

## Earthworks Intervention to the Assembly of the International Seabed Authority

Agenda Item 9: Annual report of the Secretary-General (ISBA/26/A/2, and ISBA/26/A/2/Add.1) & Item 10: Report on the implementation of the strategic plan and high-level action plan (ISBA/26/A/8-ISBA/26/C/23 and ISBA/26/A/9)

14 December 2021

In regard to the Annual report of the Secretary-General and the Report on the implementation of the strategic plan and high-level action plan, we would like to make the following observations.

The perception of many outside looking in at the work of the ISA is that the Republic of Nauru triggered the 2-year for the benefit of The Metals Company (TMC) – the Canadian company which owns NORI, the contractor Sponsored by Nauru. TMC needed to convince investors to vote for a merger with the Sustainable Opportunities Acquisition Corporation by November 2021. The merger was successfully completed in September 2021 which then allowed TMC to list on the NASDAQ stock exchange in the United States. Last month TMC stated in a press release that the triggering of the 2-year rule by the Republic of Nauru now “obliges the ISA to complete the adoption of exploitation regulations within two years”. Just today, during the break between the morning and afternoon sessions of the Assembly today, the CEO of the metals company stated in a webinar interview<sup>1</sup> that he expected the ISA to adopt the regulations in 2023 and that The Metals Company would be able to begin nodule mining in 2024.

As we mentioned during the meeting of the Council, we would submit that rushing the regulations in the absence of adequate scientific information among other things, primarily to accommodate, or for the benefit of, The Metals Company, may not only risk casting aspersions on the integrity of the ISA but may undermine public confidence in the UN Convention on the Law of the Sea itself.

We note with concern the statements of a number of the members of the ISA that the regulations need to be adopted by July 2023, that this deadline has been imposed by UNCLOS, and that adopting the regulations is a priority for the ISA. We disagree. Rather than accelerate or intensify the negotiations toward the adoption of the regulations, ISA members should take a step back and look closely at the structure, working methods and bylaws of the ISA. It would be important to revisit the why negotiators adopted the provisions that they did in Part XI during the Third UN Conference on the Law of the Sea and likewise look hard at what was agreed and why during the negotiations which concluded with the 1994 Part XI Agreement. Are all of these provisions still fit for purpose knowing what we know now entering the third decade of the 21<sup>st</sup> century?

We now know from the debate here at the ISA and elsewhere over the past few years that inevitable and irreversible biodiversity would occur if mining in the CCZ was permitted; that nodule mining will cause unavoidable and large-scale damage to the fauna of the marine environment; that the royalty payments are likely to provide very little financial benefit to ISA member states, much less humankind as a whole; that a number of the bylaws of the ISA may well provide perverse incentives to mine; the issue of transparency as a concern brought up by many delegations; and a decision-making process that puts far too much authority in the hands of the LTC to decide who will be

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<sup>1</sup> [https://icrinc.zoom.us/rec/play/l\\_UpOdob57PxTz0syeTM-qKCJLPIQSPYjVEbYMIZsR-A-o\\_WiHW4yDCHIOMFdGDFkuUtnuez16d\\_Uxd.VerfYXNMLsmNI7Yn?continueMode=true&tk=rqQ23Z9GUURDGHMz1PfXOgeks45YJQNGBr22dYjC2oM.DQMAAAAVxIbHORZwNEhVelhZY1RTQ1hqOFQ1cnN4RmJBAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA&uuiid=WN\\_2uHChES\\_TTebNbGw92ED2Q&\\_x\\_zm\\_rtaid=CWeLzoN4Q-m2xPaGvii5Zg.1639514752261.3dce8bbd2e3c5edc2c281194f4159445&\\_x\\_zm\\_rhtaid=415](https://icrinc.zoom.us/rec/play/l_UpOdob57PxTz0syeTM-qKCJLPIQSPYjVEbYMIZsR-A-o_WiHW4yDCHIOMFdGDFkuUtnuez16d_Uxd.VerfYXNMLsmNI7Yn?continueMode=true&tk=rqQ23Z9GUURDGHMz1PfXOgeks45YJQNGBr22dYjC2oM.DQMAAAAVxIbHORZwNEhVelhZY1RTQ1hqOFQ1cnN4RmJBAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA&uuiid=WN_2uHChES_TTebNbGw92ED2Q&_x_zm_rtaid=CWeLzoN4Q-m2xPaGvii5Zg.1639514752261.3dce8bbd2e3c5edc2c281194f4159445&_x_zm_rhtaid=415)

awarded contracts to mine, when and where, even if a majority countries may be opposed to the awarding of an exploitation contract.

We concur with conclusion of the UK House of Commons Environment Audit Committee in its Sustainable Seas report that “the case has not yet been made” that the world needs to mine the deep-sea.<sup>2</sup> It is important not to conflate commercial viability with societal necessity or make unfounded assertions that humankind needs to, or must, mine the deep sea. This coupled with the fact that leading scientists have stated that when it comes to mining nodules “due to the slow growth rates of nodules (ca. 10 mm/My) and overall very low sedimentation rates, short-term recovery is unlikely; the nodules and nodule dependent fauna may take millions of years to recover, and even the partial recovery of the motile sediment-dwelling fauna may take hundreds to thousands of years.”<sup>3</sup>

Do the regulations really need to be rushed to allow mining for nodules in the CCZ to be permitted over the next few years when impacts could be felt over millions of years? What’s the hurry? What about future generations? In this regard we appreciate the comments by members that have also expressed the need for caution and real precaution. Rather than agreeing to an intensified and accelerated roadmap to negotiate the exploitation regulations, again, our recommendation is that ISA members call for a pause on the process for the benefit of humankind to carefully consider next steps, how much more and what type of science is still needed to make informed decisions, whether the world really needs to mine the deep sea, and whether the ISA is fully fit for purpose as a regulatory body.

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<sup>2</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmenvaud/980/980.pdf>

see paragraphs 70 and 71

<sup>3</sup> Stefanie Kaiser, Craig Smith, Pedro Martinez Arbizu, “Biodiversity of the Clarion Clipperton Fracture Zone”. *Marine Biodiversity*, Volume 47, pages 259–264 (2017) <https://link.springer.com/article/10.1007/s12526-017-0733-0>