



## 29TH SESSION OF THE COUNCIL OF THE INTERNATIONAL SEABED AUTHORITY (Part I)

### Item 20. Report of the Secretary General on incidents in the NORI-D contract area in the Clarion-Clipperton area.

Mr. President,

Mr. Secretary General,

Distinguished delegates,

Dear Stakeholder Members,

My delegation has taken note of the Report of the Secretary-General (ISBA29/C/4) and appreciates the previous Reports describing the events that gave rise to the incident in the NORI contract area and the provisional measures adopted.

We appreciate the detailed information provided by the distinguished delegation of the Netherlands on the decision of the Amsterdam district court and the Report of the Human Environment and Transport Inspectorate of the Ministry of Infrastructure and Water Management.

We are also grateful for the statements of the distinguished delegation of Nauru, the sponsoring State of the NORI contractor, as well as the communication from Greenpeace International, in its capacity as an interested party.

My delegation wishes to make some observations.

**First.** It is not for this Council to rule on the limits of peaceful protests on the high seas, which are the responsibility of the national courts of the flag State of the vessel or vessels concerned. We refer to what is stated in the **Maritime Safety Committee of the International Maritime Organization's** May 17, 2010 Resolution, on the need to guarantee security during demonstrations, protests or clashes on the High Seas. As is known, said resolution CONDEMNS any action that intentionally endangers human life, the marine environment or property during demonstrations, protests or clashes on the high seas" (paragraph 2).

**Second.** The freedoms of the high seas are not exercised absolutely, but, in accordance with **article 87, paragraph 2** of the Convention, they are exercised by all States taking due regard of the interests of other States in their exercise of the freedom of the high seas, as well as "the rights provided for in the Convention with respect to activities in the Area." This principle of harmonization between high seas freedoms and activities in the Area, is expressly included in **article 147** of the Convention as one of the principles governing the Area.

**Third.** Although *a posteriori* it seems clear that we are not faced with a case of article 33 of the Exploration Regulations, we understand that the Secretary General acted in good faith, with the aim of protecting activities in the Area and safety at sea within the ambit of articles 147 and 157 (2) of the Convention.



Mr. President, Delegates.

If we adhere to national practice in other sectors (e.g. hydrocarbons), it would not be *a priori* excluded that exploration and exploitation vessels, when stationed in the Area, would be given a regime similar to that of a fixed installation or platform for the purpose of attributing safety zones as provided for in **Article 147, paragraph 2(c)** of the Convention.

In this case, the establishment of safety zones around a fixed installation or platform would not be limiting the freedom of protest on the high seas, it would simply be guaranteeing that activities in the Area can be carried out safely as provided for in **Article 147 paragraph 3** of the Convention.

However, given that the issue - as we have seen in the light of other interventions - is controversial and generates legal uncertainty, the Spanish delegation is of the opinion that it would be most appropriate for the Council to consider the possibility of requesting the Legal and Technical Commission an assessment of the classification of vessels carrying out activities in the Area as "installations" for the purposes of attributing safety zones to them as provided for in **Article 147 paragraph 2(c)** of the Convention, as well as the question of who would be competent to establish and to ensure such a safety zone.

Thank you very much Mr. President.