

REPUBLIC OF NAURU

**STATEMENT BY GRAHAM LEUNG,
HEAD OF THE NAURU DELEGATION AT THE COUNCIL MEETING OF 24TH ISA
ASSEMBLY, KINGSTON, JAMAICA
WEDNESDAY, 18TH JULY 2018.**

Mr President,

Nauru is a small island, developing sponsoring State (SIDSS) in the central Pacific.

Possibly no more than 4 countries fall into this category, so we obviously have a keen interest in the current debate.

Draft Regulations

We congratulate the Legal & Technical Commission on the latest iteration of the draft regulations.

The work of the LTC is at a critical juncture.

Nauru would like to see the current momentum continue with a degree of urgency. This is a window of opportunity that will not remain in perpetuity and we support Cameroon's position of concluding this work as soon as possible to allow mining to take place.

We note there has been very little discussion, policy, or regulatory text emanating from the ISA that addresses the dual regulatory roles of ISA and States, respectively, and specifically how the ISA will coordinate in the performance of its functions with sponsoring States during a contract period.

Nauru supports the idea of the development of a matrix of duties and responsibilities of regulatory actors, highlighting

- (i) the unwelcome vulnerability that a SIDS sponsoring State is exposed to in the interim, and

(ii) (ii) the difficulty agreeing the text of Regulations when fundamental policy decisions about 'who will do what' remain un-addressed.

(iii) Other aspects relevant to sponsoring States appear to require further consideration in the Regulations. For example, 'effective control' is not defined. In this regard, we support the views of Argentina and the Netherlands on this point, potentially leaving a state's sponsorship status open to challenge. The provisions on change of control, transfer of title, and use of contract as security do not appear to consider the flow-on implications for sponsorship should the event in question lead to a change in the nationality or State of 'effective control' of the contractor.

There are some good sponsoring state laws in place already. Nauru's International Seabed Authority Act, 2015 is one such example. To what extent are these precedents being taken into account in developing the ISA regime? It would be helpful for the ISA to complement, and not undermine, the existing regimes within domestic law.

The Secretary-General's report on sponsoring State laws indicates that the Secretariat will prepare by 2018 "a comparative study of the existing national legislation with a view to deriving common elements therefrom": <https://www.isa.org.jm/document/isba24c13>.

Nauru requests that this study should also explicitly consider the fit between these domestic laws and the Exploitation Regulations. There is a need to address and highlight any potential gaps or overlaps between the national and proposed international regimes.

We consider that greater efforts are needed to establish an appropriate regulatory framework to attract investment in the Area to enable commercially viable exploitation to take place compatible with the need for environmental sustainability and protection. That framework should be transparent and sensitive to the realities of commercial production and exigencies, without compromising environmental protection.

The draft regulations must ensure that the exploitation activities in the Area are carried out in terms of the principle of the Common Heritage of Mankind (CHM) because the Area and its resources are the CHM (Art 136). We support Tonga that these principles need to be operationalized in the regulations.

The draft regulations must give effect to the principle of the CHM in terms of the Convention, more particularly, how fair and equitable benefit sharing will be realized.

We respectfully suggest that there is also a need for a payment mechanism that balances commercial interests with a fair and equitable return to the CHM. This is an obligation under the Convention in accordance with Articles 140(2) and 160, paragraph 2(f)(i).

Nauru supports developing standards and guidelines in parallel with the regulations to allow for simultaneous adoption.

Finally, the draft regulations should address how the ISA is going to protect developing countries from adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected mineral, or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, as provided in articles 150 (h) and 151 of the Convention.

Protection of Contractor Rights

Nauru believes that for this to happen, there must be greater certainty and stability built into the draft Regulations.

As they stand, the Regulations can be changed at will the Authority, removing predictability and certainty. The sanctity of contracts once agreed to must be respected. It will obviously be difficult for investors and a disincentive if such sanctity is undermined. We do not think this is desirable and respectfully suggest that any changes to the Regulations must only apply to existing exploitation contracts by agreement with the Contractor.

As a sponsoring state, we are aware of our obligations and responsibilities as a sovereign nation. We take them seriously. We fully appreciate and accept concerns about environmental protection. At the same time, we recognise that commercial imperatives mean that the process of early adoption of the regulations must be brought to a head sooner than later to allowing exploitation to take place.

It is essential that the Council gives clear guidance to the Legal and Technical Commission on the major policy issues to enable it to complete its technical work and propose a draft Mining Code to the Council for consideration as soon as possible.

Nauru believes that attention should be devoted to filling the current gaps on the environmental requirements, the payment mechanism, and the monitoring and enforcement regime, so that the revised draft can be submitted to stakeholder consultations as a matter of expediency. This is essential to keep the momentum leading to a stable and predictable financial & regulatory framework, permitting continued investment from the private and public sector.

Importance of REMPS (regional environmental management plans)

Seabed mining, like all mining, will impact the environment.

The Convention requires the ISA to protect the marine environment from these impacts. This will require regional as well as local management measures. Yet the current draft regulations only loosely references regional environmental management plans (REMPs), which are necessary to protect biodiversity and the environment.

There appears to be a sense by various delegations that regulations should require a REMP be in place before mining occurs and should require contractors to comply with REMPs.

A process for REMPS

The ISA has co-sponsored REMP workshops this year for the cobalt crusts in the Western Pacific and for vents around the world. This is a welcome initiative.

However, it is still unclear what the process is for creating REMPs and adopting these plans. The ISA should clearly state what its plan, requirements, and timelines are.

Standards and Guidelines

The regulations currently put a number of contractor obligations under 'standards and guidelines'.

It is still unclear how these standards and guidelines will be developed, which will be binding on contractors, and who will have the ability to initiate reviews of the standards and guidelines. My delegation believes that the ISA should make this clear.

Holistic approach to adoption

It has been suggested in some quarters that decisions could be made on portions of the draft regulations during the current session of the Assembly.

My delegation believes however that given how interconnected the document is, the limited time available for review, and the need for closer analysis, it seems premature to declare consensus on any provisions at this stage.

We noted that Member States and observers have been asked to provide comments on individual regulations through written submissions by this Friday. We would request ample time to enable delegations to consult capitals on the latest draft.

We would like to see a Strengthening the provisions on the Financial Mechanism to better capture the interests of developing, sponsoring states. We are also concerned and would like more work to be done in ensuring the environmental provisions particularly on the issue of transboundary impacts better capture the special interests of SIDSS.

Thank you, Mr President.