Comments on the Draft Regulations on Exploitation of Mineral Resources in the Area
(ISBA/23/LTC/CRP.3*)
Submitted by the Government of Japan

As of 20 December 2017

The Government of Japan is of the view that sensible Regulations on Exploitation of Mineral Resources in the Area (hereinafter referred to as "the Regulations"), defined by a good balance of considerations for "exploitation" and "environment", should be formulated in order to realize such exploitation. We consider that the discussions for the formulation of the Regulations should fully take into account the inputs from the contractors, while fully taking into consideration the environmental aspects. We will contribute to the development of the Regulations, taking advantage of our own experiences of activities in the Area.

From this basic viewpoint, we would like to submit Japan's current proposals and comments on the Draft Regulations on Exploitation of Mineral Resources in the Area (ISBA/23/LTC/CRP.3*) as follows. The following views are as of 20 December 2017 and we reserve the right to make further oral or written comments during the course of future discussions. However, we think that the Draft Regulations provide a good basis for further discussions, and appreciate the work by the Secretary-General, Mr. Michael Lodge, and the Secretariat of the International Seabed Authority (hereinafter referred to as "the ISA").

PART I INTRODUCTION

A. Relationship between the Regulations and the United Nations Convention on the Law of the Sea (UNCLOS), the Agreement relating to the Implementation of Part XI of UNCLOS of 10 December 1982 (hereinafter referred to as "Agreement") and other international agreements

1. Paragraph 6 of Draft Regulation 1 of Part I provides that *"These Regulations are subject to the provisions of the Convention and the Agreement (...)."* The Regulations are subordinate documents which are to be adopted in accordance with UNCLOS and the Agreement. We assume that this provision is intended to provide that the

Regulations shall be drafted within the scope of UNCLOS and the Agreement. Japan is of the view that this provision should be kept in the Regulations.

2. Paragraph 6 of Draft Regulation 1 also provides that the Regulations are subject to *"other rules of international law not incompatible with the Convention."* Japan is of the view that the Regulations, which are subordinate documents of UNCLOS and the Agreement, should not be superior to existing rules of international law. Therefore, Japan supports keeping this provision in the Regulations.

B. **Relationship between the Regulations and the subordinate documents**

3. Paragraph 5 of Draft Regulation 1 provides; *"These Regulations may be supplemented by further rules, regulations and procedures, in particular on the protection and preservation of the Marine Environment."* Supplementary documents, which stipulate further details, are necessary for implementation of the Regulations. Therefore, Japan supports the inclusion of a provision on the development of subordinate documents in the Regulations.

4. The subordinate documents of UNCLOS and the Agreement adopted by the ISA so far, including the Regulations on Prospecting and Exploration for mineral resources in the Area, do not establish the rights and obligations under international law beyond the scope of UNCLOS and the Agreement. Upon the adoption these documents, States have taken measures to implement them through domestic laws and regulations and other measures as necessary taking into consideration that these documents provide the obligations to be complied by contractors under the framework of the ISA. While the Regulations are also subordinate documents and are expected not to establish rights and obligations under international law beyond UNCLOS and the Agreement, States may need to take measures to implement them through domestic laws and regulations and other measures. On the other hand, the supplementary documents on the exploitation activities, which are the subordinate documents of the Regulations, should be amended flexibly as the situation demands. Therefore the supplementary documents should be formed as "guidelines" which have more flexibility. In order to make this point clear, Japan is of the view that the wording in paragraph 5 of Draft Regulation 1 should be modified, for example, as follows:
"These Regulations may be supplemented by guidelines."

5. Japan is of the view that matters on which clear rules can be agreed based on scientific evidences or other bases including the protection and preservation of the marine environment, should be stipulated by the Regulations (the Regulations itself or their Annexes), while matters which should be treated with flexibility should be stipulated by the "guidelines." In order to formulate a well-balanced and sensible Regulations, Japan will make proposals as necessary on what should be provided by the Regulations and what should be included in "guidelines" in order to move the discussions forward.

C. Exploitation activities under the principle of the freedom of the high seas

6. Paragraph 4 of Draft Regulation 1 provides; *"Nothing in these Regulations shall be construed in such a way as to restrict the exercise by States of the freedom of the high seas as reflected in Article 87 of the Convention."* The Regulations should not impair the principle of the freedom of the high seas. Therefore, Japan supports the inclusion of this provision in the Regulations.

