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EXPLANATORY NOTES

1. INTRODUCTION

Deep Seabed Mining (DSM) is the process by which valuable minerals are retrieved from the deep seabed. The DSM exploration frenzy is occurring in the absence of regulatory regimes or conservation areas to protect the unique and little known ecosystems of the deep sea. It is also occurring without meaningful participation by the communities who will be affected by DSM in decision-making. Furthermore, the limited scientific research conducted to date provides no assurance that the health of coastal communities and the fisheries on which they depend can be guaranteed.

Three forms of DSM have attracted the attention of companies – the mining of cobalt crusts (CRC), Poly-metallic nodules, and deposits of seafloor massive sulphides (SMS) also known as Poly-metallic Sulphides. It is the latter which is arguably the most alluring to miners - with high grades of zinc, copper, silver, gold, lead and rare earths. The mining of seafloor massive sulphides is also likely to be the most contentious: causing the greatest environmental impact. Occurrences of other minerals include phosphate and metalliferous sediments.¹

Deep-sea hydrothermal vents, found along mid-ocean ridges and back-arc basins, support some of the rarest and most unique ecological communities known to science. Here organisms derive their energy from sulphide chemicals in extremely hot, mineralized vent fluids. Most species discovered at vents are new to science, and the vents support communities with extremely high biomass relative to other deep-sea habitats.²

Ecosystem Impacts: Mining of hydrothermal vents would destroy an extensive patch of productive vent habitat, including thousands of vent chimneys, killing virtually all of the attached organisms. The extent of the impacts to vents and other seafloor habitats mined will inevitably be severe at the site scale. Mining is also expected to alter venting frequency and characteristics on surrounding seafloor areas, affecting ecological communities far beyond the

¹ <http://www.deepseaminingoutofourdepth.org/what-is-deep-sea-mining>. Last visited on 1 May 2015.

² Ibid.

mined site. Life forms destroyed may well be endemic, meaning that mining may destroy species before they are even identified.³

“The dark oceans were the womb of life: from the protecting oceans life emerged. We still bear in our bodies-in our blood, in the salty bitterness of our tears-the marks of this remote past, Retracing the past, man, the present dominator of the emerged earth, is now returning to the ocean depths. His penetration of the deep could mark the beginning of the end for man, and indeed for life as we know it on this earth: it could also be a unique opportunity to lay solid foundations for a peaceful and increasingly prosperous future for all peoples.”⁴

Maltese Ambassador to the United Nations (UN) Dr. Arvid Pardo, also called the “Father of the Law of the Sea” called upon the General Assembly to establish “an effective international regime over the Deep seabed and ocean floor”. He mentioned the need for the following principles:

- (a) Seabed beyond National Jurisdiction not subject to nation appropriation.
- (b) Seabed beyond national limits reserved for peaceful purposes.
- (c) Scientific research and technology regarding deep sea shall be available to all.
- (d) Resources of the seabed shall serve the interest of Mankind.
- (e) Deep sea exploration and exploitation shall not harm the marine environment.

The basis of his argument was that the ocean and its resources are the “Common heritage of Mankind.”

Ambassador Pardo ended with a call for "an effective international regime over the seabed and the ocean floor beyond a clearly defined national jurisdiction". "It is the only alternative by which we can hope to avoid the escalating tension that will be inevitable if the present situation is allowed to continue", he said.

At present, the common heritage of mankind regime can only start where permanent sovereignty ends. This does not however, preclude the possibility of applying to them certain

³ Ibid.

⁴ Pardo, Arvid; 1967, Address to the 22nd session of United Nations General Assembly, UN.Doc.A/6695(1 November 1967): http://www.un.org/depts/los/convention_agreements/texts/pardo_ga1967. Last visited on 1 May 2015.

elements of the common heritage of mankind concept, such as collective responsibility, sharing of benefits and costs of conservation and taking into account the interests of future generation.”

According to Brownlie, some principle elements of the global heritage concept are as follows: “The environment of the earth and its constituent parts like soil and water resources plant and animal resources human beings and their societies, cultural heritages, raw materials, energy resources and information.”

“Historically, the oceans have been and continue to be fundamental to human life. The ever-increasing use of the oceans necessitates international rules governing various human activities in the oceans.”⁵

The Central Indian Basin is rich in nickel, copper, cobalt and potentially rare-earth minerals, which are highly lucrative and used widely in manufacturing electronics such as mobile phone batteries. They are found in potato-shaped nodules on the deep-sea floor. It is also a great source of valuable minerals such as gold, silver and zinc and also contain valuable rare-earth metals, which are used in aviation and defence manufacturing, as well as modern day electronic devices and gadgets.

However, as the Indian Ocean explorations accelerate a clear international overview of the potential environmental impact of the projects is still lacking. Little has been done to investigate and regulate the potential for environmental damage. There's no regulatory framework, either at a national or international level, for deep-sea mining.

India⁶ has joined the race to explore and develop deep-sea mining for rare earth elements further complicating the geopolitics surrounding untapped sources of valuable minerals beneath the oceans. Hence this is the most important issue which needs to be addressed by the maritime administration of my country. Hence this legislation is very important.

⁵ Tanaka Yoshifumi; *The International Law of the Sea*, Cambridge University Press, U.K. 2012, p. 3.

⁶ Located in South Asia. Has a vast coastline stretching from the Arabian Sea to Bay of Bengal including Indian Ocean.

2. WORLD CHARTER FOR NATURE⁷

A multinational task force began drafting the World Charter for Nature in 1975. Sponsored by thirty-four developing nations, it was adopted by the General Assembly of the United Nations on 29 October 1982. This was prior to the adoption of the United Nations Convention on Law of the Sea, 1982 (UNCLOS) and it may have influenced UNCLOS.

2.1 Annex

The following is the annex of the world charter for nature.

World Charter for Nature

The General Assembly,

Reaffirming the fundamental purposes of the United Nations, in particular the maintenance of international peace and security, the development of friendly relations among nations and the achievement of international co-operation in solving international problems of an economic, social, cultural, technical, intellectual or humanitarian character,

Aware that:

(a) Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients,[...]

Convinced that:

[...]

(b) Man can alter nature and exhaust natural resources by his action or its consequences and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving natural resources,

Persuaded that:

(a) Lasting benefits from nature depend upon the maintenance of essential ecological processes and life support systems, and upon the diversity of life forms, which are jeopardized through excessive exploitation and habitat destruction by man,

⁷ <http://www.un.org/documents/ga/res/37/a37r007.htm>. Last visited on 1 May 2015.

