



**INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA  
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER**

# **Press Release**

**SEABED DISPUTES CHAMBER RENDERS UNANIMOUS ADVISORY OPINION  
IN CASE NO. 17**

**RESPONSIBILITIES AND OBLIGATIONS OF STATES SPONSORING PERSONS  
AND ENTITIES WITH RESPECT TO ACTIVITIES IN THE AREA**

Hamburg, 1 February 2011. The Seabed Disputes Chamber rendered its Advisory Opinion on the Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area at a public sitting today. The Advisory Opinion is the first decision of the Seabed Disputes Chamber of the Tribunal and the first advisory opinion submitted to it. The eleven judges of the chamber, President Tullio Treves (Italy) and Judges Vicente Marotta Rangel (Brazil), L. Dolliver M. Nelson (Grenada), P. Chandrasekhara Rao (India), Rüdiger Wolfrum (Germany), Shunji Yanai (Japan), James Kateka (United Republic of Tanzania), Albert Hoffmann (South Africa), Zhiguo Gao (China), Boualem Bouguetaia (Algeria) and Vladimir Vladimirovich Golitsyn (Russian Federation) decided unanimously upon the Advisory Opinion.

The Advisory Opinion was submitted to the Seabed Disputes Chamber by the Council of the International Seabed Authority. The Council requested the Chamber to render an advisory opinion on the following questions:

1. What are 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, in particular Part XI, and the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982?
2. What is the extent of liability of a State Party for any failure to comply with the provisions of the Convention, in particular Part XI, and the 1994 Agreement, by an entity whom it has sponsored under Article 153, paragraph 2 (b), of the Convention?
3. What are the necessary and appropriate measures that a sponsoring State must take in order to fulfil its responsibility under the Convention, in particular Article 139 and Annex III, and the 1994 Agreement?

In its advisory opinion, the Chamber unanimously decides that it has jurisdiction to give the advisory opinion requested and to respond to the request for an advisory opinion. The Chamber unanimously responds to the three questions forming the request as follows:

**“Replies to Question 1 submitted by the Council as follows:**

Sponsoring States have two kinds of obligations under the Convention and related instruments:

A. The obligation to ensure compliance by sponsored contractors with the terms of the contract and the obligations set out in the Convention and related instruments.

This is an obligation of “due diligence”. The sponsoring State is bound to make best possible efforts to secure compliance by the sponsored contractors.

The standard of due diligence may vary over time and depends on the level of risk and on the activities involved.

This “due diligence” obligation requires the sponsoring State to take measures within its legal system. These measures must consist of laws and regulations and administrative measures. The applicable standard is that the measures must be “reasonably appropriate”.

B. Direct obligations with which sponsoring States must comply independently of their obligation to ensure a certain conduct on the part of the sponsored contractors.

Compliance with these obligations may also be seen as a relevant factor in meeting the “due diligence” obligation of the sponsoring State.

The most important direct obligations of the sponsoring State are:

- (a) the obligation to assist the Authority set out in article 153, paragraph 4, of the Convention;
- (b) the obligation to apply a precautionary approach as reflected in Principle 15 of the Rio Declaration and set out in the Nodules Regulations and the Sulphides Regulations; this obligation is also to be considered an integral part of the “due diligence” obligation of the sponsoring State and applicable beyond the scope of the two Regulations;
- (c) the obligation to apply the “best environmental practices” set out in the Sulphides Regulations but equally applicable in the context of the Nodules Regulations;
- (d) the obligation to adopt measures to ensure the provision of guarantees in the event of an emergency order by the Authority for protection of the marine environment; and
- (e) the obligation to provide recourse for compensation.

The sponsoring State is under a due diligence obligation to ensure compliance by the sponsored contractor with its obligation to conduct an environmental impact assessment set out in section 1, paragraph 7, of the Annex to the 1994 Agreement.

The obligation to conduct an environmental impact assessment is also a general obligation under customary law and is set out as a direct obligation for all States in article 206 of the Convention and as an aspect of the sponsoring State's obligation to assist the Authority under article 153, paragraph 4, of the Convention.

Obligations of both kinds apply equally to developed and developing States, unless specifically provided otherwise in the applicable provisions, such as Principle 15 of the Rio Declaration, referred to in the Nodules Regulations and the Sulphides Regulations, according to which States shall apply the precautionary approach "according to their capabilities".

The provisions of the Convention which take into consideration the special interests and needs of developing States should be effectively implemented with a view to enabling the developing States to participate in deep seabed mining on an equal footing with developed States."

**"Replies to Question 2 submitted by the Council as follows:**

The liability of the sponsoring State arises from its failure to fulfil its obligations under the Convention and related instruments. Failure of the sponsored contractor to comply with its obligations does not in itself give rise to liability on the part of the sponsoring State.

The conditions for the liability of the sponsoring State to arise are:

- (a) failure to carry out its responsibilities under the Convention; and
- (b) occurrence of damage.

