Chapter 1

Introduction

1.1 Background

Since the Second World War, major changes have occurred in the image of the contemporary world. Technological progress has been made in all spheres of economic activities, thus providing a solid potential for improving the well being of all people. The struggle for the establishment of New International Economic Order (NIEO) \(^1\) represents a continuation of the process of de-colonization in the economic sphere, the negation of domination and neo colonialism in international economic relations. The growing perception of the special needs of developing countries has lead to some evolutions in the international legal system. The crisis of international economic relations and widening gap between developed and developing countries\(^2\) have emerged\(^3\) as the most serious problems and a source of instability threatening world peace and security. Various types of insecurity, instability, and imbalances characterize the present system of international law of the sea.\(^4\) So as to preclude such an unacceptable result, the recognized harm creating process ought to be carefully prevented and meticulously managed.\(^5\)

The scientific and technological advances in the 1950’s and 1960’s\(^6\) quietly generated a new economic interest in ocean resource potential. These developments, together with related concern regarding foreign appropriation of resources,\(^7\) contributed significantly to the emergence of the concept of permanent sovereignty over natural resources,\(^8\) although many of these issues go beyond the realm of the classical law of the sea, they are becoming more and more important.\(^10\) There is little
doubt that the debate about high seas being *res communes* or *res nullius* is fruitless and can serve no purpose. The old law was developed or was left undeveloped under very different circumstances. There was on going process in the arena of international law, whether open sea was considered as open to all or not? Before the coming into force of legal reforms of seabed, there was injustice in the matter of exploring and exploiting the resource of the sea. Many developed countries like USA, UK and Germany have over exploited the natural resources of the seabed, sub soil and ocean floor.

The unilateral claims were established to exploit the resources. In order to overcome some specific gigantic and complicated issues the legal regime has focused a lot to create harmonious construction and reciprocity for the purpose of strengthening the sovereign equality, this vision existed from the very beginning. About midway through the process, there would be a sharing mechanism. It wouldn't be the individual intention of any single developing country, but something that was developed entirely by an international organ. The compromise between developed and developing nations was that there would be a shared responsibility, a dual system, and individual countries that wanted to exploit deep sea minerals would do so on a parallel basis, sharing the revenues of any mining operation with the international community.

The uses of the sea were few and the uses that we think today were unthinkable at that time. New phenomenon poses challenges to mankind and to those who were set to govern it. However as always, the law has to be adapted to the development phenomenon. From the ancient times ocean has represented a source of food, a means of communication and trade and a source of danger to communities, in the form of attack by pirates or by the fleets of their enemies. With the growth of
technology and human wants, oceans are being used in multidimensional ways. The development with the legal system can be seen as a response to and reconciliation with the conflicting interest of members of the international community as a whole. The content of many rules, which have focused to make up the marine law, has varied enormously over the years, for the reconciliation of interest has been spontaneously expanding. As world’s dependence on this traditional use of the seas has increased, technology has made it possible to reach out to deeper water for the ocean resources. First and foremost, increased production growth rate in the industrialized countries have caused rise in the conservation of raw materials. These nations are therefore facing the very real prospect of some mineral deposits becoming exhausted.

This survey of some of the more important developments since the 1958 Convention has attempted to show that, even in the area of crucial disagreement, there has not resulted an impasse which has prevented further development of the law. The mammoth task of elaborating this new legal regime began in 1967, when the concept of Common Heritage of Mankind (CHM) was first discussed by the General Assembly in the context of the quantum of preservation of the seabed and ocean floor exclusively for peaceful purposes.

The coastal states were generating multitude of claims, counter claims and sovereignty disputes in contrast to a stable order, promoting greater use and better management of ocean resources and generating harmony and reciprocity among states so that they would no longer have to eye each other suspiciously over conflict of claims. The true antecedents of the legal regime of the sea at least as understood in modern international law, are not strictly speaking to be found in ancient times.
1.2 Survey of Key Concepts

1.2.1 Sovereign Equality

The concepts of equality and solidarity are of particular importance in the establishment of NIEO, in the relations between developed and developing countries. Equity does not only imply good faith and honesty or as some claim, generosity. It means “fair”, “just”, “reasonable” and “appropriate” application of the law. As a legal concept, the principle of solidarity still needs further clarification. All states have their duty to contribute to the balanced expansion of the world economy, taking into account the close inter-relationship between the well being of the developed and developing countries. The concept of an international community made up of sovereign states is the basis of our intellectual framework for international law. A look at history, however, tells us that the model of sovereign co-equal actors with a territorial basis has by no means always shaped conceptions of world order. Contemporary international law presupposes this structure of co-equal sovereign states, the international community's constitutive set-up is dominated by it. The classical sources of international law depend on the interaction of states in the form of treaties and customary law. Diplomatic relations is conducted between states. This classical model of international law as the law to be applied among sovereign states has undoubtedly served useful purposes, but it also has serious shortcomings.

The traditional image of the international community composed of sovereign and equal states has not only displayed practical shortcomings, but has also shown weaknesses as a theoretical model. In particular, the concept of equality among states is to a large extent based on fiction. The enormous differences between
participants in terms of power and wealth have created a constant tension between basic conceptions of international law and reality. In the wake of the proclamation in the UN Charter of the "sovereign equality" of states, the principle of equality of states has become an integral part of international law. The assumption that all the states are equal entails that all the subjects of international law enjoy equality, one with another. Equality here means equality before law or equality of legal status, however; it should not be construed in the sense of a "physical capacity" for rights. In international law, states having variable sizes, strength, and resources are prone to possess different physical capacity, but they can enjoy equal legal status in the international community.

1.2.2 Optimal Use of Natural Resources

The deep seabed and subsoil is a reservoir of the resources. There is a controversy as to the feasibility of deep-sea mining. All seem to be agreeing that there are immense quantities of minerals on and in the seabed and subsoil of the high seas. In these areas of deep seabed, there ought to be optimal use of natural resources. But the unfortunate thing is that the developed countries have been exclusively using these resources in a huge manner through their high technology. There shall not be over exploitation, there ought to be a balanced interest between economic and environmental aspects. The principle of sustainable development is thus a part of modern international law that reason not only of its inescapable logical necessity, but also by reason of its wide and general acceptance by the global community.

Exploration and exploitation of natural resources can be considered in the light of peaceful use. The exploration and exploitation of seabed resources should make a considerable development, as much from the value of the resources of the
seabed\textsuperscript{62} and subsoil themselves, as from the importance of the implications implicit in the exploitation.

The scope of the exploration of activities in the seabed area is dependent on following certain important factors.

1. Physical factor

2. Technological factor

3. Economic factor

The entire attention of the world is now towards the exploitation of the seabed resources proposed to be in a large scale\textsuperscript{63}. This possible future resource of wealth\textsuperscript{64} and well being, however, carries risks of polluting the environment\textsuperscript{65} and thereby tilting the ecological balance. The intergenerational equity\textsuperscript{66} has been advanced to explain the optimum\textsuperscript{67} basis for relationship between one generation and the next. Central to this idea is the need to conserve optimum for the future uses of resources, including their quality, and that of the natural environment\textsuperscript{68}. Failure to take preventing or controlling steps, given the unprecedented scale of human interference with nature and ecological balance,\textsuperscript{69} might prove disastrous to all. Environmental concern must be regulated in the more balanced management of world resources\textsuperscript{70} and human environment. Both environment and economic aspects are required for survival of our system. These should go hand in hand. The international community strong commitment to the concept of sustainable development\textsuperscript{71} has had and will continue to have a considerable evolutionary impact on existing international environmental law and on the development of new law.

In the modern era the exploitation of resources of the sea, both living and non-living acquires a new dimension.\textsuperscript{72} The process of marine resources use can have both
positive and negative influences in the pursuit of power at sea. Sustainable development\textsuperscript{73} contains both substantive and procedural elements. They include the sustainable utilization of natural resources; the integration of environmental protection\textsuperscript{74} and economic development; the right to development;\textsuperscript{75} and the pursuit of equity\textsuperscript{76} in the allocation of resources both within the present and between present and future generations. The precautionary principle,\textsuperscript{77} endorsed by the principle 15 of the Rio-Declaration\textsuperscript{78} is also an important element of the evolving concept of sustainable utilization, because it addresses the key questions of uncertainty in the prediction of environmental effects.

1.2.3 Marine Scientific Research

Marine scientific research (MSR) in the Area shall be carried out exclusively for peaceful purposes\textsuperscript{79} and for the benefit of mankind as a whole. The Authority shall promote and encourage the conduct of MSR\textsuperscript{80} in the Area and shall co-ordinate and disseminate the results of such research and analysis when available.

Through strong technological process most of the developed countries have been conducting MSR.\textsuperscript{81} According to the generalization all states, irrespective of their geographical location and competent international organizations have right to conduct MSR subject to the rights and duties of other states. States and competent international organizations shall promote and facilitate the development\textsuperscript{82} and conduct of marine scientific research.

General principles for the conduct of MSR can be formulated in the following ways:

1. It shall be conducted exclusively for peaceful purposes;

2. It shall be conducted with appropriate scientific method and views;

3. It shall not cause unjustified interference with other legitimate use of sea;
4. It shall be conducted compatible with all relevant regulations including the protection and preservation of marine environment.

Thus in this areas of research new legal principles have been evolved. States and competent international organizations shall be responsible for ensuring compliance with this in the MSR. Due to strong technological revolution new forms of solutions have acquired new dimension. The new international organization would have discretion to interfere unnecessarily with the conduct of mining operation, and it could impose potentially burdensome regulations or impact on industry.

