

Observations on the interface between the  
Authority and sponsoring States in the  
context of the 2011 Seabed Disputes  
Chamber Advisory Opinion

# Question 1

## Responsibilities and liabilities

### Key Provisions

- *Article 139(1)*

States Parties shall have the responsibility to ensure that activities in the Area, whether carried out by States Parties, or state enterprises or natural or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals, shall be carried out in conformity with this Part. The same responsibility applies to international organizations for activities in the Area carried out by such organizations.

- *Article 153(4)*

The Authority shall exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of this Part and the Annexes relating thereto, and the rules, regulations and procedures of the Authority, and the plans of work approved in accordance with paragraph 3. **States Parties shall assist the Authority by taking all measures necessary to ensure such compliance in accordance with article 139.**

# Question 1

## Responsibilities and liabilities

### Key Provisions

- *Annex III, article 4(4)*

The sponsoring State or States shall, pursuant to article 139, have the responsibility to ensure, **within their legal systems**, that a contractor so sponsored shall carry out activities in the Area in conformity with the terms of its contract and its obligations under this Convention. A sponsoring State shall not, however, be liable for damage caused by any failure of a contractor sponsored by it to comply with its obligations if that State Party has adopted laws and regulations and taken administrative measures which are, within the framework of its legal system, **reasonably appropriate** for securing compliance by persons under its jurisdiction.

# Question 1

## Sponsorship

- The purpose of requiring the sponsorship of applicants for contracts for the exploration and exploitation of the resources of the Area is to achieve the result that the obligations set out in the Convention, a treaty under international law which binds only States Parties thereto, are complied with by entities that are subjects of domestic legal systems (para. 75).
- This result is obtained through the provisions of the Authority's Regulations that apply to such entities **and through the implementation by the sponsoring States** of their obligations under the Convention and related instruments. (para.75)

# Question 1

## Sponsorship

- **The role of the sponsoring State contributes to the realization of the common interest of all States** in the proper application of the principle of the common heritage of mankind which requires faithful compliance with the obligations set out in Part XI. (para.76)
- **The common interest role of the sponsoring State is further confirmed by its obligation, set out in article 153(4) of the Convention, to “assist” the Authority,** which, as stated in article 137(2), acts on behalf of mankind. (para.76)

# Question 1

## “Responsibility to ensure”

- “Responsibility to ensure” points to an obligation of the sponsoring State under international law. It establishes a mechanism through which the rules of the Convention concerning activities in the Area, although being treaty law and thus binding only on the subjects of international law that have accepted them, **become effective for sponsored contractors which find their legal basis in domestic law.** This mechanism consists in the creation of obligations which States Parties must fulfil by exercising their power over entities of their nationality and under their control. (para.108)

# Question 1

The content of the “due diligence obligation to ensure

- Article 153(4) states that the obligation of the sponsoring State in accordance with article 139 of the Convention entails “taking all measures necessary to ensure” compliance by the sponsored contractor. Annex III, article 4(4) makes it clear that sponsoring States’ “responsibility to ensure” applies “within their legal systems”. **Necessary measures are required and these must be adopted within the legal system of the sponsoring State.** (para. 118)

# Question 1

## Direct obligations of sponsoring States

Among the most important of these direct obligations are: (para.122)

- **the obligation to assist the Authority in the exercise of control over activities in the Area;**
- the obligation to apply a precautionary approach;
- the obligation to apply best environmental practices;
- the obligation to take measures to ensure the provision of guarantees in the event of an emergency order by the Authority for protection of the marine environment;
- the obligation to ensure the availability of recourse for compensation in respect of damage caused by pollution; and
- **the obligation to conduct environmental impact assessments.**



# Question 1

## Direct obligations of sponsoring States

- **Obligation to assist the Authority** (para.124)

In accordance with article 153(4) of the Convention, sponsoring States have the obligation to assist the Authority in its task of controlling activities in the Area for the purpose of ensuring compliance with the relevant provisions of Part XI of the Convention and related instruments. This obligation is to be met “**by taking all measures necessary** to ensure such compliance in accordance with article 139”. The **obligation of the sponsoring States is a direct one**, but it is to be met through compliance with the “due diligence obligation” set out in article 139 of the Convention.

# Question 1

## Direct obligations of sponsoring States

- **Environmental Impact Assessments** (para.141-142)

Regulation 31(6) of the Nodules Regulations and regulation 33(6) of the Sulphides Regulations establish a direct obligation of the sponsoring State concerning EIA, which can also be read as a relevant factor for meeting the sponsoring State's due diligence obligation. This obligation is linked to the direct obligation of assisting the Authority. The above mentioned provisions of the two Regulations read as follows: "[c]ontractors, sponsoring States and other interested States or entities shall cooperate with the Authority in the establishment and implementation of programmes for monitoring and evaluating the impacts of deep seabed mining on the marine environment".

This provision is designed to clarify and ensure compliance with the sponsoring State's obligation to cooperate with the Authority in the exercise of the latter's control over activities in the Area under article 153(4), of the Convention, and of its general obligation of due diligence under article 139 thereof. **The sponsoring State is obliged not only to cooperate with the Authority in the establishment and implementation of impact assessments, but also to use appropriate means to ensure that the contractor complies with its obligation to conduct an environmental impact assessment.**

# Question 1

## Direct obligations of sponsoring States

- **Environmental Impact Assessments** (para.145-146)

**It should be stressed that the obligation to conduct an environmental impact assessment is a direct obligation under the Convention...**

As regards the Convention, article 206 states the following:

When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205. [Article 205 refers to an obligation to publish reports.]

# Question 3

## General aspects

- Article 139(2) of the Convention provides that the sponsoring State shall not be liable for damage caused by any failure to comply with Part XI of the Convention by an entity sponsored by it under article 153(2)(b), of the Convention, if the State Party has taken all necessary and appropriate measures to secure effective compliance under article 153(4) and Annex III, article 4(4). (para.214)
- Annex III, article 4(4) contains an explanation of the words “necessary and appropriate measures” in article 139(2).
- **Under these provisions, in the system of the responsibilities and liability of the sponsoring State, the “necessary and appropriate measures” have two distinct, although interconnected, functions as set out in the Convention.** On the one hand, these measures have the function of ensuring compliance by the contractor with its obligations under the Convention and related instruments as well as under the relevant contract. On the other hand, they also have the function of exempting the sponsoring State from liability for damage caused by the sponsored contractor.(para.217)

## Question 3

Laws and regulations and administrative matters (para. 218 and 222)

- **The scope and extent of the laws and regulations and administrative measures required depend upon the legal system of the sponsoring State.**
- **Laws, regulations and administrative measures may include the establishment of enforcement mechanisms** for active supervision of the activities of the sponsored contractor. They *may also provide* for *the co-ordination* between the various activities of the sponsoring State and those of the Authority with a view to eliminating avoidable duplication of work.
- The national measures, once adopted, may not be appropriate in perpetuity. It is the view of the Chamber that such measures should be kept under review so as to ensure that they meet current standards and that the contractor meets its obligations effectively without detriment to the common heritage of mankind.

# Question 3

## Content of the measures

- **The Convention leaves it to the sponsoring State to determine what measures will enable it to discharge its responsibilities.** Policy choices on such matters must be made by the sponsoring State. Nevertheless, without encroaching on the policy choices a sponsoring State may make, the Chamber deems it appropriate to indicate **some general considerations that a sponsoring State may find useful in its choice of measures.** (para. 227)
- Annex III, article 4(4) of the Convention requires the sponsoring State to adopt laws and regulations and to take administrative measures which are, within the framework of its legal system, “reasonably appropriate” for securing compliance by persons under its jurisdiction. The standard for determining what is appropriate is not open-ended. **The measures taken must be “reasonably appropriate”. The appropriateness of the measures taken may be justified only if they are agreeable to reason and not arbitrary.** (para. 228)

## Question 3

### Content of the measures

- The sponsoring State does not have an absolute discretion. In the sphere of the obligation to assist the Authority acting on behalf of mankind as a whole, while deciding what measures are reasonably appropriate, the sponsoring State **must take into account, objectively, the relevant options in a manner that is reasonable, relevant and conducive to the benefit of mankind as a whole. It must act in good faith**, especially when its action is likely to affect prejudicially the interests of mankind as a whole. Reasonableness and non-arbitrariness must remain the hallmarks of any action taken by the sponsoring State. (para. 230)

## Question 3

### Content of the measures

- ***The sponsoring State may find it necessary, depending upon its legal system, to include in its domestic law provisions that are necessary for implementing its obligations under the Convention.*** These provisions may concern, *inter alia*, financial viability and technical capacity of sponsored contractors, conditions for issuing a certificate of sponsorship and penalties for non-compliance by such contractors. (para. 234)
- **Additionally, the Convention itself specifies in various provisions the issues that should be covered by the sponsoring State's laws and regulations.** In particular, article 39 of the Statute dealing with enforcement of decisions of the Chamber provides: (para.235)

*The decisions of the Chamber shall be enforceable in the territories of the States Parties in the same manner as judgments or orders of the highest court of the State Party in whose territory the enforcement is sought.*



## Question 3

### Content of the measures

- **Other indications may be found in the provisions that establish direct obligations of the sponsoring States.** (para. 236)
- The sponsoring State is under an obligation to ensure that the contractor complies with its contract. This means that the sponsoring State must adopt laws and regulations and take administrative measures which do not hinder the contractor in the effective fulfilment of its contractual obligations but rather assist the contractor in that respect. (para. 238)
- **It is inherent in the “due diligence” obligation of the sponsoring State to ensure that the obligations of a sponsored contractor are made enforceable.** (para. 239)

## Question 3

### Content of the measures

- Under Annex III, article 21(3), the rules, regulations and procedures concerning environmental protection adopted by the Authority are used as a minimum standard of stringency for the environmental or other laws and regulations that the sponsoring State may apply to the sponsored contractor. **It is implicit in this provision that sponsoring States may apply to the contractors they sponsor more stringent standards as far as the protection of the marine environment is concerned.**