

(g) Written Statement of the Russian Federation

*Written Statement submitted by the Russian Federation concerning the Advisory Opinion by the Seabed Disputes Chamber in accordance with Article 133, paragraph 3 of the Rules of Procedure of the International Tribunal for the Law of the Sea on the question of the legal responsibilities, obligations and liability of the Sponsoring States*

*On behalf of the Russian Federation*

Pursuant to article 133, paragraph 3 of the Rules of Procedure of the International Tribunal for the Law of the Sea and Order 2010/3 of the President of the Seabed Disputes Chamber, the Russian Federation presents to the Seabed Disputes Chamber its written statement on the question of responsibilities and obligations of States sponsoring persons and entities with respect to activities in the international seabed Area.

On 6 May 2010, the Council of the International Seabed Authority decided, in accordance with Article 191 of the United Nations Convention on the Law of the Sea ("the Convention"), to request the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea to render an advisory opinion on legal questions arising within the scope of its activities.

The request consists of three questions, namely pertaining to:

- 1) the legal responsibilities and obligations of States Parties to the Convention with respect to the sponsorship of activities in the Area in accordance with the Convention;
- 2) the extent of liability of a State Party for any failure to comply with the provisions of the Convention by an entity whom it has sponsored for the purposes of carrying out of activities in the Area;
- 3) the necessary and appropriate measures that a sponsoring State must take in order to fulfill its responsibility under the Convention.

The Russian Federation requests that in rendering its Advisory opinion on the aforementioned questions, the Seabed Disputes Chamber may take into account and include in its findings the following considerations:

1. The Russian Federation agrees that the Convention does not provide a transparent and clear notion of what the responsibilities and liability of the Sponsoring States are. The unclarity results, in particular, from vagueness of the terms used in certain articles of the Convention. This applies to
  - a) article 139 stipulating that “States Parties shall have the responsibility to ensure that activities in the Area ... shall be carried out in conformity with” the Convention and that a State Party shall be relieved from liability if it “has taken all necessary and appropriate measures to secure effective compliance...”;
  - b) article 153 providing that States Parties shall assist the Authority exercising control over activities in the Area “by taking all measures necessary to ensure” compliance with the Convention;
  - c) annex III, article 4, paragraph 4 envisaging that the Sponsoring States shall “have the responsibility to ensure, within their legal systems, that a contractor so sponsored carry out activities in the Area in conformity with the terms of its contract and its obligations under this Convention” and that the sponsoring State, however, shall be relieved from liability if it “has adopted laws and regulations and taken administrative measures which are ... reasonably appropriate for securing compliance by persons under its jurisdiction”.
2. As one can see, different wordings are used in the Convention to express the essentially similar provisions as to the responsibility and liability of the Sponsoring States. The Russian Federation considers that the main task of the Chamber is to clearly explain the aforementioned alternative terms and especially to point out which of them shall apply in practice.
3. At the 16-th Session of the Seabed Authority the delegation of Nauru distributed a proposal to seek an advisory opinion of the Chamber on matters regarding sponsoring State responsibility and liability (ISBA/16/C/6) where

some relevant questions were raised and Nauru's interpretation of the problem was expressed.

4. In particular, Nauru considers that, without clarity on the issue, it will be difficult for a State to assess potential risks and liability before commencing activities in the Area, and this may prevent some States (e.g. developing ones) from participating in activities in the Area. That would supposedly constitute a breach of the Convention clause providing promotion of effective participation of developing States in activities in the Area (Article 148).
5. In Nauru's view, the vague terms describing responsibility and liability of the Sponsoring States should be clarified with regard to the limited capabilities of developing States to control contracting entities, which are in most cases independent from the sponsoring State, and to secure effective compliance by them with the Convention's requirements.
6. Moreover, Annex III, Article 4, paragraph 4 of the Convention, by stating that a sponsoring State shall not be liable if it has adopted laws and regulations and taken measures which are "within the framework of its legal system, reasonably appropriate for securing compliance", implies, in Nauru's opinion, a subjective element and supposedly gives grounds to assume that the measures required may vary from State to State.
7. The Russian Federation believes such approach to be erroneous and contradicting the basic principles of the Convention.
8. In view of the Russian Federation, the Convention contains no subjective elements which could allow States to interpret it basing on their own economic or other capacities. The words "necessary", "(reasonably) appropriate", though in some sense being unclear, are strongly linked to the basic provisions of the Convention governing the activities in the Area, i.e. they imply an entirely objective standard for liability and responsibility of the sponsoring States.

9. As to the preclusion of developing States from the effective participation in the activities in the Area due to their inability to assess potential risks and liabilities, we draw the Chamber's attention to the wording of Article 148 which envisages promotion of developing States only in cases "**specifically provided for in this Part**". There are clear provisions stipulating certain privileged conditions for developing States – for example, Article 143, paragraph 3, subparagraph "b" (developing of programmes for the benefit of developing States), Article 144, paragraph 1, subparagraph "b" (transfer of technology and scientific knowledge to developing States) or Article 150, subparagraph "h" (protection of developing States from adverse effects). Thus, the approach presupposing application of different standards of responsibility and liability to developed and developing States as a form of promotion of the latter would go beyond the principle introduced in the Article 148 as there is no such provision in the Convention that refers to a special approach to the needs of developing States in terms of their responsibility or liability.
10. Furthermore, Article 150, subparagraph "g" refers to "the enhancement of opportunities for all States Parties, irrespective of their social and economic systems or geographical location, to participate in the development of the resources of the Area" as one of the policies relating to activities in the Area. In case different standards of State responsibility and liability are applied, the opportunities of developing States to carry out activities in the Area would be substantially higher than those of the developed ones. That may lead to a situation where private companies seeking a sponsoring State would prefer only those States where potential risks are lower and liabilities are less onerous.
11. The same approach of developing a single standard of responsibility for all States should be applied when analyzing the issue of necessary and appropriate measures that a sponsoring State must take in order to fulfill its obligations under the Convention. The wording of Annex III, Article 4,

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paragraph 4 of the Convention, though containing uncertainty, does not, however, imply any subjective element. The words "... within the framework of its legal system ...", in view of the Russian Federation, should not be interpreted so as to imply a different standard of responsibility for each State. The aforementioned phrase is used only to point out possible difference in the legal nature (or form) of regulations and measures adopted by States in order to fulfill their obligations under the Convention.

Bearing in mind the arguments laid down above, the Russian Federation believes that there should be a single standard applied with regard to the responsibilities, obligations and the extent of liability of the Sponsoring States and to what necessary and appropriate measures a sponsoring State is required to take.

Signed and transmitted on behalf of the government of the Russian Federation by:

Acting Director  
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