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President of the Seabed Disputes Chamber, Judge Tullio Treves, presiding

Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area

(Request for Advisory Opinion submitted to the Seabed Disputes Chamber)

Verbatim Record

Seabed Disputes Chamber

of the International Tribunal for the Law of the Sea

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THE PRESIDENT: I now wish to give the floor to the representative of the Russian Federation, Mr Titushkin.

MR TITUSHKIN: Mr President, distinguished Members of the Chamber, it is a great honour to represent my country, the Russian Federation, before the Chamber in these public hearings.

The Russian Federation regards the Chamber as one of the most authoritative bodies in the sphere of the international law of the sea and the one that contributes most consistently and effectively to the progressive development of this highly important branch of international law.

The Russian Federation is eager to maintain and develop full cooperation with the Tribunal and this is one of the reasons for our decision to present our oral statement that follows on the arguments and comments my country has already made in writing.

In our written statement we mentioned that the Convention – namely article 139, article 153, paragraph 4, and Annex III, article 4, paragraph 4 – contains vague terms that need clarification.

Let me make some specific comments on the questions that are under the Chamber's consideration. I will quote them. First: 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? Question 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?

Mr President, today in our oral statement we would like to address the problem of interpretation of these provisions and share with you our understanding of these issues.

Article 139 provides that States shall have the responsibility to ensure that the activities in the Area performed by enterprises which they sponsor shall be carried out in conformity with the Convention. The article goes on to stipulate that a State Party shall not, however, be liable for damage caused by any failure to comply with the Convention by a person whom it has sponsored under article 153, paragraph 2(b), if the State Party has taken all necessary and appropriate measures to secure effective compliance under article 153, paragraph 4, and Annex III, article 4, paragraph 4.

As we can see, when describing the prerequisites for a State to be released from liability, article 139 refers to two other provisions of the Convention. One of them, article 153, paragraph 4, provides that the Authority shall exercise control over activities in the Area and that States Parties shall assist the Authority by taking all measures necessary to ensure such compliance in accordance with article 139. The other one – Annex III, article 4, paragraph 4 – contains a more detailed presentation of the circumstances when a State cannot be considered liable for the damage mentioned. It states that a sponsoring State shall not 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.

On our way to perceiving the notion of the responsibilities and obligations of States as initially designed by the founders of the Convention, in going from one article to another we permanently encounter an obstacle – uncertainty of the terms in question.

For instance, article 139 speaks of “all necessary and appropriate measures”; Article 153 then goes on with “all measures necessary”; Annex III, article 4, paragraph 4, finally, ends up with “reasonably appropriate” laws, regulations and administrative measures.

It is obvious that there is not only uncertainty but also an overlap of terms used to define the same thing; in particular, these terms are used to describe the character

of the measures that a State should take in order to fulfil its responsibility to ensure compliance.

The Russian Federation believes that it is in the interests of neither States Parties to the Convention nor enterprises which they sponsor that such uncertainty and confusion should continue to exist. The Russian Federation sees the task of the Chamber as to eliminate this uncertainty when answering questions numbered 1 and 3.

Mr President, distinguished Members of the Chamber, although there are a number of difficult points of interpretation as to the question of responsibilities and obligations of States sponsoring entities, there is still a number of quite clear issues which I would like to highlight.

Annex III, article 4, paragraph 4, stipulates that the sponsoring States shall 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.

I would like to draw your attention to the following point. Article 4 speaks of the responsibility of States sponsoring contractors and then of terms of contract and obligations under the Convention attributing them to contractors.

In the provisions of article 139 there is also the distinction between the responsibility of sponsoring States and the obligations on contractors (entities). The same state of affairs appears in article 153. Proceeding from that, we can say that the responsibilities and obligations of States and entities are clearly distinguished by the Convention. We should bear this in mind in future when analyzing the conclusions.

Now, Mr President, allow me to skip to another point which may help us understand the nature of the responsibilities of sponsoring States and their liability that again lies within the provisions of article 153.

Article 153 provides for the primary role of the Authority in supervising all activities of any entity in the Area. It states that the Authority shall exercise control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of the Convention and that States shall assist the Authority by taking all measures necessary to ensure such compliance in accordance with article 139. According to that, the Authority is primarily responsible for ensuring compliance with the provisions of the Convention by entities acting in the Area. States take a secondary role by assisting the Authority by taking all measures necessary to ensure such compliance. This does not, of course, mean that States bear less responsibility than the Authority. In our belief, in conceiving this provision the founders of the Convention wished to point out that the Authority as the partner of the entity with which it makes a contract to act in the Area disposes of certain means of control – monetary, contractual, and administrative. States have some measure of control too, from mainly administrative measures to penal sanctions.

Analyzing the provisions of the three articles in question, the Russian Federation has come to provisional conclusions which can give us some hints, but unfortunately not the answers, to Question 1: (a) the Convention distinguishes the responsibility of States and obligations of contractors; the contractor's duty is to comply with the provisions of the Convention and the terms of its contract, whereas the responsibility of States may be expressed by the phrase "ensure such compliance by entities", as described in Annex III, article 4, paragraph 4. Such responsibilities include, *inter alia*, adopting laws and taking administrative measures which are reasonably appropriate for securing compliance by persons under their jurisdiction; and (b) the Authority bears primary responsibility to control the compliance by any entity with the Convention while the State's duty is to assist the Authority.

Mr President, now allow me to briefly comment on the question as to the necessary and appropriate measures that a sponsoring State must take in order to fulfil its responsibility, which is Question 3.

Once again, let me refer to Annex III, article 4, paragraph 4. In their written statements some delegations suggested that the problem of the liability of sponsoring States can be resolved through a sponsoring contract. My Government is

of the view that it is not a solution of the problem, since a bare fact of making a sponsoring contract with an entity does not exempt a State from liability. Annex III, article 4, does not include a conclusion of sponsoring contracts since it is not an administrative or legislative measure, but pertains rather to the sphere of civil law. It is also clear that the simple act of adopting laws will not be sufficient either. For a State to fulfil its responsibilities, a multilevel system of control measures over activities of sponsored entities should be constructed. Laws should be enforceable enough and there should be administrative bodies that would be responsible for enforcing them, preventing violation thereof and imposing sanctions against the violators.