7. On the other hand, for the safe conduct of exploitation activities, one needs to avoid the situation where other ships carelessly navigate in and out of the area under operation. In this regard, the International Maritime Organization (IMO) administers the "World-wide Navigational Warning Service" in accordance with guidance of the International Convention for the Safety of Life at Sea (SOLAS) (See below). Japan would like to propose making it obligatory for contractors to inform the "NAVAREA coordinator" appointed under the Service when they conduct exploitation activities, thereby widely sharing in advance the operational plan of exploitation activities. Japan does not insist on using the above-mentioned Service if other measures to ensure the safety of exploitation activities are being considered. However, if there is no other proper measure, utilization of the Service should be added in an appropriate place in the Regulations, for instance, Part IX.

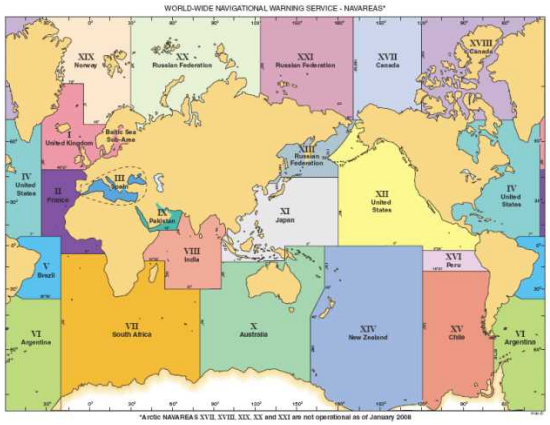
WORLD-WIDE NAVIGATIONAL WARNING SERVICE

7.1 Regulation 4, Chapter V of the Annex to SOLAS provides that "Each Contracting Government shall take all steps necessary to ensure that, when intelligence of any dangers is received from whatever reliable source, it shall be promptly brought to the knowledge of those concerned and communicated to other interested Governments." There is a footnote to this provision which

reads; "Refer to the Guidance on the IMO/IHO World–Wide Navigational Warning Service adopted by the organization by resolution A.706(17)."

7.2 *The Guidance on the IMO/IHO World-Wide Navigational Warning Service lists, as examples of cases where NAVAREA warnings should be issued, "the presence of large unwieldy tows in congested waters", "the establishment of offshore structures in or near shipping lanes" and "information concerning events which might affect the safety of shipping, sometimes over wide areas". Although the exploration for and exploitation of mineral resources in the Area itself does not appear in this list, issuing navigational warnings in this regard is not prohibited either.*

7.3 *The Guidance divides the entire globe into geographical sea areas, and a NAVAREA coordinator who issues the navigational warnings is appointed for each area .*



PART II APPLICATIONS FOR APPROVAL OF PLANS OF WORK FOR EXPLOITATION IN THE FORM OF CONTRACTS

A. "Reasonable regard" for other activities in the Area

8. Paragraph 4(e) of Draft Regulation 7 provides that the Legal and Technical Commission (LTC) shall determine if the proposed Plan of Work submitted by an applicant provides for Exploitation Activities to be carried out with reasonable regard for other activities in the Marine Environment, and sites navigation, laying of submarine

cables and pipelines, fishing and scientific research as examples of "other activities." This is an important point, and Japan supports this provision.

9. At the same time, it is difficult for contractors to take adequate measures unless it is clear as to what measures they need to take for them to be considered as having carried out the Activities with "reasonable regard". Contractors should not be left to make judgements in this regard on their own. Therefore, Japan is of the view that clear standards for "reasonable regard" should be established in the "guidelines", subordinate documents of the Regulations, and the Regulations should clearly state that such standards should be provided by the "guidelines."

B. Deposit of a Performance Guarantee

10. Draft Regulation 9 provides that the LTC may recommend to the Council that, as part of the terms and conditions for the approval of a Plan of Work, the applicant deposit a Performance Guarantee in respect of the performance of its obligations, undertakings or conditions in a Plan of Work or proposed exploitation contract. Japan supports asking an applicant to deposit a Performance Guarantee when necessary, but a Performance Guarantee is not necessary for those contractors with sound financial and fiscal conditions. Therefore, Japan is of the view that clear standards on in what kind of case the LTC will make a recommendation on the deposit of a Performance Guarantee should be established in the "guidelines", subordinate documents of the Regulations, and the Regulations should clearly state that such standards should be established in the "guidelines."

PART III EXPLOITATION CONTRACTS

Procedures for extension of an exploitation contract

11. Paragraph 2 of Draft Regulation 13 provides that an application to extend an exploitation contract shall be made in writing addressed to the Secretary-General. The elements to be included in the application for extension should be selective and simple as much as possible, for example, the reason for extension, as the contractors submit detailed information on the relevant activities to the ISA in any case during the term of the exploitation contract for example by means of submitting the annual reports. The

format for the application of extension is not provided in the Draft Regulations. One option may be to include it in an annex of the Regulations or in the "guidelines", subordinate documents, after it is discussed in the LTC and the Council. Japan also considers that this aspect should be taken into account if separate regulations regarding the extension of an exploitation contract are to be developed.

PART IV ENVIRONMENTAL MATTERS

A. Relationship between the "Precautionary approach" and the "Best Available Scientific Evidence"

12. Paragraph (c) of Draft Regulation 17 provides that in the assessment and management of risks to the Marine Environment "*the precautionary approach… shall be applied*" and "*the Best Available Scientific Evidence shall be taken into account*." As drafted, it seems as if the former has priority over the latter. Japan is of the view that both are equally important and one should not be given priority over the other. For this reason, Japan requests a modification to this part of Draft Regulation 17 so that both concepts are treated equally. It may be useful to call to mind that in the recommendations to the United Nations General Assembly adopted by the Preparatory Committee for the development of an international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction in July 2017, both "*precautionary approach*" and "*science-based approach, using the best available scientific information and knowledge…*" are treated as a part of "*general principles and approaches*" and no priority is given to one over the other.

B. Public Consultation

13. In paragraph (e) of Draft Regulation 17 holding "public consultation" on environmental matters is encouraged, but there is no provision on what kind of consultation shall be held under what circumstances and how it should be held. Japan is of the view that the "guidelines", subordinate document of the Regulations, should establish the criteria on whether or not to hold a public consultation and specific manner in which it should be held. Also, the Regulations should clearly state that such standards should be established in the "guidelines."

C. Scope of Interested Persons

14. Paragraph 2 of Draft Regulation 18 and paragraph 2 of Draft Regulation 20 provide that "Interested Persons" may comment on the Environmental Scoping Report, the Environmental Impact Statement (EIS), Environmental Management and Monitoring Plan (EMMP) and Closure Plan (CP). Japan supports having this kind of provision, but Japan is of the view that the scope of "Interested Persons" should be discussed in the LTC and the Council in 2018 and in 2019 after having heard the opinions of contractors and the results of the discussions should be reflected in the Regulations.

15. Comments by the Interested Persons should be based on scientific evidence, and this should be clearly stated in the Regulations. Also, there should be a fixed format for comments in order to facilitate the effective and efficient consideration of comments from the Interested Persons. From this viewpoint, the "guidelines", a subordinate document of the Regulations, should set up this format for comments. The Regulations should provide for inclusion of such a provision in the "guidelines."

D. Comments by the LTC on documents on environmental matters

16. Draft Regulations 18 and 21 provide that the LTC shall provide its comments on the Environmental Scoping Report, and that it shall review the EIS, EMMP and CP. While Japan supports these provisions, it is appropriate for the LTC to clearly demonstrate scientific evidence when it provides its comments. This should be clearly stated in the Regulations.

E. Measures to protect the marine environment

17. Draft regulation 23 makes it obligatory for contractors to take all reasonable and practicable measures to prevent or minimize any resulting harm to the marine environment (paragraph 2), and to take all reasonable and practicable Mitigation measures to protect the Marine Environment (paragraph 3). Japan supports this provision as it is important from the viewpoint of the protection of the marine environment.

18. At the same time, as mentioned in 9 above, it is difficult for contractors to take adequate measures unless it is clear as to what measures they need to take for them to be considered as having complied with these obligations. It should not be left for the contractors to make judgments on this point. Therefore, Japan is of the view that standards that provide a benchmark on harmful effect to the marine environment should be established in the "guidelines", subordinate document of the Regulations. Also, the Regulations should clearly state that such standards should be established in the "guidelines."

PART V OBLIGATIONS OF THE CONTRACTOR

A. Introduction of insurance system

19. Draft Regulation 27 makes it obligatory for a contractor to maintain appropriate insurance policies as a fundamental term of the contract and provides that if a contractor fails to maintain the insurance policy the Secretary-General may issue a stop work order on the contractor. Supposing that a contractor is expected to maintain an insurance policy with a private insurance company, