PROJECT BACKGROUND: APPLICATION FOR EXPLORATION CONTRACT

Article 148 "The effective participation of developing States in activities in the Area shall be promoted ... having due regard to their special interests and needs" (emphasis added)

Developing States do not possess the financial and technical capacities to undertake polymetallic nodule exploration and exploitation in the Area. To effectively participate in these activities Developing States must partner with the Private Sector. Importantly, if polymetallic nodules are to be developed in the near term Private Sector investment and technology must be attracted to the Area.

Nauru Ocean Resources Inc. is offering to direct the required investment and world leading deep sea exploration and development expertise to the Area under a partnership that provides significant benefits to the Republic of Nauru; a Developing State.

Nauru Ocean Resources Inc. ("NORI") is a Nauruan registered company that was incorporated in the Republic of Nauru on 6 March, 2008. NORI is a subsidiary of Nautilus Minerals Inc.; a world leader in deep sea mineral exploration and development; and a Company that has worked with the ISA for over 10 years. The Republic of Nauru has sponsored NORI in an application to obtain a plan of work for exploration in the Reserved Area.

NORI’s ability to operate is controlled by the jurisdiction and regulatory control of Nauru, and NORI’s exploration activities are effectively controlled under a Sponsorship Agreement between NORI and the State which provides a legal mechanism through which Nauru can fulfil its Sponsorship Responsibilities and effectively ensure NORI complies with the ISA Contract for Exploration, the Regulations, and the Convention.

Nauru is dependent upon foreign aid and food imports, and considers this project important in the State’s strive to identify new social and economic development opportunities; particularly since Nauru’s terrestrial resources are almost completely depleted and there are no known non-living resources in its EEZ that are considered commercially prospective.

Benefits to Nauru from Partnership with NORI:

Nauru has negotiated a Sponsorship Agreement under which NORI shall provide to the State:

(i) Significant annual mining production fee (royalty) during exploitation
(ii) Significant annual monetary contributions to health and education during exploitation
(iii) Monetary payments during exploration
(iv) Employment in the project for Nauruan Nationals
(v) Training and capacity building - geology, engineering, environmental science
(vi) Skills and technology transfer
(vii) access to finance and technology Nauruan entities would otherwise not have
REQUEST FOR AN ADVISORY OPINION PURSUANT TO ARTICLE 191 OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

As this project is fundamentally premised on benefiting Nauru and providing a model for other Developing States to follow, Nauru and NORI recognise there is a responsibility to set a leading example to ensure the appropriate safeguards are put in place for those Developing States interested in such a project. In the interests of all Developing States it would be of value to obtain legal clarification to assist these States fulfil their Sponsorship Responsibilities and identify what terms they should impose in their own sponsorship agreements to ensure a successful relationship with their Private Sector partner.

Whilst Nauru’s Sponsorship Agreement is quite exhaustive and confers numerous powers upon Nauru to assist the State take the necessary measures to fulfil its Sponsorship Responsibilities, Nauru believes the Seabed Disputes Chamber may be able to clarify whether there are any additional measures the Sponsoring State must take. If there are additional measures, additional safeguards can then be incorporated into the Sponsorship Agreement. As Nauru would like its application for exploration to be reheard by the LTC in 2011, there needs to be sufficient time prior to that date to incorporate any additional feedback from the Seabed Disputes Chamber this year.

Under Nauru’s Sponsorship Agreement, NORI assumes a duty of care to protect the interests of Nauru at all times. This Request for an Advisory Opinion demonstrates that Nauru’s interests come first in its partnership with NORI.

Obtaining an advisory opinion from the Seabed Disputes Chamber to clarify Sponsor State Responsibility will also:

(i) provide greater certainty to all States who are, or who intend to, Sponsor activities in the Area;
(ii) demonstrate to Private Sector investors that there is a procedure to refer matters to a functioning tribunal that can be called upon to provide timely rulings and settle disputes regarding activities in the Area; and
(iii) assist to develop minimum standards that must be observed in the Area which in turn will promote best practice and consequently promote the protection of the environment and the safety of those operating in the Area.
Benefits to the ISA and its Member States from NORI’s Proposed Resource Development

(i) Finally sees Developing States involved in the Reserved Area – provides an example for other Developing States to follow.