Mr President, bearing in mind these conclusions as to Questions 1 and 3, let us come to Question 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?

Article 139 contains a general provision stipulating that damage caused by the failure of a State to carry out its responsibilities under Part XI of the Convention shall entail liability. Article 22, Annex III, states that it is the contractor who shall have responsibility or liability for any damage arising out of wrongful acts in the conduct of its operations. Article 139, however, exempts a State from liability for damage caused by any failure of a contractor to comply with the Convention if it has taken all necessary measures elaborated in article 4, Annex III.

The Russian Federation believes that a State can be held liable only for something for which it is really responsible. Therefore, as we concluded previously, a State may be liable only for an inability to adopt laws and take administrative measures, not for the activity of entities, and only in the case of damage being caused by any failure of a contractor sponsored by the State to comply with its obligations.

Accordingly, the strong persuasion of the Russian Federation is that a contractor takes primary liability for the damage resulting from its activity in the Area, whereas there is no subsidiary liability of States for that damage.

Having expressed the position of the Russian Federation on the questions put forward before the Chamber by the Authority, we would like as well to share our views on some other issues relating to the standards of responsibility.

At the 16th 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 – I refer to the document ISBA/16/C/6 – in which some relevant questions were raised and Nauru's interpretation of the problem was expressed. Nauru also confirmed its position in the written statement submitted to the Chamber.

In particular, Nauru considers that, taking into account the lack of 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 fact may prevent some States – for instance, developing ones – from participating in activities in the Area. That would supposedly constitute a breach of the Convention clause, providing the promotion of effective participation of developing States in activities in the Area – article 148 of the Convention.

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 in most cases are independent from the sponsoring State, thus leading to their failure to ensure effective compliance with the Convention's requirements.

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.

The Russian Federation believes that such an approach is erroneous and contradicts the basic principles of the Convention.

In the view of the Russian Federation, the Convention contains no subjective elements which could allow States to interpret it [on the basis of] their own economic or any other capacities. The words “necessary” and “(reasonably) appropriate”, though in some sense unclear, are strongly linked to the basic provisions of the Convention governing the activities in the Area and can be interpreted only in integrity with them. They imply an entirely objective standard for the liability and responsibility of the sponsoring States.

As to the preclusion of developing States from effective participation in activities in the Area due to their inability to assess potential risks and liabilities, we would like to draw the Chamber’s attention to the wording of article 148, which envisages the 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(b) – developing programmes for the benefit of developing States; article 144, paragraph 1(b) – the transfer of technology and scientific knowledge to developing States; or article 150(h) – the protection of developing States from adverse effects. Thus, the approach presupposing application of different standards of responsibility and liability to developed and/or developing States as a form of promotion of the latter would go beyond the principle introduced in 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.

Furthermore, article 150(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 for 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.

The same approach of developing a single standard of responsibility for all States should be applied when analyzing the issue of the necessary and appropriate measures that a sponsoring State must take in order to fulfil its obligations under the Convention. The wording of Annex III, article 4, paragraph 4, of the Convention, though containing uncertainty, does not, however, imply any subjective element. In the view of the Russian Federation, the words "… within the framework of its legal system …" 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 differences in the legal nature or form of regulations and measures adopted by States in order to fulfil their obligations under the Convention. For instance, such a difference may emerge due to objective reasons; different States may have quite different legal systems – Anglo-Saxon, continental, et cetera.

Bearing in mind the arguments referred to above, the Russian Federation has come to the following conclusions:

First, the Convention distinguishes the responsibility of States and obligations of contractors. The contractor's duty is to comply with the provisions of the Convention and the terms of its contract, whereas the responsibility of States is described in Annex III, article 4, paragraph 4, and consists of adopting laws and taking administrative measures which are reasonably appropriate for securing compliance by persons under their jurisdiction. At the same time the Authority bears primary responsibility to control the compliance by any entity with the Convention while the State's duty is to assist the Authority by adopting laws and taking administrative measures.

Second, the necessary and appropriate measures that a sponsoring State must take in order to fulfil its responsibility consist in constructing a multilevel system of control measures over activities of sponsored entities, adopting enforceable laws and establishing administrative bodies that would be responsible for enforcing them, preventing violations thereof and imposing sanctions against the violators. The bare

fact of making a sponsoring contract with an entity will not exempt a State from liability.

Third, a State may be liable only for omission to adopt laws and take administrative measures, not for activity by entities, and only in case of damage being caused by any failure of a contractor sponsored by the State to comply with its obligations. A contractor shall take primary liability, whereas States take no subsidiary liability.

Fourth, a single standard should be applied with regard to the responsibilities, obligations and the extent of liability of sponsoring States and to what necessary and appropriate measures a sponsoring State is required to take.

I would like to thank you, Mr President, and distinguished Members of the Chamber.

THE PRESIDENT: Thank you very much, Mr Titushkin. I now give the floor to the representative of the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization. Mr Desa, you have the floor.

MR DESA: Mr President, distinguished Members of the Seabed Chamber, it is an honour for the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization (UNESCO/IOC) to appear before the Tribunal in the present advisory proceedings.

I will present to you the comments of UNESCO/IOC regarding the questions for which the advisory opinion is sought. These proceedings are of great importance for UNESCO/IOC, which is following them with keen attention.

Mr President, I wish to present the views of UNESCO/IOC on some scientific aspects of the questions on which the Chamber is requested to advise, which are of particular relevance to UNESCO/IOC in the light of its mandate and the work that it has developed.

As you know, science looks at the seabed and ocean floor and subsoil thereof as natural laboratories decoupled from anthropogenic influences. These laboratories need preservation for this reasons and because they are the refuge of unique and vulnerable marine ecosystems comprising abundant and rare biodiversity. These ecosystems comprise species that have slow growth rates, high longevity and low fecundity which may or may not recover from any sort of adverse impacts.
As human exploration of our seas reaches deeper and further from shores, technology is reaching its limits and starts to fail, in some cases expensively and destructively. Liabilities can be in excess of the GDP of many least developing countries seeking mineral exploration in the Area, leading to unrecoverable damages to the common heritage of mankind.

It is for all the above reasons and more that UNESCO/IOC advocates the precautionary principle in its approach to the exploitation in the Area, thereby complying with what is established in article 209 of UNCLOS.

Mr President, my intention now is not to analyze issues concerning the threshold of compliance nor of State responsibility, but to focus on the content of the obligations contained in UNCLOS and on the 1994 Agreement, and among these only those directly related to the mandate and work of UNESCO/IOC, in particular marine scientific research and transfer of marine technology, as UNESCO/IOC is recognized by the United National General Assembly as a competent international organization in the field of transfer of marine technology in accordance with Part XIV of UNCLOS and as a focal point on matters of marine science. Additionally, article 144 and section 5 of the annex to the 1994 Agreement establish obligations relating to the transfer of marine technology, including the obligation to promote international technical and scientific cooperation with regard to activities in the Area by developing scientific and cooperation programmes in marine science and technology and the protection and preservation of the marine environment.

In accordance with article 143 of UNCLOS, States Parties may carry out marine scientific research in the Area provided that they promote international cooperation by ensuring that the research is conducted for the benefit of all nations, including developing countries, and by effectively disseminating the results and analysis.

Towards that end, in 1997 UNESCO/IOC established, through Resolution XIX-19, the Advisory Body of Experts on the Law of the Sea (IOC/ABE-LOS) with the mandate to develop criteria and guidelines for the implementation of the general obligation of transfer of marine technology contained in article 271 of UNCLOS.

In 2003 IOC/ABE-LOS approved the final draft of the *Criteria and Guidelines on the Transfer of Marine Technology*. Later that year, the UNESCO/IOC Assembly endorsed them at its 22nd session through Resolution XXII-12. For its part, the UN General Assembly, through Resolution 58/240, welcomed their adoption and encouraged UNESCO/IOC to continue to disseminate and implement them, and, similarly, encouraged States to use them.

As for marine scientific research, in 2001 the UN General Assembly, through Resolution 53/12, invited UNESCO/IOC to request IOC/ABE-LOS to develop, in cooperation with the Division of Ocean Affairs and Law of the Sea (DOALOS) and with regional or sub-regional organizations, procedures under Part XIII of UNCLOS related to marine scientific research.

In 2006 the IOC/ABE-LOS approved the “Procedure for the application of Article 247” through Resolution XXIII-8. The UN General Assembly, for its part, welcomed it.

Mr President, although resolutions of UNESCO/IOC Assembly do not fall under the category of sources of international law as defined in Article 38 of the Statute of the International Court of Justice, they set forth guidelines and recommendations for the Member States and are considered a vital part of international law making process. For instance, UNESCO/IOC's guidelines on transfer of marine technology as well as the implementation procedure for marine scientific research, adopted by its Assembly, sometimes serve as a base from which national legislation is drawn in Member States. Therefore, the impact of these resolutions on the State practice in the field of marine scientific research cannot be underestimated.

For example, the criteria and guidelines on the transfer of marine technology further develop what is established in part XIV of UNCLOS by defining what “marine technology” means and by establishing some useful criteria of how the transfer of marine technology should benefit all parties concerned. As for the implementation of Part XIII of UNCLOS, that regulates marine scientific research, for example the procedure, and seeks to enhance the transparency of State Parties’ conditions required for obtaining an authorization to carry out research activities.

Mr President, in this sense note has thus to be taken that out of the 160 States Parties to UNCLOS (as of 1 March 2010), UNESCO/IOC Member States amount to 138 (as of 14 September 2010). While part of UNESCO/IOC membership differs from the Parties to UNCLOS, it is however fair to say that the great majority of UNCLOS States Parties are also Members of the Commission.

We would furthermore like to offer UNESCO’s assistance regarding addressing the threat to submerged archaeological sites located in the Area.

The oceans are filled with the traces of human existence. This includes some millions of shipwrecks, prehistoric dwellings, ruins and artefacts. Many of them are located in the Area and are of immense importance for the comprehension of the development of humanity. Unfortunately, many cases arise, where such submerged archaeological sites are damaged or destroyed by negatively-impacting activities. These range from pipeline laying, drilling, mineral extraction, trawling and dredging to international treasure hunt.

In respect of articles 149 and 303 of UNCLOS, UNESCO has complemented these regulations, as it has the protection of culture in its mandate. Its General Conference adopted in 2001 the Convention on the Protection of the Underwater Cultural Heritage that complements UNCLOS in all respects of its provisions additionally providing useful guidance in general in the matter of submerged cultural heritage. The UNESCO Underwater Cultural Heritage Convention has been ratified by 33 States.

The UNESCO Underwater Cultural Heritage Convention explains in much greater detail than UNCLOS the obligations of States to preserve underwater cultural heritage in the Area. It contains also scientific guidelines on how to intervene on underwater heritage. While it only applies yet to its 33 States Parties, the UNESCO Underwater Cultural Heritage Convention may give the Chamber a general picture of what exactly underwater cultural heritage is, how it should be protected and which measures States would have to take to protect it. The UNESCO Underwater Cultural Heritage Convention gives, for example, in its Article 5, a direction on which measures should be taken to prevent damage through industrial activities. The Scientific and Technical Advisory Body of the UNESCO Underwater Cultural Heritage Convention has also pronounced on which measures should be taken, including more considerate authorization procedures and the sharing of information between the various authorities. I draw especially attention to its recent recommendations STAB 1/5 available at UNESCO's website.

In conclusion, Mr President, UNESCO/IOC respectfully considers that some of the elements of both its criteria and guidelines on the transfer of marine technology and of the procedure for the application of article 247 of UNCLOS could be useful for the Chamber to answer the question submitted by the Seabed Authority.

