(h) Written Statement of the United Mexican States

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

SEABED DISPUTES CHAMBER

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

REQUEST FOR AN ADVISORY OPINION IN ACCORDANCE WITH ARTICLE 191 OF THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

WRITTEN STATEMENT OF MEXICO

17 AUGUST 2010

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INTRODUCTION

1. On 6 May 2010, the Council of the International Seabed Authority, at its 16th meeting, adopted by consensus a Decision requesting the Seabed Disputes Chamber of the International tribunal for the Law of the Sea to render its first advisory opinion in accordance with Article 191 of the United Nations Convention of the Law of the Sea[1] on legal questions concerning the responsibilities and obligations of States sponsoring persons and entities with respect to activities in the International Seabed Area (the "Area") in conformity with the Convention and the 1994 Agreement relating to the Implementation of Part XI of the Convention[2] (the "1994 Agreement"). The Decision is contained in document ISBA/16/C/13.

2. On18 May 2010, the Chamber issued an Order inviting States Parties to the Convention to present written statements on the questions submitted to the Chamber for an advisory opinion and fixed 9 August 2010 as the time-limit with which written statements on these questions may be presented to the Chamber.

3. Subsequently, by its Order of 28 July 2010 the Chamber extended to 19 August 2010 such time-limit. The present written statement is filed pursuant to both Chamber's Orders.

4. The terms of the request made by the Council of the International Seabed Authority are contained in document ISBA/16/C/13.

5. By rendering the advisory opinion, the Chamber will bring legal certainty to the regime of the Convention, in particular Part XI. In addition, by doing so, the Chamber will be participating in the Convention's architecture.

6. Indeed, the exercise of the Chamber's advisory jurisdiction in this case will have practical importance to the Council's powers and functions, providing clarity to the scope of responsibilities and obligations of State Parties sponsoring activities in the Area.

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[1] Article 191 of the United Nations Convention of the Law of the Sea, adopted in Montego Bay, Jamaica, the 10th of December 1982, *United Nations Treaty Series*, vol. 1833, p. 3.

[2] Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, adopted by Resolution 48/263, on 28 July 1994, by the General Assembly of the United Nations during its resumed 48th session, held from 27 to 29 July 1994 in New York, *United Nations Treaty Series* vol 1836, p 3

7. Mexico is convinced that the Chamber will also pay an important service to State Parties and the international community to the extent that it will also guide the general conduct of States in relation to the Area which shall be in accordance with provisions of Part XI of the Convention, the principles embodied in the Charter of the United Nations and other rules of international law in the interests of maintaining peace and security and promoting international co-operation and mutual understanding.[3]

8. Indeed, in the context of the exchange of views on legal questions arising within the scope of activities of the Council when considering the Council's agenda item on Nauru's proposal to seek and advisory opinion from the Chamber, Mexico. participated actively in the debate favouring the exercise of the Chamber's advisory jurisdiction.

9. Mexico, as a Council member, concurred with the general approach outlined by the joint statement of the Delegations of Fiji and Nauru made at the Council meeting on 6 May 2010, justifying as to why was important to receive the advisory opinion form the Chamber, namely: "…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."

10. As noted above, Mexico participated actively in the formation of consensus behind the adoption of Decision ISBA/16/C/13, including by submitting amendments to the text of the draft decision with a view to broaden the scope of the questions.

11. At the Council's meeting on 3 May 2010, the Representative of Mexico indicated that Nauru's proposal to refer a request to the Chamber for an advisory opinion was in principle welcomed in view of its potential role in clarifying the nature and scope of the obligations enshrined in the Convention and bringing legal certainty to their application and interpretation. While supporting the general thrust of Nauru's proposal, Mexico also felt that the proposal required further refinement so as to have a clearer and a more succinct formulation to facilitate the task of the Seabed Disputes Chamber.

12. Several delegations were of the same view that the proposal required refinement. Consequently and upon Council's members request the Secretariat presented a shorter draft version of the Nauru proposal.

[3] Article 138 of the Convention.

13. At the Council's meeting on 6 May 2010, the Secretariat presented delegates a revised draft decision.[4] Before its adoption, the Permanent Representative of Mexico to the International Seabed Authority, Ambassador Leonora Rueda, explained:

> ...the revised draft decision before us fulfills the Council's members expectations to have a refined version of Nauru's original proposal and to that extent, the draft constitutes an excellent basis for member's discussion with a view to adopt a decision during [the 16th Session]. Mexico believes that the Council has a unique opportunity to request and advisory opinion from the Seabed Disputes Chamber[...] which will certainly contribute to the effective development of the Council's functions, as the Authority's executive organ[...] My delegation has studied carefully the text of the draft decision and noted that [the issues contained therein] are limited to Part XI of the Convention. In that regard, my delegation wonders whether other Convention's provisions, not necessarily found in Part XI, are also relevant. For example, Article 209(2) is placed in Part XII of the Convention. Such provision in general terms stipulates the obligation of States to adopt laws and regulations to prevent, reduce and control pollution of the marine environment from activities in the Area undertaken by vessels, installations, structures and other devices flying their flag. An explicit reference is also found in paragraph 9(b) of Nauru's original proposal. Notwithstanding international judicial bodies tend to examine the issues before them from a broad perspective; [Mexico] believes that it is appropriate to amend the text accordingly. In light of the [latter], Mr. President, my delegation suggests to add at the end of paragraph 1 the following: "What are the legal responsibilities and obligations of State Parties to the Convention with respect to the sponsorship of activities in the Area in accordance with *the Convention, in particular Part XI*" (emphasis added).

14. The Mexican amendment, along with some additional changes made by other delegations were included in the adopted decision ISBA/16/C/13.

15. In Mexico's view, the questions put before the Chamber regard a wide range of critical issues concerning not only the apparently limited scope of responsibilities and obligations of States Parties of the Convention sponsoring persons and entities in accordance with Part XI, but more broadly the whole legal system envisaged for the Area in the Convention, the Annexes relating thereto, the rules, regulations, and procedures of the

[4] ISBA/16/C/L.4

Authority and the 1994 Agreement.[5] In that context, it is also important to take due account of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area, adopted by the Authority back in 2000; and the recently adopted, 2010 Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area.

