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Agenda item 12

Draft regulations for exploitation of mineral resources in the Area

Submission of members of the Council of the International Seabed Authority from the African Group in relation to the request made by Nauru pursuant to section 1, paragraph 15, of the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982

1. The African Group presents its compliments to the Council of the International Seabed Authority and wishes to submit the following statement in response to the letter dated 25 June 2021 from the President of Nauru, Lionel Aingimea, requesting, pursuant to section 1, paragraph 15, of the 1994 Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, that the Council completes within two years of the operative date of the request, which is 30 June 2021, the adoption of the rules, regulations and procedures necessary to facilitate the approval of plans of work for exploitation in the Area.
2. The African Group wishes to reiterate its commitment to sustainable ocean governance, including through the development and adoption of the regulations for exploitation.
3. While appreciating the rationale of Nauru to accelerate the discussions on the draft regulations for exploitation, the African Group hereby expresses concern about the invocation of the provisions of section 1, paragraph 15, at a time of a global pandemic that continues to constrain the ability of member States to engage effectively in the deliberations allowed under the applicable rules of procedure of the Authority to develop and “complete the adoption of the rules, regulations and procedures necessary to facilitate the approval of plans of work for exploitation in the Area” as contemplated under section 1, paragraph 15, of the 1994 Agreement. The legal and public health constraints notwithstanding, work on the regulations for exploitation and corresponding standards and guidelines is moving forward, as far as practicable.
4. More importantly, critical questions persist regarding the mechanism for sharing equitably the benefits derived from seabed mining, the impact of such activity on

* New dates of the in-person meetings originally scheduled for July 2020.



terrestrial mining economies and the effects of mining on deep ocean ecosystems and coastal States. These questions must be substantially answered before regulations for exploitation can be finalized and commercial scale mining permitted, even on provisional basis.

5. In the past, we, the States members of the Authority, have mutually gained from our shared commitment to consensus decision-making and stewardship on behalf of humankind, and although the request by Nauru is undertaken within the framework of the Convention, it is likely to weaken rather than facilitate the development of an effective regime fully embodying the common heritage of humankind principle.

6. The African Group has repeatedly emphasized the need to operationalize the Enterprise. For most developing States, the Enterprise is the only means of participation in activities in the Area. Without the operationalization and autonomy of the Enterprise, including by the appointment of a Director-General and a governing board, we are concerned that elements and mechanisms designed to operationalize the common heritage of humankind principle in the Area risk being eroded.¹

7. Moreover, the financial regime has not been agreed – the African Group has also repeatedly insisted that a prerequisite for any mining in the Area is a financial regime that properly compensates humanity for its resources and land-based miners for their losses. The payment regime remains a subject of intense negotiation, and discussions are yet to open regarding the methods for distributing funds thus collected.²

8. Other key sections of the exploitation regulations have yet to be agreed. It is recalled that the African Group submitted extensive comments on the draft regulations, including key positions on critical issues, such as transparency; inspection, compliance and enforcement; the settlement of disputes; and transboundary harm.³ We note with concern that most of those comments have not been included in the draft regulations and have received no response. Member State working groups established to further the development of the regulations have yet to meet.

9. Given the significant work on the regulations that still lies ahead, it may seem unlikely that a satisfactory agreement on this framework could be reached in two years. Sufficient time is needed for due consideration to ensure a regime that balances the rights and obligations of the Authority and its stakeholders.

10. The African Group also acknowledges the critical importance of scientific knowledge of the deep ocean and its connection to coastal States and the broader ocean ecosystem. Effective governance requires sound scientific knowledge that is also yet not available.

11. To conclude, despite the seemingly insurmountable task ahead of approving regulations within two years, the African Group would like to state its expectations that the priorities listed above will be fully addressed in any regulations to be adopted by the Authority as a prerequisite to the consideration of any exploitation contracts. If sufficient regulations cannot be agreed upon within two years, the African Group

¹ See the proposal of the African Group for the operationalization of the Enterprise dated July 2018. Available at <https://isa.org.jm/files/files/documents/alg-oboag-entp.pdf>.

² See the submissions of the African Group on the payment regime of the Authority for deep-sea mining in the Area and on two payment regimes for consideration by the Council of July 2019. Available at www.isa.org.jm/files/files/documents/agsmitmodelfinal.pdf and www.isa.org.jm/files/files/documents/agpaymentregimes.pdf, respectively.

³ See the submission of the African Group to the Authority on comments on the revised draft regulations for exploitation of mineral resources in the Area dated September 2018. Available at www.isa.org.jm/files/documents/EN/Regs/2018/Comments/AfricanGroup.pdf.

member States will heavily weigh those priorities yet to be addressed when faced with a decision to consider and “provisionally” approve a plan of work.

12. The African Group requests that the present letter be issued as a document of the Council for the twenty-sixth session and made available in all official languages of the Authority.