UNESCO/IOC believes that the compliance of the provisions related to the transfer of marine technology and the conduct of marine scientific research contained in UNCLOS and elaborated by the two UNESCO/IOC instruments should be analysed in relation to the overall principle governing the activities in the Area; that is the notion of common heritage of mankind.

Furthermore, it is our firm conviction that for the implementation of these and all other provisions relevant for the matter under examination, the principle of special and differential treatment for developing countries has to be kept in mind. This principle has produced specific and differentiated rights and obligations for developing countries explicitly set in the text of the Convention which aim to take into account their interest and protect the notion of common heritage of mankind.

The special and differential treatment for developing countries, explicitly provided for within the provisions themselves, have resulted in the incorporation into the legal norm the *de facto* differences between these and the rest of the States Parties to UNCLOS.

Mr President, distinguished Members of the Chamber, on behalf of UNESCO/IOC, I thank you for your attention and hope these elements will help the Seabed Chamber in the outcome of the present proceedings.

THE PRESIDENT: Thank you very much, Mr Desa. I now give the floor to the representatives of the International Union for the Conservation of Nature, who requested a speaking time of 45 minutes.

MS PAYNE: Mr President, Members of the Chamber. It is an honour to appear before you today on behalf of the International Union for the Conservation of Nature.

I propose, first, to discuss the special legal nature of areas beyond national jurisdiction, which include the Area, and the consequences of their status as global commons. My colleague, Mr Makgill, will then speak of remaining differences in views concerning legal obligations and the nature and content of necessary and appropriate measures to be taken by States. My colleague Mr Anton will address differences concerning the nature and extent of the liability of States and will offer a summary of our statement.

In these introductory remarks, I invite you to consider the context in which the obligations and measures of which we speak will come into play. Our concern is not only for harm to the mineral resources of the deep seabed, but to the physical and biological systems of the ocean that are found on the sea floor, the water column and the surface.

What liability regime is established by the Convention, the 1994 Agreement and other relevant principles of international law, with regard to activities in the Area and their effect on the areas beyond national jurisdiction or areas within national jurisdiction?

First, specific treaty terms applicable to the Area are intertwined with the international legal rules and norms that govern the global commons. Second, international law recognizes an obligation *erga omnes* of States to ensure that activities within their jurisdiction and control do not harm the environment of areas beyond national jurisdiction, that is, the global commons.

Third, a seamless and complete liability scheme is needed to protect the shared interests of all States in the global commons, as trustees for all humanity.

Mr President, Members of the Chamber, the Area is, by definition, limited to "the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction", and it, "as well as its resources, are the common heritage of mankind".

In the early days of international law, such regions beyond national jurisdiction were considered *res nullius* – that is, owned by no-one.

Taking account of new facts and deeper knowledge, today the Area is considered *res communis*, part of the global commons. The innovative and complex regime described in Part XI of the Convention and the 1994 Agreement was developed to protect this community interest in the mineral resources of the Area on a non-discriminatory basis.

But there is greater complexity in the concept of *res communis*: Arvid Pardo said, in 1971, "Ocean space is an ecological whole, vital to man." Its common heritage resources include the high seas and environmental resources whose protection may invoke the "global concerns of humanity as a whole".

Ambassador Pardo went on to express concern that "[p]resent international law is not designed to cope with the new intensity and diversity of our use of ocean space." He pointed out that we cannot think of the seas and oceans in terms of "sectors divided by fictitious legal lines" but – and we submit, this is particularly true in the context of responsibility and liability – "as a whole, comprising the surface, water column, ocean floor and its subsoil". A number of States have referred to the norms

that pertain to the international law of the environment, which has developed significantly since 1971.

The legal concept of the common heritage has developed progressively in international law. In the middle of the twentieth century, “common heritage of mankind” was primarily, though not exclusively, understood as a statement of common ownership of resources on a non-discriminatory basis, but focused on “elements of wealth”, that is, minerals.

“Equally, however, it was meant as a statement of legal norms indicating the moral imperative of protecting the marine environment and its resources … as a legacy for future generations.”

The Convention provides for both, with a set of rules to implement cooperation with regard to mineral resource development in Part XI and the 1994 Agreement. It provides for management and protection of other resources elsewhere, and particularly in Part XII.

We ask this honourable Chamber to consider the development in scientific knowledge of the ocean’s resources, humanity’s increasing exploitation of them, and the law’s commensurate growth in this area. While minerals and fisheries are ocean resources with market value, the ocean system’s role in stabilizing climate and marine biodiversity are examples of public natural resources that evoke the common concern of humankind.

An indication of the seriousness with which States and intergovernmental organizations consider this is their undertaking of marine ecosystem-based management and marine spatial planning to ensure that all of the ocean’s valuable resources are preserved and used in a sustainable manner, for example through the Intergovernmental Oceanographic Commission of UNESCO.

International law and domestic law recognize the value of non-market ecosystem services, even when they are not priced commercially. Treaties, domestic legislation,

and general international law consider damage to non-market natural resources as compensable harm, and have developed methods of valuing them.

The potential harm that may result from activities to develop mineral resources in the Area, which is the subject of this inquiry, threatens ocean resources which are the subjects of humanity's common concern.

The existence of obligations *erga omnes*, those "obligations of a State towards the international community as a whole", was recognized by the Hague Court in the *Barcelona Traction* case in 1970. The Court explained that "[b]y their very nature [such obligations] are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*."

More recently, in the *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, the Court also recognized,

> that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.

This leads to the conclusion that the protection of areas beyond the limits of national jurisdiction, which include but are not limited to the Area, is an obligation *of* all States *to* the international community, which is represented by States in a role that is sometimes described as that of "trustees".

States recognize, in their statements submitted to this Chamber, that one consequence of the special status of the Area is the need to prevent, mitigate and control any harm that may arise from activities undertaken there. Many States have argued that although international law does not provide a precise definition of due diligence, a high standard is called for in this case because the Area is the common heritage of humankind, and exploration, prospecting and exploitation entail a high level of risk. The proposed activities in the Area are to be undertaken remote from

land, often at great depth. For these reasons, and because of the experimental nature of these activities, they are potentially hazardous to scientific research, to the living resources of the sea, to the ocean system, and even to future exploitation of mineral resources.