(b) The degradation of natural systems owing to excessive consumption and misuse of natural resources, as well as to failure to establish an appropriate economic order among peoples and among States, leads to the breakdown of the economic, social and political framework of civilization,

(c) Competition for scarce resources creates conflicts, whereas the conservation of nature and natural resources contributes to justice and the maintenance of peace and cannot be achieved until mankind learns to live in peace and to forsake war and armaments,

Reaffirming that man must acquire the knowledge to maintain and enhance his ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations,[...]

Adopts, to these ends, the present World Charter for Nature, which proclaims the following principles of conservation by which all human conduct affecting nature is to be guided and judged.

2.1.1 GENERAL PRINCIPLES

1. Nature shall be respected and its essential processes shall not be impaired.

2. [...]

3. [...]

4. Ecosystems and organisms, as well as the land, marine and atmospheric resources that are utilized by man, shall be managed to achieve and maintain optimum sustainable productivity, but not in such a way as to endanger the integrity of those other ecosystems or species with which they coexist.[...]

5. [...]

2.1.2 FUNCTIONS

6. In the decision-making process it shall be recognized that man's needs can be met only by ensuring the proper functioning of natural systems and by respecting the principles set forth in the present Charter.[...]

7. [...]

8. [...]

9. [...]

10. [...]

11. Activities which might have an impact on nature shall be controlled, [...]

12. Discharge of pollutants into natural systems shall be avoided and: [...]

3. UNITED NATIONS CONVENTION ON LAW OF THE SEA, 1982 (UNCLOS)

3.1 The History of Development of UNCLOS

The first conference of the Law of the Sea was held in 1956 and concluded in 1958. Four conventions were adopted namely: the Territorial Sea and the Contiguous Zone Convention⁸, the High Seas Convention⁹, the Continental Shelf Convention¹⁰ and the Fishing and Conservation of the Living Resources of the high Seas Convention¹¹.

The second conference on the Law of the Sea was held in 1960. However, no agreement could be reached in this conference. Several States became independent and had different priorities after the first conference of 1958 and the second conference of 1960. The membership of the UN suddenly doubled in the span of few years. These were mostly colonies and had their priorities more than the traditional priority of Navigation and Fishing.

Thus various important issues which had developed in the 1950s and 1960s *inter alia*; needs of the newly formed States, technological developments, scarcity of resources, inadequate definition of the outer limit of the continental shelf and exploitation criterion. In order to tackle these issues the third conference on the Law of the Sea was convened in 1973 and concluded in 1982.

UNCLOS is often hailed as ‘constitution for the oceans’. It comprises of 320 articles and nine annexes, governing all aspects of ocean space from delimitations to environmental control, scientific research, economic and commercial activities, technology and the settlement of disputes relating to ocean matters.

3.1.1 Objective of the Convention

To establish, with due regard for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilisation of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment.

⁸ Adopted at Geneva, Switzerland on 29 April 1958.

⁹ Adopted at Geneva, Switzerland on 29 April 1958.

¹⁰ Adopted at Geneva, Switzerland on 29 April 1958.

¹¹ Adopted at Geneva, Switzerland on 29 April 1958.

The Convention establishes a comprehensive legal framework to regulate all ocean space, its uses and resources. It contains, among other things, provisions relating to the territorial sea, the contiguous zone, the continental shelf, the exclusive economic zone and the high seas. It also provides for the protection and preservation of the marine environment, for marine scientific research and for the development and transfer of marine technology. One of the most important parts of the Convention concerns the exploration for and exploitation of the resources of the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction (the Area). The Convention declares the Area and its resources to be "the common heritage of mankind". The mineral resources of the seabed beyond national jurisdiction are the common heritage of mankind, as provided in Part XI of UNCLOS. The original Part XI regime effectively precluded industrialized States from joining the Convention for more than a decade, putting at risk the whole project for a modern constitution for the oceans.¹²

Thereafter States devoted considerable time and resources to preparing for its entry into force, in particular in the Preparatory commission, which met twice a year between 1983 and 1994.¹³ Even after the clear rejection of Part XI by industrialized countries it was suggested that the Commission could somehow remedy the major defects in Part XI; but the Commission had no power to alter the Convention. The non-participation of the United States, together with the reserved position of the United Kingdom and the Federal Republic of Germany (which did attend as observers) and of other developed countries, as well as developing-country objection to anything which might deviate from the Convention's provisions, precluded any role for the Commission in making Part XI acceptable; the Commission may indeed have had a negative impact. Its drafts and studies were largely overtaken. Its most significant work lay in implementing (often effectively amending) the provisions of Resolution II of the Conference concerning registered pioneer investors. There was growing realization that the Part XI deep seabed mining regime was unworkable, would preclude participation in the Convention by

¹² The Convention was adopted by the Third United Nations Conference on the Law of the Sea and opened for signature, together with the Final Act of the Conference, at Montego Bay, Jamaica, on 10 December 1982. The Conference was convened pursuant to resolution 3067 (XXVIII)1 adopted by the General Assembly on 16 November 1973. The Conference held eleven sessions, from 1973 to 1982. The Conference also adopted a Final Act together with six Annexes.

¹³ The Preparatory Commission was established by Resolution I of the Conference, and remained in existence until the conclusion of the first session of the Assembly of the International Seabed Authority on 18 August 1995. See Virginia Commentary Vol.V, 467 et seq. The report of the Preparatory Commission for presentation to the Assembly of the International Seabed Authority (i.e. excluding its report on Tribunal matters) is in document LOS/PCN/153 (Vols I to XIII, plus index), and was presented to the Assembly in August 1995 (ISBA/A/L.6). Sir Michael Wood, *The International Seabed Authority: Fifth to Twelfth Sessions (1999-2006)*, 11 *Max Planck Yearbook of United Nations Law* (2007).

most industrialized countries, and was based on wildly optimistic estimates of the potential and time scale of deep seabed mining, and that the common heritage would not benefit mankind as a whole. In the words of one commentator, "a zone without any foreseeable economic uses had held the whole Convention hostage for more than a decade".