The liability of the sponsoring State for failure to comply with its due diligence obligations requires that a causal link be established between such failure and damage. Such liability is triggered by a damage caused by a failure of the sponsored contractor to comply with its obligations.

The existence of a causal link between the sponsoring State's failure and the damage is required and cannot be presumed.

The sponsoring State is absolved from liability if it has taken "all necessary and appropriate measures to secure effective compliance" by the sponsored contractor with its obligations. This exemption from liability does not apply to the failure of the sponsoring State to carry out its direct obligations.

The liability of the sponsoring State and that of the sponsored contractor exist in parallel and are not joint and several. The sponsoring State has no residual liability.

Multiple sponsors incur joint and several liability, unless otherwise provided in the Regulations of the Authority.

The liability of the sponsoring State shall be for the actual amount of the damage.

Under the Nodules Regulations and the Sulphides Regulations, the contractor remains liable for damage even after the completion of the exploration phase. This is equally valid for the liability of the sponsoring State.

The rules on liability set out in the Convention and related instruments are without prejudice to the rules of international law. Where the sponsoring State has met its obligations, damage caused by the sponsored contractor does not give rise to the sponsoring State's liability. If the sponsoring State has failed to fulfil its obligation but no damage has occurred, the consequences of such wrongful act are determined by customary international law.

The establishment of a trust fund to cover the damage not covered under the Convention could be considered."

**"Replies to Question 3 submitted by the Council as follows:**

The Convention requires the sponsoring State to adopt, within its legal system, laws and regulations and to take administrative measures that have two distinct functions, namely, to ensure compliance by the contractor with its obligations and to exempt the sponsoring State from liability.

The scope and extent of these laws and regulations and administrative measures depends on the legal system of the sponsoring State.

Such laws and regulations and administrative measures may include the establishment of enforcement mechanisms for active supervision of the activities of the sponsored contractor and for co-ordination between the activities of the sponsoring State and those of the Authority.

Laws and regulations and administrative measures should be in force at all times that a contract with the Authority is in force. The existence of such laws and regulations, and administrative measures is not a condition for concluding the contract with the Authority; it is, however, a necessary requirement for carrying out the obligation of due diligence of the sponsoring State and for seeking exemption from liability.

These national measures should also cover the obligations of the contractor after the completion of the exploration phase, as provided for in regulation 30 of the Nodules Regulations and regulation 32 of the Sulphides Regulations.

In light of the requirement that measures by the sponsoring States must consist of laws and regulations and administrative measures, the sponsoring State cannot be considered as complying with its obligations only by entering into a contractual arrangement with the contractor.

The sponsoring State does not have absolute discretion with respect to the adoption of laws and regulations and the taking of administrative measures. It must act in good faith, taking the various options into account in a manner that is reasonable, relevant and conducive to the benefit of mankind as a whole.

As regards the protection of the marine environment, the laws and regulations and administrative measures of the sponsoring State cannot be less stringent than those adopted by the Authority, or less effective than international rules, regulations and procedures.

The provisions that the sponsoring State may find necessary to include in its national laws 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.

It is inherent in the “due diligence” obligation of the sponsoring State to ensure that the obligations of a sponsored contractor are made enforceable.

Specific indications as to the contents of the domestic measures to be taken by the sponsoring State are given in various provisions of the Convention and related instruments. This applies, in particular, to the provision in article 39 of the Statute prescribing that decisions of the Chamber shall be enforceable in the territories of the States Parties, in the same manner as judgments and orders of the highest court of the State Party in whose territory the enforcement is sought.”

### **Background Information**

The Advisory Opinion relates to the recovery of resources from the ‘Area’, a zone established by the United Nations Convention on the Law of the Sea as the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction. The Convention declares the Area and its resources to be the common heritage of mankind. The resources of the Area, such as polymetallic nodules and polymetallic sulphides, are managed by the International Seabed Authority.

The Authority regulates deep seabed mining and endeavours to ensure the protection of the marine environment. The Authority has established regulations for the prospecting and exploration for both polymetallic nodules and polymetallic sulphides. Countries already involved in the prospecting or exploration of resources in the Area include China, France, Germany, India, Japan, the Republic of Korea, the Russian Federation and a consortium of Bulgaria, Cuba, the Czech Republic, Poland, the Russian Federation and Slovakia.

The question of the responsibility and liability of States who sponsor entities undertaking mining activities in the Area was raised in 2009 and discussed during meetings of the Authority. The outcome of these discussions was the approval by consensus of the proposal made to the Council to request an advisory opinion from the Chamber.

The text of the Advisory Opinion is available on the [website](#) of the Tribunal.

The press releases of the Tribunal, documents and other information are available on the Tribunal’s websites: <http://www.itlos.org> and <http://www.tidm.org> and from the Registry of the Tribunal. Please contact Ms Julia Ritter or Ms Johanna van Kisfeld at: Am Internationalen Seegerichtshof 1, 22609 Hamburg, Germany, Tel.: +49 (40) 35607-227; Fax: +49 (40) 35607-245; E-mail: [press@itlos.org](mailto:press@itlos.org)