1.2.4 Transfer of Technology

The rights of every state to benefit from the advances and developments in science and technology for the acceleration of its economic and social development are created by the law of the sea. Accordingly, developed countries should cooperate with the developing countries in establishment, strengthening and development of their scientific and technological infrastructures and their scientific research and technological activities, so as to expand and transform the economies of the developing countries. The long-term influences are as yet unclear. There is the concern for technology transfer and conservation of resources. A group of countries including some have the landlocked and geographically disadvantaged states have a keen interest in acquiring the technology and in participating in the exploitation countries. The poorest countries in the world are landlocked, and as we can imagine, their negotiating possibilities are not that great; landlocked states are typically dependent upon the states between them and the seas, and it's certainly no coincidence that they are the poorest nations in the world
The problem relating to transfer of technology is still in existence. In this scenario, it is required to have body of law to regulate transfer of technology. The question that needs to be answered is how might existing laws be able to be transformed to meet this requirement or do we need new Convention to deal with transfer of technology? Private deep seabed miner would subject to a mandatory requirement for the transfer of technology to the Enterprise\textsuperscript{92} and to developing counties. This provision is considered burdensome, prejudicial to intellectual property rights, and objectionable as a matter of principle and precedent. This advancing technology will, however, create many new legal problems. Several new activities will have to be regulated. Flexibility and ingenious solutions are required to tackle these issues unless they are dealt with adequately, no significant break through can be expected.

1.2.5 Jurisdiction

Jurisdiction is broader concept in the arena of international law,\textsuperscript{93} through the exploration or innovation; the seabed legal regime is going to be expanded. Suppose developed states resort to exploiting beyond their area, what should be the approach-required jurisdiction? Moreover, a pertinent question therefore arises as to what are the outer limits of coastal state’s jurisdiction\textsuperscript{94} in the seabed? The First and Second Conference on the Law of the Sea failed to solve these questions satisfactorily.\textsuperscript{95} Even the Third Conference on the Law of the Sea 1982 remained as an unfulfilled source of the solution regarding outer limits of the seabed.\textsuperscript{96} To understand the context of these scenarios better, this study makes a critical analysis of the key legal regimes of maritime jurisdiction established by the 1982 UNCLOS. In addition, study considers various methods of boundary delimitation and offer examples of borders the
delimitation of which stands out in the debate. Jurisdiction of the coastal states and ISA is as follows.

Since the seabed and its resources can be considered a *res communis omnium* or the property of all mankind,\(^97\) for a disposition of such property consent ought to be obtained from all mankind\(^98\) as expressed through the states as representative of mankind. Article 140 says that\(^99\) “the activities in the Area shall, as specifically provided for the XI part, be carried out for the benefit of mankind as a whole, irrespective of the geographical location of states, whether coastal or landlocked and taking into particular consideration the interests and needs of developing states and of peoples who have not attained full independence or other self governing states.
recognized by United Nations in accordance with General Assembly Resolution 1514 IX and other relevant General Assembly resolutions. On December 17, 1970 the United Nations General Assembly, by a vote of 108-0 with 8 absentees passed Resolution 2749 (XXV) entitled “Declaration of Principles Governing the Seabed and the Ocean Floor and the Sub soil Thereof, beyond the Limits of National Jurisdiction”. The growing interest in the practical aspects of deep seabed mining has resulted in the elaboration of an international legal regime of the seabed beyond the limits of the continental shelf. 

Certain guiding principles of CHM are as follows:

1. The principle of non appropriation
2. The principle of shared management
3. The principle of common benefit for mankind as a whole
4. The principle of use for exclusively peaceful purposes
5. The principle of conservation for future generation

As the concept of the CHM originated in the United Nations, it is useful to chart its development by tracing the various U.N. resolutions. In the present juncture the principle of CHM has its own drawbacks. Because of the arrogant nature, domination and strong technological development of developed countries this has not been very perfect in the present world order. The principle has lost its veracity and sound. The need of the poor countries to receive preferential consideration in the event of financial benefits being derived from the exploitation of the seabed and ocean floor commercial purposes has remained a dead letter.

There is a growing fears among the developing countries that the technologically advanced nations would soon expose the seabed and ocean floor to
competitive national appropriation. There is a need to put various proposals and to view them against the background of the present general international law governing seabed activities.

