

## (n) Written Statement of the Republic of the Philippines

**PROPOSED PHILIPPINE STATEMENTS  
ON THE REQUEST FOR ADVISORY OPINION SUBMITTED TO THE  
ITLOS SEABED AUTHORITY<sup>1</sup>**

**Introduction:**

The Government of the Republic of the Philippines expresses its appreciation to the International Tribunal on the Law of the Sea (ITLOS) for this opportunity to state its positions on the issues at hand.

The Philippines wishes to state at the outset that the spirit and intent of having designated the seabed in the high seas as the "Area" or "Common Heritage of Mankind" is precisely for the very reason that whatever benefits to be accrued from the activities in the Area would be for everybody. As the "Area" is for everybody, it should follow therefore that everybody should be given equal opportunity to effectively participate in the activities in the Area. For a developing State like the Philippines, such opportunity for effective participation should take into account the special interests and needs of a developing State. The lack of financial and technical capabilities should not hinder a country from participating in the activities in the Area. This is the true essence of the "common heritage of mankind."

Given those as the background, the Philippines wishes to state its positions as follows:

**Philippine Positions:**

On the question about 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.

<sup>1</sup> During the 16<sup>th</sup> Session of the International Seabed Authority (ISA) held on 26 April to 7 May 2010, the Council of the International Seabed Authority adopted Decision ISBA/16/CJ3 on 6 May 2010 requesting the Seabed Disputes Chamber of the International Tribunal on the Law of the Sea (ITLOS) to render an advisory opinion on the following questions:

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

In an Order dated 18 May 2010, the President of the Seabed Disputes Chamber of ITLOS invited the ISA, intergovernmental organizations participating as observers in the Assembly of the Authority, and the States Parties to the UNCLOS to present written statements on the aforementioned questions by 09 August 2010.

**The Philippines points that:**

At the outset, it is the Authority itself that has the overall responsibility over the activities in the Area as provided for under the following provisions:

**Article 162, UNCLOS**

- \*1. Activities in the Area shall be organized, carried out and controlled by the Authority on behalf of mankind as a whole in accordance with this article as well as other relevant provisions of this Part and the relevant Annexes, and the rules, regulations and procedures of the Authority.
1. The Authority shall exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of this Part and the Annexes relating thereto, and the rules, regulations and procedures of the Authority, and the plans of work approved in accordance with paragraph 3. States Parties shall assist the Authority by taking all measures necessary to ensure such compliance in accordance with article 139.
  2. The Authority shall have the right to take at any time any measures provided for under this Part to ensure compliance with its provisions and the exercise of the functions of control and regulation assigned to it thereunder or under any contract. The Authority shall have the right to inspect all installations in the Area used in connection with activities in the Area.\*

**Article 17, 1994 Agreement Relating to the Implementation of Part XI of UNCLOS**

- \*1. The Authority shall adopt and uniformly apply rules, regulations and procedures in accordance with article 160, paragraph 2(b)(i), and article 162, paragraph 2(a)(ii), for the exercise of its functions as set forth in Part XI on, *inter alia*, the following matters:
- (a) administrative procedures relating to prospecting, exploration and exploitation in the Area;
  - (b) operations:
    - ... (viii) inspection and supervision of operations;\*

The general responsibilities of the State Parties with respect to the activities in the Area are provided for in the following relevant provisions under UNCLOS and the 1994 Agreement relating to the Implementation of Part XI of UNCLOS:

**Article 139, UNCLOS**

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

organisations for activities in the Area carried out by such organisations.

2. Without prejudice to the rules of international law and Annex III, article 22, damage caused by the failure of a State Party or international organisation to carry out its responsibilities under this Part shall entail liability; States Parties or international organisations acting together shall bear joint and several liability. A State Party shall not however be liable for damage caused by any failure to comply with this Part 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.
3. States Parties that are members of international organisations shall take appropriate measures to ensure the implementation of this article with respect to such organisations.

#### Article 153, UNCLOS

4. "...States Parties shall assist the Authority by taking all measures necessary to ensure such compliance in accordance with article 139."

The responsibilities of the State Parties with respect to the sponsorship of activities in the Area are provided for in the following relevant provisions under UNCLOS and the 1994 Agreement relating to the Implementation of Part XI of UNCLOS:

#### Article 4, Annex III of UNCLOS

4. "...4. The sponsoring State or States shall, pursuant to article 139, have the responsibility to ensure, within their legal systems, that a contractor so sponsored shall carry out activities in the Area in conformity with the terms of its contract and its obligations under this Convention."

A sponsoring State Party's responsibility to ensure that a contractor it sponsored would conform with the terms of the contract and its obligations under UNCLOS is further elucidated in the following provisions:

#### Article 159, UNCLOS

2. "...2.... A State Party shall not however be liable for damage caused by any failure to comply with this Part 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."

