Deep Seabed Mining: Sponsorship and Investor Protection

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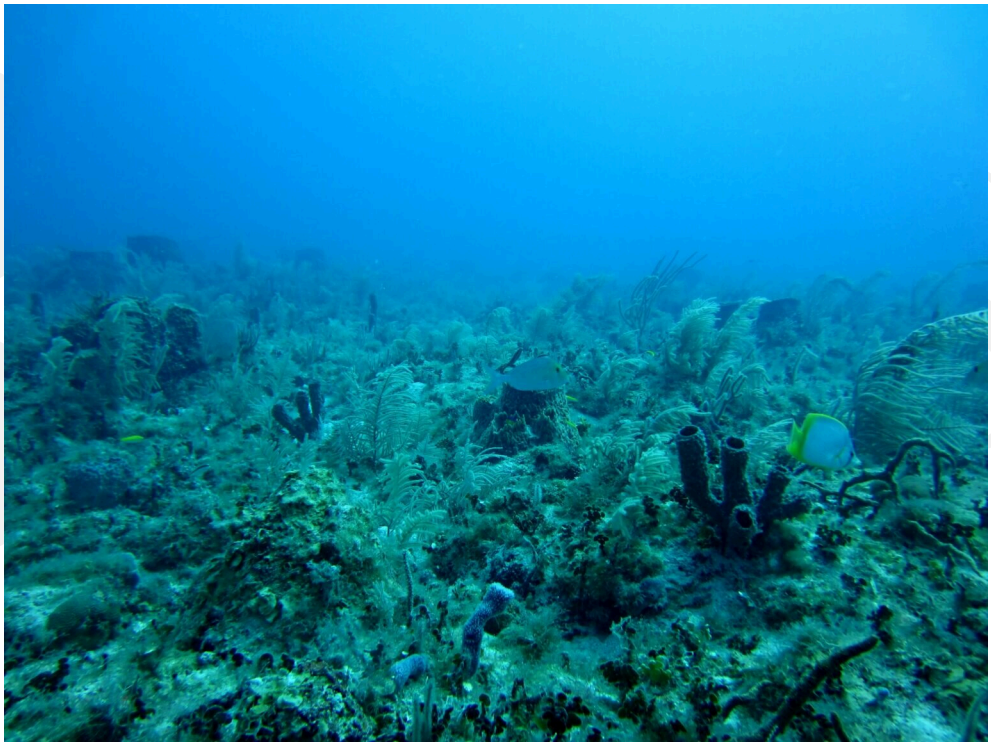

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Introduction

In order to reduce over-dependence on terrestrial mineral sources, Deep Seabed Mining (hereafter DSM) is presented as an attractive alternative, potentially paving the way for the green transition (Wang et al., 2025). The main legal difficulty, however, lies in the fact that DSM activities take place in areas beyond national jurisdiction, where States cannot exercise sovereign rights (United Nations Convention on the Law of the Sea, 1982, Article 89). UNCLOS declares that the Area and its resources are not subject to national appropriation and must be governed as the common heritage

of humankind (United Nations Convention on the Law of the Sea, 1982, Articles 136-137). Under UNCLOS, State sponsorship is a prerequisite for private actors to enter the DSM regime, providing a legal link between the contractor and the relevant State Party (Robb et al., 2024, pp. 2-3). The ITLOS Advisory Opinion of 2011 was triggered by Nauru in 2010 (ITLOS Advisory Opinion, 2011) and concluded that the responsibility to ensure compliance by the sponsored contractor with UNCLOS and with its contract is an obligation of conduct and not of result. A sponsoring State is not required to guarantee that no harm will occur, but it must exercise due diligence to secure compliance by the sponsored contractor (ITLOS Advisory Opinion, 2011, paras. 110-111).

Current literature on DSM has focused on three distinct trajectories, namely State responsibility under UNCLOS, environmental compliance issues, and investment law analogies. However, little attention has been given to the contractual mechanisms of the regime, the sponsorship agreements, and how they fit into these trajectories. Regarding environmental compliance and the precautionary principle, the focus lies in the work of Willaert, who explored sponsoring States' national interests, arguing how recovery payments and taxation, through which sponsoring States pursue their national interest in revenue, create a tension *vis-a-vis* the common heritage of humankind, under which activities in the Area must benefit humankind as a whole (Willaert, 2021). The current publication tries to fill in a part of that gap by asking whether one specific, publicly available sponsorship agreement -the one concluded between Nauru and Nauru Ocean Resources Inc. (NORI) and revised in 2025- is itself compatible with the due diligence obligations and the common heritage of humankind principle.

The analysis is accordingly confined to this sponsorship agreement and to these two legal benchmarks. In this way, broader questions of environmental protection, benefit-sharing design, or the institutional powers of the International Seabed Authority (ISA) fall outside its scope, since the governance of the Area raises too many distinct issues to be addressed responsibly within a short publication.

As discussed below, this paper concludes that despite Nauru's formal compliance with its international obligations, the Nauru-NORI agreement's stabilisation clauses, that is, provisions shielding the contractor from future changes in the sponsoring State's law, sit in tension with the State's due diligence obligations and with the common heritage principle. To address that, this paper adopts a doctrinal method, focusing on the interpretation and systematisation of UNCLOS, the 2011 ITLOS Advisory Opinion, and the Nauru-NORI sponsorship agreement. It first introduces the Nauru-NORI relationship and its sponsorship agreement, comparing the latter with investment treaties, then examines the legal content of due diligence and the common heritage principle, and finally positions the agreement's specific clauses within that framework.

The Case Study: Nauru and NORI

The diversity of sponsoring States reflects the varied interests of actors in the DSM regime established under Part XI of UNCLOS (Jiaxin, 2026). Nauru and Tonga are among the most prominent small island developing States in this context, collaborating with private investors from the Global North to benefit from such activities.

From a historical perspective, while the seabed mining negotiations of the 1970s were motivated by distributive goals, the focus has since shifted toward promoting economic access and integration into international markets (Feichtner, 2019, pp. 610-611, 620-621, 629). Against this backdrop, the parallel system under UNCLOS has enabled developing States to access reserved areas, that is, sections of the seafloor set aside specifically for the Enterprise or for activities involving developing States, ensuring that commercially valuable areas remain accessible to states lacking the technical and financial capacity to compete with advanced operators, thereby positioning them as attractive partners for commercial mining enterprises (Feichtner, 2019, pp. 616, 630; United Nations Convention on the Law of the Sea, 1982, Annex III, Articles 8-9).

The case of Nauru, a small Pacific island State of just 21 square kilometres and a population of 12,000, illustrates clearly these dynamics (Worldometers, 2026). In 2008, Nauru Ocean Resources Inc. (NORI), a subsidiary of the Canadian corporation Nautilus Minerals, submitted an application for a plan of work for exploration in a reserved area, sponsored by the Republic of Nauru. The application, covering approximately 74,830 square kilometres, was approved by the Council, leading to the conclusion of an exploration contract in 2011. Although Nauru's status as a developing State facilitated access to exploration rights, it did not affect the legal standard applicable to its responsibilities as a sponsoring State. In that regard, the 2011 ITLOS Advisory Opinion clarified that both developed and developing States are subject to the same due diligence obligations to ensure compliance by sponsored entities, while also recognising that developing States may require assistance in fulfilling them.

Significantly, the Nauru-NORI agreement is not a treaty but a binding contract between a developing State and a Nauruan-incorporated contractor. As pointed out by Silva-Send, NORI is a wholly owned subsidiary of the Canadian-incorporated The Metals Company (TMC), and, as such, TMC retains full operational and strategic management control of NORI (Silva-Send, 2025). Compared with international investment agreements (IIAs) and bilateral investment treaties (BITs), which States conclude to protect each other's investors, the agreement is similar in substance: it grants fair and equitable treatment, non-discrimination, full security and protection, and compensation for expropriation, and submits disputes to arbitration under the UNCITRAL Rules (Nauru Seabed Minerals Authority & Nauru Ocean Resources Inc. (NORI), 2025, cls. 10.5, 10.8-10.11, 24). It differs in

structure: NORI's protection rests on contractual consent rather than on a treaty, the activities take place in the Area rather than in Nauruan territory, and Nauru remains bound by its UNCLOS sponsorship obligations, to which some protections yield (cls. 10.1(a), 39). It should therefore be expected to operate as a hybrid: investor protection qualified by sponsorship obligations.

The updated 2025 agreement makes the contractual character of sponsorship clear, stating that "the Republic sponsors the seabed mineral activities of NORI pursuant to the Sponsorship Certificate and agrees to sponsor NORI in respect of its seabed mineral activities on the terms of this Agreement" (Nauru Seabed Minerals Authority & NORI, 2025). Furthermore, while substantial investment is necessary before minerals can be commercially recovered, no monetary investment comes from Nauru as sponsoring State (Nauru Seabed Minerals Authority & NORI, 2025, recital I), though it bears reputational risks and international responsibilities. This reflects the asymmetric nature of the sponsorship system: the contractor bears the economic costs, while the sponsoring State shoulders legal responsibilities and, at the same time, grants the contractor contractual guarantees, such as protection against legislative change and expropriation (Nauru Seabed Minerals Authority & NORI, 2025, cls. 10.1, 10.11; Silva-Send, 2025).

Due Diligence and the Common Heritage of Humankind

In general international law, due diligence is an obligation of conduct: the State must deploy adequate means and exercise best possible efforts, notably by adopting appropriate rules and vigilantly enforcing them, without guaranteeing a result (ITLOS Advisory Opinion, 2011, paras. 110-111, 115-116). It is a variable standard that rises with scientific knowledge and risk (ITLOS Advisory Opinion, 2011, para. 117), and the International Court of Justice has confirmed it as the standard for the customary duty to prevent significant environmental harm (ICJ Climate Change Advisory Opinion, 2025; Robertson & Sthoeger, 2025). For sponsoring States, it must be discharged through laws, regulations and administrative measures, not contractual arrangements alone (ITLOS Advisory Opinion, 2011, paras. 118-120, 223-226). A sponsorship agreement therefore bears on due diligence insofar as it preserves or constrains the State's capacity to adopt and adapt such measures.

Due diligence obligations cannot be analysed only as technical administrative duties (ITLOS Advisory Opinion, 2011, paras. 110-117). They form part of the broader structure of the common heritage of humankind, because activities in the Area must be carried out for the benefit of humanity (United Nations Convention on the Law of the Sea, 1982, Article 140).

In particular, the idea of the common heritage of humankind was influenced by the notion of *res communis*, but it eventually sought to prevent the accumulation of DSM benefits in the hands of a small number of indus-

trialised States (Guntrip, 2003, pp. 382-384). This was especially important because, before its consolidation, developed States relied on the freedoms of the high seas to govern activities beyond national jurisdiction (Convention on the High Seas, 1958; Mahmoudi, 1987, pp. 125-130). The principle was also connected to the demand for a New International Economic Order, which aimed to establish a more equitable distribution of resources and income between developed and developing States (Guntrip, 2003, pp. 383-384). In that sense, the common heritage of humankind was not only a legal label attached to the Area, but a revolutionary project intended to avoid unbridled exploitation in the absence of an established management regime (Guntrip, 2003).

Under UNCLOS, the common heritage principle is expressed through several elements: a ban on appropriation, exclusive use for peaceful purposes, protection of the marine environment, international cooperation and knowledge dissemination with respect to marine scientific research, and equitable sharing of financial and economic benefits derived from activities in the Area (United Nations Convention on the Law of the Sea, 1982, Arts. 137, 140, 141, 143-145; Willaert, 2021, pp. 136-138), establishing therefore an equitable and fair sharing regime (Noyes, 2011, pp. 459-460).

Over the years, different mechanisms were deployed and adjusted to realise the equitable sharing component, including reserved areas for developing States, the future establishment of the Enterprise and the payment and distribution system to be set up by the Authority (United Nations Convention on the Law of the Sea, 1982, Annex III, Articles 8-9, Articles 153(2)(a), 170; Agreement relating to the Implementation of Part XI of UNCLOS, 1994, Annex, section 2). However, the 1994 Implementation Agreement, adopted to accommodate industrialised States' objections to Part XI through market-oriented features, curtailed these tools: it set aside mandatory technology transfer and the funding of the Enterprise by States Parties (Agreement relating to the Implementation of Part XI of UNCLOS, 1994, Annex, sections 2 and 5; Noyes, 2011, pp. 463-464). As a result, the common heritage of humankind remains a legal expectation, with benefit-sharing mechanisms dependent on future exploitation revenues that have not yet materialised (Jaeckel, 2020, p. 662).

At the same time, the compatibility between sponsorship agreements and the common heritage principle becomes more complex when the domestic legislation of sponsoring States entitles the State itself to collect revenue from contractors, such as recovery payments and taxes. These laws define the requirements for sponsorship, but since they do not follow a uniform pattern, the compatibility of their content with the international regime remains important. UNCLOS allows every State to adopt environmental or other laws that are more stringent, but sponsoring States must not impose conditions inconsistent with international laws. Since regulatory capacity, meaning the institutional and technical means to regulate, varies from State to State, the content of national DSM legislation can be very

diverse. Once the minerals are recovered, the private contractor acquires ownership of them. Due to this "commodification", recovery payments and taxation imposed on the private contractors become a vital way of redistributing the economic benefits derived from the Area's resources, the common heritage, through the national legal system of the sponsoring States. For example, the Cook Islands, Fiji and Nauru provide rules on recovery payments, stipulating that the fee is based on a percentage of the latest market value of the metal content of the extracted minerals and should take into account the setup, exploration and exploitation costs incurred by the sponsored Party.

Since due diligence requires the State to keep and adapt its regulatory means, and the common heritage principle bars appropriation, sponsorship agreements are compatible with due diligence obligations and the common heritage of humankind only if they operate as instruments of supervision, environmental control and compliance. They become problematic when they prioritise financial return, the insulation of the contractor from regulatory change (regulatory stability) or contractor protection limiting the sponsoring State's ability to adjust its domestic regulation in light of new environmental risks (ITLOS Advisory Opinion, 2011, para. 117).

Positioning the Nauru-NORI Agreement in this Regime

Therefore, the preceding analysis leads to a central evaluative question: *"Does the Nauru-NORI sponsorship agreement, as a concrete legal instrument, operate in a manner compatible with the due diligence obligations and the common heritage of humankind governing the DSM regime?"*

As established above, due diligence is an obligation of conduct and compliance is achieved through the adoption of a sufficient regulatory framework (ITLOS Advisory Opinion, 2011, paras. 110, 117). In this regard, the Nauru-NORI agreement raises significant concerns. According to Clause 10.1 in conjunction with Clause 10.6, future Nauruan laws shall not interfere with or diminish NORI's rights unless required by international law to perform Nauru's sponsorship obligations. This carve-out deserves weight: where due diligence itself requires new measures, the agreement lets Nauru adopt them, subject to consultation and notice (cls. 10.1(a), 10.2, 10.3). Its protection is nonetheless limited, since it covers only what international law obliges Nauru to enact, not the more stringent measures UNCLOS permits, and Clause 10.3 lets NORI contest the application of such laws through dispute resolution. Similarly, clause 10.3 imposes a renegotiation obligation where any Nauruan legislative change affects substantially NORI's financial obligations (Nauru Seabed Minerals Authority & NORI, 2025, cls. 10.1, 10.3, 10.6). Taken together, these provisions discourage Nauru from adjusting its regulatory policy in line with evolving scientific knowledge (Jaeckel, 2024, pp. 72-73), as advised by ITLOS (ITLOS Advisory Opinion, 2011, paras. 117-120). An agreement (Nauru Seabed Minerals Authority & NORI, 2025)

that curtails the sponsoring State's regulatory capacity sits in tension with due diligence obligations, irrespective of Nauru's *prima facie* compliance.

Clause 10.5 goes further, obliging Nauru to accord NORI "fair and equitable treatment" (FET) and "a stable and predictable legal framework" in line with its "legitimate expectations" (Nauru Seabed Minerals Authority & NORI, 2025, cl. 10.5). In investment arbitration, FET is closely tied to legitimate expectations (Saluka Investments BV v. The Czech Republic, 2006, para. 302), so regulatory change may be invoked as a breach. Unlike Clause 10.1(a), Clause 10.5 has no express exception for measures required by international law. It thus imports an investment-law standard into what UNCLOS frames as a public supervisory relationship, and sets stability against the evolving standard of due diligence.

Clause 10.11 similarly bars expropriation of, or interference with, NORI's rights "except against prompt, adequate and effective compensation", and expropriation is defined to include regulation that "reduces or eliminates the economic value or viability" of a right (Nauru Seabed Minerals Authority & NORI, 2025, cls. 10.11, 39). Read literally, regulatory tightening could therefore be compensable, as in indirect expropriation claims. The definition excludes acts "reasonably required to fulfil the Republic's Sponsorship Obligations", but stricter discretionary regulation remains exposed.

Table 1

Key Clauses of the Nauru-NORI Sponsorship Agreement (2025) and the Concerns They Raise for Due Diligence and the Common Heritage Principle

Furthermore, the common heritage principle has a dual function, operating both as a non-appropriation instrument and encapsulating a redistributive logic; it prohibits States and private entities alike from establishing proprietary interests over the Area and its resources, guaranteeing equitable access to their economic benefits (United Nations Convention on the Law of the Sea, 1982, Articles 136-137, 140). In this regard, the Nauru-NORI agreement creates an ambiguous situation. As instructed by Article 140(2) UNCLOS, Nauru is a developing State and as such, its interests are expected to be taken into consideration when implementing the DSM regime. Condemning every financial benefit derived from the recovery payments would be unreasonable, and the problem does not lie there. What causes criticism is the asymmetry incorporated within the sponsorship structure. The ownership stake in NORI, and thus, its profits, belongs to The Metals Company (TMC), incorporated in Canada (Alger et al., 2025, p. 207). At the same time, Nauru alone bears the legal responsibility, meaning that profits flow back to Canada, while legal risks remain within the sponsoring State. As Marcos explains, this arrangement has been described as neo-Grotian, with the reintroduction of another freedom of the high seas, a doctrine that the common heritage principle aimed to displace (Marcos, 2025). This logic

is also discursive: Childs has observed, in relation to Nautilus Minerals, NORI's original parent company, that private corporate actors in DSM rely on legitimacy strategies that present mining as sustainable or necessary, strategies that may influence how the common heritage regime is practically understood and applied (Childs, 2019).

The precautionary principle provides that, where there are threats of serious or irreversible damage, lack of full scientific certainty must not postpone cost-effective preventive measures (Rio Declaration on Environment and Development, 1992, Principle 15). The Seabed Disputes Chamber treats it as integral to the sponsoring State's due diligence (ITLOS Advisory Opinion, 2011, para. 131), a view the International Court of Justice has endorsed (Robertson & Sthoeger, 2025). In the same logic, the precautionary principle is a direct binding obligation upon States, and in this case, it is highly relevant, since DSM is a field characterised by scientific uncertainty and regulatory incompleteness (ITLOS Advisory Opinion, 2011, para. 135). The Nauru-NORI agreement fails to incorporate it as an operational obligation. Instead, it includes various stabilisation and FET-type provisions that expose the State to the danger of renegotiation or trigger claims for compensation, if its legislation is adjusted to new scientific evidence on the environmental impacts of mining. As it has been argued, the precautionary principle requires action despite uncertainty, not merely because of it, and therefore a sponsorship agreement that reads precautionary regulatory response as an unstable framework distorts the incentive structure upon which precautionary governance is built (Trouwborst, 2009, p. 121).

Overall, while DSM has been grounded on the assumption of collective management of the area and its resources, the contractualisation of sponsorship progressively changes it into bilateral arrangements, which reflects more market logic than anything else. In this sense, the normative assumption underlying the DSM regime needs to be restated: exploitation appears to be the default, while environmental protection and equitable wealth redistribution are treated as exceptions. This conclusion does not suggest that every commercial participation in the DSM regime constitutes incompatibility with the common heritage principle; it rather means that the contractual tools facilitating such participation need to preserve and not constrain the sponsoring State's regulatory capacity to act as a public trustee of the Area, in line with the collective nature of UNCLOS and the supervisory role assigned to the ISA.

Conclusion

This paper examined whether the 2025 Nauru-NORI sponsorship agreement complies with due diligence obligations and the common heritage principle. Under UNCLOS and ITLOS, due diligence requires effective control, which renegotiation clauses leave vulnerable to regulatory chill, while its redistributive logic offers sponsoring States little benefit. The

clause-by-clause analysis showed that specific provisions limit Nauru's ability to update its regulations amid new scientific knowledge, while NORI's ownership structure channels profits to its Canadian parent, leaving Nauru with legal responsibility. Nauru's participation is not incompatible with the common heritage principle—Article 140(2) UNCLOS protects developing States' interests. The real problem is a contractual architecture that repurposes investor-protection language as environmental oversight, making protection the exception, not the default. Sponsorship risks becoming an instrument of investor stability rather than compliance for the Area.

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