In the 1990s the Convention's deep seabed mining regime was radically revised as a result of consultations under the auspices of the United Nations Secretary-General leading to the Agreement relating to the Implementation of Part XI of the UNCLOS. With the adoption of the 1994 Implementation Agreement, industrialized States were willing to join the Convention, and the centrepiece of the new regime. The International Seabed Authority (ISA) came into being on 16 November 1994 with the entry into force of the Convention. UNCLOS finally entered into force on 16 November 1994.

3.1.2 The Annexes and Part XI of UNCLOS

The Annexes and the Final Act complete the UNCLOS.

Annex I of the Final Act consists of Resolutions I to IV.

Annex II of the Final Act consists of statement of understanding concerning a specific method to be used in establishing the outer edge of the continental margin.

Annex III of UNCLOS explains the basic conditions of prospecting, exploration and exploitation.

Annex IV of UNCLOS gives the statute of the enterprise. The enterprise being the commercial operation organ of the ISA who will be engaging/granting license for the exploration and exploitation of the deep seabed minerals in the Area.

Part XI of UNCLOS – The Area

As per Part XI of the UNCLOS;

"Area" means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.¹⁴

¹⁴ Article 1.1(1) PART I, UNCLOS.

"Authority" means the International Seabed Authority.¹⁵

The ISA is an autonomous international organization established under the UNCLOS and the 1994 Agreement relating to the Implementation of Part XI of the UNCLOS. The ISA is the organization through which States Parties to the Convention shall, in accordance with the regime for the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction (the Area) established in Part XI and the Agreement, organize and control activities in the Area, particularly with a view to administering the resources of the Area.¹⁶

"activities in the Area" means all activities of exploration for, and exploitation of, the resources of the Area.¹⁷

"resources" means all solid, liquid or gaseous mineral resources in situ in the Area at or beneath the seabed, including polymetallic nodules.¹⁸

resources, when recovered from the Area, are referred to as "minerals".¹⁹

The Area and its resources are the common heritage of mankind.²⁰

From the above we see that the deep seabed mining is clearly comprehensive regime of UNCLOS and it is considered to be a common heritage of mankind. Hence it is important to have in place regulations so as to benefit all mankind which means that not only the coastal states but also the land locked states as well.

The Authority shall provide for the equitable sharing of financial and other economic benefits derived from activities in the Area through any appropriate mechanism, on a non-discriminatory basis, in accordance with article 160, paragraph 2(f)(i).²¹

¹⁵ Article 1.1(2) PART I, UNCLOS.

¹⁶ <http://www.isa.org.jm/authority>. Last visited on 1 May 2015.

¹⁷ Article 1.1(3) PART I, UNCLOS.

¹⁸ Article 133 (a), UNCLOS.

¹⁹ Article 133 (b), UNCLOS.

²⁰ Article 136, UNCLOS.

²¹ Article 140.2, UNCLOS.

4. CASE STUDY FOR THE PURPOSE OF THE DRAFTING PROJECT

This case study gives an overview of what are the legal responsibilities and obligations of State Parties to the Convention, the extent of liability of a State Party for any failure to comply with the provisions of the Convention and the necessary and appropriate measures that a sponsoring State must take in order to fulfil its responsibility under the Convention.

4.1 SEABED DISPUTES CHAMBER OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA, YEAR 2011, 1 February 2011

4.1.1 Case No.17, RESPONSIBILITIES AND OBLIGATIONS OF STATES SPONSORING PERSONS AND ENTITIES WITH RESPECT TO ACTIVITIES IN THE AREA ADVISORY OPINION²².

The full text of the case is stated below.

- On 10 April 2008, the Authority received two applications for approval of a plan of work for exploration in the areas reserved for the conduct of activities by the Authority through the Enterprise or in association with developing States pursuant to Annex III, article 8, of the United Nations Convention on the Law of the Sea (hereinafter “the Convention”). These applications were submitted by Nauru Ocean Resources Inc. (sponsored by the Republic of Nauru) and Tonga Offshore Mining Ltd. (sponsored by the Kingdom of Tonga);

- These applications were submitted to the Legal and Technical Commission of the Authority. On 5 May 2009, the applicants submitted to the Authority a request that consideration of the applications should be postponed. At the fifteenth session of the Authority, held from 25 May to 5 June 2009, the Legal and Technical Commission decided to defer further consideration of the item;

- On 1 March 2010, the Republic of Nauru transmitted to the Secretary General a proposal, set out in document ISBA/16/C/6, to seek an advisory opinion from the Chamber on a number of specific questions regarding the responsibility and liability of sponsoring States;

- In support of its proposal, Nauru submitted, inter alia, the following considerations:

In 2008 the Republic of Nauru sponsored an application by Nauru Ocean Resources Inc. for a plan of work to explore for polymetallic nodules in the Area. Nauru, like many other

²² https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_17/adv_op_010211.pdf. Last visited on 1 May 2015.

developing States, does not yet possess the technical and financial capacity to undertake seafloor mining in international waters. To participate effectively in activities in the Area, these States must engage entities in the global private sector (in much the same way as some developing countries require foreign direct investment). Not only do some developing States lack the financial capacity to execute a seafloor mining project in international waters, but some also cannot afford exposure to the legal risks potentially associated with such a project.

Recognizing this, Nauru's sponsorship of Nauru Ocean Resources Inc. was originally premised on the assumption that Nauru could effectively mitigate (with a high degree of certainty) the potential liabilities or costs arising from its sponsorship. This was important, as these liabilities or costs could, in some circumstances, far exceed the financial capacities of Nauru (as well as those of many other developing States). Unlike terrestrial mining, in which a State generally only risks losing that which it already has (for example, its natural environment), if a developing State can be held liable for activities in the Area, the State may potentially face losing more than it actually has. (ISBA/16/C/6, paragraph 1);

Ultimately, if sponsoring States are exposed to potential significant liabilities, Nauru, as well as other developing States, may be precluded from effectively participating in activities in the Area, which is one of the purposes and principles of Part XI of the Convention, in particular as provided for in article 148; article 150, subparagraph (c); and article 152, paragraph 2. As a result, Nauru considers it crucial that guidance be provided on the interpretation of the relevant sections of Part XI pertaining to responsibility and liability, so that developing States can assess whether it is within their capabilities to effectively mitigate such risks and in turn make an informed decision on whether or not to participate in activities in the Area. (ISBA/16/C/6, paragraph 5);

The Council of the International Seabed Authority, considering the fact that developmental activities in the Area have already commenced, bearing in mind the exchange of views on legal questions arising within the scope of activities of the Council, decides, in accordance with Article 191 of the United Nations Convention on the Law of the Sea ("the Convention"), to request the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea, pursuant to Article 131 of the Rules of the Tribunal, to render an advisory opinion on the following questions:

1. What are the legal responsibilities and obligations of States Parties to the Convention with respect to the sponsorship of activities in the Area in accordance with the Convention, in

particular Part XI, and the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982?