#### Article 4, Annex III of UNCLOS

4. "...4...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

Based on the above provisions it may be deduced that a sponsoring State Party's responsibilities are:

1. To adopt laws and regulations to secure effective compliance from its sponsored entity; and
2. To take administrative measures to secure such compliance.

How a sponsoring State Party can carry out the above responsibilities is not exactly clear. There are two interpretations on this regard:

1. First, is that it might simply require the sponsoring State Party to provide a means in its legal system through which the contractor can be held accountable for its violations
2. Second, is that sponsoring State Party has to monitor /oversee the contractor's activities in the seabed area to ensure the contractor's conformity

The Philippines adopts the first interpretation for the following reasons:

- The responsibility to oversee/monitor the contractor's activities in the seabed area is under the purview of the Authority. Requiring the sponsoring State Party to oversee such activities would be duplicating the above regulatory function of the Authority.
- Some sponsoring State Parties, especially the developing State Parties, would have technical and financial difficulties to monitor the activities of the sponsored contractor. To require to do so would be contrary to the spirit of Article 148 which promotes the effective participation of developing States in activities in the Area taking into account their special interests and needs.

#### Article 148, UNCLOS

"The effective participation of developing States in activities in the Area shall be promoted as specifically provided for in this Part, having due regard to their special interests and needs, and in particular to the special need of the land-locked and geographically disadvantaged among them to overcome obstacles arising from their disadvantaged location, including remoteness from the Area and difficulty of access to and from it."

- However, a sponsoring State Party could collaborate both with the Authority and the contractor on the establishment of a monitoring

programme of activities in the seabed area.<sup>2</sup> Such monitoring programme should take into account the capabilities and constraints of the sponsoring State Party.

On the question as to 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.

*The Philippines holds the view that:*

Under UNCLOS, its Annex III and the 1994 Agreement, the primary liability rests with the contractor. The sponsoring State Party seems to have a residual liability on the following conditions:

**Article 129, UNCLOS**

“...2... A State Party shall not however be liable for damage caused by any failure to comply with this Part 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.”

Article 4(4) of Annex III further elaborates that:

**Article 4, Annex III of UNCLOS**

“...4...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.

Related to the measures that a sponsoring State Party may undertake, UNCLOS cautions the sponsoring State Party not to impose conditions that are inconsistent with Part XI thereof. However, UNCLOS allows for more stringent application of laws and regulations insofar as marine environment protection is concerned. Article 21(3) of Annex III states that:

**Article 21, Annex III of UNCLOS**

“3. No State Party may impose conditions on a contractor that are inconsistent with Part XI. However, the application by a State Party to contractors sponsored by it, or to ships flying its flag, of environmental or other laws and regulations more stringent than those in the rules, regulations and procedures of the Authority adopted pursuant to article 17, paragraph 2(f), of this Annex shall not be deemed inconsistent with Part XI.”

<sup>2</sup> This regulation is provided for under the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area (adopted 13 July 2000). See [http://www.un.org/Depts/los/convention\\_agreements/EN/BasicMiningCode.pdf](http://www.un.org/Depts/los/convention_agreements/EN/BasicMiningCode.pdf).

Pursuant to the above provisions, it may be deduced that a sponsoring State Party will not be liable for any damage caused by the entity it is sponsoring if the following conditions are present:

1. If the sponsoring State Party has adopted laws and regulations to secure effective compliance from its sponsored entity; and
2. If the sponsoring State Party has taken administrative measures to secure such compliance.

Conversely, if the sponsoring State Party fails to undertake all necessary and appropriate measures to secure effective compliance, then it is liable for damage caused by the entity it is sponsoring. However, the extent of the sponsoring State Party's liability is not provided under UNCLOS, Annex III, and the 1994 Agreement.

On the aspect about the necessary and appropriate measures that a sponsoring State must take in order to fulfill its responsibility under the Convention, in particular Article 139 and Annex III, and the 1994 Agreement.

**The Philippines notes that:**

**Article 139 states:**

**Article 139, UNCLOS**

"...2.... A State Party shall not however be liable for damage caused by any failure to comply with this Part 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 188, paragraph 4, and Annex III, article 4, paragraph 4."

Article 153, para 4 of UNCLOS and Article 4, para 4 of Annex III respectively state:

**Article 153, UNCLOS**

"4...States Parties shall assist the Authority by taking all measures necessary to ensure such compliance in accordance with article 139."

**Article 4, Annex III of UNCLOS**

"...4...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"

The Philippines is of the view that the above provisions are clear on the issue of what would be the necessary and appropriate measures that a sponsoring State Party must take, to wit:

1. Adopt laws and regulations to secure effective compliance from its sponsored entity; and
2. Take administrative measures to secure such compliance.

Thus, the Philippines believes that there is no need to further elaborate on this matter. It is already a given that whatever measures a sponsoring State Party plans to undertake would be within the context of ensuring compliance from a contractor. Further, it must be remembered that the adoption of such measures should be within the framework of the legal system of the sponsoring State Party.

-END-