(ii) Brings a successful and proven Private Sector business model and expertise to polymetallic nodule development in the Area.

(iii) Significantly increases the likelihood of mining royalties being paid to the ISA in the near term to assist the Authority achieve “self-funding” status and position the ISA to distribute mining proceeds to Developing States.

(iv) NORI is willing to direct significant investment from the Private Sector to advance the development of polymetallic nodules in the Area for the Benefit of Mankind, and willing to take on the large financial risks and high costs associated with being the first Private Sector entity to operate under an ISA Contract for Exploration. By leading the way NORI will hopefully ‘de-risk’ the industry and provide confidence to others in the Private Sector who are currently reluctant to risk such significant investment.

(v) By giving confidence to the Private Sector NORI will hopefully encourage a greater number of Private Sector entities to participate in activities in the Area, thus there will be more entities for Developing States to partner with.

(vi) May result in the creation of new Reserved Areas through increase in exploration and attracting investment from additional Developed States.

(vii) Increase our knowledge of the environment and resources in the Area, which will assist the ISA to manage these areas and assist in developing an Exploitation Code that is based on sound and extensive scientific data.

(viii) Significantly increase progress in advancing deep-sea technology and engineering.

(ix) Training for Nationals from other Developing States.

(x) Increased opportunities for collaboration with current Contractors and future Contractors from both Developed and Developing States.

Thank you Mr President

The Fiji Delegation would like to seize this moment to speak in support of the Nauru Delegation’s proposal contained in Council document ISBA/16/C/6.

For over thirty years now the International Seabed Authority has been preparing for the day when minerals might be collected from the floors of our oceans. These preparations have been diligently carried out, they have been inclusive and, yes, with all these sessions over the years they have been costly for us all. Throughout these preparations, this Council has shown over-riding concern for the safeguarding of the ocean’s environment, Mr President, and this respect for the planet’s environmental integrity must rule our efforts as we begin the move to the next phases of exploration and harvesting of the seabed’s mineral resources.

Some of us who have been involved in this process since the 1970s, have wondered if the day would ever come in our lifetimes when we would witness the harvesting of the seabed’s minerals. But by many accounts we are now closing in on that time of harvest. It is timely therefore to recall that the International Seabed Authority is the guardian that ensures the seabed’s resources are administered for the benefit of all mankind. And let us also recall that under that guiding principle, we have through the good offices of the Authority, adopted specific provisions to give Developing Countries the opportunity to participate in the work and rewards of the process.

As you are well aware, Mr President, the Authority can issue licenses for the exploration and mining of seabed minerals to any of three categories of operators; namely, to Member States to carry out their own work, to state-owned enterprises, or to the private sector operating in concert with a Sponsoring State. For Small Island Developing States such as Fiji and the thirteen other Pacific Island countries that are State Members of the International Seabed Authority, the only foreseeable participation we can have in the mining process is by State sponsorship of private sector enterprise. It is therefore very encouraging for us to observe the kind of cooperation evident in the agreement between the Government of Nauru and Nauru Ocean Resources, which is a Nauru incorporated subsidiary of Nautilus Minerals, a world leader in deep sea mineral exploration. As we see them set off to explore the ocean’s
last frontier, we are reminded of the almost incredible human endeavor that took the first settlers of the Pacific Islands out over the vast Pacific Ocean in their frail sailing canoes.

Mr President, the Small Island Developing States of the Pacific have few resources with which to support the aspirations of their people. It is thus that we look to the potential of the seabed minerals of the wide waters surrounding our island countries with great hope. And it is because of these aspirations and this hope that we have signaled our welcome to the international private sector to join with us, to get involved with our Small Island Developing States in the harvesting of seabed resources. In doing so, we seek to play a positive contributing role by our island countries serving as State Sponsors in the exploration and mining of seabed minerals. In this way, Mr President, we are undertaking the role that was envisaged for us by the far-sighted, high principles of the founders of the International Seabed Authority.

Given the pioneering nature of Nauru's partnership with the international private sector, a partnership that is taking the Authority into new phases of its work, the Fiji Delegation fully agrees that it is prudent, both on the part of Nauru and on the part of all Small Island Developing States, that we are clear on the responsibilities and liabilities a Sponsoring State assumes under such a role. There is most certainly no element of evasion in this prudence. What the Nauru proposal represents is a call for clarity and certainty, so that we can all faithfully fulfill our responsibilities to the international community and at the same time, to the vulnerable economies of our Small Island Developing States. It is thus in a spirit of prudent responsibility, that we speak in support of the Nauru proposal before the Council.

Mr President, lest there be members of the Council who think these considerations are not pressing, please allow the Fiji delegation to say otherwise. In the case of Nauru Ocean Resources Inc, we are witness to a Sponsoring State and a very credible private sector entity being on the cusp of committing substantial resources to advance polymetallic nodule exploration and harvesting in the Clarion-Clipperton Zone. As we understand it, once the Seabed Dispute Chamber has given its advisory opinion, if the advice is conducive to proceeding, Nauru Ocean Resources intends to request the Legal and Technical Commission to rehear its exploration license application at next year's 17th Session of the Authority.

They are keen to get on with the job, and in doing so will be serving as pioneers for us all; so let us move in tandem. Through the International Seabed Authority, we will all share in the rewards of their efforts, by way of greater understanding of legal provisions of State Sponsorship agreements, by way of exploratory and environmental findings, by the technological advances involved, and by way of our sharing in the resulting royalties. It is with these common benefits in mind, Mr President, that we support this endeavor and respectfully call for timely action by the Council.

The Fiji Delegation stresses that our deliberations on this matter send an important message to the private sector, for what we are dealing with here is cutting-edge interaction between the Authority, the deep-sea mining private sector and a Developing Country. If the International Seabed Authority system is seen to work efficiently in this case, then it sends a clear message that it can work for private sector cooperation with any developing country. Let us be sure of one thing, bogging the system down by
Inertia or dissension will be a major deterrent to private sector involvement in seabed mining in cooperation with Sponsoring States. Such an outcome could only be to the detriment of the interests of developing countries.

In the proposed approach to the International Tribunal for the Law of the Sea, we are greatly encouraged by Article 191 of UNCLOS, which states that such advisory opinions as those sought by Nauru, shall be given by the Seabed Disputes Chamber as a matter of urgency. May I suggest, Mr President, that the Article’s specific call for urgency implies that we too at this Council should refer on such matters without delay.

In conclusion, Mr President, the Nauru proposal is that an advisory opinion be sought from the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea on matters relating to Sponsoring States’ responsibility and liability. In speaking in support of the Nauru proposal, Mr President, the Fiji Delegation suggests the way forward for us today is for the Secretariat of the Authority to prepare a draft decision that succinctly captures the essence of the Nauru proposal, for presentation to the Council for discussion and hopefully approval in the aforesaid spirit of prudent and timely responsibility.

I thank you.
6th May, 2010 Statement by the Fiji Delegation on the Draft Decision of the Council of the
International Seabed Authority requesting an Advisory Opinion pursuant to Article 191 of the

Thank you Mr President.

I take the floor to speak today in order to present the Council with the perspective of not just the Fiji
Delegation, but that of other Pacific Island developing countries. My colleague from Nauru has had to
return to the Pacific this morning, but he and I had the opportunity last night to jointly prepare this
statement to the Council. It would be remiss of me to not to also mention, Mr President, that upon
returning to New York it is my assigned duty to brief the PSIDS, the caucus of eleven Pacific Small Islands
Developing States, on the deliberations and results of the 16th Session of the International Seabed
Authority. In this regard it shall be with great pleasure that I will be able to relate the thorough
consideration given to the regulations governing the prospecting and exploration of minerals in the
Area, and to report to my New York colleagues on the spirit of inclusiveness and consensus that has
driven our efforts at this Session. We have seen in action here this year, Mr President, that it is indeed
the principle of "for the good of all mankind", for it is so that we are bound, which in the end rules the
Council's work.

Moving to the subject at hand, Mr President, we wish to thank the Secretariat and congratulate the
Legal Counsel on the production of the paper before us, ISBA/16/C/L.4. As Council has already heard,
both the Nauru Delegation and the Fiji Delegation are in agreement with the succinct summary that the
"draft decision" captures. We would also like to state we would be very happy to consider any
modifications to the draft decision that Council members in their wisdom may wish to make by way of
refinements of the questions being asked of the Seabed Disputes Chamber.

During informal discussions held with members of the Council over the last couple of days, one of the
misunderstandings that has been cleared up is the relationship between Nauru's application for an
exploration license at the Legal and Technical Commission, and the proposal now before us to seek an
advisory opinion from the Seabed Disputes Chamber. We trust we are all now clear on the
understanding that these are two very distinct and materially unrelated matters. The first is an ongoing
piece of business between Nauru and the Legal and Technical Commission. The second, that of the
request for an advisory opinion, is on the other hand, one that is relevant to all of us here at the Council,
particularly for those developing countries present.

A second consideration in the negative that has been suggested to us, is one of a lack of confidence in
the ITLOS system itself, with the corollary that it is better for us to soldier on regardless without seeking
the advice of the Seabed Disputes Chamber. Whatever the reasons behind it, we find this view one we
cannot follow, as it undermines the fundamental architecture of UNCLOS. Where else can we go for an
expert advisory opinion on this subject, if not to the Chamber? And what does it say of our faith in the
integrity of the International Seabed Authority, if we have no faith in ITLOS?
A third concern that has arisen during informal discussions, put forward by those colleagues who would like to see the request put back to the Legal and Technical Commission, is the question, "Why can't we wait in order to give this matter more consideration before going to the Seabed Disputes Chamber with our questions on liability and responsibility of Sponsoring States?" The answer to that question is one of development momentum.

Please consider, Mr President, that if a decision were to be made by the Council to throw the proposal back to the Legal and Technical Commission, it would condemn the process to a two-year delay. The Commission next meets in a year's time. If they then decide to present a recommendation to the Council that an advisory opinion be sought and the Council this time agrees to so approach the Seabed Disputes Chamber, it will then be another year before the resulting opinion can again be considered by this Council.

Some may wonder where we are really coming from with this request for an advisory opinion, Mr President. Well, in our self-help efforts to lift the struggling economies of our Small Island States, we have begun developing partnerships with the private sector to sponsor the exploration and eventual seabed mining of the ocean that surrounds us. There is nothing particularly audacious about this endeavor. As we remarked in our earlier statement this week, Mr President, the Sponsoring State role was envisaged for us by the wise heads that put in place the provisions of the Law of the Sea. The challenge before the Small Island Developing States is to take up this role in a prudent and responsible manner; hence the request for this advisory opinion.

Allow me, Mr President, to return to the importance of development momentum. The boards and management of private sector corporations have shareholders' interests to think of, and two years is a long time to hang about. If these private sector boards observe that the Small Island Developing States do not collectively have the necessary weight at the International Seabed Authority to carry through even a relatively simple request, such as the request for this advisory opinion, what message does this send about their place in the workings of the Authority, and their viability as State Sponsoring parties?

As developing countries, we more than most, must look to our windows of opportunity, and such windows are scarce for isolated island economies. As far as Pacific seabed minerals are concerned, we find that positive industry investment sentiments currently exist for us to develop State Sponsorship relations with the private sector. Accordingly, we want to demonstrate we can move in sync within the contingencies of economic cycles. And as we do so, we realize we must do so with responsibility to our international obligations, mindful of potential liabilities and risk for our countries. We are making progress, but it would be untenable for us to go back to the private sector and say, "If you don't mind hang around for a couple of years, while we see if we can battle the request for an advisory opinion through the UNCLOS system".

We say again, Mr President, this is no evasion of responsibility. It is quite the opposite. Let us receive this advisory opinion from the Seabed Disputes Chamber and we can then take the necessary measures by way of national legislation, inspection regimes, or any other required measures of sovereign responsibility. This is an exercise of prudent responsibility, a search for the sort of clarity that will give
further strength of will to these pioneering efforts, and a proof that the Sponsoring State role envisaged for developing countries in the Law of the Sea holds true.

We ask the Council, Mr President, to assist us preserve the development momentum we are achieving by allowing this advisory opinion to be obtained in a timely manner. Whatever opinion comes forth, it will help developing countries to more effectively assess their risks and responsibilities, to get their houses in order so that they can properly work with the international private sector as Sponsoring States. This, Mr President, is the path that leads to the participation of the developing countries in the exploration and harvesting process, a path of cooperation with the private sector, the only meaningful one open to us, the one envisaged for us in the Law of the Sea. Mr President, we ask the Council to adopt this draft decision in affirmation that the system works for all of us, big and small.

I thank you.