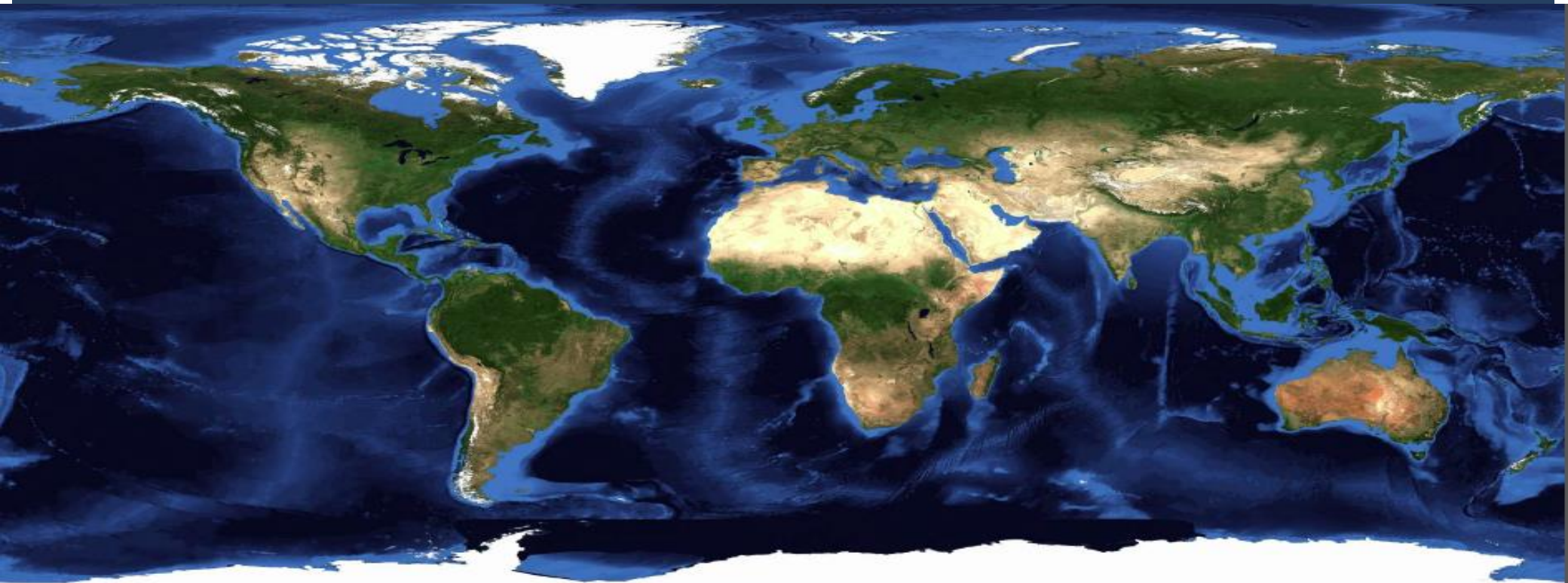


THE AREA & THE 1994 IMPLEMENTATION AGREEMENT



Law of the Sea Course
17 November 2017

Tara Davenport
Centre for International Law

CIL

CENTRE FOR INTERNATIONAL LAW
National University of Singapore

MARITIME ZONES UNDER UNCLOS

Areas under Sovereignty

- Internal waters
- Territorial Sea
- Archipelagic Waters

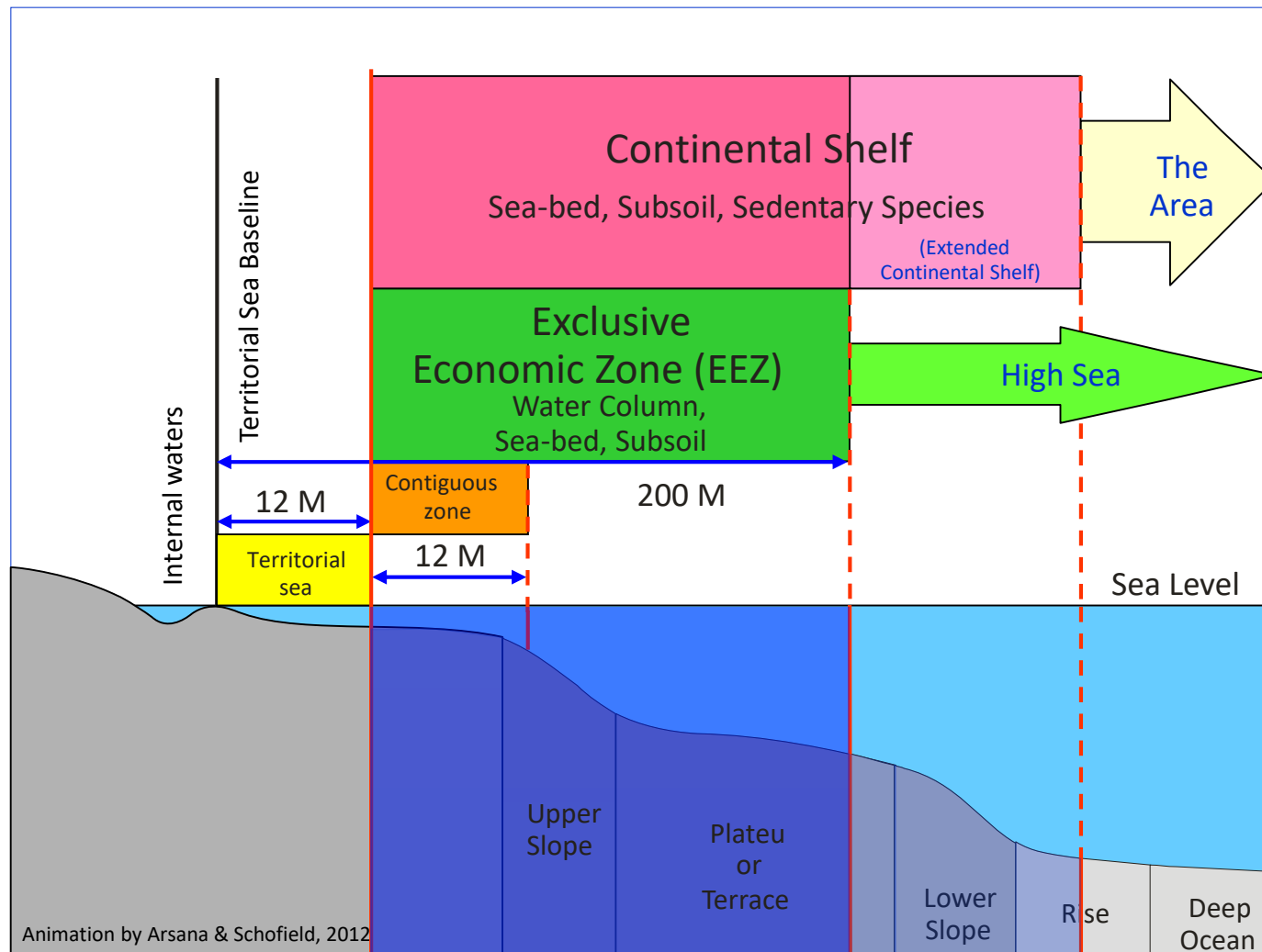
Areas outside of Sovereignty but within national jurisdiction

- Contiguous Zone
- Exclusive Economic Zone (EEZ)
- Continental Shelf

Areas Beyond National Jurisdiction

- High Seas
- The Deep Seabed

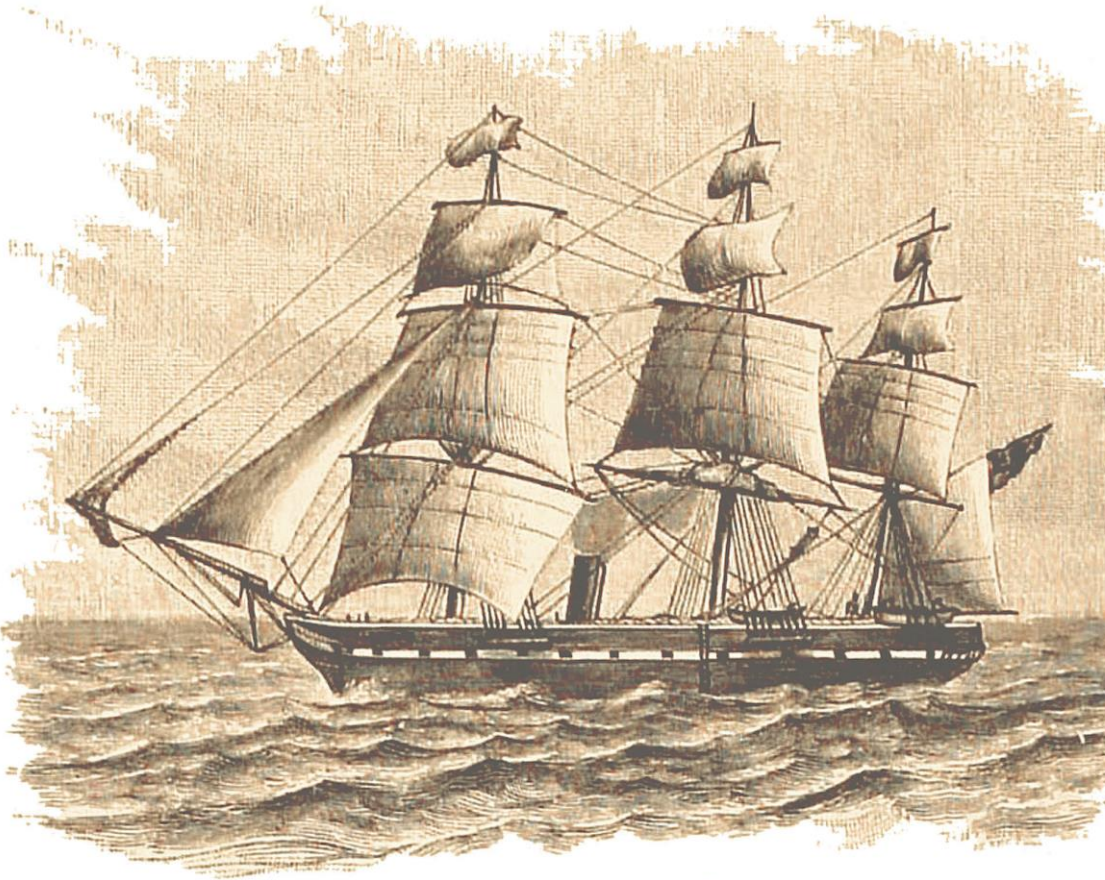
MARITIME ZONES UNDER UNCLOS



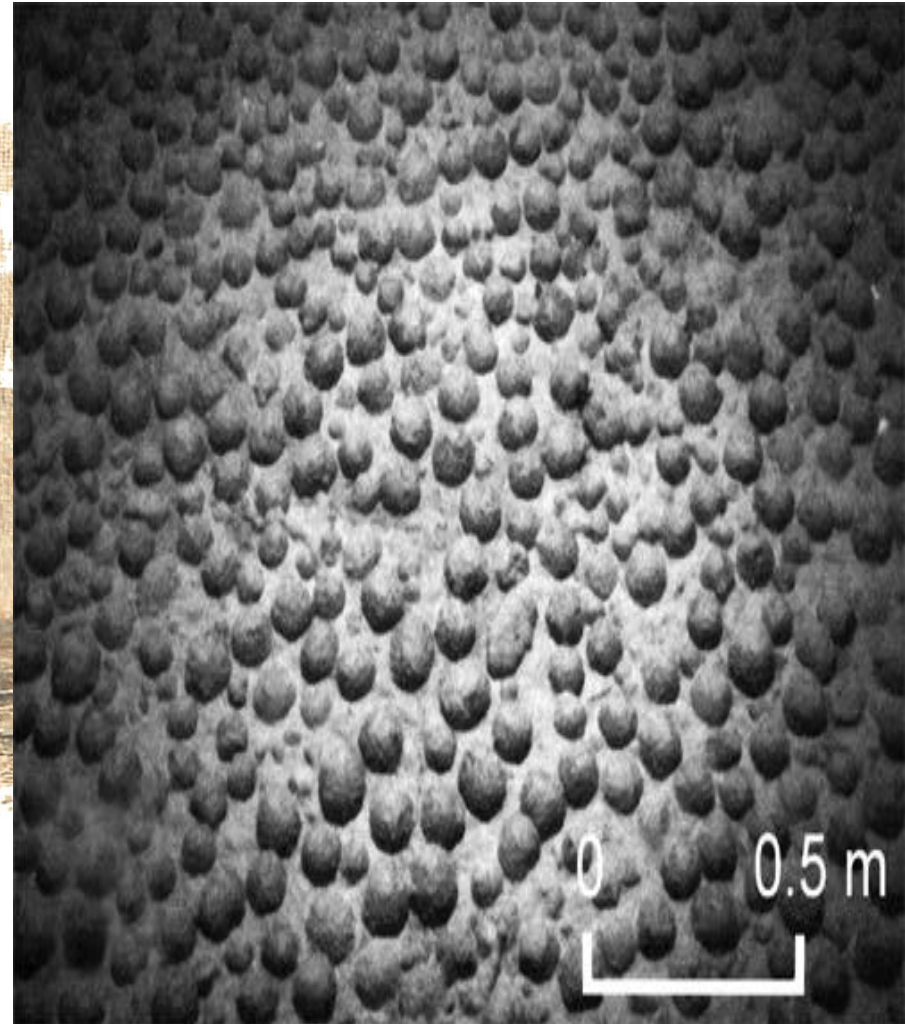
Outline

- 1. History of the Legal Regime Governing the Deep Seabed**
- 2. Drivers for Deep Seabed Mining**
- 3. Relationship between UNCLOS and the 1994 Implementation Agreement**
- 4. Geographical Limits of the Area**
- 5. Marine Mineral Resources of the Area**
- 6. Legal Status of the Area and its Resources**
- 7. The International Seabed Authority**
- 8. Regulation of Activities in the Area**
- 9. Exploration Contracts**
- 10. Participation of Developing States Through Reserved Areas**
- 11. Protection of the Marine Environment**
- 12. Dispute Settlement**
- 13. Obligations of Sponsoring States**

1. History of the Legal Regime Governing the Deep Seabed



H.M.S. "CHALLENGER"
Shortening sail to sound.



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1. History of the Legal Regime Governing the Deep Seabed

1945: Truman Declaration on the Continental Shelf



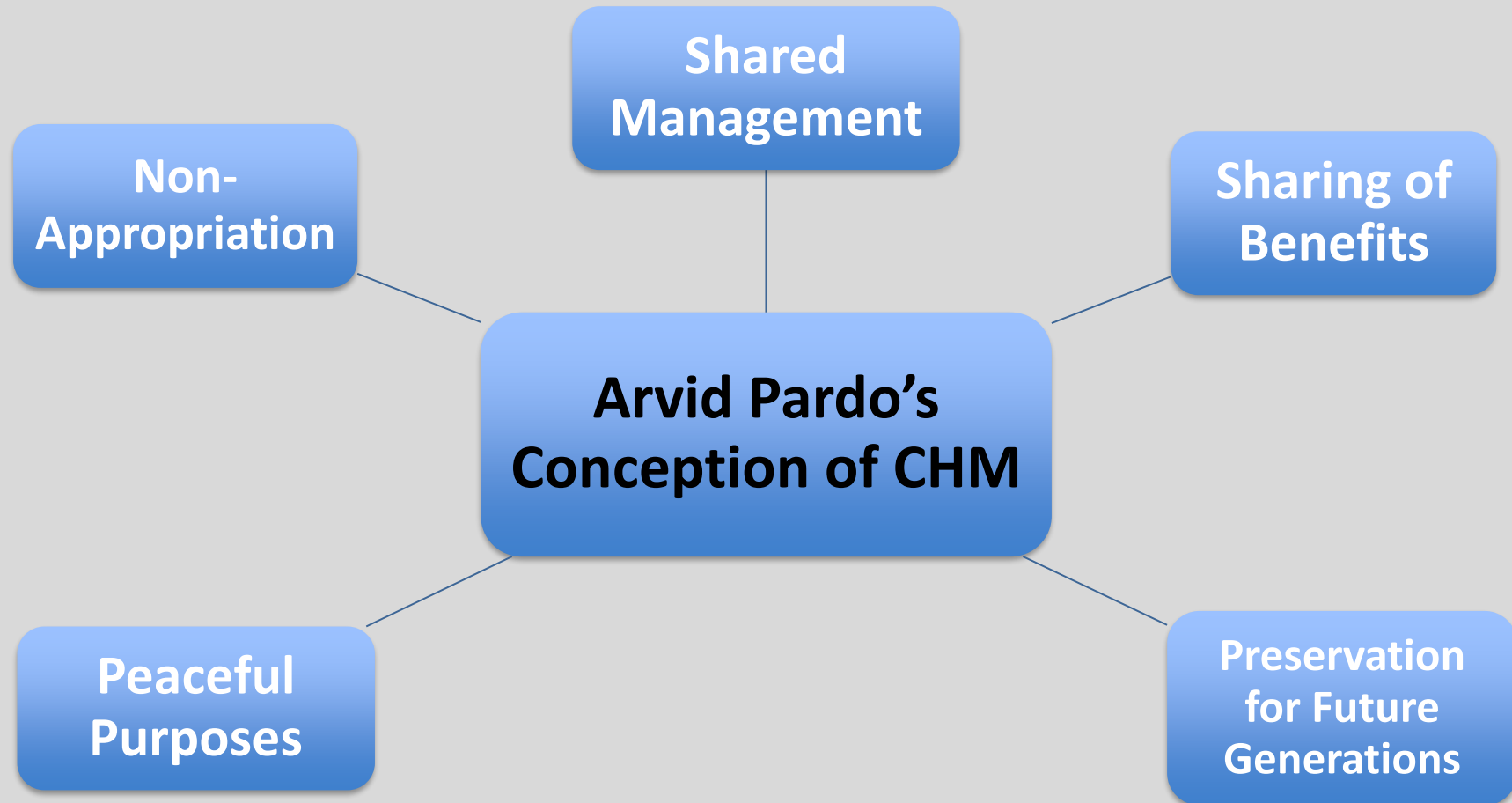
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graph TD; A[1945: Truman Declaration on the Continental Shelf] --> B[1958: Geneva Conventions]; B --> C[1965: J.L Mero published Mineral Resources of the Sea]; C --> D[1967: Statement of Maltese Ambassador Arvid Pardo that seabed and ocean floor are common heritage of mankind];
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1958: Geneva Conventions

1965: J.L Mero published *Mineral Resources of the Sea*

1967: Statement of Maltese Ambassador Arvid Pardo that seabed and ocean floor are common heritage of mankind