As a result of technological\textsuperscript{106} as well as world population growth, the voracity and intensity of uses of the oceans\textsuperscript{107} have been rapidly increasing. A meaningful view of the totality of these uses, and the problems of the oceans that they imply, is given in the 1982 Convention the Law of the Sea. If any state intends to explore and exploit the natural resources of the seabed, first of all they should take permission from the Seabed Authority.\textsuperscript{108} Under the 1982 Convention, the ISA consists of all national participants in the UNCLOS. The states, enterprises and companies\textsuperscript{109} can do the exploration and exploitation. The Authority is based in Kingston Jamaica\textsuperscript{110} and assisted by member states of UNO. Eleven years after the establishment of the Authority, it is apparent that work program of the Authority has become substantially scientific and technical\textsuperscript{111} in nature. The most important functions of the Authority are to promote and encourage the marine environment,\textsuperscript{112} MSR, harmonious construction to exploit the resources, eliminate regional and global confrontation. According to Art 156,\textsuperscript{113} “all states parties are \textit{ipso facto} members of the Authority”. It is an organization through which state parties shall in accordance with XI part,\textsuperscript{114} organize and control activities in the Area, particularly with a view to administering the resources of the Area”.

Moreover, Authority is based on the principle that the sovereign equality\textsuperscript{115} is the ultimate goal to be achieved. It has been a kind of key principle or stabilizing factor of international relations. Based on this, all members of the Authority should fulfill the obligations in the light of good faith\textsuperscript{116}. They are supposed to carry out all these in a co-operative, reciprocal, amicable and good order.
The substantive works of the Authority\textsuperscript{117} are as follows:

1) The supervisory functions of the Authority with respect to existing contracts for exploration of polymetallic nodules.

2) The development of an appropriate regulatory framework for the future development of the mineral resources of the Area, particularly hydrothermal polymetallic sulphides and cobalt rich crusts, including standard for the protection and preservation of the marine environment.

3) The promotion and encouragement of MSR in the Area and co-ordination and dissemination of the results of such research and activities.

4) Information gathering and the establishment and development of databases of scientific and technical information with a view to obtaining a better understanding of the deep ocean environment.

5) Ongoing assessment of available data relating to prospecting and exploration.

There is confrontation between the developed and developing countries\textsuperscript{118} expecting and demanding a share of the new found riches of the seabed on the one hand and developed countries\textsuperscript{119} with real technological capacity to exploit\textsuperscript{120} and to acquire riches on the other. The exploration and exploitation of the natural resources of the sea constitute one of the most typical problems\textsuperscript{121} of the contemporary international law. Whenever the intensity of human activity has increased, the emergence of management arrangement has been a prerequisite for rational utilization of such areas. The article 137 articulated\textsuperscript{122} that “no state shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor shall any state or natural or juridical person appropriate part thereof.
The search for the law applicable to the deep seabed traditionally begins with the theoretical question. Who owns the seabed? Since the seabed area is described as CHM, the Area is *intoto* applicable to the world community as a whole, irrespective of developed, developing or least developed countries. Prior to the recent development of advanced technology for deep seabed ocean mining, the question was merely academic. Now it has come to the attention of world community as a whole. International law functions to establish the minimum order necessary for states to carry on their relations and activities in a peaceful manner with an opportunity to reach just accommodations of their legitimate interests.

The evolution of law can be seen as a response to, and a recommendation of conflicting interest of the members of the international community. Prospects for the development of seabed mineral resources continue to be doubtful. At the same time, however it is apparent that existing knowledge about the deep ocean environment and especially the potential conservation of minimum activity is highly uncertain. The assumptions of 1982 Convention were that the only economic minimal resources in the deep seabed would be manganese nodules and that they could be exploited only in international arena. Now such assumptions have become groundless. The peripheral issues have been purposely ignored. It is now increasingly realized that there are limits to the extent to which the resources of the sea could be exploited. The changing realities have made it imperative to change the structure of the traditional law of the sea. An argument is advanced that there is no right under customary international law for states to make unilateral claims to a right to explore and exploit the resources of the seabed. Article 150 focuses upon development of the world economy and balanced growth of international trade and to promote international co-operation for the overall development of all countries, especially
developing countries. In a similar vein, it has laid down certain norms that have the following policies:

1. The development of the resources of the sea
2. Orderly, safe and rational management of the resource of the Area
3. The expansion of an opportunity for participation in such activities
4. Participation in revenues by the Authority and the transfer of technology to the Enterprise and developing states
5. The promotion of just and stable prices is remuneration to producer and fair to consumer for minerals derived both from the Area and from other sources
6. The enhancement of an opportunities for all states
7. The protection of developing countries from adverse effects on their economies
8. The development of the CHM for the benefit of mankind

The ISA and the Tribunal are still in the early phase of their establishment and operation. It is important that member states pay there assessed contributions in full, on time and without conditions to enable their effective functioning.

The problem of tax system and compulsory transfer of technology can be redesigned and reconciled without any problem taking the chance of changed conditions. By analyzing present status of the treaty conditions, particularly relating to seabed mining regime, it has been made very clear that the part XI of the 1982 Convention should be reformed thoroughly. Moreover, there ought to be coordination, reciprocity, good order and amicable relationship amidst nations to share the CHM.
The confusion on the law of the sea brought\textsuperscript{143} to light a wide variety of conflicting interests between states and group of states,\textsuperscript{144} it did not succeed in reconciling all these conflicts and failed to settle the seabed problems. Part XI of the Law of the Sea Convention comprehensively\textsuperscript{145} regulated activities in the Area, including deep seabed mining, 117 states signed the Convention on the first day, although the USA\textsuperscript{146} did not sign the Convention until July 29, 1994.\textsuperscript{147} As time went on, it becomes increasingly clear that the developed states are not willing to agree to part XI\textsuperscript{148} concerning the deep seabed portion of the Convention.

1.3. Legal Perspective

The impact of science and technology in international reality,\textsuperscript{149} reciprocity, solidarity and co-operations are enormous.\textsuperscript{150} States are involved in various activities over seabed Area such as exploration and exploitation of natural resources\textsuperscript{151} etc., and have interests and obligations. The unresolved legal issues of the sea\textsuperscript{152} itself aggravate existing political, economic, environmental\textsuperscript{153} problems. The problems of exploitation, sovereignty over natural resources\textsuperscript{154} are unresolved; the widening gap between developed and developing states is still continued; new relationships are formed, new entities, tribunals, institutions, organizations\textsuperscript{155} or agencies are established. New pattern of attitudes of states have emerged\textsuperscript{156} and the law ultimately recognizes and protect that is changing because of scientific and technological development.\textsuperscript{157} The concepts of equity and solidarity are of particular importance in the establishment of NIEO, in the relations between developed and developing countries. In spite of the intense interest of all parties to reach a satisfactory conclusion of seabed regime negotiations as part of UNCLOS, the parties to the negotiations were unable to do so. Heightened expectations of potential value and
unresolved conflicts in approaches to international economic and trade policy prevented agreement and time was not available to overcome the differences.

1.4 Statement of Research Questions

Who should have a right of access to exploit minerals? What should be the conditions of operations? If restrains are adequate, what steps should be taken?

With seabed existing beyond national jurisdiction of state, what effective measures can be adopted for future disputes? What is to be done for effectiveness? And even if these questions are resolved, how can such laws be enforced? Seabed, subsoil and ocean floor are considered as CHM. Every state has right to explore and exploit natural resources in the seabed based on equal distribution of wealth. What steps can be identified for future problems? Is CHM limited to that extent? What law ought to be done through equity and justice for the benefit of mankind?

MSR in the seabed Area shall be carried out exclusively for peaceful purposes and for the benefit of mankind as a whole. How best MSR can be used for peaceful purposes? What measures can be identified and what modification can be done? How best can these controversial issues be resolved? All sovereign states have a right to access natural resources on the seabed. What steps can be identified for harmonization among the states? How best can disparities between developed and developing states be resolved? What measures can be found for equality before law? And how best can corrective and distribution legal justice is achieved in the seabed Area?

There ought to be a balanced of interest between economic development and environmental protection. How to ensure access to common economic interest? How to protect common economic interest and resources? What extreme measures should be taken? Through modern technology the seabed Area is going to be over exploited.
Almost all developed states ignored the problem of environment. If it is correct what further measures can be adopted for the purpose of preservation and control of marine environment?

How best can dichotomies between economic and environmental aspects be minimized? Does the Convention effectively contribute to maintain international peace and security? Does the 1982 Convention effectively contribute to the conservation of living resources of the sea? Does the Convention adequately promote the preservation of the marine environment? Does the Convention adequately provide for a stable and predictable framework of law for using the oceans? How is the 1994 Agreement more effective? The ISA adopted its first legislations in 2000, Regulations on Prospecting and Exploration of the Polly metallic Nodules in the Area, which made executing the initial exploration contracts possible. How best are these regulations more effective for the protection of minerals?

1.5 Objectives of the Study

1 The primary objective of this study is to bring out more information and give an explanatory analysis of the legal problem of seabed Area and international law in the contemporary perspective.

2 The impending need is to establish a mechanism that can bring a harmony between developed and developing countries, through evolution of equitable principles.

3 It is therefore necessary to evaluate the dichotomy between international law and exploration and exploitation of the seabed in the contemporary perspective.

4 There is a felt need to analyze the functional deficiencies of the ISA.
To provide effective understanding of the relevance and application of the ‘sustainable development’ concept in the field and to bring out the economic, ethical and legal dimension of the problem in addition to practical difficulties.

Promotion and encouragement of MSR.

Information gathering and the establishment and development of database of scientific and technical information with a view to obtaining better information pertaining to seabed.

The work can suggest legal principles with reference to seabed environment.

To evaluate and assess the role of ISA in modern international law.

To discuss and analyze the general principles governing the seabed Area in the contemporary perspective

1.6 Research Significance

In recent two decades, there has been much change-taking place in the arena of seabed. The impact of globalization and liberalization in this aspect is immense and enormous. However, the development of WTO, the NIEO and new dimension in the field of economy acquires a new significance. We must see how and in what manner the basic issues of the contemporary world can and should be solved. International law has a certain role to play here. The emergence of new international law acquires a new approach to the very notion of the principle of governing the seabed Area and the sources of contemporary, international law. What is needed today is a vision a vision of realism, a vision of an opportunity in the seabed. It is necessary to eliminate pessimism, not to say defeatism and confrontation, regarding the possibility of problems of modern world and the economic realities that exist in it. The study of this area aims at highlighting the importance especially looking from the standpoint of its
effect at present and on what happens in the future. It is intended in this thesis to analyze the contribution of legal regime of the seabed in the contemporary perspectives to the role of ISA in protecting the natural resources of the seabed.

The contribution of the study will also reflect in the future. The research has gone through principles and concepts like polluter and users pays principle, right to development, state sovereignty, common concern of humankind, intergenerational equity, and the principle of prevention, the precautionary principle, state responsibilities, good neighbors, and duty to co-operate. The emergence of new international law acquires new approach to the very notion of seabed activities. In the present scenario, there is an urgent need to protect and preserve the seabed minerals. The research provides a solution to prevent seabed pollution. There are unsettled problems in the legal regime. Therefore, the work is focused an appropriate solutions. This work is more important for policy makers, academicians, diplomats, and all persons involved in this field. The littoral, land locked, and geographically disadvantaged states can get benefits out of this outstanding work. Therefore, it is more relevant and significant in the present context.

1.7 Methodology

Doctrinal method has been employed to do the research work. The task involves analysis of case law, arranging, ordering and systematizing legal propositions and study of legal institution, authorities and organizations. International treaties, resolutions, recommendations, declarations, judicial decisions form primary source of research and text books, journals, articles, periodicals and reports have been used as secondary sources of research. Through Internet various information have been collected as primary and secondary sources of research. A Critical, comparative
and analytical method are employed in the analysis of the entity involve keeping in view of the judicial decisions of Seabed Dispute Chamber, International Court of Justice, International Tribunal for Law of the Sea and etc. With regard to analysis of the role of ISA in international perspective, the methodology adopted has been analytical. These survey and analysis have been conducted by studying the initiations rendered by the ISA, brief facts, questions involved principles or policy laid down the relief given to the parties. Both normative and analytical approaches are employed.

1.8 Chapterization

Chapter 1 deals with introduction of the whole thesis. Here the legal perspective, research significance and survey of key concepts have been undertaken for developing an over all perspective. Chapter 2 indicates where and how exactly the legal regime has been developed. In this chapter detailed development of regime has been articulated through divisions of the sea like territorial sea, contiguous zone, and continental shelf. From the perspective of analysis of the regime the 1958 and 1982 Convention comparative research has been undertaken. The research work has gone through some modification to face the recent problems. Chapter 3 has focused on the general principles governing the seabed Area. The relevance of these principles is being discussed. Principles like CHM, benefit of mankind, and peaceful use of natural resources have been discussed. In this chapter the detailed analysis has been undertaken through the development of some steps by these developed and developing states.

Chapter 4 deals with natural resources and world order. Some key factors like seabed mining, world order, disarmament, customary laws, and relevance of Agreement for the Implementation of 1982 Convention on the Law of the Sea have
been discussed. Chapter V has been dealt with an integrated approach relating to seabed pollution. In this chapter many of the basic principles of environmental law have elaborately discussed and analyzed. So far as chapter VII is concerned, the role of Seabed Authority has been discussed. From the perspective of efficacy of ISA, the research has undertaken analyses and surveys the development regarding the ISA. Here the legal system has been focusing through organs like Council, Assembly and Secretariat that the present factors are being discussed. Moreover, there is collective responsibility by all states in order to prevent or control the seabed pollution. The prognostic and analytical approach has been undertaken in this chapter. Chapter VII has made recommendations and modifications in order to overcome the long-standing problems of legal regime of the seabed
Chapter Notes


2 Francis, T Christiny, J R, Law of the Sea Caracas and Beyond, (Brillinger publishing Co 1975) p. 117;


5 ISA –ISAB LTC 2001 available at www.isa.org


Ibid p 618


Marine Science Officers, Annual Report of the US President to the Congress on Marine Resources and Engineering Development 1970


Ibid p 526


International Seabed Authority 9th session 2003

Ibid 2003 session

Markas, *Common Heritage of Mankind*, (London, Oxford University 1989), pp20, 21

Ibid p 31, 32,34
21 Supra note 16
22 http/www.china.org
26 Ibid CSR report
27 Geneva Conventions on Law of the Sea 1958
29 Article 141 of the part xi of 3rd Law Conference of the Law of the Sea 1982

33 See North Sea Continental Shelf Arbitration

34 ISA 10th Session, Jamaica Press Release, May 2004, SB/10, 124 May 2004 ISA its 10th Annual Secretary General


36 The views of the Group of 77 are contained in a document entitled legal position of the Group of 77 on the quantity of Unilateral Legislation Concerning for Explorations and Exploitations of the Seabed and Ocean floor and Sub soil thereof beyond National Jurisdiction, UN Doc A/Cong. 62/106


38 Art. 145; read with principle 15 of Rio Declaration on Environment and Development states in order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. Where there are thousands of serious or irrevocable damage, lack of all scientific certainty shall not be used as a reason for positioning cost effective movements to prevent environmental degradation. Report of the United Nations Conference on Environment and Development: Rio Declaration on Environment and Development, UN GAOR annex 1, UN Doc A/Coy 151/26, Vol. 1992, available at http: www.unep.org.en


40 International Tribunal for the Law of the Sea, year 2002 December list of the cases NO-8 Russian Federation v/s Australian Available at http://www.itols.org and http://www.itols.org


In this respect some legal commentators have concluded that mankind phrase has consequently become a subject under international law; R.P. Anand, Legal Regime of the Seabed and the developing Countries, (India Thomson press, 1975), p.193; The original article of UNCLOS 1982 dealing with the deep seabed regime are products of the NIEO. They also reflect the initial success of the New International Economic Order agenda in transpiring north and south economic relations by promoting the CHM as a legal principle for governing the commercial exploitation global commons and for sharing of benefits these articles remained the most for reaching attempt by developing countries to create binding treaty obligations that mandated to restructuring of international economic relations.

Article 87 of the 1982 Convention.


Statement of Sathyanandan, Secretary General of the International Seabed Authority, agenda item 52 ocean and law of the sea 58th session of the General Assembly of the UN 24 November 2003.

ISA Press Release Sixth Session Kingston, Jamaica 20-31 March 2000 Council (PM) SB/6/621 March 2000

ISA Press Release Sixth Session Kingston, Jamaica 20-31 March 2000 Roundup of Session SB/6/1731 March
51 ISA Press Release Sixth Session Kingston, Jamaica 3-14 July 2000 Assembly (PM) SB/6/28.13 July 2000

52 ISA Press Release Seventh Session Kingston, Jamaica 2-13 July 2001 Biographical Note SB/7/63 July 2001

53 ISA Press Release Seventh Session Kingston, Jamaica Biographical Note SB/7/42 July 2001

54 ISA Press Release Eighth Session Kingston, Jamaica 5-16 August 2002 SB/8/109 August 2002

55 ISA Press Release Eighth Session Kingston, Jamaica 5-15 August 2002 Council (AM) SB/8/1715 August 2002 Ninth Session

56 ISA Press Release Ninth Session Kingston, Jamaica 28 July - 8 August 2003 Assembly (AM) SB/9/115 August

57 ISA Tenth Session Kingston, Jamaica Press Release 24 May – 4 June 2004 Round-up of Session SB/10/204 June

58 ISA ISBA/11/A/3 Assembly Distr.: General 28 June 2005 Original: English 05-40358 (E) 060705 Eleventh session Kingston, Jamaica 15-26 August

59 ISA Eleventh ISBA/11/A/5 Assembly Distr.: General 28 July 2005 Original: English 05-44517 (E) 290705 Eleventh session Kingston, Jamaica 15-26 August 2005

60 ISA Press Release Sixth Session Kingston, Jamaica 20-31 March 2000 Council (AM) SB/6/1224 March 2000

61 ISA Press Release Sixth Session Kingston, Jamaica 3-14 July 2000 Council (AM) SB/6/2613 July 2000

62 ISA 12 Press Release Seventh Session Kingston, Jamaica 2-13 July 2001 Assembly (AM) SB/7/1210 July


64 ISA Press Release Sixth Session Kingston, Jamaica 20-31 March 2000 Council (AM) SB/6/521 March 2000
65 See the principles posed under Declaration on the Establishment New International Economic Order

66 ISA Press Release Eighth Session Kingston, Jamaica 5-16 August 2002 Assembly (AM) SB/8/3 Council (AM) 5 August 2002


69 ISA Eleventh ISBA/11/A/5 Assembly Distr.: General 28 July 2005 Original: English 05-44517 (E) 290705 Eleventh session Kingston, Jamaica 15-26 August 2005

70 ISA ISBA/11/A/3 Assembly Distr.: General 28 June 2005 Original: English 05-40358 (E) 060705 Eleventh session Kingston, Jamaica 15-26 August

71 United Nations General Assembly A/RES/57/143, 57th Session agenda item 25(c) 26th February 2003


75 Hugo Caminos, Law of the Sea, (USA, University of Miami School of Law, Ashgate, Dartmouth, 2001), p. 253

76 UN Charter 1945, article 2(1); William Slomansion, Fundamental Perspectives on International Law, (Australia, Canada, Mexico, Singapore, Spain, UK, USA 4th Ed, Thompson West, 2003), p.78


88 ITLOS Oct 1996, See Workshop on the establishment of a Geological Model of Polymetallic Nodule Resources in the CCFZ of the North Pacific Ocean May 2003


91 General Principles Governing the Seabed Area like CHM, common benefit, peaceful use of natural resource of the seabed. See Part XI of the 1982 Convention


93 International Seabed Authority, Press Release 5th Session Kingston Jamaica, 27-Augst 1999

94 http://www.geturout.org/un/articles/lost.htm


96 Declaration on the establishment of a New International Economic Order, May 1,1974, G.A.Rsolution.3201.

97 Provisional Understanding Regarding Deep Seabed Mining 1984


99 Principle 15 of the Rio Declaration on Environment and Development states “in order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation”. Report of the United Nations Conference on


November 2002; United Nations General Assembly A/RES/50/23, 58th Session
agenda item 24(b) 10th January 2000

106 United Nations General Assembly A/RES/49/118, 49th Session agenda item
and third states’, American Journal of International Law, (Vol. 77, No. 3,
1983), pp. 541-559; ISA Eleventh ISBA/11/A/5 Assembly Distr.: General 28
July 2005 Original: English 05-44517 (E) 290705 Eleventh session Kingston,
2005 Original: English 05-41768 (E) 220705 eleventh session Kingston,
Jamaica 15-26 August 2005, ISA ISBA/11/A/INF/1 Assembly Distr.: General 26
July 2005 Original: English 05-44242 (E) 280705 Kingston,
Jamaica 15-26 August 2005 ISA ISBA/11/A/3 Assembly Distr.: General 28
June 2005 Original: English 05-40358 (E) 060705 Eleventh session Kingston,
Jamaica 15-26 August

107 See Article 145 of the UNCLOS; Press Release 6th Session Kingston, Jamaica,
and 20th March 2000 Council Seabed Council; See Rio Declaration.

108 Equity is one of the sources of law like custom, convention or general
principles of law recognized by civilized states. It encompasses some basic
features like fair, just, uniformity, reciprocity and reasonable. It is nothing but
spirit of the law. In absence of hard laws equity will play an important role.

109 Principle 15 Rio Declaration

110 Ibid Principle 15

111 Article 113 part xi of 3rd Law Conference of the Law of the Sea 1982; Mina
Mashayekhi, ‘The Present Legal Status of Deep Seabed Mining,’ Journal of

112 Ibid-230

113 See Report of the UN Conference on the Human Environment 1972 A/CONF
48 14 Rev, New York, 1972

114 Statement of Sathyanandan, Secretary General of the International Seabed
Authority, agenda item 52 ocean and law of the sea 58th session of the General
Assembly of the UN 24 November 2003.

116 The developing nations influence has been well dominated; ISA Press Release Sixth Session Kingston, Jamaica 3-14 July 2000 Roundup of Session SB/6/2914 July 2000x Nodule Regulations Adopted by ISA Second Part of Sixth Session, Kingston


121 See UNCLOS Part XI
The developing nations influence has been well dominated; ISA Press Release Sixth Session Kingston, Jamaica 3-14 July 2000 Roundup of Session SB/6/2914 July 2000x Nodule Regulations Adopted by ISA Second Part of Sixth Session, Kingston


Article 76 UNCLOS

1958 and 1960 Law of the Sea Convention

UNCLOS 1982


Article 140, UNCLOS

General Assembly Resolution 2749xxv

Ibid, Art – 140;

General Assembly Resolution 2749, xxv 1970.

Supra Note 20 articles 136.


Tsutomu Fuse JSD, Ocean Governance and a view towards multilateral security, Yakohama City University, Planning Council of the International Ocean Institute IOI

See Agreement relating to the Implementation of part XI of the UNCLOS, 1982,see 48,Session of General Assembly of UN

Supra Note 20 Article 153


142 Article 144

143 Article 150


146 Article 53 Vienna Convention on Law of the Treaties 1969

147 See 1982 UNCLOS

148 Testimony of William, US Department of State, Committee on Foreign Relation Oct 21,2003; see Part XI UNCLOS


Supra Note 103

Article 137;

Ibid 137

Article 123 UNCLOS

See Commemoration of the 20th Anniversary of the Opening for Signature of the 1982 UNCLOS, 57 Session of the General Assembly 9th December 2002 International Seabed Authority