16. Mexico considers that the questions regard also the principles governing the activities in the Area, the development of its resources, the powers and functions of the International Seabed Authority, in particular its Council, and the protection and preservation of marine environment.

17. Therefore, the advisory opinion which the Chamber is asked to give needs to be placed in that wider context.

18. At the end, the Area, together with its resources, constitute the common heritage of mankind.[6] A concrete expression of such concept is linked to the principle indicating that the activities carried in the Area shall be undertaken for the benefit of mankind as a whole, irrespective of the geographical location, whether coastal or land-locked, and talking in particular consideration the interests and needs of developing States.[7]

19. The present written statement is divided into two chapters. The first chapter addresses issues connected to the jurisdiction of Seabed Disputes Chamber to render an advisory opinion, including the competence of the Council of the International Seabed Authority to request it. The second chapter will be devoted to articulate Mexico's view concerning the question one posed by the Council. In this respect, it is important to highlight that Mexico's views on questions two and three and on issues connected to the protection and preservation of the marine environment will be further elaborated in the context of its oral intervention. It is Mexico's intention to participate at the hearing to be held on the forthcoming 14 September 2010.

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[5] Article 153 (4) of the Convention. In addition, Article 318 of the Convention reads: "The Annexes form an integral part of [the] Convention and, unless expressly provided otherwise, a reference to this Convention or one of its Parts includes a reference to the Annexes relating thereto. With respect of the relationship between the Convention and the 1994 Agreement, Article 2 of the Agreement defines such relationship.

[6] Article 136 of the Convention.

[7] Article 140 of the Convention.

Chapter 1: Jurisdiction of the Seabed Disputes Chamber

20. This chapter is dived into two main sub-titles. In sub-title one, it will be discussed as to why in Mexico's view the Seabed disputes Chamber (the "Chamber") has jurisdiction to render the requested advisory opinion. In doing so, it will also be examined the issue as to whether the Council of the Authority has the necessary competence to request such advisory opinion in accordance with Article 191 of the Convention. In addition it will discuss whether the questions posed by the Council are legal ones arising within the scope of the Council's activities with the meaning of Article 191.

21. Sub-title two spells out the reason as to why, in Mexico's view, the Chamber shall exercise its advisory powers as provided for in Part XI, Section 5, of the Convention and the Statute of the International Tribunal for the Law of the Sea.

I. The Chamber has jurisdiction to render the requested advisory opinion

22. Mexico is convinced that the Chamber has jurisdiction to render the advisory opinion requested by the Council of the Authority. Therefore, the present chapter will attempt to demonstrate that the conditions found in Article 191 of the Convention for the Chamber's exercise of its advisory function are satisfied.

23. In order to so, this chapter will examine, firstly, the issue whether the Council has the competence to request the opinion from the Chamber. Secondly, it will address the question whether the questions posed by the Council were "legal" ones arising within the scope of the Council's activities.[8]

A. The Council of the International Seabed Authority has competence to request the advisory opinion

24. The competence of the Council of the International Seabed Authority is found in Article 191 of the Convention, which reads as follows:

[8] "It is a precondition of the Court's competence that the advisory opinion be requested by an organ duly authorized to seek it…that it be requested on a legal question, and that…question should be one arising within the scope of the activities of the requesting organ" *Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, ICJ Reports 1982*, pp.333-334, para.21; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, 2010*, 22 July 2010, p.11, para.19 ,http://www.icj-cij.org/docket/files/141/15987 pdf.

> The Seabed Disputes Chamber shall give advisory opinions at the request of the Assembly or the *Council* on legal questions arising within the scope of their activities. Such opinions shall be given as a matter of urgency. (Emphasis added)

25. The Council competence is derived from the fact that it is one of the two Authority's organs named in that provision, the other being the Assembly, with the power to request such advisory opinions from the Chamber.

26. The proposal to seek an advisory opinion from the Chamber was properly included as item number seven of the draft agenda for the 16th Session of the Authority contained in document ISBA/16/C/1. At its 150th meeting, the Council adopted the agenda with no amendments.

27. Agenda item seven was extensively considered in three different Council meetings: namely: 155th, 160th and 161 th. In such meetings, the competence of the Council to refer questions to the Chamber was not challenged. However, it is true that there were some divergent views as to whether it was appropriate and timely for the Council to request such advise.

28. The delegations who were not entirely convinced to forward the questions to the Chamber argued, among other things, procedural concerns in the manner in which the request was made. Some of those delegations preferred having the Legal and Technical Commission study the questions and make recommendations to the Council.

29. As to the issue whether the request was timely or not, the joint Fiji and Nauru statement made on 6 May 2010, conveyed the sense of urgency as to why the request needed to be made during the Authority's last session:

> ...if a decision were to be made by the Council to throw the proposal back to the Legal and Technical Commission, it would condemned 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 such approach the Seabed Disputes Chamber, it will then be another year before the resulting opinion can again be considered by this Council.

30. Mexico, as indicated in the Introduction of the present document, favoured all along during the discussions of this agenda item, the exercise of the competence of the Council

to seek an advisory opinion. As mentioned above, Mexico considered appropriate and timely such request, given its practical importance to the Council's activities in light of its potential clarifying effect.

31. In Mexico's view, the request made by the Council followed the appropriate procedural channels. The proposal was included in Council's Agenda and discussed in three meetings. Accordingly, the issue was before the Council and was subject to various "exchange of views on legal questions."[9] There is no rule fixing a minimum or maximum number of meetings within which the proposal to seek and advisory opinion needs to be made. The assessment as to whether to request an opinion from the Chamber rests on the Council alone based on its own needs.

32. In light of the above, it is submitted that Article 191 of the Convention grants power to the Council to seek advisory opinions from the Chamber and that the issue was properly before the Council's consideration.

33. However, it needs yet to be determined whether the questions posed by the Council constitute "legal questions arising within the scope of its activities" within the meaning of Article 191 of the Convention.

B. The questions posed by the Council are legal questions arising within the scope of its activities

34. Article 191 gives the power to the Council to request advisory opinions to the extent that they are on legal questions arising within the scope of the Council's activities. Therefore, the first requirement that needs to be examined is whether the three questions posed by the Council are legal ones.

35. The International Court of Justice with its long experience exercising its advisory jurisdiction has determined that questions "framed in terms of law and rais[ing] problems of international law…are by their very nature susceptible of a reply based on law and therefore appear to be questions of a legal character."[10]

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[9] See preambular paragraph two of decision ISBA/16/C/13.

[10] *Western Sahara, Advisory Opinion, ICJ Reports 1975*,p.18, para.15; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, 2010*, 22 July 2010, p.12, para.25,http://www.icj-cij.org/docket/files/141/15987.pdf.

36. The questions referred to the Chamber certainly fall within the category of questions of a legal character. The three questions in general terms refer to the scope of "the legal responsibilities and obligations of State Parties" and "the extent of their liability" for any failure to comply with the provisions in accordance with the Convention, in particular Part XI and the 1994 Agreement. Questions which expressly ask the legal nature and scope, as well issues connected to the application and interpretation of treaty provisions appear to be "legal questions" within the meaning of Article 191.

37. Furthermore, preambular paragraph two of Decision ISBA/16/C/13, acknowledges explicitly that the Council held an "exchange of views on legal questions". This reference reflects the fact that the Council, prior to the adoption of that Decision, undertook discussions on legal issues concerning its activities, concluding that there was a need to request the Chamber to exercise its advisory function. By looking at the records of the meetings where Agenda item seven was discussed, one is inclined to conclude that indeed there was legal exchange among Council members.

38. Consequently, the next issue to address is whether the legal questions posed by the Council "ar[oused] within the scope of [its] activities.

39. The questions posed by the Council and the answers thereto, will have practical consequences for the Council's activities due to their potential clarifying effect of the Convention's provisions. The three questions put by the Council are not of pure academic nature. They deal with an important part of the normative core of the Council's activities. By answering the questions, the Chamber will assist the Council in the performance of its activities[11] and will contribute significantly to the Convention's regime by bringing legal certainty to the application and interpretation of its provisions."

40. Article 162 of the Convention describes the broad range of powers and functions of the Council, as the executive organ of the Authority. The Council has the general power to establish, in conformity with this Convention and the general policies established by the Assembly, the specific policies to be pursued by the Authority on any question or matter within the competence of the Authority. The nature of such competence and the fundamental principles which govern the Authority's work is to organize and control

[11] "The purpose of the advisory jurisdiction is to enable organs ..to obtain opinions from the [ICJ] which will assist them in the future exercise of their functions" *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, 2010*, 22 July 2010, p.17, para 44, http://www.icj-cij.org/docket/files/141/15987.pdf)

activities in the Area, particularly with a view to administering the resources thereof.

41. Indeed, Council's express and implied powers are so broad, that the list of its specific powers and functions found in Article 162(2) of the Convention exhaust the alphabet, begging in sub-paragraph (a) and finishing in sub-paragraph (z).

42. The combined effect of Article 162 together with the relevant provisions of the 1994 Agreement yields a robust body with a pivotal role in the implementation of Part XI of the Convention.

43. That key role is expressed in several provisions found in Part XI of the Convention and the 1994 Agreement. For instance, as part of its regulatory and supervisory control over activities in the Area, the Council is competent to approve, or even disapprove, the plans of work submitted by contractors and the -non-yet operative- Enterprise, including the power to monitor non-compliance.[12] In addition, the Council has critical tasks to protect and preserve the marine environment by, among other things, issuing emergency orders to prevent serious harm to the marine environment and disapproving areas for exploitation in cases where substantial evidence indicates the risk of serious harm to the marine environment.[13]

44. In light of the above, it is clear that the Council has a vital role in exercising a large degree of control over the manner within which State Parties perform their responsibilities and obligations with respect to activities in the International Seabed Area.

45. Consequently and as corollary of the Council's control, any State Party has the correspondent duty to ensure that activities in the Area shall be carried out in conformity with Part XI and to repair for damaged caused as a result of its failure to carry out its duties and obligations under Part XI.[14]

46. Generally, that duty extends to State Parties, not only when they carry the activities by themselves or by their state enterprises, but also when they are undertaken by natural or

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[12] See Articles 162(2)(a),(k) and (l) and 153 of the Convention and Annex, Section 3, paragraphs 11 and 12 of the 1994 Agreement.

[13] Article 162 (2)(w) and (x) of the Convention.

[14] Article 139 (1) and (2) and Article 22 of Annex III. Additionally, they are obliged to render the Authority such assistance to ensure compliance with the Convention's provisions in conformity with Article 153 (4) of the Convention.

juridical persons which posses the nationality of State Parties or effectively controlled by them or their nationals. [15]

47. In view of the above and given the broad nature and scope of the Council powers and functions envisaged in Part XI of the Convention and the 1994 Agreement to:

> ...exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of [Part XI] and the Annexes relating thereto, and the rules, regulations and procedures of the Authority and the [approved] plans of work.[16]

48. And whereas the questions referred to the Chamber by the Council in accordance with Decision ISBA/16/C/13, refer precisely to the nature and scope of responsibilities and obligations of States sponsoring persons and entities with respect to activities in the International Seabed Area, which are closely connected to the scope of the Council's functions in light of its regulatory and supervisory control over activities in the Area.

49. It follows that the questions posed by the Council in order to obtain an advisory opinion, arise within the scope of its activities within the meaning of Article 191 of the Convention.

II. The Chamber shall exercise its advisory powers and functions as provided for in Part XI, Section 5, of UNCLOS and the Statute of the International Tribunal for the Law of the Sea

50. Article 191 of the Convention clearly stipulates that "[t]he Seabed Disputes Chamber shall give advisory opinions at the request of the....Council."

51. Accordingly, by using the verbs "shall give", it seems beyond doubt that, to the extent that the pre-conditions of Article 191 are met, that the Chamber has the duty to render the opinion requested either by the Authority's Assembly or Council. As stated in the above paragraphs, such pre-conditions were met in the present request, since the request was formulated by a competent organ to do so and it also referred to legal questions arising within the scope of its activities.

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[15] See Article 139 (1) and (2) of the Convention.

[16] Article 153(4) of the Convention.

52. The Chamber's duty to render an advisory opinion may be contrasted with the discretionary power of the International Court of Justice to exercise its advisory jurisdiction. In that regard, "[t]he fact that the Court has jurisdiction does not mean, however, that it is obliged to exercise it."[17]

53. With regards to the advisory function of the ICJ, the Court has further stated that:

> The Court has recalled many times in the past that Article 65, paragraph 1, of its Statute, which provides that "The Court may give an advisory opinion..." should be interpreted to mean that the Court has a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met.[18]

54. However, as stated above, the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea has no room for such a discretionary margin. The ordinary meaning to be given to the terms of Article 191 in their context and in light of its object and purpose Article 31(1) of the 1969 Vienna Convention on the Law of Treaties[19] reveals the imperative nature of that provision. For the Chamber, the duty is absolute.[20]

55. However, it has been argued that "imperative language of [A]rticle 191...does not prevent the Chamber from giving as its opinion that the question asked is not a legal question arising within the scope of the activities of the requesting organ."[21]

56. In the present request, it is clear that all the conditions put forward in Article 191 are met. Consequently the Chamber is bound to give answers to the questions posed by the Council.

57. Furthermore, by rendering the advisory opinion requested by the Council, the Chamber is

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[17] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo. 2010*, 22 July 2010, p.13, para.29, http://www.icj-cij.org/docket/files/141/15987.pdf).

[18] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion. ICJ Reports 2004 (I)*, p.156, para.44.

[19] Article 31(1) of the 1969 Vienna Convention on the Law of Treaties, adopted the 23 May 1969, *United Nations Treaty Series*, vol. 1155, p. 331

[20]. Nandan, Satya N. *(et al.) United Nations Convention of the Law of the Sea 1982: A Commentary, Volume VI, The Hague/London/New York, 2002*, p. 644, para.191.7 (a).

[21] *Ibid*

asked to participate in the Convention's architecture.[22]

58. Moreover, as mentioned previously in the Introduction of the present Statement, by answering the questions, the Chamber will also pay an important service to State Parties and the international community to the extent that it will also guide the general conduct of States in relation to the Area which shall be in accordance with provisions of Part XI of the Convention, the principles embodied in the Charter of the United Nations and other rules of international law in the interests of maintaining peace and security and promoting international co-operation and mutual understanding.[23]

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[22] "The [ICJ] is, mindful of the fact that its answer to a request for an advisory opinion 'represents its participation in the activities of the [United Nations]' *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania First Phase, Advisory Opinion, ICJ Reports 1950*, p.71; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004 (I)*, p 156, para.44; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, 2010*, 22 July 2010, p.13, para.30, http://www.icj-cij.org/docket/files/141/15987.pdf)

[23] Article 138 of the Convention.

Chapter 2: Responsibilities and obligations of States sponsoring persons and entities with respect to the activities in the Area: the questions

I. Introductory remarks

59. As mentioned in paragraph 17 of the Introduction of the present Written Statement, the advisory opinion which the Chamber is asked to give needs to be placed against a wide context. Such context refers to the legal framework within which the Chamber needs to answer the questions. The three questions posed by the Council, refer expressly to the Convention as whole, its relevant Annexes, and the 1994 Agreement. As part of that legal framework and although, not expressly mentioned in the three questions, it is also relevant to take due account of the 2000 Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area("Regulations for Polymetallic Nodules), and the 2010 Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area ("Regulations for Polymetallic Suphides").

60. At the time of the negotiations of Decision ISBA/16/C/13, Mexico, as a member of the Council, introduced amendments to the draft by adding to the first question the terms "....in accordance with the Convention, in particular Part XI..." What Mexico had in mind was to broaden the scope of the questions to be forwarded to the Chamber. In particular, as stated in paragraph 13 of the Introduction of the present Written Statement, Mexico is convinced that Part XII of the Convention relating to the protection and preservation of the marine environment is highly relevant when considering the nature and scope of the responsibilities and obligations of States sponsoring persons and entities with respect to activities in the International Seabed Area.

61. Furthermore, Mexico believes that three questions posed by the Council are closely interrelated and, hence, they need to be looked at from that broad perspective.

62. In addition, the answers to the questions need to take fully in account that there is a set of fundamental principles governing the Area and the development of its resources, including the policies relating to activities therein.[24] Article 155(2) of the Convention appears to provide a list of the core principles which govern the regime of Part XI.[25]

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[24] See article 150 of the Convention and article 6(3)(c) of Annex III.

[25] Article 155(2) reads as follows "The Review Conference shall ensure the maintenance of the principle of the common heritage of mankind, the international regime designed to ensure equitable exploitation of the resources

63. In that regard, it is important to recall the principle referring to the Area and its resources, as the common heritage of mankind,[26] and the one prescribing that the activities carried in the Area shall be undertaken for the benefit of mankind as a whole.[27]

64. In light of the above, the present document will refer, in general terms, to key issues, in Mexico's view, which arise under question one posed by the Council, in particular to issues connected with the protection and preservation of the marine environment, liability, and the prevention of monopolization of activities in the Area.

65. Mexico attaches special importance to the issue of protection and preservation of the marine environment, including the marine biodiversity of the International Seabed Area. Such issues have been constantly raised by Mexico not only in the context of the Authority but also in the framework of the General Assembly of the United Nations, including in the ambit of the Ad Hoc Open- ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction.

66. Mexico also considers of critical importance to ensure that the activities in the Area be conducted in way so as to prevent their monopolization by persons or entities sponsored by State Parties.

67. In addition, in Mexico´s view, the answers to the advisory opinion shall highlight the importance of Article 142 concerning the rights and legitimate interests of coastal States. In that regard, as noted below, it is important to take due note of the location of the

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of the Area for the benefit of all countries, especially the developing States, and an Authority to organize, conduct and control activities in the Area. It shall also ensure the maintenance of the principles laid down in this Part with regard to the exclusion of claims or exercise of sovereignty over any part of the Area, the rights of States and their general conduct in relation to the Area, and their participation in activities in the Area in conformity with this Convention, the prevention of monopolization of activities in the Area, the use of the Area exclusively for peaceful purposes, economic aspects of activities in the Area, marine scientific research, transfer of technology, protection of the marine environment, protection of human life, rights of coastal States, the legal status of the waters superjacent to the Area and that of the air space above those waters and accommodation between activities in the Area and other activities in the marine environment." See also Nandan, Satya N., *Op Cit* p.322.

[26] Article 136.of the Convention.

[27] Article 140 of the Convention.

polymetallic nodule deposits in the *Clarion-Clipperton Fracture Zone of the Pacific Ocean*, and its proximity to marine areas under national jurisdiction.

68. At the opening of the hearing, the forthcoming 14 September 2010, Mexico plans to make, in the context of its oral statement, additional and more detailed comments in connection with the issues mentioned in the preceding paragraphs, as well as its views and comments concerning questions two and three posed by the Council.

II. Question one

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?

69. To answer the question, as a first step it seems necessary to determine the meaning of the word "responsibilities" within the framework of the 1982 Convention on the Law of the Sea, in particular Part XI. As a second step, it seems appropriate to attempt to identify the relevant responsibilities and obligations of State Parties concerning the protection and preservation of the marine environment and the prevention of monopolization of activities in the Area in accordance with Part XI and Annex III of the Convention as well as the 1994 Agreement. Thirdly, it seems adequate to further identify such responsibilities and obligations in accordance with the Convention, in particular in Part XII (Protection ad Preservation of the Marine Environment).

A. The use of the term "responsibilities"

70. Article 139 of the Convention refers explicitly to the "responsibility" of State Parties to ensure compliance. However, it does refer also to the issue of "liability for damage."

71. At first sight, the term "responsibilities" might be thought to refer to the issue of State responsibility for internationally wrongful acts, i.e. a breach of international law.[28] However, on a close look to the entirety of Article 139, reveals that this provision addresses two different issues. On the one hand, paragraph 1 of that Article deals with the

[28] See the Commentary to Article 1 of the International Law Commission Articles on Responsibility of States for Internationally Wrongful Acts A/56/10.

responsibility to ensure compliance; and on the other, paragraph 2, touches upon the question of liability for damage.

72. Therefore, it seems that the question reflected in Article 139(2) is more closely linked to the realm of responsibility for internally wrongful acts. In other words, damage caused by the failure of the State Party to carry out its responsibilities, constitutes a breach of the Convention entailing State liability, to use the term referred to in the text of the Convention and its Annex III.[29]

73. The term "responsibility" in the text of Article 139 read together in the context of the text of the Convention and Annex III, reveals its inconsistent use. For instance:

i) Although not relevant to the questions posed by the Council, due to its non-application to matters relating to the International Seabed Area, Article 31 of the Convention provides however an example of the inconsistent use of the term "responsibility." That provision refers to the international responsibility of the flag state of a warship or other governmental ship operated for non-commercial purposes for any loss of damage to the Coastal State concerning passage through the territorial sea.

ii) By contrast, Article 235(1) in relation to the protection and preservation of the marine environment, introduces in its text both terms "responsibility" and "liability." It seems that the issue of responsibility refers to the question of the duty of the State Party to fulfill its international obligations concerning the protection and preservation of the environment. However, paragraph 3 refers to the "further development of international law relating to responsibility and liability for the assessment of and compensation for damage."

iii) A similar situation arises from the text of Article 263(1), which indicates that States shall be responsible for ensuring that marine scientific research is conducted in accordance with the Convention. But paragraphs 2 and 3 of that provision resort back to the notions of responsibility and liability for breach of the Convention and for damage caused by the pollution to the marine environment.

[29] See Article 22 of Annex III

iv) To make matters more confusing in Part XVI General Provisions- Article 304 refers to all the provisions in the Convention concerning "responsibility" and "liability for damage". By adding the reference at the end of the paragraph "without prejudice to the application of existing rules and the development of further rules regarding responsibility and liability under international law" it seems that Article 304 is more closely connected to questions arising out from State responsibility for internationally wrongful acts.

v) Article 4 (4) Annex III of the Convention, introduces the the notion of "responsibility" by stipulating that "[t]he Sponsoring State or States shall, pursuant to Article 139, have the responsibility to ensure, within their legal systems, that a contactor so sponsored shall carry out activities in the Area in conformity with the terms of the contract and its obligations under [the] Convention." However, that provision also includes a reference to "liability for damage."

vi) In addition, Article 22 of Annex III, entitled "Responsibility introduces both terms "responsibility" and "liability" as follows: "[t]he contractor shall have responsibility or liability for any damage arising out of wrongful acts in the conduct of its operations." In the same line, Section 16.1 of the Standard Clauses for Exploration Contract contained in Annex 4 of both Regulations for Polymetallic Nodules and for Polymetallic Sulphides,[30] includes references to "responsibility" and "liability."

74. To sum up, it might be submitted that the term responsibility within the context of the Convention has a dual utilization. Sometimes is used in the context of the duties and obligations of States to ensure compliance with the provisions of the Convention. And sometimes is linked to the words "liability for damage" for failure of the State to carry out its responsibilities under the Convention. The latter situation is more closely associated with State responsibility for internationally wrongful acts.

75. Accordingly, it seems that Articles 139(1), 235(1), 263(1), and partially Article 4(4) of Annex III, are related to the use of the term as "duties" or "obligations". While Articles

[30] De La Fayette, Louise "The Concept of Environmental Damage in International Liability Regimes" in Bowman, M. & Boyle, A. *Environmental Damage in International and Comparative Law. Problems of Definition and Valuation* pp.173-177

139(2), 235(3), 263 (2) and (3), Article 304, partly Article 4(4) of Annex III and Article 22 of Annex III (in cases where the State Party has failed to take necessary legislative or administrative measures in order to secure compliance from the sponsored person or entity), might be more closely related to the doctrine of State responsibility for internationally wrongful acts.

76. As a result, one is left with a not so clear picture as to the exact meaning of the concept of "responsibility" in order to ascertain the scope of the question posed by the Council to the Chamber.

77. One approach might be to consider the interrelated nature of the three questions posed by the Council to the Chamber. In that context, question two asks in general terms what is the extent of liability of a State Party sponsoring persons and entities? Consequently, one might feel inclined to assume that, for the purposes of question one, the intention of the Council was to refer to the term "responsibilities" as "duties or obligations."

78. However, that does not resolve completely the problem since it will render superfluous the use of the term "obligations" within the meaning of question one posed by the Council. In order to give effect to the expression "obligations", a possible way out might be to consider the scope of the term "responsibilities" within the limited notion of "the duty to ensure that activities in the Area are carried in conformity with the Convention and the 1994 Agreement", as referred to in Article 139(1).

B. The responsibilities and obligations of State Parties concerning the protection and preservation of the marine environment and the prevention of monopolization of activities in the Area in accordance with Part XI and Annex III of the Convention as well as the 1994 Agreement

79. Due to the control that the Authority shall exercise over activities in the Area for the purpose of securing compliance, Part XI of the Convention and the 1994 Agreement envisage a complex web of responsibilities and obligations for States sponsoring activities in the International Seabed Area.

80. As referred to above, Article 139(1) of the Convention sets out the basic duty or responsibility of State Parties to "ensure" that activities in the Area undertaken by sponsored persons or entities shall be carried out in conformity with Part XI.

81. At first sight, it appears that term "ensures" requires States to exercise a reasonable degree of due diligence by taking a number to steps so as to oblige sponsored persons or entities to act in conformity with Part XI. In the absence of guidance in the text of paragraph 1 as to the precise nature and scope of those necessary steps to conform to the due diligence standard, it seems that paragraph 2 of the same provision offers some orientation as to what is expected from the State. In that sense, it seems important to note that a State Party will not be liable for damage caused by any failure to comply with the obligation arising from Part XI by sponsored persons or entities, if the State Party has taken all necessary and appropriate measures to "secure effective compliance" with Article 153(4) and Annex III Artilce 4(4).

82. Article 153 (4) refers to the obligation of Authority, in the exercise of its supervisory control over the activities in the Area to "secure compliance" witch the relevant provisions of Part XI and the Annexes relating thereto, and the rules, regulations[31] and procedures of the Authority, and the approved plans of work. The assistance by State Parties to the Authority with a view to secure compliance is discharged by taking all measures necessary. It seems natural to expect that there is a general obligation on the part of State Parties to assist the Authority in the conduct of its work so as to facilitate the performance of its powers and functions.[32] The more so, when State Parties are sponsoring persons and entities with respect to activities in the International Seabed Area.

83. Notwithstanding the above, Article 153 does not go a long way in clarifying the nature and scope of the measures necessary for the sponsoring State to duly fulfill its duty to "ensure" and "secure effective compliance."

84. In that respect. Article 4(4) of Annex III it seems to offer better guidance as to meaning of those expressions. The first sentence of Paragraph 4 reads as follows:

> ...The sponsoring State or States shall, pursuant to article 139, have the

[31] The 2000 Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area and the 2010 Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area.

[32] This duty of assistance to the Authority resembles one of the principles of the United Nations Charter: Article 2(5) of the Charter stipulates that "All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter..."

> 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.

85. In light of the above, it appears that it is within the domestic legal system the appropriate context where the sponsoring State needs to deploy measures so as to ensure compliance from sponsored persons or entities. The second part of paragraph 4, clarifies even more the kind of measures that need to be taken within the national legal system:

> ...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.

86. Therefore, it seems that the manner in which the State Party discharges its duty or responsibility to ensure and secure effective compliance from its sponsored persons and entities is by enacting laws and regulations and take in parallel administrative measures, which must be "reasonably appropriate" for securing compliance.

87. It is submitted that the terms "reasonably appropriate" need to be understood against an evolving context according to the level of scientific and technical knowledge of what is reasonably appropriate according to the circumstances. As part of that context it is also crucial to consider -as will be discussed below- the content of laws and rules relating the protection and preservation of the marine environment and the evolving nature of the emerging principles of international environmental law, like the precautionary principle. In that sense, it is important to note that under Section 27.1, concerning applicable law, of the Standard Clauses for Exploration Contract contained in Annex 4 of both Regulations for Polymetallic Nodules and for Polymetallic Sulphides, exploration contracts shall be governed also by those other rules of international law not incompatible with the Convention.

88. Finally, it is important to note that under Regulation 11 of both set of Regulations, any certificate of sponsorship for the approval of plans of work for exploration in the Area shall contain a declaration that the sponsoring State assumes "responsibility" in accordance with Articles 139, 153(4) and 4(4) of Annex III. In light of the explanation given in the preceding paragraphs, it seems that this requirement is satisfied if proved that the State has adopted, in the process to adopt or willing to adopt the necessary legislation

and administrative measures in order to secure compliance.

89. As to the "obligations" in accordance with Part XI and the 1994 Agreement, ask by question one to the chamber, States have a wide variety of obligations that they need to comply when sponsoring persons and entities for activities in the Area in conformity with Article 153(2)(b) of the Convention. In particular, activities in the Area are governed by principles set out in Section 2 of Part XI of the Convention. Notwithstanding that the present Statement, will put an emphasis on issues connected to the protection and preservation of the marine environment and the prevention of monopolization of activities in the Area, there are a number of additional obligations for State Parties in accordance with Section 2 of Part XI.

90. For instance, State parties may carry out marine scientific research in the Area provided that they promote international cooperation by ensuring that they are developed for the benefit of developing countries and by effectively disseminating the results and analysis in accordance with Article 143 of the Convention. In addition, there are obligations relating to the transfer technology in accordance with Article 144 and Section 5 of the Annex of the 1994 Agreement, including the obligations of State parties to promote international technical and scientific co-operation with regard to activities in the Area by developing scientific co-operation programmes in marine science and technology and the protection and preservation of the marine environment. Article 147 also prescribes the general obligation of States to carry out activities in the Area with reasonable regard for other activities in the marine environment.

91. Of special importance to Mexico are the obligations of State Parties as a consequence of the rights and legitimate interests of Coastal States in conformity with Article 142 due to the location of the polymetallic nodule deposits in the *Clarion-Clipperton Fracture Zone of the Pacific Ocean*. Given its proximity to marine areas under national jurisdiction, due account should be take to the rights of the coastal States to take such necessary measures to protect and preserve the marine environment consistent with Part XII, including those to prevent damage to marine biodiversity and related ecosystems from pollution caused by activities in the Area. In this respect, the coastal State has a wide discretion as to the scope of the measures to be introduced for the protection and preservation of rare or fragile ecosystems, provided that they are consistent with Part XII.

92. The latter issue, bring us to one of the main focus of this section of Mexico's Statement: the protection and preservation of the marine environment in accordance with Part XI.

1. Obligations to protect and preserve the marine environment in accordance with Part XI

93. Part XI has specific references to obligations of the Authority and State Parties to protect and preserve the marine environment. These obligations, as will be described below, need to be read together with the obligations of States consistent with the obligations found in Part XII of the Convention.

94. Article 145 prescribes the obligation to take necessary measures in accordance with the Convention with respect to activities in the Area to ensure effective protection for the marine environment from harmful effects which may arise form such activities. To that end, the Authority shall adopt appropriate rules, regulations and procedures for the prevention, reduction and control of pollution, the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment. These references include, in contemporary terms, the biodiversity of the deep sea beyond limits of national jurisdiction.

95. Apart from having effective legislation and administrative measures in that regard, State have the "obligation" to ensure that sponsored persons and entities comply with a number of environmental requirements in order to conclude contracts with the Authority for exploration of the resources of the Area. In this connection, the Regulations for Polymetallic Nodules and the Regulations for Polymetallic Sulphides contain a variety of obligations to that effect.

96. From the outset, it is noteworthy to recognize that the broad definition on "marine environment" found in common Regulation 1(3)(c) of both sets of Regulations. This boad definition is not found in the Convention and could be considered a normative development if compared with Article 1(1)(4) of the Convention which defines only "pollution of the marine environment."

97. In conformity with both sets of Regulations there are a number of important obligations for State Parties sponsoring persons and entities with respect to activities in the Area:

i) Regulation 2(2) of the Regulations for Polymetallic Nodules forbids prospecting if substantial evidence indicates the risk of serious harm to the marine environment. Although not expressly mentioned, this may be considered as an implicit reference to the precautionary principle. This is confirmed by looking at the text of regulation 2(2) of the Regulations for Polymetallic Sulphides, which, by contrast, expressly mentioned the

precautionary principle as reflected in Principle 15 of the Rio Declaration.

ii) Equally in both sets of Regulations, it is forbidden to prospect in an area which the Council has disapproved for explotation because of the risk of serious harm to the environment.[33]

iii) Regulation 5 of the Regulations for Polymetallic Sulphides introduces detailed obligations to take measures to protect and preserve the marine environment during prospecting. It seems that sponsored persons and entities need to take such measures on the basis of the national legal system of the sponsoring State Party.

iv) As part of the mandatory undertakings that need to be made by the applicant in accordance with the Regulation 15(a), there is an obligation to accept as enforceable and comply with the applicable obligations created by the provisions of the Convention and related rules and regulations of the Authority. In that respect, the obligations found in the Convention concerning the protection and preservation of the marine environment, including those in Part XII constitute "applicable obligations." This matter is also relevant for the determination that the Legal and Technical Commission is required to make as to whether a proposed plan for exploration provides for the effective protection of the marine environment,[34] including the impact to marine biodiversity.[35]

v) Part V of the both Regulations establish a detailed regime for the protection and preservation of the marine environment in the explorationt, by the inclusion of such concepts as: the precautionary principle of the Rio Declaration; the obligation of sponsoring States to cooperate with the Authority for the establishment of "Impact reference zones" and "Preservation reference zones," which may be considered as a zone with similar features to marine protected area since no mining shall occur to asses any changes in the biodiversity of the marine environment."[36] Moreover,

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[33] Regulation 2(3).

[34] Regulation 21(4)(b) of the Regulations for Polymetallic Nodules.

[35] Regulation 23(4)(b) of the Regulations for Polymetallic Sulphides.

[36] Regulation 31(7) of the Regulations for Polymetallic Nodules. Regulation 33(6) of the Regulations for Polymetallic Suphides.

Article 34 of the Regulations for Polymetallic Sulphides establishes the obligation to the sponsored persons or entities to cooperate with the sponsoring State and with the Authority in the establishment and implementation of monitoring programmes. In addition, emergency orders may be issued.

vi) Section 5 titled "Environmental Monitoring" of the Standard Clauses for Exploration Contract contained in Annex 4 of both Regulations for Polymetallic Nodules and for Polymetallic Sulphides, contain important environmental obligations for those wishing to conduct exploration activities in the Area. Significantly, 5.2 of the Regulations for Polymetallic Sulphides clearly spells out the obligation that prior to the commencement of exploration activities, the Contractor shall submit to the Authority an impact assessment of the potential effects on the marine environment of the proposed activities. A requirement which is not so clearly spelled out in the rest of the main body of those Regulations.

2. Obligations to prevent the monopolization of activities in the Area

98. Article 150 (g) of the Convention to the need that activities in the Area be carried out with a view to ensuring:

> The enhancement of opportunities for all State Parties, irrespective of their social and economic systems or geographical location, to participate in the development of the resources of the Area and *the prevention of monopolization of activities in the Area.* (emphasis added)

99. In that respect Article 6(3)(c) of Annex III is regarded to include an anti-monopolization clause for the purposes of the approval of plans of work related to activities concerning polymetallic nodules[37] sponsored by the State Party. However, with respect to polymetallic sulphides there is no equivalent provision in the respective 2010 Regulations. In this regard, by Decision ISBA/16/C/12, in virtue of which the Council decided to approve the Regulations for Polymetallic Sulphides, requested also to the Legal and Technical Commission to elaborate, in due course, appropriate criteria that might be used to prevent monopolization of activities in the Area with respect to polymetallic sulphides.[38]

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[37] See ISBA/16/C/WP.1 para. 9, 10 and 11.

[38] See paragraph 3 of Decision ISBA/16/C/12.

100. In light of the two preceding paragraphs, Mexico considers extremely important that the Chamber considers the scope of the issue of prevention of monopolization of activities in the Area within the context of the obligations of States sponsoring persons and entities.

3. Obligations to protect and preserve the marine environment in accordance with Part XII

101. As mentioned, in the introduction of the present Written Statement, Mexico's amendment to question one of Decision ISBA/16/C/13 was incorporated in the final text inserting a reference to the Convention. That inclusion resulted in an expansion of the question's scope beyond Part XI.

102. Mexico believes that the obligations concerning protection of the marine environment in Part XI need to be read and interpreted together with those in Part XII.

103. Article 192 of the Convention expresses the general obligation of States to protect and preserve the marine environment. This general obligation extends over all marine areas, including the International Seabed Area.

104. In addition and in the context of measures to prevent, reduce and control pollution of the marine environment from any source, Article 194(5) provides that "[t]he measures taken in accordance with [Part XII] shall include those necessary to protect and preserve rare or fragile ecosystems as well as habitat depleted, threatened or endangered species and marine environment. This matter has been the object of particular concern of the work of the General Assembly of the United Nation under the agenda item on "Oceans and the Law of the Sea",[39] as well as the work of the Authority.[40]

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[39] See the Preamble of General Assembly Resolution *A/RES/64/71*: "*Reiterating its deep concern* at the serious adverse impacts on the marine environment and biodiversity, in particular on vulnerable marine ecosystems, including corals, hydrothermal vents and seamounts, of certain human activities"

[40] "[T]he relationship between the measures taken by the Authority for the protection of the marine environment and the commitments expressed by the international community towards coherent global measures for the protection of [marine] biodiversity in areas beyond the limits of national jurisdiction" is categorized by the Authority's Secretary- General as one of the issues which will assume greater importance in the work of the Authority in the near future: see *Report of the Secretary- General of the International Seabed Authority under Article 166, paragraph 4, of the United Nations Convention on the Law of the Sea*, para.94 and 100-105 (ISBA/15/A/2).

105. Article 209 of the Convention expressly refers to marine pollution from activities in the Area. In paragraph 1, it seems that implicitly stipulates the obligation of State Parties, including those sponsoring persons and entities to promote the re-examination from time to time, as necessary, of rules, regulations and procedures adopted in accordance with Part XI to prevent, reduce, and control pollution of the marine environment from activities in the Area. With regards to the Regulations for Polymetallic Sulphides, Regulation 44 includes a compulsory review clause to assess five years after the adoption of the Regulations the manner in which they have operated in practice, [41] and consider whether, in light of improved knowledge or technology, the Regulations are no longer adequate and, hence, in need for revisions.[42] Additionally in accordance with Regulation 44(3), and notwithstanding Regulation 44(2), amendments to the Regulations may be proposed and adopted, in light of the five-year review. It seems that the revisions referred in Regulation 44(2) are not a precondition to propose or adopt the amendments referred to in Regulation 44(3).

106. The Regulations for Polymetallic Nodules are silent on the issue of review. Notwithstanding the latter, it seems that by virtue of Article 209(1) some form of periodic re-examination needs to take place, most likely in the context of the Authority.

107. Article 209(2) creates also obligations for Sates to adopt laws and regulations to prevent, reduce and control pollution of the marine environment form activities in the Area undertaken by vessels, installations, structures and other devices flying their flag or of their registry or operating under authority, as the case may be. This provision applies to States sponsoring persons and entities and should be read in conjunction with the responsibilities and obligations of Part XI, in particular Articles 139, 153(4) and 4(4) of Annex III.

108. In addition, at the end of Article 209(2) there is an obligation to ensure that the requirements of such laws and regulations shall be no less effective than the international rules and regulations adopted in the context of the Authority, like the both sets of Regulations for Polymetallic Nodules and for Polymetallic Sulphides.

109. In light of the above and as part of the regulatory obligations concerning the need to adopt national law and regulations in order to prevent pollution of the marine environment from activities in the Area, it seems that the State Party sponsoring persons and entities, needs

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[41] Regulation 44(1).

[42] Regulation 44(2).

to introduce the requirement of an environmental impact assessment given the content of Section 5.2(a) of the Standard Clauses for Exploration Contract contained in Annex 4 of the Regulations and for Polymetallic Sulphides.

110. The obligation to request a mandatory environmental impact assessment[43] is also consistent with that embodied in Article 206 of the Convention which requires States, although in highly qualified fashion, to assess the potential effects of certain activities likely to cause substantial pollution or harmful changes in the marine environment. This requirement could also be applied in the context of activities relating to polymetallic nodules and not only to sulphides. The environmental impact assessment is not only justified as preventive measure which requires to be reflected at the national lever, but also as an expression of the precautionary principle given the lack of full scientific certainty and knowledge as to the scale and magnitude of impacts on the ecosystems of the deep ocean. In addition, by introducing laws and regulations on environmental impact assessments, constitutes an adequate manner to discharge part of the obligations to take measures to protect rare or fragile marine ecosystems in conformity with Article 194(5) of the Convention.

111. A further obligation to State Parties sponsoring persons and entities in accordance with Article 235(2) is to ensuring that recourse is available in their domestic legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment. This provision is also relevant for securing effective compliance in conformity with Part XI.

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[43] *The Mox Plant* case (Ireland v United Kingdom), *ITLOS Report of Judgements, Advisory Opinions and Orders 2001*,pp. 95-149; *The Mox Plant* Arbitration (Ireland v United Kingdom) 42 *ILM* (2003), pp. 1187-1199. The ICJ has stated: "The Court is mindful that, in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage" *Gabcikovo-Nagymaros Project (Hungary/Slovakia) Judgment ICJ Reports 1997* p.78, para.141, and Separate Opinion Judge Weeramantry, pp.111-115.