Other States point out that all States Parties to the Convention bear an equal responsibility within the Area, as a consequence of its status as part of the common heritage. This responsibility entails a commensurately high level of environmental protection.

I submit, and Mr Anton will further discuss, that the higher standard should include assurance that, although the primary focus is on the sponsored contractor, there should be no gap in liability, a view shared by a number of States. We do not believe that the relevant contractors and other potentially responsible parties which may be directly responsible for damage will always be capable of providing a sufficient remedy. “Appropriate and necessary measures” are those that assure the strongest prevention. And emphasis should be on precaution because of the risk of irreparable harm. This all will need national regulation to implement each State’s obligations, which must at least attain the minimum of international standards and observe that the customary obligations of cooperation, notice, exchange of information and no harm, are applied to common areas.

We have only to look at the recent blow-out of the Deepwater Horizon exploratory oil drilling rig in the Gulf of Mexico to see that difficulties in providing environmental protection exist even for States that have strong legislative authority for protection of the environment during hazardous resource extraction. We see that, even within the 200 mile limit, working far from shore and at great depth increases risk of catastrophe. We see that major development calls for multiple operators, some with their chief assets located in a different country. The strict, joint and several liability that the US Oil Pollution Act imposes removes the burden of proving fault or negligence as a threshold matter. The Act also recognizes pure environmental damage and requires reinstatement of the environment. Without these provisions, it is unlikely that the damaged marine and coastal environment would be fully restored in the Gulf of Mexico.

Legal measures at least this strong are consistent with the purpose of the Convention and are appropriate in light of the danger of causing irreparable harm to valuable common resources and "to ensure the conservation and sustainable and equitable use of all high seas resources", as called for in the IUCN 10 Principles for High Seas Governance.

As I noted in my introduction, this is a new area of law, as the common heritage of mankind is itself a new principle of international law, relatively speaking. The Chamber may decide that some of these principles are not yet firmly anchored in international law. In that case, we invite the Chamber to ensure that this opinion does not foreclose the further development and integration of these principles as practice and experience dictate.

Mr President, Members of the [Chamber], this concludes my presentation and I thank you for your kind attention. I would be grateful, Mr President, if you could now call upon Mr Makgill.

THE PRESIDENT: Thank you very much, Ms Payne. I now call on Mr Makgill.

MR MAKGILL: Mr President, Members of the Chamber, it is an honour to appear before you today on behalf of the IUCN.

I propose to address the legal obligations of sponsoring States under the Convention, and the necessary and appropriate measures that they must take in order to fulfil those obligations.

My submissions are that sponsoring States must satisfy three principal obligations under the Convention. These are:

(a) The obligation to balance their aspirations for development of the Area with its preservation and protection.

(b) The obligation to adopt laws and regulations and to take administrative measures within their legal systems for securing compliance by persons under their jurisdiction.

(c) The obligation to satisfy international standards of due diligence when making provision for laws and measures within their legal systems.

Turning to my first submission, it is important, in light of Articles 31(1) and (2) of the Vienna Convention on the Law of Treaties, to consider the Convention in accordance with its purpose and in its entirety when determining the legal obligations of States sponsoring seabed mining in the Area.

Particular consideration should be accorded to the development of resources together with the protection and preservation of the marine environment, as provided for under the preamble to the Convention and its subsequent parts, especially articles 145 and 193.

This approach accords with the concept of sustainable development recognised by the World Commission on Sustainable Development in its report, *Our Common Future,* and commonly applied as a guide for international action.

The concept of sustainable development calls for a balancing of development with environmental protection, as recognised by the International Court of Justice in the *Gabčíkovo-Nagymaros* case. Most recently in the *Pulp Mills* case, the International Court of Justice observed that it is "the balance between economic development and environmental protection that is the essence of sustainable development."

It is acknowledged that the concept of sustainable development is relatively new in terms of international law. The precise term is unlikely to have been at the forefront of the minds of the architects of the Convention when they drafted Parts XI or XII.

Nevertheless, the "Area and its resources are the common heritage of mankind", as set out under article 136 of Convention. The principle of common heritage, as discussed by my colleague Ms Payne, was formulated with the intention of recognising that while States Parties were entitled to develop the Area's resources on a non-discriminatory basis, they were also under a duty to protect the ecological values of that environment.

It is possible, in this sense, to read the notion of sustainable development into the purpose of the Convention insofar as resource use and environmental protection are

set out in the Convention's preamble and its subsequent parts. This was indeed the approach of the International Court of Justice when faced with similarly worded provisions in the *Pulp Mills* case, as alluded to in the earlier quote that I cited. This point is not simply one of academic interest. It supports the view expressed in the IUCN's written statement that the interpretation of a sponsoring State's obligations under the Convention should be read subject to the provisions of both Part XI and Part XII of the Convention.

It is too narrow a reading of the Convention to interpret a sponsoring State's obligations under the Convention as compartmentalised within Part XI. Rather, when the purpose of the Convention is read together with references to the Convention *per se* under article 145 of Part XI and Annex III, article 4, paragraph 4, it is evident that a sponsoring State's obligations also need to be considered in light of Part XII.

This approach is given further weight under article 142, paragraph 3, of the Convention which expressly provides that any rights granted under Part XI shall not "affect the rights of coastal States to take such measures consistent with the relevant provisions of Part XII as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastlines …"

At least two States Parties concur with this view. Indeed, it appears that the Seabed Authority included reference to the Convention in Question 1 specifically to expand its scope beyond Part XI.

The balancing of development aspirations with environmental protection under the Convention calls for the various rights of sponsoring States pertaining to the development of resources in the Area to be read together with the full range of measures available for protection and preservation of the marine environment under the Convention.

This is important because we maintain that the measures that sponsoring States have an obligation to make provision for within their legal systems are derived from both Parts XI and XII of the Convention.

Turning to my second submission, it is important to recognise that the Seabed Authority and sponsoring States both have obligations under Part XI of the Convention.