1. History of the Legal Regime Governing the Deep Seabed



1. History of the Legal Regime Governing the Deep Seabed

Developed Countries	Developing Countries
Non-Appropriation	Non-Appropriation
Freedom of the Seas (Open Access)	Common Property Owned by all Mankind
Shared Management through Licensing Authority	Shared Management through International Organization
Sharing of Financial Benefits with Preferential Treatment to Developing States	Equal Participation in Mining Regime through Mining Arm
No Transfer of Technology	Sharing of Financial Benefits
	Transfer of Technology

1. History of the Legal Regime Governing the Deep Seabed

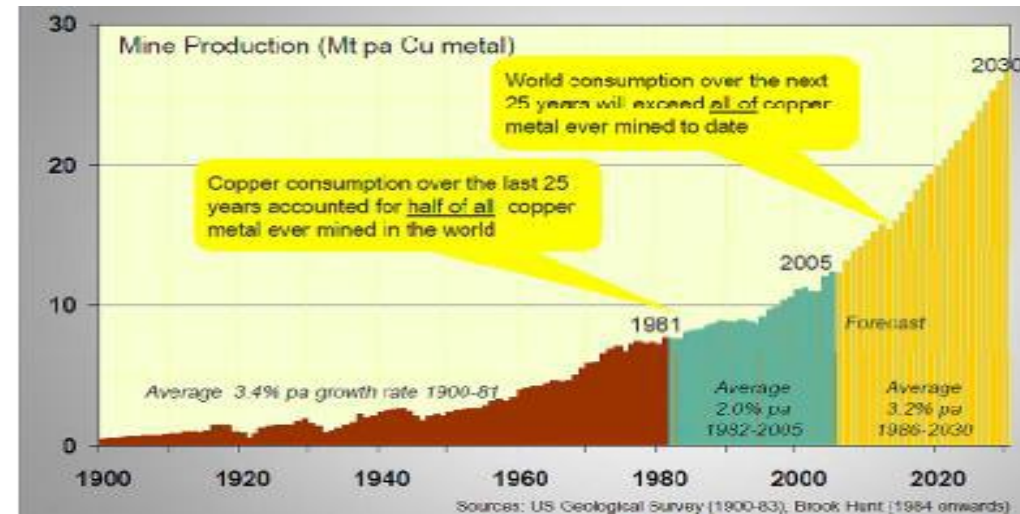
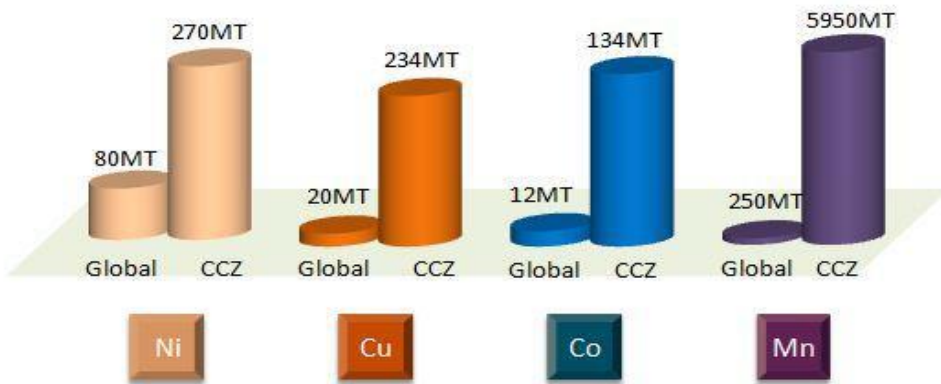
Key Milestones After Pardo's Declaration	
1967	Statement of Maltese Ambassador Pardo declaring the seabed and ocean floor as 'common heritage of mankind'
1967	GA Resolution 2340 (XXII) recognizing common heritage of mankind principle and establishing Seabed Committee
1969	Establishment of Seabed Committee
1973	Commencement of Third UN Conference on Law of the Sea
1980	US objects to Part XI on the Area
1982	Adoption of UNCLOS including Part XI on the Area
1980 – 85	Adoption of unilateral legislation by Industrialized States recognizing their claims to seabed mining sites (Reciprocating States Regime)
1983 - 94	Work of Preparatory Commission for the International Seabed Authority
1990 – 94	UN SG began informal consultations with Developing Nations on changing Part XI
1994	Adoption of the Implementation Agreement on Part XI
1996	International Seabed Authority Established

2. Drivers for Seabed Mining

Increased demand for minerals

Tightening of Land-Based Supplies

Advances in Mining Technology



Deep Seabed Mining an Increasingly Attractive Option for Investment but you need a **stable legal regime**

3. Relationship between UNCLOS & 1994 Implementation Agreement

Provisions of 1994 Agreement and Part XI of the Convention are to be interpreted and applied as a single instrument and in the event of an inconsistency, the 1994 Agreement will prevail (**Article 2, 1994 Agreement**)

After adoption of the 1994 Agreement, ratification or accession to UNCLOS also represents consent to be bound by the 1994 Agreement and that no State may establish its consent to be bound by the Agreement unless it has previously or at the same time become party to the Convention (**Article 4, 1994 Agreement**)

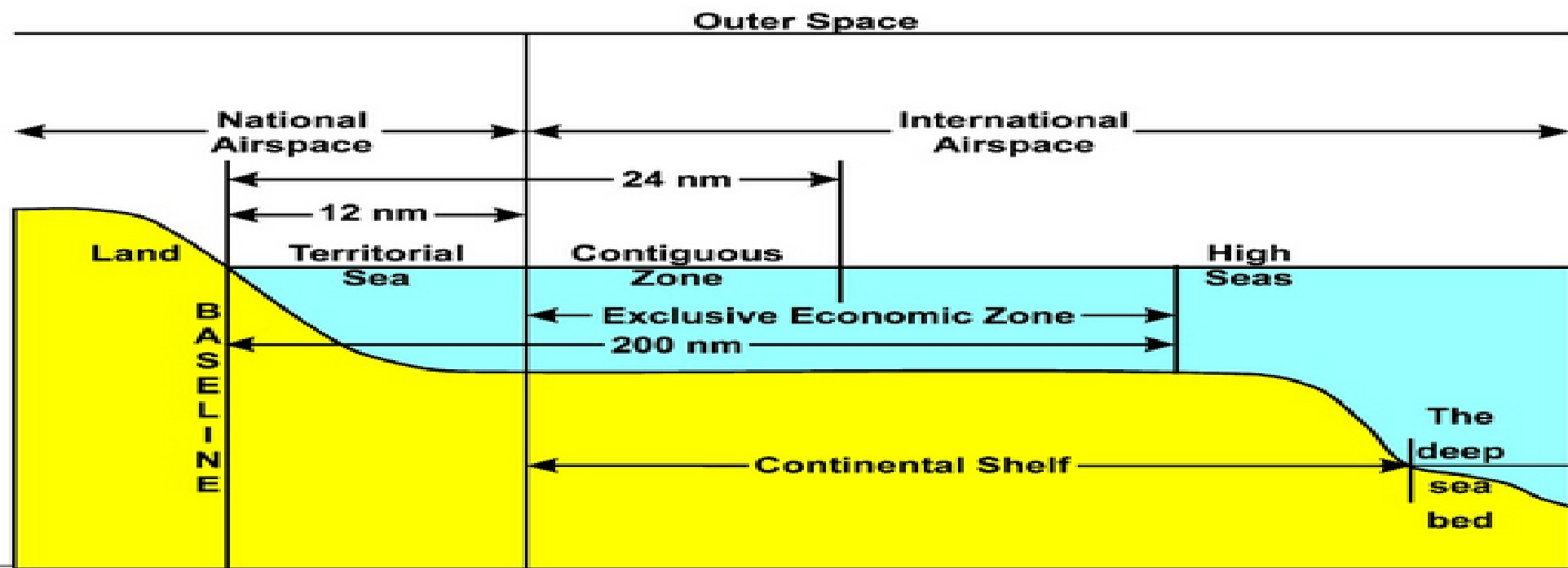
168 State Parties to
UNCLOS

150 State Parties to 1994
Implementation
Agreement

4. Geographical Limits of the Area

The Area means “the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction” [Article 1 (1)]

LEGAL REGIMES OF THE OCEANS AND AIRSPACE



4. Geographical Limits of the Area

The Area means “the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction” [Article 1 (1)]

Outer Continental Shelf Claims



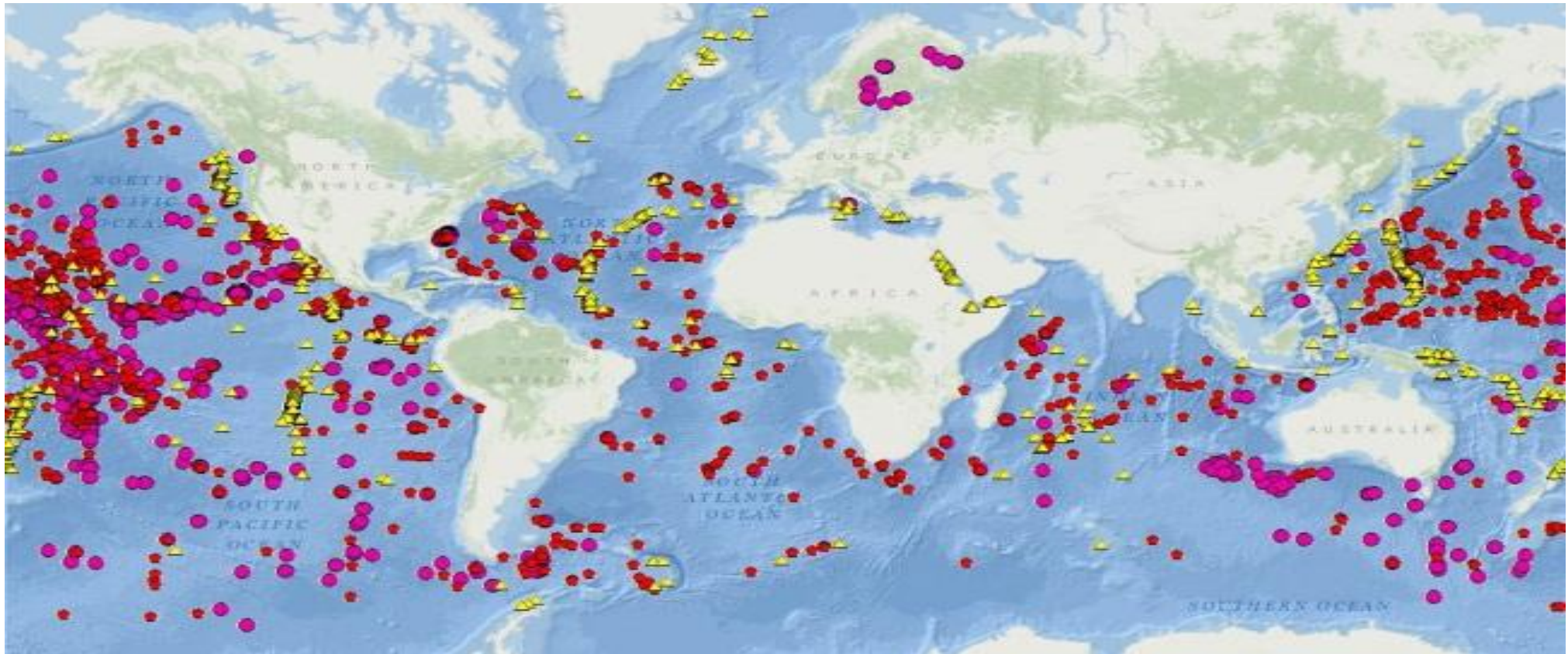
5. Marine Mineral Resources in the Area

Polymetallic Nodules	Polymetallic Sulphides	Cobalt-Rich Crusts
Lay on the Seabed	Hydrothermal vents	Seamounts & Submerged Volcanic Mountain Ranges
4000 – 6000 m	1000 – 4000 m	400 to 3000 m
Manganese Copper Nickel Cobalt Iron Rare Earth Materials	Copper Zinc Silver Gold	Cobalt Rare Earth Materials



5. Marine Mineral Resources

Global Distribution of Marine Mineral Deposits (Source: ISA)



6. Legal Status of the Area and its Resources

The **Area** and its **Resources** are the
Common Heritage of Mankind

[Art. 136]

The Area:

The seabed and ocean floor and
subsoil thereof, beyond the limits
of national jurisdiction

[Art. 1 (1)]

The Resources:

All solids, liquid or gaseous mineral
resources in situ in the Area at or beneath
the surface, including polymetallic nodules

[Art. 133 (a)]

6. Legal Status of the Area and its Resources

The Area and its Resources are the
Common Heritage of Mankind

[Art. 136]

No State may claim or exercise sovereignty or sovereign rights over any part of the Area or its Resources

[Art. 137 (1)]

All rights in the resources of the Area are vested in mankind as a whole and are to be exercised by the International Seabed Authority

[Art. 137 (2)]

Deep Seabed Mining shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, and taking account of developing States

[Art. 140]

The Area shall be open to use exclusively for the peaceful purposes by all States

[Art. 141]

7. The International Seabed Authority

Functions

Regulate Deep Seabed Mining in the Area

Equitable Sharing of Benefits from Deep Seabed Mining

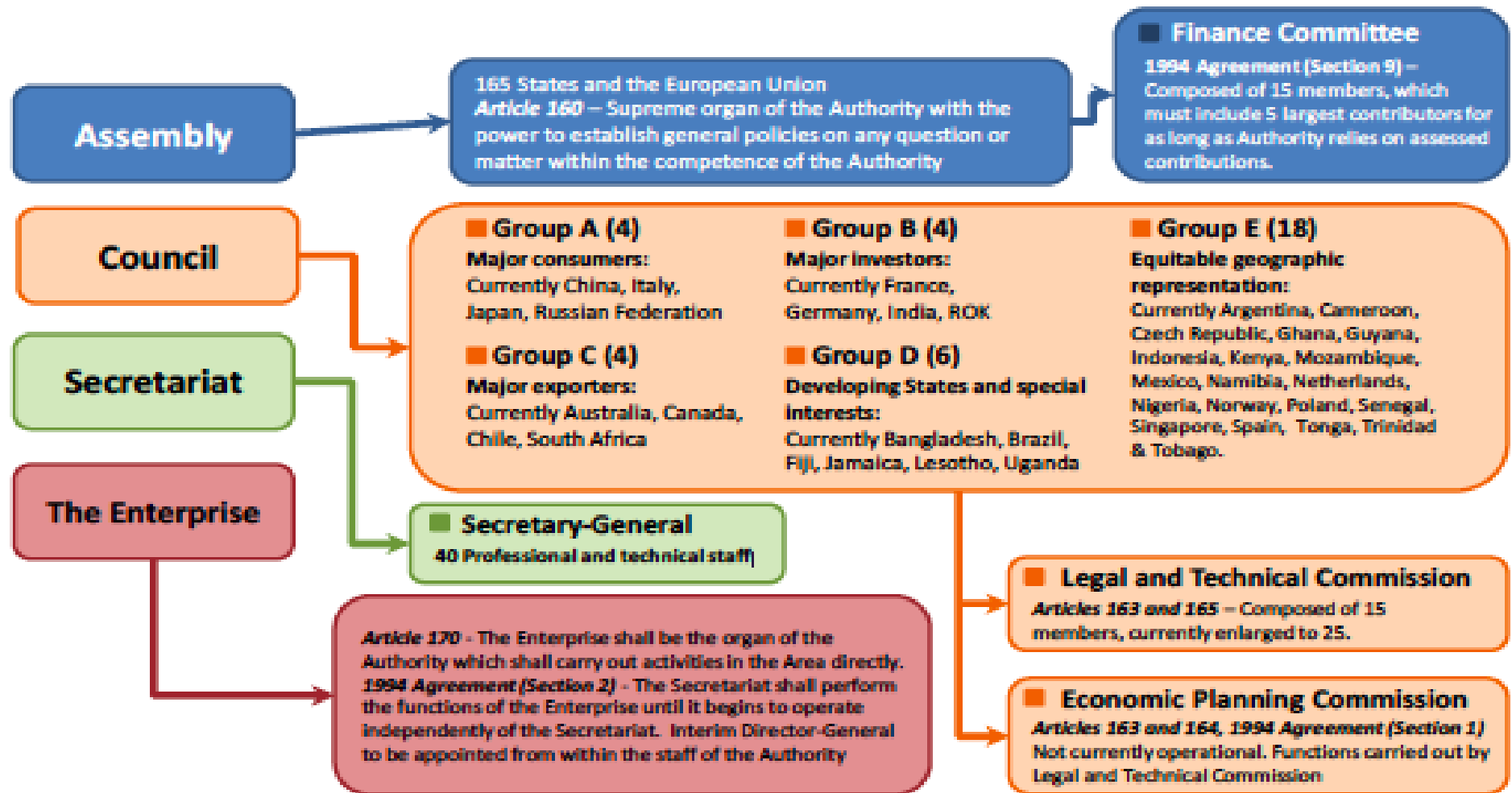
Distribute Revenues from the exploitation of outer continental shelf

Promote Marine Scientific Research

Promote Transfer of Technology to Developing Countries

Protection of the Marine Environment

7. The International Seabed Authority: Organs



8. Regulation of Activities in the Area

Activities in the Area: Exploration & Exploitation of Resources of the Area [Art. 1 (3)] but also includes prospecting (See Advisory Opinion and ISA Regulations)

Prospecting:

Search for deposits of minerals including estimation of the sizes and distributions of deposits and their economic values without any exclusive rights

Exploration

Searching for Deposits in the Area with exclusive rights, the analysis of such deposits, the use and testing of recovery systems and carrying out of other relevant studies

Exploitation

Recovery for commercial purposes of minerals in the Area and the extraction of minerals therefrom, including the construction & operation of mining, processing and transportation systems for the production and marketing of metals

Exploration and Exploitation can only be carried out on the basis of a contract with the ISA, acting on behalf of mankind as a whole

The Enterprise

State Parties

State Enterprises

Private Sector

**Must be sponsored by a State Party
(Sponsoring States)**

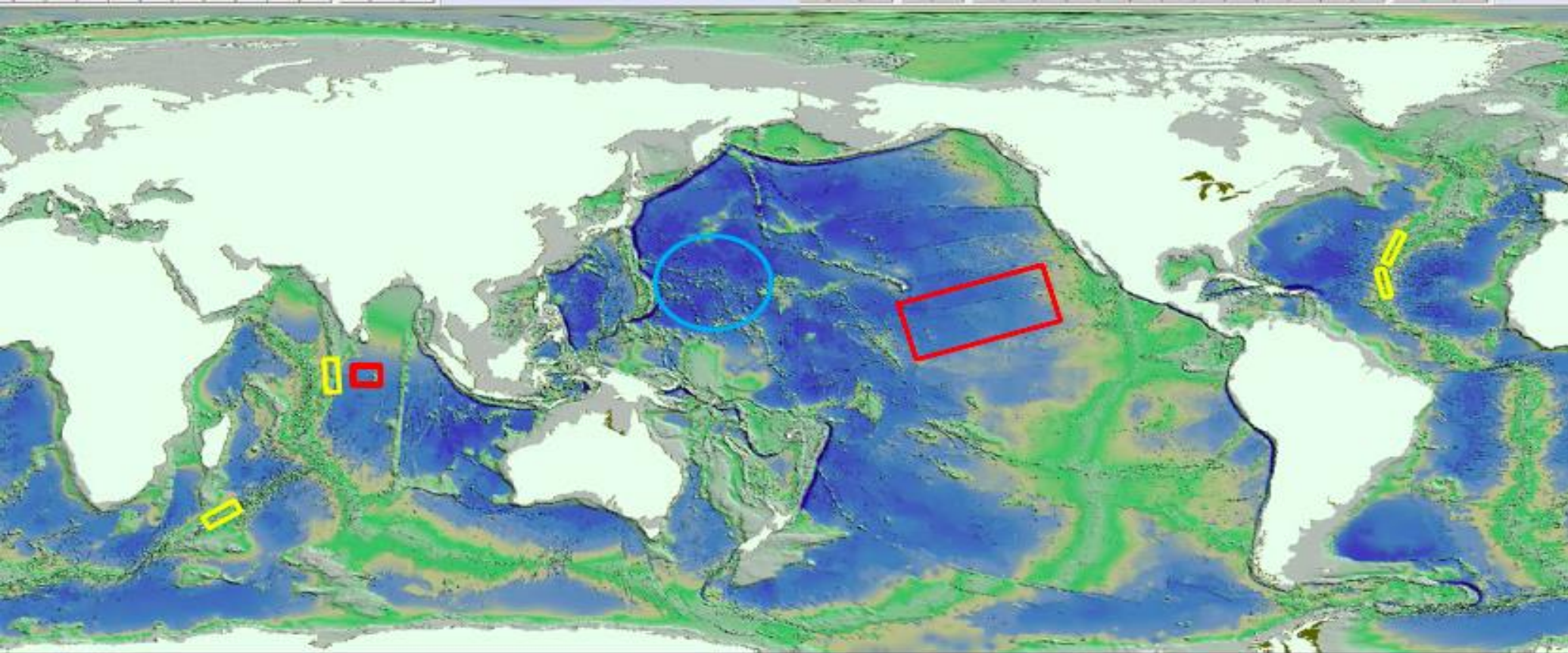
8. Regulation of Activities in the Area




The Authority is responsible for issuing comprehensive rules, regulations and procedures to regulate prospecting, exploration and exploitation of marine minerals in the Area

The ISA Mining Code	
Regulations on prospecting and exploration for polymetallic nodules (2000)	Recommendations for guidance of contractors on the assessment of environmental impacts (issued 2001, revised 2010 and 2013)
Regulations on prospecting and exploration for polymetallic sulphides (2010)	
Regulations on prospecting and exploration for cobalt-rich ferromanganese crusts(2012)	

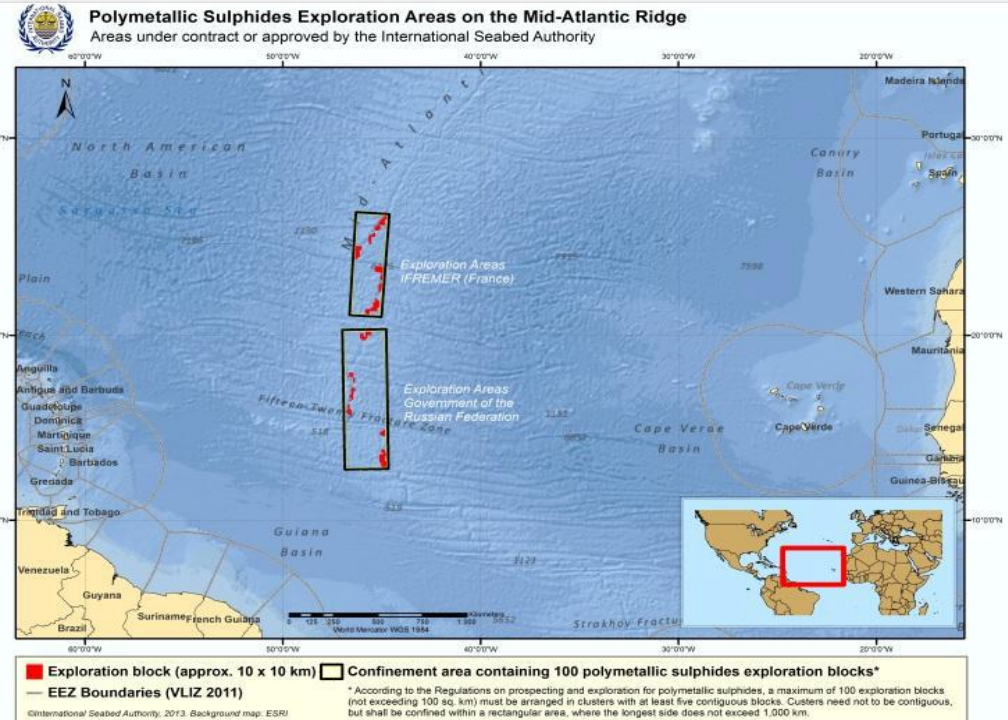
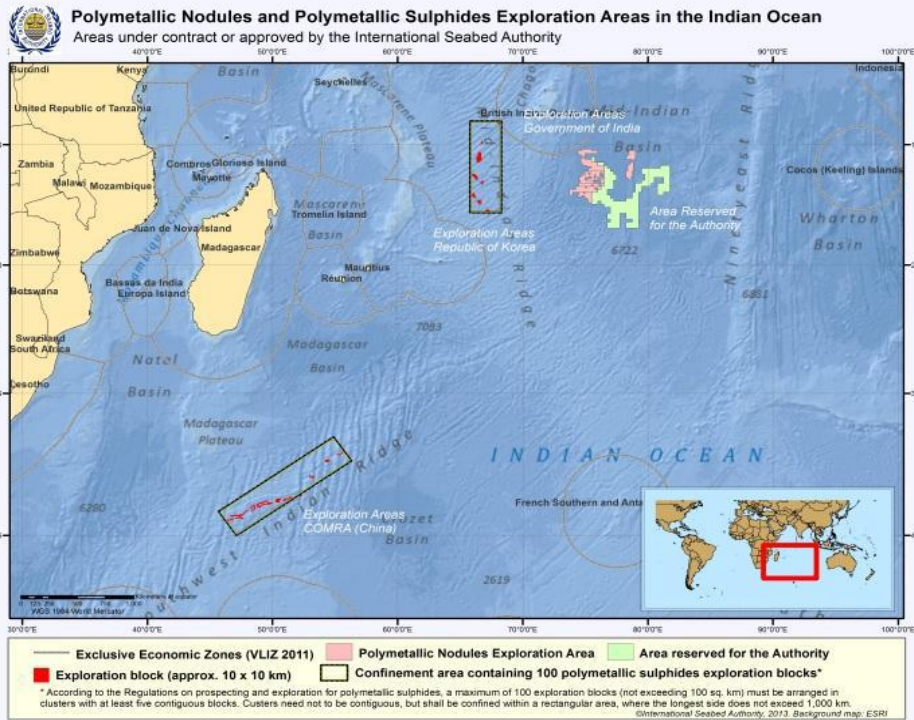
- **No regulatory regime exists as yet for exploitation (currently under discussion)**
- **Part XI contained a detailed regime covering the financial terms for exploitation but these were eliminated in the 1994 Implementation Agreement**
- **1994 Agreement contains a set of general principles to guide the future financial terms of seabed mining**

8. Regulation of Activities in the Area



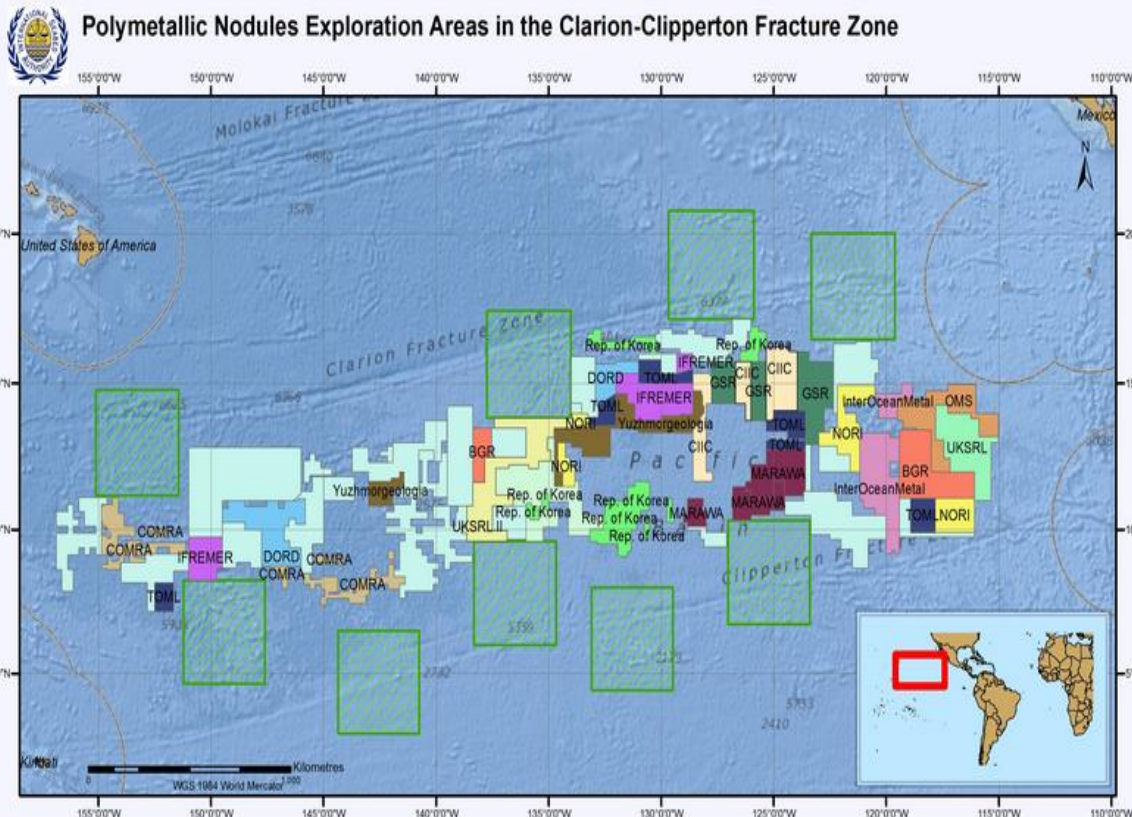
-  Polymetallic nodules
-  Polymetallic sulphides
-  Cobalt-rich crusts

9. Exploration Contracts for Polymetallic Sulphides



Contractor	Sponsoring State(s)	Date of contract	Date of expiry
Ministry of Natural Resources and Environment	Russia	29 October 2012	2027
China Ocean Minerals Research & Development Association (COMRA)	China	18 November 2011	2026
Government of Korea	Korea	24 June 2014	2029
Ifremer	France	18 November 2014	2029
Government of India	India	To be signed	
BGR	Germany	To be signed	

9. Exploration Contracts for Polymetallic Nodules



- | | |
|--|---|
| Ocean Mineral Singapore Pte Ltd. (OMS) | Government of the Republic of Korea |
| Cook Islands Investment Corporation (CIIC) | Institut français de recherche pour l'exploitation de la mer (IFREMER; France) |
| Marawa Research and Exploration Ltd (Kiribati) | InterOceanmetal (IOM; Bulgaria, Cuba, Czech Republic, Poland, Russian Fed., Slovakia) |
| Bundesanstalt für Geowissenschaften und Rohstoffe (BGR; Germany) | Nauru Ocean Resources Inc. (NORI; Nauru) |
| China Ocean Mineral Resources Research and Development Association (COMRA; China) | Tonga Offshore Mining Ltd (TOML; Tonga) |
| Deep Ocean Resources Development Company (DORD; Japan) | UK Seabed Resources Ltd (UKSRL I; UK) |
| G-TEC Minerals Resources NV (GSR; Belgium) | Yuzhmorgeologiya (Russian Federation) |
| | UK Seabed Resources Ltd. (UKSRL II; UK) |

Reserved area* Area of particular environmental interest (APEI)** Exclusive Economic Zones

* In the case of polymetallic nodules, the so-called parallel system provides that each application for exploration by a developed State must cover two parts of "equal estimated commercial value". One part is allocated to the applicant and the other is to become the reserved area, which is set aside for the conduct of activities by the Authority or developing States.

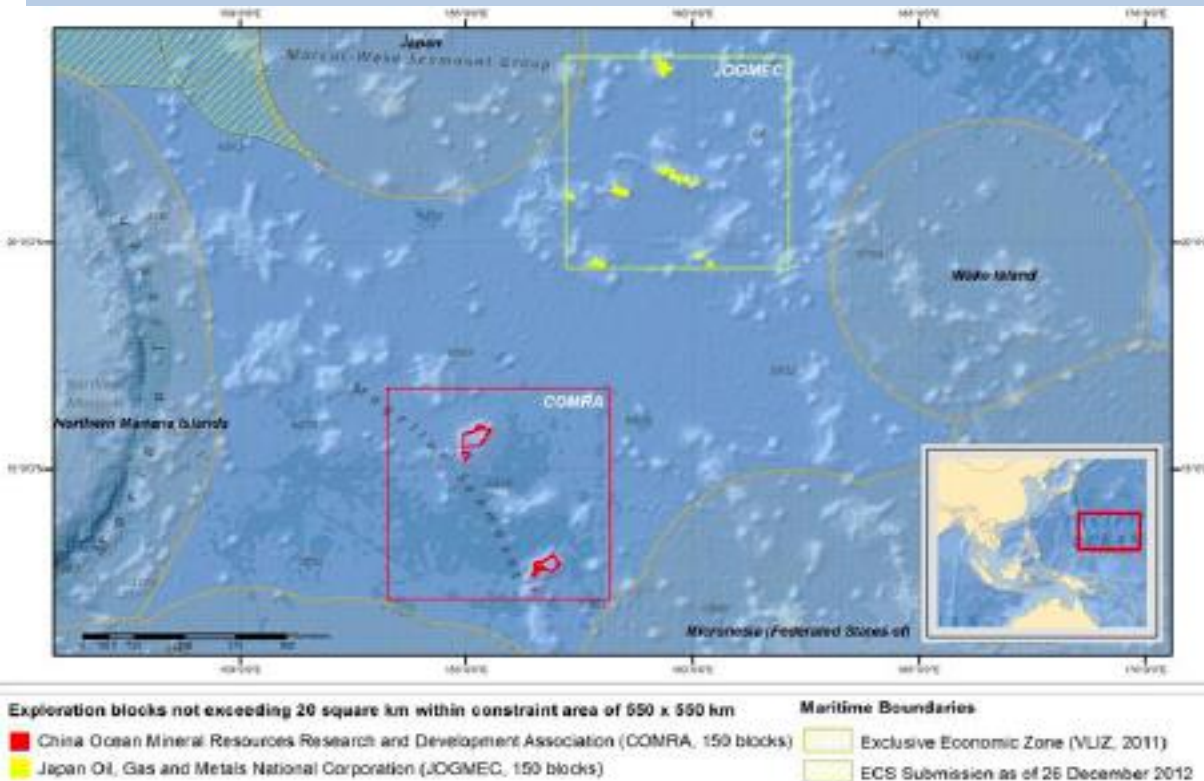
** In July 2012, the Authority adopted an environmental management plan for the Clarion-Clipperton Zone to be implemented on a provisional basis over an initial three-year period.

The plan includes the designation of a network of areas of particular environmental interest (ISBA/18/C/22).

©International Seabed Authority, 24 July 2014. Background map: ESRI

Contractor	Sponsoring State(s)	Size of area (Km ²)	Date of contract	Date of expiry
Government of India	India	75,000	2002	2017
Ifremer	France	75000	2001	2016
Deep Ocean Resources Development Co. Ltd.	Japan	75,000	2001	2016
Yuzhmorgeologiya	Russia	75.000	2001	2016
China Ocean Minerals Research & Development Association (COMRA)	China	75.000	2001	2016
InterOceanmetal Joint Organization	Bulgaria, Cuba, Czech Republic, Poland, Russia, Slovakia	75,000	2001	2016
Government of Korea	Korea	75,000	2001	2016
Federal Institute of Geosciences (BGR)	Germany	75,000	2006	2021
Nauru Ocean Resources	Nauru	75,000	2012	2027
Tonga Ocean Minerals Ltd.	Tonga	75,000	2012	2027
GSR NV	Belgium	75,000	2013	2028
UK Seabed Resources Ltd.	UK	58,600	2013	2028
Marawa Research & Exploration Ltd.	Kiribati	75,000	2015	2030
UK Seabed Resources Ltd.	UK	148,000	TBS	
Ocean Minerals Singapore Pty.	Singapore	75,000	TBS	
Cook Islands Investment Corporation	Cook Islands	75,000	TBS	

9. Exploration Contracts for Cobalt Crusts

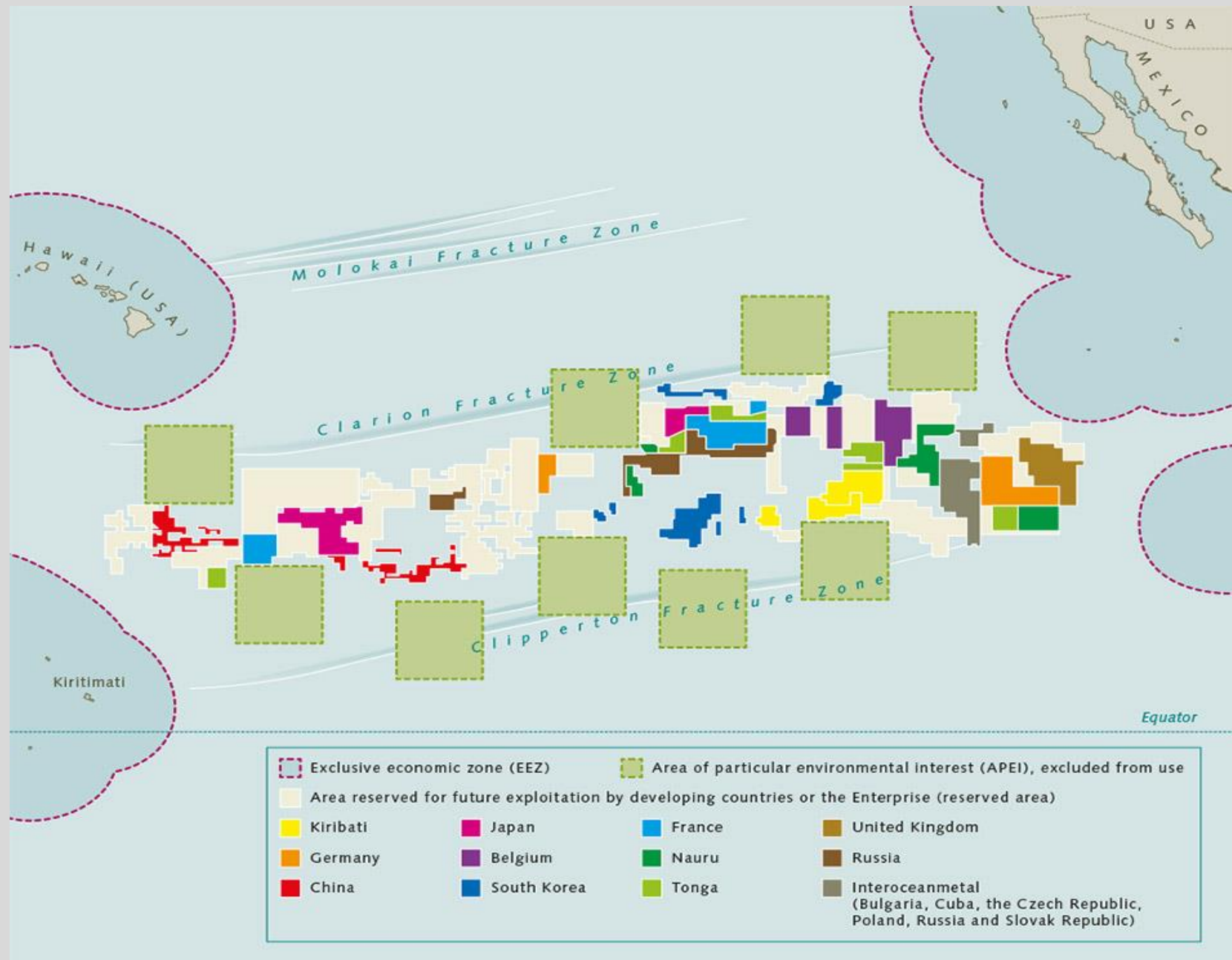


Contractor	Sponsoring State(s)	Date of approval
China Ocean Minerals Research & Development Association (COMRA)	China	2013
Japan Oil, Gas and Metals National Corporation (JOGMEC)	Japan	2013
Ministry of Natural Resources and Environment	Russia	To be signed
Companhia de Pesquisa de Recursos Minerais (CPRM)	Brazil	To be signed

10. Participation of Developing Countries Through Reserved Areas

- To ensure the availability of potential mine sites for the Enterprise or for developing countries, each entity applying for an exploration contract sponsored by a developed country is required to propose two sites of equal estimated commercial value
- One site is allocated to the applicant and the other is retained by the ISA as a Reserved Area (site banking)
- The Reserved Areas are available for use by the Enterprise or, if the Enterprise is not in a position to use it, the area is available to any developing country or to any entity sponsored by a developing country
 - ⇒ Enabled entities sponsored by Singapore, Nauru, Tonga and Kiribati to enter into contracts for the Exploration of Reserved Areas usually through joint ventures with corporations
 - ⇒ If the Reserved Area is not used within 15 years, the entity that originally contributed the area is entitled to utilize it
 - ⇒ Newer regulations for Sulphides and Cobalt crusts give applicants choice of offering a Reserved Area or to offer the Enterprise a future equity interest at exploitation
- Note that the Enterprise will not come into operation until the Council issues a Directive for that purpose and that the obligations on States Parties to fund the Enterprise have been removed and Enterprise must conduct its initial operations through joint ventures

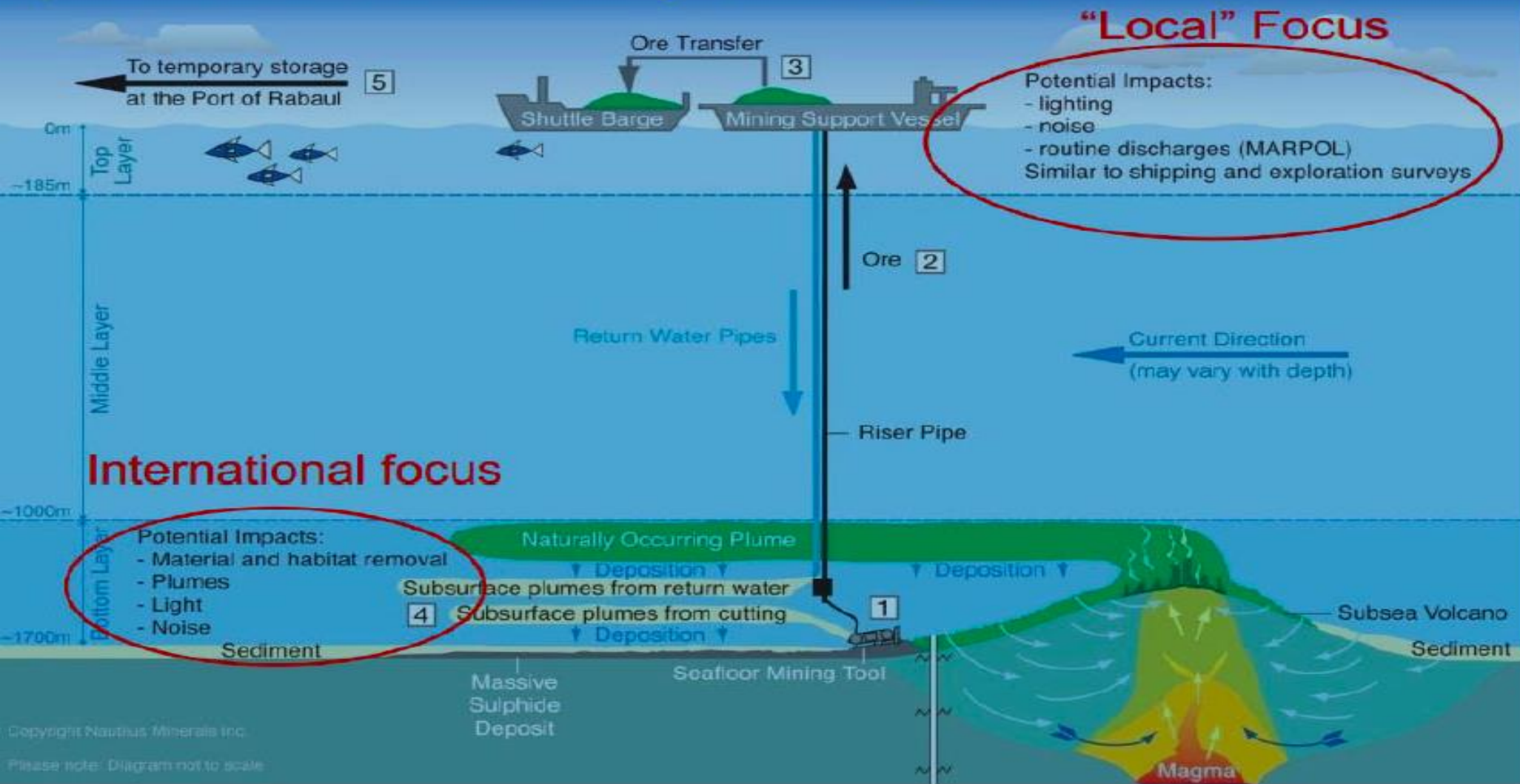
10. Participation of Developing Countries Through Reserved Areas



Exploration Contracts Covering Reserved Areas			
<u>Sponsoring State</u>	<u>Contractor</u>	<u>Effective Control?</u>	<u>Contributing Entity</u>
Nauru	Nauru Ocean Resources Inc.	Deep Green Resources Inc. (Canada)	<ul style="list-style-type: none"> Federal Institute for Geosciences and Natural Resources of Germany Yuzhmorgeologyia Interoceanmetal Joint Organization
Tonga	Tonga Offshore Mining Ltd	Nautilus Minerals (Canada)	<ul style="list-style-type: none"> Federal Institute for Geosciences and Natural Resources of Germany Deep Ocean Resources Korea
Kiribati	Marawa Research & Exploration Ltd	State Enterprise	Korea
Singapore	Ocean Minerals Singapore	Keppel Corporation (Singapore) UK Seabed Resources (minority)	UK Seabed Resources Ltd
Cook Islands	Cook Islands Investment Corporation	State Enterprise G-TEC Sea Mineral Resources (Belgium)	G-Tec Sea Mineral Resources (Belgium)
China	China Minmetals Corporation	State Enterprise	<ul style="list-style-type: none"> COMRA Yuzhmorgeologyia Interoceanmetal Joint

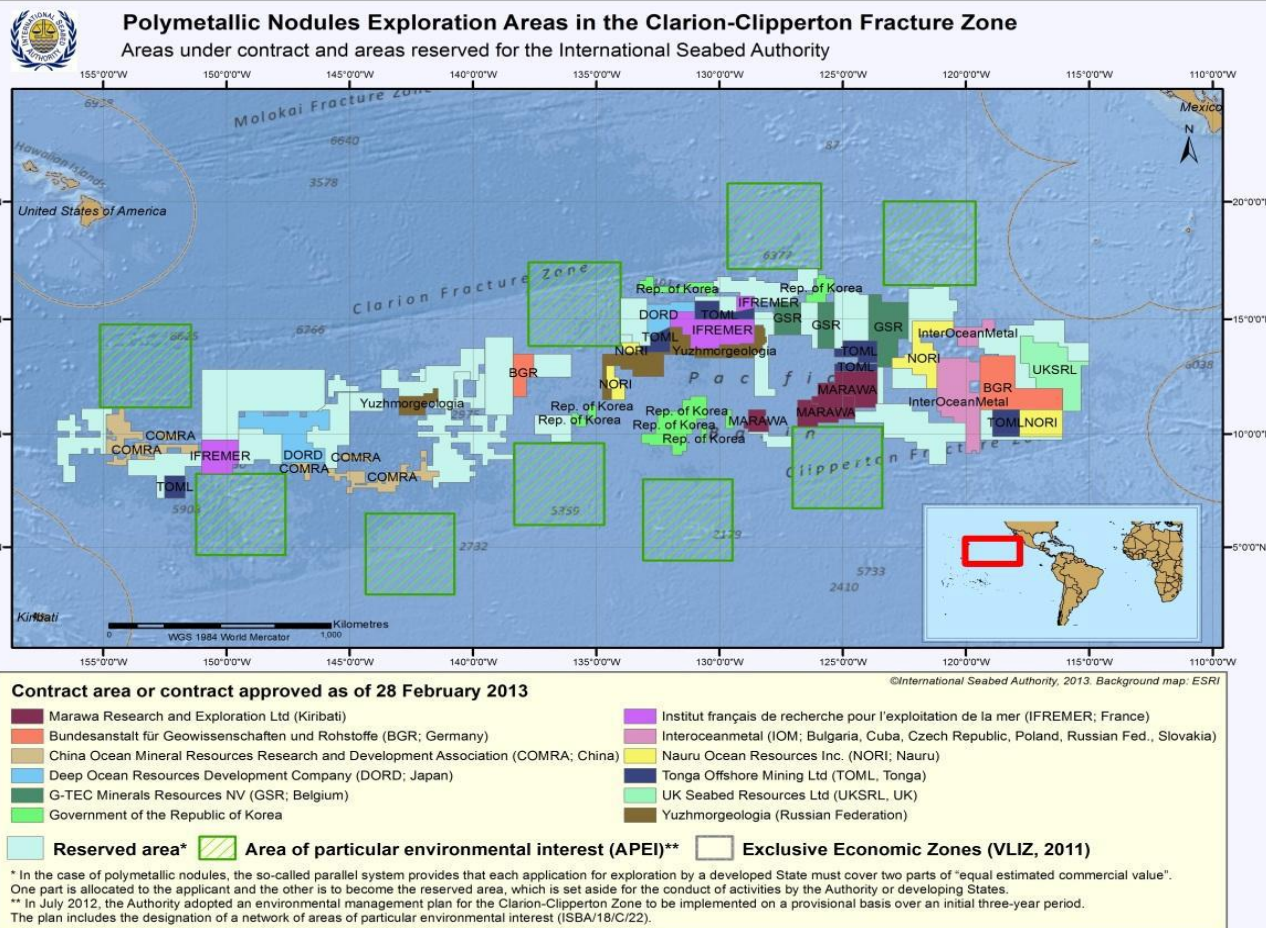
11. Protection of the Marine Environment

Potential Impacts (note: cartoon only)



11. Protection of the Marine Environment

ISA has the responsibility to establish international rules, regulations and procedures to prevent, reduce and control pollution of the marine environment from activities in the Area, and to protect and conserve the natural resources of the Area (Art 145)



ISA Regulations

Contains environmental obligations on contractors such as collection of baseline data and Environmental Impact Assessment

Areas of Particular Environmental Interest

In 2012, the Council approved an environmental management plan for the Clarion Clipperton Zone including a network of nine areas of particular environmental interest, each 400 km² in size

12. Dispute Settlement (Section 5, Part XI)

Establishment of the Seabed Disputes Chamber as a special chamber of ITLOS (Art 186)

Contentious Jurisdiction (Art. 187)

- Disputes between State Parties on interpretation/application of Part XI
- Disputes between a State Party and the ISA
 - Violations of UNCLOS, Annexes, rules, regulations and procedures of ISA
 - ISA acts in excess of jurisdiction or a misuse of power
- Disputes between Parties to a contract, being State Parties, the ISA or the Enterprise, State enterprises or private entities
 - Interpretation or application of contract
 - Acts of Party in relation to the Contract
- Disputes between the ISA and Contractor on refusal of contract or a legal issue arising in the negotiation of the Contract
- Disputes between the ISA and a State Party, State enterprises or private entities on responsibility and liability for damage to the environment

Advisory Jurisdiction (Art 191)

The Seabed Disputes Chamber shall give advisory opinions at the request of the Assembly or the Council on legal questions arising within the scope of their activities.

No jurisdiction on certain decisions of the ISA

- SDC shall have no jurisdiction with regard to the exercise by the ISA of its discretionary powers, in particular, whether any rules, regulations or procedures conform to UNCLOS
- Can only exercise jurisdiction:
 - Whether application of any rules, regulations or procedures in individual cases would conflict with contractual obligations of parties to the dispute or UNCLOS obligations
 - Claims concerning excess of jurisdiction/misuse of power
 - Claims for damages

12. Dispute Settlement (Section 5, Part XI)

Other Dispute Settlement Options (Art. 188)

Disputes between States Parties on the interpretation/application of Part XI/Annexes may be submitted to:

Special Chamber of ITLOS
(Annex VII, Art. 15 and 17)

Ad Hoc Chamber of Seabed Disputes Chamber
(Annex VI, Art. 36)

Disputes between Parties to a contract, being State Parties, the ISA or the Enterprise, State enterprises or private entities on the Interpretation or application of contract

Binding Commercial Arbitration
Shall be submitted at the request of any party to the dispute to Binding Commercial Arbitration unless parties otherwise agree

Arbitral Tribunal cannot decide any disputes on interpretation of UNCLOS and shall refer to the SDC for a ruling on such a issue

13. Obligations of Sponsoring States

The Advisory Opinion was submitted to the Seabed Disputes Chamber by the Council of the International Seabed Authority. The Council requested the Chamber 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?

13. Obligations of Sponsoring States

Question 1 on Legal Responsibilities and Obligations with respect to the sponsorship of activities in the Area?

- Sponsoring States have 2 kinds of obligations under UNCLOS and related instruments:
 - 1) The obligation to exercise *due diligence* to ensure compliance by sponsored contractors with the terms of the contract and obligations set out in UNCLOS and related instruments. Due diligence means that the Sponsoring State is bound to make best possible efforts to secure compliance by sponsored contractors.
 - 2) Direct obligations with which Sponsoring States must comply independently of their obligation to ensure a certain conduct on the part of sponsored contractors.
 - The obligation to assist the ISA as set out in Article 153 (4) of UNCLOS
 - The obligation to apply the precautionary approach as reflected in Principle 15 of the Rio Declaration
 - The obligation to apply best environmental practices as set out in the ISA Regulations
 - The obligation to adopt measures to ensure the provision of guarantees in the event of an emergency order by the ISA for protection of the marine environment
 - 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 carry out an Environmental Impact Assessment under the Annex to the 1994 Agreement

13. Obligations of Sponsoring States

Question 2 on Extent of Liability of a State Party for any failure to comply with UNCLOS by an entity whom it has sponsored under Article 153 (2) (b) of UNCLOS

- 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
- Liability of sponsoring state only arises:
 - When the sponsoring state has failed to carry out its responsibilities under the Convention;
 - When damage occurs as a result;
 - When it can be established that the sponsoring State's failure to comply with its due diligence obligations was the cause of the damage
- The sponsoring state is absolved from liability if it has taken **all necessary and appropriate measures** to secure effective compliance by the sponsored contractors

13. Obligations of Sponsoring States

Question 3 on the necessary and appropriate measures that a sponsoring State must take in order to fulfill its responsibility 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
- In light of the requirement that measures by the sponsoring State 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

13. Obligations of Sponsoring States

- 27 ISA Contracts (plus 2 Approved Plans of Work awaiting Contract Signing)
- 20 Contractors
- 20 Sponsoring States
 - Includes a 6 State Consortium Contract
 - 9 Sponsoring States with more than 1 Contract
- 10 Sponsoring States with Relevant Laws in Force
 - 3 more under development: France, Brazil and Cook Islands

13. Obligations of Sponsoring States

Sponsoring State Legislation (Source: Commonwealth Secretariat)

Country	Title	Date	Liability?
UK	Deep Sea Mining (Temporary Provisions) Act, amended by Deep Sea Mining Act	1981 (amended 2014)	No
Japan	Act on Interim Measures for Deep Seabed Mining	1982	Yes
Germany	Act Regulating Seabed Mining	1995 (amended 2010)	No
Czech Republic	Prospecting, Exploration for and Exploitation of Mineral Resources from the Seabed beyond Limits of National Jurisdiction	2000	?
Belgium	Law on Prospecting, Exploration and Exploitation of Seabed Mineral Resources Beyond National Jurisdiction	2013	Yes
Tonga	Seabed Minerals Act	2014	Yes
Nauru	International Seabed Minerals Act	2015	Yes
Singapore	Deep Seabed Mining Act	2015	Yes
China	Law on Exploration and Exploitation of Resources in the Area	2016	?
Kiribati	Seabed Minerals Act	2017	Yes

A map of Southeast Asia, including the Malay Peninsula and the Indonesian archipelago, is shown in a light blue and green color scheme. Numerous small blue circles are scattered across the map, representing data points from a marine life census. The text "Thank you!" is centered over the map.

Thank you!

Questions?

lawtmd@nus.edu.sg

Source: Census of Marine Life:

http://www.comlmaps.org/extra/ngs/Ocean_Life_Diversity_Distribution-300dpi.pdf

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