities from the Pacific.

First, Nauru supports the suggestion that purely intangible cultural heritage is better protected through preventative measures and that stakeholder interests in such heritage is best addressed through processes such as the Environmental Impact Assessment and EIA-related consultation.

This reflects the nature of intangible cultural heritage – namely that is not tangible and thus is not something that can be ‘found’ in the sense relevant for draft regulation 35.

It is also a practical and concrete way to ensure that such heritage is properly identified and safeguarded. This is far preferable to more ambiguous or unclear proposals that would

impose broad but potentially vague obligations that will be difficult to implement and regulate in practice.

Second, Nauru welcomes the inclusion of a specific definition of intangible underwater cultural heritage in the regulations and agrees that the definition contained in the Convention for the Safeguarding of the Intangible Cultural Heritage could form the basis for any such future definition.

At the same time, Nauru considers that such definition could be supplemented to reflect the realities of intangible cultural heritage related to the deep sea and to ensure that the language works in the context of the UNCLOS regime. We can propose specific language on this in due course.

Third, noting UNCLOS's designation of the Area as the common heritage of all humankind, Nauru also takes this opportunity to reiterate its position that the whole of the deep sea cannot be considered a culturally significant place. Such an interpretation is incompatible with the conventional supporting logic of a special protected cultural place which requires that such a place possess specific historical or cultural characteristics.

Although there may be cultural or spiritual values broadly associated with the deep sea, such values do not qualify the entire Area to be designated a unique and special cultural place. We consider that allowing for such a claim would set a dangerous precedent for future UNCLOS decision-making and would be neither reasonable nor practical.

Fourth, Nauru notes that the submission of representatives of Indigenous Peoples proposes to include "*the free prior informed consent of Indigenous People and Local Communities*" as one of the principles to guide the application of the draft regulations. Nauru considers that such a concept will be challenging to implement procedurally and may create uncertainty for both Contractors and the Authority. In any case, it would not be sufficiently clear to merely include this reference in draft regulation 2, given the various understandings and approaches to this concept that parties may hold.

Finally, Nauru notes the proposal to establish a Committee on Intangible Underwater Cultural Heritage to assist the Council in protecting and safeguarding intangible underwater cultural heritage. While respecting and understanding the importance of this topic, Nauru would be concerned with the creation of multiple bodies and committees which may overlap

with and duplicate existing work and processes. The issue of intangible underwater cultural heritage is an important one, but it is connected with broader issues of cultural heritage and stakeholder consultation such that it would not seem to be justified to establish an entire, permanent committee focused solely on intangible heritage issues. It is also not clear why such a committee would be created in the draft exploitation regulations, given the relevance of these issues to the Authority's broader work.

The Convention establishes the key organs of the Authority, including bodies that are already responsible for considering matters relating to the protection of cultural heritage. We consider that Member States in the Council should be representing these concerns on behalf of their Indigenous Peoples. Further, the Legal and Technical Commission should be staffed or have access to appropriate expertise to consider these matters as part of its overall work. We note in this context that applicants will already be engaging with Indigenous Peoples and local communities as part of their Environmental Impact Assessments, and having this work assessed by the Commission as part of the application process.

Next steps

As to the possible next steps, Nauru agrees with the suggestion of Micronesia that it will be useful for the facilitator of the intersessional working group on underwater cultural heritage to put together a set of draft textual proposals, drawing on all inputs submitted and comments made by delegations on the matter.

Nauru reserves its right to make further written submissions on the matter of underwater cultural heritage as well as to submit written comments regarding the textual proposals put forward by the facilitator following this discussion.

Nauru looks forward to hearing the views of others and finding a path forward to ensure the effective protection of underwater cultural heritage.

Thank you, Mr Facilitator.