Article 153, paragraph 4, places the primary obligation on the Seabed Authority to control activities in the Area and a corresponding obligation on sponsoring States to assist the Authority with compliance.

While article 153, paragraph 4, provides that the Authority's obligation is to regulate activities in the Area under international law, Annex III, article 4, paragraph 4, makes it clear that States Parties have the obligation of "securing the compliance of persons under [their] jurisdiction."

Indeed, sponsoring States must adopt legislative and administrative measures to secure compliance with the Convention. This approach is supported in the *Pulp Mills* case where the International Court of Justice found in respect of similarly worded provisions that: "[T]he obligation assumed by the Parties ... is to adopt appropriate rules and measures within the framework of their respective domestic legal systems to protect and preserve the ... environment and prevent pollution".

One State says that "[i]ntroducing and enforcing domestic laws and regulations constitutes a crucial element of the obligations of States Parties under Art. 139 of the Convention and Article 4 paragraph 4, of Annex III." Another State adds, in respect of Annex III, article 4, paragraph 4, that it requires monitoring and enforcement in a meaningful manner. "[T]he word 'securing' is employed instead of such terms as 'facilitating', 'encouraging' or 'urging' compliance. The test must then be that such measures, whether legislative or administrative, must be effective enough to 'secure' compliance by the sponsored entity with the applicable rules."

The approach of the aforementioned States Parties is supported insofar as article 139 and Annex III, article 4, paragraph 4, are interpreted as requiring a sponsoring State to enact and enforce legislation designed to ensure the compliance of its nationals with the provisions of the Convention. Authority for this approach is again found in the *Pulp Mills* case.

Turning to my third submission, the measures that sponsoring States are obliged to take when enacting legislation to ensure compliance in the Area are derived from Parts XI and XII of the Convention, and so we can see a continuing theme to my argument. This includes *inter alia* the regulations promulgated by the Seabed Authority under Part XI and other sources of international law under article 235, paragraph 1, of the Convention.

Some parties emphasize that the measures to be adopted under domestic legislation are for the sponsoring State to determine and that this Tribunal has no jurisdiction to make findings on the specific content of domestic legislation. This is correct insofar as States Parties must retain sovereign jurisdiction to tailor measures to their own legal systems.

Nevertheless, there seems to be a general acceptance amongst the States Parties that the measures taken under domestic legislation must not fall below international standards of due diligence. In the *Pulp Mills* case the Court identified this as a level of due diligence that ensures: "... that the rules and measures adopted by the parties both have to conform to applicable international agreements and to take account of internationally agreed technical standards".

The rationale for requiring sponsoring States to satisfy international standards must be that those States do not exercise sovereignty or sovereign rights over the Area as set out under article 137, paragraph 1. Sponsoring States must in effect enact legislation making provision for "necessary and appropriate measures" in order to be able to exercise rights under the Convention to develop resources in the Area.

As my colleague Ms Payne points out, the measures that sponsoring States should take under Parts XI and XII of the Convention cannot be set out in a definitive list without a factual basis against which to position them. Nevertheless, I invite the Chamber to consider that both the Convention and customary international law make provision for international standards of due diligence that need to be incorporated within domestic legislation and used to guide the "necessary and appropriate measures" that sponsoring States must take. These include *inter alia*:

(a) adherence to the following environmental principles: (i) protection and preservation as required under articles 145, 192 and 194, paragraph 5, of the

Convention; (ii) best practice as required under article 194, paragraph 1, of the Convention; (iii) the duty to prevent damage as set out under article 194, paragraph 2, and generally required under customary international law; (iv) the duty of cooperation as set out in the *MOX Plant Case*; and (v) the precautionary approach as provided for under Article 31(2) of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area.

(b) (The international standards of due diligence also include) implementation of the following environmental practices: (i) appropriate, transparent scientific data collection and research as set out under article 200 of the Convention and Article 31(4) of the Regulations; (ii) environmental impact assessment as set out in the *Pulp Mills* case; (iii) notification as provided for under article 198 of the Convention; (iv) contingency planning as required under article 199; and (v) monitoring as provided for under Article 32(6) of the Regulations.

A number of these measures are referred to in the written statements of the other parties. Key amongst these measures are the following:

(a) the precautionary approach;

(b) monitoring and evaluation; and

(c) Environmental Impact Assessment.

Likewise, we heard in oral submissions yesterday of certain fundamental measures to be taken within a sponsoring State's legal system. These include:

(a) Again, the obligation to carry out Environmental Impact Assessment;

(b) The obligation periodically to review laws, regulations and administrative measures; and

(c) The obligation to monitor the implementation of laws, regulations and administrative measures.

It is respectfully submitted that sponsoring States must make provision for the above international standards of due diligence when enacting domestic legislation to secure compliance under the Convention. These international standards are by and large

expressly provided for under the Convention and its regulations. Sponsoring States are of course entitled to choose how these standards are expressed within their legislative systems, but they must, it is submitted, nonetheless ensure that those standards are provided for.

The Chamber is invited to address these standards in order to offer sponsoring States the clarity they have sought as to the level of due diligence that must be satisfied when enacting legislation to secure compliance with the Convention.

Mr President, Members of the [Chamber], this concludes my submissions. Thank you for the opportunity to be heard. I would be grateful, Mr President, if you could now call upon Mr Anton.

THE PRESIDENT: Thank you very much, Mr Makgill. I now call on Mr Anton to take the floor.

MR ANTON: May it please the Chamber. Mr President, Members of the Chamber, I am very conscious that I have the high honour on behalf of the IUCN of concluding the oral statements in this historic hearing on the first request for an advisory opinion by this Chamber – a daunting prospect, following so many learned submissions by my eminent counterparts who, after the past three days, I now count among friends.

I am also conscious of the time. I had intended to make five submissions to you today, but in the interest of expediting matters I will limit my submissions to three. I now turn to the final part of the submission on behalf of the IUCN, that is the extent of state liability for the failure of a sponsored entity to comply with the provisions of the Convention.

THE PRESIDENT: If I may interrupt you, Mr Anton, you can take your time, but please go slowly for the interpreters. Please do not feel that you are pressed by time.

MR ANTON: Thank you, Mr President. My submission highlights issues that appear to remain open and is in three parts: first, the liability of a sponsoring State will arise in certain circumstances under the Convention and general international law for injury caused to the Area and marine environment by the lawful activities of a

sponsored entity; second, in the context of hazardous activities, the exercise of due diligence by a sponsoring State does not exculpate that State from responsibility or liability for injury caused by a sponsoring State under its jurisdiction and control; and, third, under the Convention and general international law, States have a residual liability to ensure prompt and adequate compensation for injury, including remediation of the marine environment in the event that the primary liability of a sponsored entity or other parties, for whatever reason, is not engaged or is insufficient.

I now turn to my first submission, that the liability of a sponsoring State will arise in certain circumstances under the Convention and general international law for injury caused to the Area or marine environment by the lawful activities of a sponsored entity.

The starting point for analysis is the Convention's provisions that anticipate the application of extra-Coventional rules on the subject of liability, particularly article 139, paragraph 2, article 235, paragraphs 1 and 3, and article 304. Aside from one exception, we have generally heard during this hearing that these articles establish that liability under the Convention is to be both in accordance with general international law on liability and without prejudice to its further development or application.

I submit that article 304 is not a mere "without prejudice" clause, as has been suggested. While "without prejudice" clauses are in themselves important to the application of law outside the Convention, article 304 is different. Article 304 reads: "The provisions of this Convention regarding responsibility and liability for damage are without prejudice to the application of existing rules." It is clear that the article 304 reference to the existing rules regarding responsibility and liability is a reference to present legal norms and not mere policy, as has been suggested. This conclusion is confirmed by a look at article 235, which, in relation to international obligations concerning the protection and preservation of the marine environment, provides that States are responsible for the fulfilment of those obligations and shall be liable in accordance with international law. Of course, the Convention is part of international law, but international law is more general.

Accordingly, the application of these provisions plainly requires a regard for not only the extent of liability provided for by the Convention but also, under the Convention's own terms, for that provided by general international law. This has two important ramifications.

First, it is beyond cavil today that the practice of States accepted as law establishes that a State's responsibility and liability for injury in the Area and beyond remains fully engaged with regard to the actions of its agents, organs or individual actors, including the sponsored entities, that it directs or controls. This is a well-settled doctrine under the law of State responsibility.

Second, and more relevant for my first submission, the obligation to prevent environmental harm, discussed by my co-counsel Mr Makgill, includes the duty of a State to protect the environment in areas beyond national jurisdiction against harm caused by private activities under its jurisdiction and control. This obligation runs to sponsored entities operating in the Area. It is a primary obligation resting on sponsoring States, the breach of which gives rise to state responsibility and, without more, the duty to make appropriate reparations.

More importantly, the obligation to prevent harm applies to harm caused by lawful activities, including those of a sponsored entity under a sponsoring State's jurisdiction and control.

THE PRESIDENT: Mr Anton, the interpreters are still having difficulty.

MR ANTON: I am sorry. I will slow down. This means that the apparent limitations on a sponsoring State's liability under article 139, paragraph 2, and Annex III, article 4, paragraph 4, of the Convention have no bearing in the circumstances.

When these limiting provisions do apply, in the ordinary course of events, a State that takes all reasonable measures to ensure that a sponsored entity complies with its obligations under the Convention will limit its liability accordingly. That seems to

be the plain meaning of these provisions, in context and in light of the objects and purposes of the Convention.

However, they do not apply in the context of injury caused by lawful activities carried out by a sponsored entity, because by the terms of the Convention these limitations on State liability only apply to wrongful acts by the sponsored entity, namely a failure to comply with its obligations under Part XI and, more broadly, the Convention.

Additionally, general international law establishes that a State will be liable for injury in two further situations, even in the face of the limitations on State liability established in article 139, paragraph 2, and Annex III, article 4, paragraph 4, as my second and third submissions will show.

Before turning to these submissions, however, I want to emphasize that the apparent limitations on a sponsoring State's liability under a narrow interpretation of the Convention create at least two situations in which no party will be held liable for injury to the common heritage of humanity or the marine environment.

These gaps in liability will present themselves if (1) injury arises because a sponsored entity fails to comply with its obligations but is insolvent or its assets shielded and the sponsoring State has taken all necessary and appropriate measures, or (2) injury is caused by a sponsored entity in absence of fault, due diligence is the standard of care required of the sponsoring State in the circumstances, rather than a higher standard of care, and the sponsoring State has met this standard through appropriate and necessary measures.

Mr President, Members of the Chamber, I submit that a gap in coverage in responsibility and liability for injury to the Area and the marine environment was not intended by the drafters of the Convention. Article 139, paragraph 2, article 235, paragraphs 1 and 3, and article 304 clearly demonstrate that the drafters were well aware that the law of responsibility and liability lives and grows and that they could not envisage all eventualities and developments. I submit that the application of the plain meaning of these provisions, as intended, largely eliminates the possibility of unremedied injury, as I will explain.

I turn now to my second submission, that, in the context of hazardous activities, the exercise of due diligence by a sponsoring State does not exclude that State from responsibility or liability for injury caused by the hazardous activities of a sponsored entity under its jurisdiction and control.

As we have heard in, I believe, every submission before the Chamber, under general principles of international law a State's responsibility and liability for the activity of private entities has been considered to ordinarily consist of an obligation of some form of due diligence in taking all reasonable and appropriate measures of prevention. There is, however, an exception which imposes a more onerous standard.

In cases that involve inherently dangerous or hazardous activities, it has been asserted that the principle of absolute or strict liability applies as one of the general principles of law recognized by civilized nations. This view finds support in the practice of States and is confirmed by the writings of eminent publicists.

In terms of a general principle of law, it has long been recognized that strict liability for the risk of harm from hazardous activities is part and parcel of many municipal legal systems. Recently the eminent Chinese scholar and now Judge of the International Court of Justice, Judge Hanqin, has written that strict liability related to hazardous activities forms part of the law of a large number of disparate States – for example, Austria, China, Germany, India, Switzerland and the United States; and, of course, there are more.