2. What is the extent of liability of a State Party for any failure to comply with the provisions of the Convention, in particular Part XI, and the 1994 Agreement, by an entity whom it has sponsored under Article 153, paragraph 2 (b), of the Convention?

3. What are the necessary and appropriate measures that a sponsoring State must take in order to fulfil its responsibility under the Convention, in particular Article 139 and Annex III, and the 1994 Agreement?

4.1.2 Replies to Question 1 submitted by the Council as follows:

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

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

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

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

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

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

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

The most important direct obligations of the sponsoring State are:

(a) the obligation to assist the Authority set out in article 153, paragraph 4, of the Convention;

(b) the obligation to apply a precautionary approach as reflected in Principle 15 of the Rio Declaration and set out in the Nodules Regulations and the Sulphides Regulations; this

obligation is also to be considered an integral part of the “due diligence” obligation of the sponsoring State and applicable beyond the scope of the two Regulations;

(c) the obligation to apply the “best environmental practices” set out in the Sulphides Regulations but equally applicable in the context of the Nodules Regulations;

(d) the obligation to adopt measures to ensure the provision of guarantees in the event of an emergency order by the Authority for protection of the marine environment; and

(e) the obligation to provide recourse for compensation.

The sponsoring State is under a due diligence obligation to ensure compliance by the sponsored contractor with its obligation to conduct an environmental impact assessment set out in section 1, paragraph 7, of the Annex to the 1994 Agreement. The obligation to conduct an environmental impact assessment is also a general obligation under customary law and is set out as a direct obligation for all States in article 206 of the Convention and as an aspect of the sponsoring State’s obligation to assist the Authority under article 153, paragraph 4, of the Convention.

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

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

4.1.3 Replies to Question 2 submitted by the Council as follows:

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

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

(a) failure to carry out its responsibilities under the Convention; and

(b) occurrence of damage.

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

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

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

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

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

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

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

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

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

4.1.4 Replies to Question 3 submitted by the Council as follows:

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

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

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

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

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

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

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

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

The provisions that the sponsoring State may find necessary to include in its national laws may concern, inter alia, financial viability and technical capacity of sponsored contractors, conditions for issuing a certificate of sponsorship and penalties for noncompliance by such contractors.

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

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

Summary of the case study

From this case study, we get an overview of what are the legal responsibilities and obligations of State Parties to the Convention, the extent of liability of a State Party for any failure to comply with the provisions of the Convention and the necessary and appropriate measures that a sponsoring State must take in order to fulfil its responsibility under the Convention. The Sponsoring States have two kinds of obligations under the Convention and related instruments, namely the obligation to ensure compliance by sponsored contractors direct obligations with which sponsoring States must comply independently of their obligation to ensure a certain conduct on the part of the sponsored contractors. The liability of the sponsoring State arises from its failure to fulfil its obligations under the Convention and related instruments. The Convention requires the sponsoring State to adopt, within its legal system, laws and regulations and to take administrative measures that have two distinct functions, namely, to ensure compliance by the contractor with its obligations and to exempt the sponsoring State from liability.

5. THE NEED TO ADOPT A DEEP SEABED MINING LEGISLATION

As discussed earlier, DSM is important and has to be regulated in terms of International law. Bearing in mind the principles of International law, there is a need to introduce this law in order to bring India within the folds of the UNCLOS regime on deep seabed mining. There is no regulatory framework at the moment governing this area in India.

India ratified UNCLOS on 29 June 1995 however the provisions relating to Deep seabed has not been domesticated in any of the laws in India. In 1987, India became the first developing State to be accorded the status of a "pioneer investor"²³, which provided it an area of 150,000 sq km in the central Indian Ocean for deep seabed mining.

India has a Maritime Zone Act 1976 dealing with Territorial Waters, Continental Shelf, Exclusive Economic Zone but none for the DSM.

Hence this draft legislation is of great importance to India for the purpose of exploring and exploiting deep seabed beyond national jurisdiction.

²³ http://www.un.org/depts/los/convention_agreements/convention_historical_perspective.htm#Pioneer Investors. Last visited on 1 May 2015.

The Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea was established, prior to the entry into force of the Convention, to prepare for the setting up of both institutions. The Preparatory Commission proceeded with the implementation of an interim regime adopted by the Third United Nations Conference on the Law of the Sea, designed to protect those States or entities that have already made a large investment in seabed mining. This so-called Pioneer Investor Protection regime allows a State, or consortia of mining companies to be sponsored by a State, to be registered as a Pioneer Investor. Registration reserves for the Pioneer Investor a specific mine site in which the registered Investor is allowed to explore for, but not exploit, manganese nodules. Registered Investors are also obligated to explore a mine site reserved for the Enterprise and undertake other obligations, including the provision of training to individuals to be designated by the Preparatory Commission.

The Preparatory Commission had registered seven pioneer investors: China, France, India, Japan, the Republic of Korea, and the Russian Federation, as well as a consortium known as the Interoceanmetal Joint Organization (IMO). With the Convention in force and the International Seabed Authority being functioning, those pioneer investors will become contractors along the terms contained in the Convention and the Agreement, as well as regulations established by the International Seabed Authority.

6. HOW THE BILL WILL COME INTO FORCE²⁴

All international treaties and agreements are negotiated and concluded on behalf of the President of India. Once a treaty is ratified it does not automatically apply as India is a dualist State. The treaty has to be domesticated by incorporating it into the law of the land.

This draft 'The Deep Sea Mining Act 2015' has to undergo the below process in order to become enforceable.

The process is explained briefly below;

The legislative process starts with the introduction of the Bill in either House of Parliament. After introduction of the Bill, it is published in the Official Gazette. It has to pass through various stages before it becomes an Act of Parliament. . It undergoes three readings in each House of Parliament. It becomes law after it is passed by both the Houses of Parliament and assented to by the President.

²⁴ <http://www.parliamentofindia.nic.in/ls/intro/p5.htm>,
<http://rajyasabha.nic.in/rsnew/legislation/introduction.asp>. Last visited on 1 May 2015.

7. EXPLANATION OF THE DRAFT LEGISLATION TEXT

7.1 How is the Draft Legislation made

The Draft Legislation has been prepared taking the model of the United Kingdom “Deep Sea Mining (Temporary Provisions) Act 1981” with amendments now called “Deep Sea Mining Act 2014”.

7.1.1 Outline of the Draft Legislation

The Draft legislation contains 5 parts.

Part I titled Preliminary gives the short title, extent and commencement. It also provides for interpretation of various terms used in the draft giving their definition.

Part II is titled Regulation of deep seabed mining. It provides for regulations governing the prohibition of unlicensed deep sea mining and its exemptions, exploration and exploitation licences, the contract granted by the Authority, prevention of interference with the licensed operations, protection of the marine environment, variation and revocation of licences, freedom of high seas, Foreign discriminatory action, the DSM levy and fund.

Part III is titled Enforcement of decisions and awards. It provides for enforcement of decisions and awards of the Seabed Disputes Chamber, the registration of the chamber’s decision, recognition of arbitration awards and recovery of financial penalties.

Part IV is titled subject matter of regulations. It provides general regulations covering applications, health and safety, Inspectors powers and functions, disclosure of information.

Part V is titled Offences. It provides for provision relating to offences and the liability for breach of statutory duty.

DEEP SEA MINING ACT, 2015

[DATED:]

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title and commencement
2. Interpretation
3. Scope of Application

PART II

REGULATION OF DEEP SEABED MINING

4. Prohibition of unlicensed deep sea mining
5. Exemptions from prohibition in section 1
6. Exploration and exploitation licences
7. Contracts granted by the Authority
8. Prevention of interference with licensed operations
9. Protection of the marine environment
10. Variation and revocation of licences
11. Freedom of the high seas
12. Foreign discriminatory action
13. The Deep Sea Mining Levy
14. The Deep Sea Mining Fund

PART III

ENFORCEMENT OF DECISIONS AND AWARDS

15. Registration and Enforcement of decisions of the Seabed Disputes Chamber.
16. Proof and admissibility of decisions of the Seabed Disputes Chamber
17. Recognition and enforcement of arbitration awards
18. Recovery of financial penalties

PART IV

SUBJECT MATTER OF REGULATIONS

19. General
20. Regulations and orders
21. Inspectors

22. Disclosure of information

PART V
OFFENCES

23. Provision relating to offences

24. Civil liability for breach of statutory duty

An Act to make provision with respect to deep seabed mining operations and for purposes connected therewith or incidental thereto.

BE IT ENACTED by the Parliament of the Republic of India as follows :-

PART I
PRELIMINARY

1. Short title and commencement

- (1) This Act may be called the Deep Sea Mining Act, 2015.
- (2) This Act shall come into force on such date as the Central Government may, by notification in the Official Gazette.

2. Interpretation

In this Act, unless the context otherwise requires –

- (1) Activities – shall be all activities to explore and exploit the resources of the Area.
- (2) Agreement – means the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 adopted on 28 July 1994 by the General Assembly of the United Nations.
- (3) Ancillary operations - in relation to any licensed operations, means any activity carried on by or on behalf of the licensee which is ancillary to the licensed operations (including the processing and transportation of any substances recovered).
- (4) Area - means the area of the seabed and the subsoil situated beyond the limits of national jurisdiction of the Republic of India or any other State.
- (5) Convention – shall be the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS).
- (6) Corresponding contract” means —
 - (a) in relation to an exploration licence, a contract which is granted by the ISA to the licensee and authorises exploration for the licensed mineral resource in the licensed area, and
 - (b) in relation to an exploitation licence, a contract which is granted by the ISA to the licensee and authorises the exploitation of the licensed mineral resource in the licensed area;“exploration licence” and “exploitation licence” granted by the ISA, in relation to a contract, means granted by the ISA in accordance with Article 153 of the Convention.
- (7) Court – means the High Court.
- (8) Deep seabed - means that part of the seabed and the subsoil in respect of which sovereign rights in relation to the natural resources of the seabed are neither exercisable by the Republic of India nor recognised by the Government as being exercisable by any other Sovereign State or, in a case where disputed claims are made by more than one Sovereign State, by one or other of those Sovereign States.

(9) Exploration – means the exclusive right to –

- (a) search within the Area for seabed mineral deposits with exclusive rights,
- (b) conduct the sampling and analysis of such deposits,
- (c) conduct the testing of systems and equipment, and
- (d) the carry out of studies,

for the purpose of investigating whether those minerals can be commercially exploited.

(10) Exploitation – means the recovery of seabed minerals within the Area for commercial purposes and the extraction of minerals therefrom, including the construction and operation of all mining, processing and transportation systems for the production and marketing of metals, insofar as these activities take place in the Area.

(11) Exploration licence – means a licence authorising the licensee to explore for the mineral resources of such part of the deep seabed as may be specified in the licence.

(12) Exploitation licence – means a licence authorising the licensee to exploit the mineral resources of such part of the deep seabed as may be specified in the licence.

(13) Licensed area - in relation to a licence, means the area of the deep sea bed specified in the licence.

(14) Licensed mineral resource - in relation to a licence, means the description of mineral resource specified in the licence.

(15) Licensed operations - means any activities which the licensee may carry on by virtue of their licence.

(16) Licensee - means the holder of an exploration or exploitation licence.

(17) Mineral resource - means a solid, liquid or gaseous mineral resource.

" hard mineral resources " means deposits of nodules containing (in quantities greater than trace) at least one of the following elements, that is to say, manganese, nickel, cobalt, copper, phosphorus and molybdenum.

(18) Ministry - means Ministry of Earth Sciences (MoES).

(19) Person – means any natural person or business enterprise and includes, but is not limited to, a corporation, partnership, cooperative, association, the State or any subdivision or agency thereof, and any foreign State, subdivision or agency of such State or other entity.

(20) Plan of work - means a programme of activities and expenditure.

(21) Prospecting – means searching for mineral resources in that area of the deep seabed and may include estimating the composition, size, distribution and economic values of such mineral resources.

(22) Seabed Disputes Chamber – means the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea established under the Convention.

(23) Ship - includes every description of vessel used in navigation.

(24) The Authority - means the International Seabed Authority (ISA) established by Part XI of UNCLOS.

(25) Tribunal – means the International Tribunal for the Law of the Sea (ITLOS) as provided in Annex VI of UNCLOS.

3. Scope of Application

(1) The purposes of this Act are –

(a) to regulate the exploration for and exploitation of resources in the Area by persons sponsored by the Republic of India under the Convention and the Agreement;

(b) to ensure the effective protection of the marine environment against any harmful effects of those activities; and

(c) to fulfil the obligations of the Republic of India under the Convention and the Agreement in relation to those activities.

PART II

REGULATION OF DEEP SEABED MINING

4. Prohibition of unlicensed deep sea mining

(1) A person may explore for mineral resources of any description in any area of the deep seabed provided —

(a) the person holds an exploration licence which is in force or is the agent or employee of the holder of such a licence (acting in that capacity), and

(b) the licence relates to mineral resources of that description and to that area of the deep seabed.

(2) A person may exploit mineral resources of any description in any area of the deep seabed provided —

(a) the person holds an exploitation licence which is in force or is the agent or employee of the holder of such a licence (acting in that capacity), and

(b) the licence relates to mineral resources of that description and to that area of the deep sea bed.

(3) Any person who contravenes subsection (1) or (2) above shall be guilty of an offence under this Act and shall on conviction after trial on indictment by the High Court be punished by simple imprisonment not exceeding two years or a fine not exceeding one crore rupees or both.

(4) This section applies to any person who –

(a) is a citizen of India; and

(b) is resident in any part of India.

(5) The Government of India may by notification in the Official Gazette extend the application of this section to all citizens of India, firms and bodies incorporated under the law of any part of India who are resident outside India or to such citizens, firms and bodies who are resident in any country specified in the notification.

(6) In any proceedings, a certificate issued by the Government of India certifying that “an area of the seabed is beyond the limits of national jurisdiction of India or any other State” shall be conclusive as to that fact; and any document purporting to be such a certificate shall be received in evidence and shall, unless the contrary is proved, be deemed to be such a certificate.

5. Exemptions from prohibition in section 4

(1) A person to whom section 4 applies is not prohibited by that section from prospecting for mineral resources in any area of the deep seabed if the person does so in accordance with the terms of a notification of prospecting —

(a) given by the person to the Authority under the Convention, and

(b) recorded by the Authority as complying with the requirements of the Convention.

(2) Where a person to whom section 4 applies holds a contract for exploration granted by the Authority or is the agent or employee of the holder of such a contract (acting in that capacity), that person is not prohibited by that section from exploring for any of the description of mineral resources to which the contract relates in any area of the deep seabed in respect of which the contract is in force.

(3) Where a person to whom section 4 applies holds a contract for exploitation granted by the Authority or is the agent or employee of the holder of such a contract (acting in that capacity), that person is not prohibited by that section from exploiting any of the description of mineral resources to which the contract relates in any area of the deep seabed in respect of which the contract is in force.

6. Exploration and exploitation licences

(1) Subject to section 7 below, the Ministry of Earth Sciences (MoES) may on payment of such fee as prescribed grant to such persons as it thinks fit for exploration or exploitation licences.

(2) An exploration or an exploitation licence-

(a) may be granted for such period as the MoES thinks fit, and

(b) must not come into force before the date on which a corresponding contract comes into force.

(3) An exploration or exploitation licence may contain such terms and conditions as the MoES thinks fit, including, in particular, terms and conditions—

(a) relating to the safety, health or welfare of persons employed in the licensed operations or in the ancillary operations ;

(b) relating to the processing or other treatment of any hard mineral resources won in pursuance of the licence which is carried out by or on behalf of the licensee on any ship ;

(c) relating to the disposal of any waste material resulting from such processing or other treatment;

(d) requiring plans, returns, accounts or other records with respect to any matter connected with any licensed area or licensed operations or ancillary operations to be furnished to the MoES;

(e) requiring samples of licensed minerals discovered or extracted in any licensed area, or assays of such samples, to be furnished to the MoES;

(f) requiring any exploration or exploitation of the licensed mineral resources in the licensed area to be diligently carried out;

(g) requiring the licensee to comply with such provisions of the Convention and the Agreement, interpreted in accordance with Article 2 of the Agreement, as are applicable to contractors;

(h) requiring compliance with any other rules, regulations and procedures issued or adopted by the ISA, as are applicable to contractors;

(i) requiring compliance with a corresponding contract;

(j) requiring compliance with any plan of work authorised by a corresponding contract;

(k) requiring the payment to the MoES of such sums as may be prescribed at such times as may be prescribed;

(l) requiring payment to the MoES of such sums as may be prescribed at such times as may be prescribed; and

(m) permitting the transfer of the licence in prescribed cases or with the written consent of the MoES.

(4) An exploration licence shall not be granted in respect of any period before the said Act comes into force.

(5) Where the MoES has granted an exploration licence it shall not grant an exploitation licence which relates to any part of the licensed area in relation to the exploration licence and to any of the mineral resources to which that licence relates unless the exploitation licence is granted—

(a) to the holder of the exploration licence, or

(b) with that person's written consent.

(6) Any fees or other sums received by the MoES under this section shall be paid into the Consolidated Fund.

7. Contracts granted by the Authority

(1) The MoES may grant an exploration or exploitation licence which relates to—

(a) any area of the deep seabed in respect of which a contract granted by the ISA is in force, and

(b) any description of mineral resources to which the contract relates.

(2) Subsection (1) does not apply where the contract is a corresponding contract in relation to a licence previously granted by the MoES .

(3) For the purposes of any proceedings a contract granted by the ISA may be proved by the production of a copy of the contract certified to be a true copy by an official of the ISA; and any document purporting to be such a copy is to be received in evidence and is to be deemed to be such a contract unless the contrary is proved.

8. Prevention of interference with licensed operations

(1) No person shall intentionally interfere with any operations carried on in pursuance of -

(a) a contract granted by the ISA; or

(b) an exploration or exploitation licence.

(2) Any person who contravenes subsection (1) above shall be guilty of an offence under this Act and shall on conviction after trial on indictment by the High Court be punished by simple imprisonment not exceeding two years or a fine not exceeding one crore rupees or both.

9. Protection of the marine environment

(1) In determining whether to grant an exploration or exploitation licence the MoES shall have regard to the need to protect (so far as reasonably practicable) marine creatures, plants and other organisms and their habitat from any harmful effects which might result from any activities to be authorised by the licence; and the MoES shall consider any representations made concerning such effects.

(2) Without prejudice to section 5 and section 6 above, any exploration or exploitation licence granted by the MoES shall contain such terms and conditions as the MoES considers necessary or expedient to avoid or minimise any such harmful effects.

10. Variation and revocation of licences

(1) The MoES may vary or revoke any exploration or exploitation licence -

(a) where the variation or revocation is in the opinion of the MoES required -

(i) to ensure the safety, health or welfare of persons engaged in any of the licensed operations or ancillary operations ; or

(ii) to protect any marine creatures, plants or other organisms or their habitat ; or

(iii) in pursuance of section 12 below ; or

(iv) to avoid a conflict with any obligation of India arising out of any international agreement in force for India;

(b) in any case, with the consent of the licensee.

(2) The MoES may revoke an exploration or exploitation licence in any case where a term or condition of the licence or any regulation made under this Act has not been complied with.

11. Freedom of the high seas

It shall be the duty of the licensee to exercise his rights under the licence with reasonable regard to the interests of other persons in their exercise of the freedom of the high seas.

12. Foreign discriminatory action

(1) This section applies to any ship which is registered in a country of which the government (or an agency or authority of the government), in the opinion of the Government of India, has adopted or is proposing to adopt discriminatory measures or practices prohibiting or otherwise restricting the use in connection with any deep seabed mining operations of ships registered in India.

(2) Without prejudice to section 5 and section 6 above, the MoES may include in any exploration or exploitation licence, either on granting the licence or by a subsequent variation, such terms and conditions as it considers expedient for prohibiting or otherwise restricting the use in connection with the licensed operations or any ancillary operations of any ship to which this section applies.

(3) The Government of India may by notification in the Official Gazette extend this section to ships which are registered in any country of which the government (or any agency or authority of the government), in its opinion, has adopted or is proposing to adopt discriminatory measures or practices prohibiting or otherwise restricting the use in connection with any deep sea bed mining operations of ships registered in India.

(4) In this section, references to an agency or authority of a government include references to any undertaking appearing to the Government of India to be, or to be acting on behalf of, an undertaking which is in effect owned or controlled (directly or indirectly) by a State other than India.

13. The Deep Sea Mining Levy

(1) Subject to the following provisions of this section, the holder of an exploitation licence shall, at the prescribed times, pay to the MoES -

(a) an amount equal to 3.75 percent of the value of the hard mineral resources recovered in pursuance of the licence during any prescribed period ; or

(b) if the value of the hard mineral resources so recovered cannot be ascertained under paragraph (a) above, 0.75 percent of the value of any manganese, nickel, cobalt, copper, phosphorus or molybdenum, (" the elements ") or any compound containing any of the elements, found in those hard mineral resources.

(2) The value of any hard mineral resources, element or compound shall for the purposes of subsection (1) above be determined in accordance with such rules as may be prescribed.

(3) If any hard mineral resources recovered by the licensee during any prescribed period contain less than the amount prescribed in relation to that period (by weight or proportion or otherwise) of any of the elements or any compound containing any of the elements, the licensee shall not be liable to make any payment in respect of that element or compound.

(4) A licensee may elect, in writing and at the prescribed times, in respect of any element or compound specified in the election to defer payment under subsection (1) above until the element or compound is separated from any other matter with which it was recovered or, if earlier, until he disposes of the hard mineral resources containing that element or compound.

(5) Where a licensee fails at the prescribed time to pay to the MoES any amount which he is required by sub- section (1) above to pay at that time, the amount due shall as from that time carry interest at the relevant rate until payment. For the purposes of this subsection, "relevant rate" means such rate as the MoES may with the consent of the Treasury prescribe.

(6) Where any payment has been deferred under subsection (4) above and becomes due, the amount due shall be calculated in accordance with subsections (1) to (3) above, and, for the purposes of subsection (5) above, that amount shall be deemed to have become due on the date when it would have been due had the election not been made.

14. The Deep Sea Mining Fund

(1) There shall be established under the control and management of the Treasury a fund to be called the Deep Sea Mining Fund (" the Fund ") into which there shall be paid any sums paid to the MoES under section 13 above.

(2) Subject to subsection (3) below, the Treasury shall prepare accounts of the Fund and shall send them to the Comptroller and Auditor General not later than the end of the month of November following the financial year to which the accounts relate; and the Comptroller and Auditor General shall examine and certify every such account and shall lay copies thereof, together with his report thereon, before Parliament.

(3) Subsection (2) above shall not have effect until the first payment into the Fund is made in pursuance of subsection (1) above.

(4) In subsection (2) above, "financial year" means a period of twelve months ending on 31st March except that the MoES may direct that -

(a) the first financial year for the Fund shall be of such period not exceeding two years and ending on 31st March as he may specify in the direction ; and

(b) where an order under subsection (7) below is made, the last financial year shall be of such period not exceeding twelve months as he may specify in the direction ; and, where a direction is given under paragraph (b) above, sub- section (2) shall apply in relation to the accounts for that last financial year with the substitution for the reference to the end of the month of November of a reference to the end of the eighth month following the end of that year.

(5) If an international organisation for the deep seabed is established in pursuance of an international agreement on the law of the sea which has been adopted by a United Nations Conference on the Law of the Sea and has entered into force for India, the MoES may by notification designate that organisation as the relevant international organisation for the purposes of this section.

(6) An order designating an international organisation as the relevant international organisation for the purposes of this section may also make provision for the payment to that organisation of any sums for the time being standing to the credit of the Fund.

(7) If within ten years of the coming into force of this section no organisation has been designated as the relevant international organisation the MoES may by notification made with the approval of the Treasury provide for the winding up of the Fund and the payment into the Consolidated Fund of any sums standing to its credit and for the repeal of section 13 above.

(8) An order under subsection (7) above shall not be made unless a draft thereof has been approved by resolution of the Lower House of Parliament.

(9) Until such time as an international organisation is so designated, any money in the Fund may from time to time be paid over to the Reserve bank of India (National Debt Commissioners) and invested by them, in accordance with such directions as may be given by the Treasury.

PART III

ENFORCEMENT OF DECISIONS AND AWARDS

15. Registration and Enforcement of decisions of the Seabed Disputes Chamber

(1) A decision of the Seabed Disputes Chamber of the Tribunal in relation to a dispute of a type described in Article 187(c), (d) or (e) of the Convention may be registered in the High Court in such manner as may be prescribed by rules of the court.

(2) Where a decision is registered under this section, it is to be treated for the following purposes as if it had been originally given by the High court and had (where relevant) been entered —

- (a) its force and effect for the purposes of enforcement;
- (b) the powers of the High court in relation to its enforcement;
- (c) the taking of proceedings for or with respect to its enforcement.

(3) Where a decision registered under this section provides for payment of a sum of money, the debt resulting from the registration is to carry interest as if the decision were a judgment of the High court and the debt had become due on the date of registration.

(4) Where a decision is registered under this section, the reasonable costs and expenses of and incidental to its registration are to be recoverable as if they were sums recoverable under the decision.

(5) Costs or expenses recoverable by virtue of subsection (4) are to carry interest as if they were the subject of an order for costs and expenses made by the High court on the date of registration.

(6) Subsection (2) is subject to any provision made by rules of the court as to the manner in which and conditions subject to which a decision registered under this section may be enforced.

16. Proof and admissibility of decisions of the Seabed Disputes Chamber

(1) For the purposes of section 15 a document, duly authenticated, which purports to be a copy of a decision given by the Seabed Disputes Chamber of the Tribunal is without further proof to be taken to be a true copy, unless the contrary is shown

(2) A document purporting to be a copy of a decision given by the Seabed Disputes Chamber of the Tribunal is duly authenticated for the purposes of this section if it purports—

(a) to bear the seal of the Tribunal, or

(b) to be certified by any person in the person's capacity as a judge of the Tribunal, the Registrar of the Tribunal or a member of the staff of the Registrar to be a true copy of a decision given by the Tribunal.

(3) Nothing in this section prejudices the admission in evidence of any document which is admissible apart from this section.

17. Recognition and enforcement of arbitration awards

An award made in pursuance of Article 188(2) (a) of the Convention (disputes concerning interpretation or application of contracts) is to be treated for the purposes of Part II of Arbitration and Conciliation Act 1996 (recognition and enforcement of certain foreign awards) as a New York Convention award.

18. Recovery of financial penalties

A financial penalty imposed under this Act may be recovered in the same manner as a fine.

PART IV
SUBJECT MATTER OF REGULATIONS

19. General

- (1) Form and content of applications.
- (2) Evidence to be submitted in support of applications, the form in which it is to be submitted and the time within which it is to be submitted.
- (3) The safety, health or welfare of persons employed in any licensed operations or in any ancillary operations.
- (4) The holding of inquiries into accidents occurring in the course of any licensed operations.
- (5) The prohibition of any method of working which in the opinion of the Government is or is likely to be harmful to any marine creatures, plants or other organisms or their habitat.

20. Regulations and orders

- (1) The MoES may make regulations-
 - (a) prescribing anything required or authorised to be prescribed under this Act in relation to an exploration or exploitation licence granted or to be granted ;
 - (b) generally for carrying this Act into effect ; and, without prejudice to the generality of the foregoing, regulations may be made with respect to any of the matters mentioned in the Schedule to this Act.
- (2) Regulations under this section may, in particular, make provision with respect to any of the matters mentioned in the Schedule.
- (3) Regulations under this section may make different provision for different cases or classes of case and may exclude the operation of any provision of the regulations in specified cases.
- (4) Any power of the MoES to make regulations or an order under this Act is exercisable by statutory instrument.
- (5) A statutory instrument containing regulations made under this Act by the MoES is subject to annulment in pursuance of a resolution of either House of Parliament.

21. Inspectors

- (1) The MoES may appoint as inspectors to discharge such functions as may be prescribed and generally to assist him in the execution of this Act such persons appearing to him to be qualified for the purpose as he considers appropriate from time to time.

(2) The MoES may make to or in respect of any inspector appointed under subsection (1) above such payments by way of remuneration as deemed fit.

(3) Powers of inspectors to board, and to obtain access to all parts of, any ship used for exploration or exploitation, and to obtain information and to inspect and take copies from any log book or other document.

(4) Powers of inspectors to test equipment and, in special circumstances, to dismantle, test to destruction or take possession of any article of equipment.

(5) Powers of inspectors to require, in connection with the survey or inspection of any equipment, the carrying out of procedures by such persons as may be specified in the regulations.

(6) Rights of inspectors to require, on payment of reasonable costs, conveyance to and from any ship used in connection with any licensed operations, together with any equipment required by an inspector for testing, or any equipment of which he has taken possession in special circumstances.

(7) Duties to provide inspectors with reasonable accommodation and means of subsistence while on any ship in exercise of their functions under this Act.

(8) Powers to be exercisable by inspectors in case of immediate or apprehended danger.

22. Disclosure of information

(1) A person shall not disclose any information which he has received in pursuance of this Act and which relates to any other person except

(a) with the written consent of that other person ; or

(b) to the Treasury, the MoES; or

(c) with a view to the institution of or otherwise for the purposes of any criminal proceedings under this Act or regulations made under this Act; or

(d) in accordance with regulations made under this Act ; or

(e) to the Authority.

(2) Any person who discloses any information in contravention of subsection (1) above shall be guilty of an offence under this Act and shall on conviction after trial on indictment by the High Court be punished by simple imprisonment not exceeding two years or a fine not exceeding one crore rupees or both.

PART V
OFFENCES

23. Provision relating to offences

(1) Any prescribed breach of regulations under this Act shall be an indictable offence or an offence triable either way and punishable by simple imprisonment not exceeding two years or a fine not exceeding one crore rupees or both.

(2) Regulations may afford such defence, if any, as may be prescribed in relation to any offence created by regulations made under this Act.

(3) Proceedings for an offence under this Act may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in India.

(4) A person may be guilty of an offence under regulations made under this Act whether or not he is a citizen of India or, in the case of a body corporate, it is incorporated under the law of any part of India.

(5) Where an offence has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

In this subsection " director ", in relation to a body corporate which-

(a) is established by or under any enactment for the purpose of carrying on under public ownership any industry or part of an industry or undertaking ; and

(b) is a body whose affairs are managed by its members, means a member of the body corporate.

24. Civil liability for breach of statutory duty

(1) Breach of a duty imposed on any person by a provision of regulations made in pursuance of section 20 above which state that this subsection applies to such a breach shall be actionable so far, and only so far, as the breach causes personal injury.

(2) Nothing in subsection (1) above shall prejudice any action which lies apart from the provisions of that subsection.

(3) In subsection (1) above, " personal injury " includes any disease, any impairment of a person's physical or mental condition and any fatal injury.