In recognizing that strict liability is a general principle of law in relation to injury caused by hazardous activities in the Area, this Chamber would be recognizing the underlying considerations that make it an important feature of any legal system. In particular, both equity and justice indicate that a sponsoring State ought to shoulder the ultimate burden of liability for sponsored hazardous activities in the area. This is because the State is ultimately responsible for exposing the marine environment and the common heritage of humankind to high risks and devastating consequences and at the same time reaping significant benefits from the activity.

The application of this doctrine to hazardous activities carried out by a sponsored entity in the Area imposes strict liability on sponsoring States in the establishment, implementation and enforcement of protective measures under the Convention, the Agreement and general international law.

I now turn to my third submission, that under the Convention and general international law States have a residual liability to ensure prompt and adequate compensation for injury, including remediation of the marine environment, in the event that the primary liability of a sponsored entity or other parties, for whatever reason, is not engaged or is insufficient.

In the present context, residual liability is a stop gap measure and arises only when the primary liability of the contractor under Annex III, article 22, of the Convention is unavailable. It extends beyond the secondary liability of a sponsoring State under the Convention for failure to take necessary and appropriate measures. Indeed, residual liability starts at this point because of the lacuna that I have indicated would otherwise exist.

The emerging trend in response to gaps in liability is reflected in the International Law Commission's Principles on Allocation of Loss in the Case of Transboundary Harm Arising out of Hazardous Activities. In terms of legal status, the Principles have been said by Professors Birnie, Boyle and Redgwell to "show that the Commission has made use of general principles of law [and] successfully reflects the modern development of civil liability treaties, without in any way compromising or altering those which presently exist".

The point of departure for the Principles on Allocation, like the Convention, is the establishment by Principle 4, paragraph 2, of liability for a private operator in the first instance. However, the Principles recognize that a situation may arise, as presently possible under the Convention, in which prompt and adequate compensation for harm by a private operator, like a sponsored entity, fails. In such a situation, a residual liability remains with the State under Principle 4, paragraph 5, "to ensure

that additional financial resources are made available", including resources to remedy harm to the environment.

The role and relationship of a sponsoring State to the common heritage and the nature of the Area makes it particularly appropriate for the Chamber to have regard to residual liability. Residual liability ensures that damage to the world's common heritage is not left unremedied by a party deriving the principal benefit from the exploitation of global public goods in the Area.

Accordingly, I invite the Chamber to make allowance for the advent of the principle of residual State liability embodied in Principle 4, paragraph 5, of the ILC Principles on Allocation of Loss.

Alternatively, as we heard yesterday in sapient and persuasive oral submissions, the Chamber can reach the same legal result in terms of residual liability through its inclusion in a strict liability regime that is part and parcel of the necessary and appropriate measures required of sponsoring States in order to fulfil their responsibilities under the Convention.

Application of the principle of residual liability would prevent the occurrence of the two situations identified previously in which no party is responsible for environmental harm to the common heritage of humankind.

I will now sum up the submission of the IUCN. One of the most important norms upon which the Convention rests is the common heritage. The establishment of the Area, together with its common heritage legal status in article 136 of the Convention, was a major achievement in the history of the law of the sea and indeed in the history of international law. The actual implementation of the concepts of common heritage, common spaces and common concern through the work of the International Seabed Authority will mark another milestone.

In terms of obligations of sponsoring States and necessary and appropriate measures, three conclusions flow from our submissions: first, the principle of sustainable development found embodied in the preamble to the Convention

requires sponsoring States to comply with the obligations found in Parts XI and XII of the Convention; second, the obligation of a sponsoring State to adopt laws and measures is accompanied by a concomitant obligation to enforce those laws and measures in order to secure compliance with the Convention; and, third, a sponsoring State has an obligation to ensure that the laws and measures that it adopts pursuant to the Convention satisfy international standards.

As the international community moves closer to exploiting the resources of the deep seabed, it is imperative that an adequate and effective liability regime is in place to protect and preserve a mostly unknown environment. The environment of the Area has importance for activities other than mining. For instance, deep in the hydrothermal vent ecosystems of the Area may lay life forms that still await discovery and development of options for energy, food, and medicine for present and future generations. Moreover, we are largely ignorant of the full implications of how mining will affect the environment. For example, it is still unknown how mining will impact benthic life and its food supply away from mining areas.

An erroneous reading of the extent of liability established by the Convention has the potential to render the liability regime inadequate and ineffective. Fortunately, the Convention itself provides a solution by recognising explicitly that international law beyond the Convention may be brought to bear in these situations. As demonstrated, the application of the doctrine of strict liability in connection with hazardous activities and the use of contemporary developments in international law in the form of the ILC Principles on Allocation establishes residual state liability in case a sponsored entity (or any other party) escapes liability or is insolvent. In this way existing international law provides the solution.

This concludes our oral statement. On behalf of the IUCN delegation, I have the honour to thank the Chamber for its very kind attention. We wish it well – I am sure on behalf of all the parties – in its deliberations.

MR PRESIDENT: Thank you for your statement, Mr Anton. This brings us to the end of the oral proceedings in Case No. 17. As indicated on the previous days, the Chamber may see a need to address questions to delegations. Such questions

would be sent by the Chamber to delegations indicating to them a time-limit for a written response.

I would also like to take this opportunity to thank representatives and delegates of all participating States and organizations for their excellent statements made before the Chamber over the past three days. In particular, the Chamber appreciates the professional competence and courtesy exhibited by all participants to the hearing.

The Registrar will now address questions in relation to transcripts.

THE REGISTRAR: Mr President, in conformity with article 86, paragraph 4, of the Rules of the Tribunal, all representatives have the right to correct the transcripts in the original language of their statements made by them in the oral proceedings. Any such corrections should be submitted as soon as possible but in any case not later than 27 September 2010.

THE PRESIDENT: The Chamber will now withdraw to deliberate on the case. The advisory opinion will be read on a date to be notified.

(*The sitting closed at 4.35 p.m.*)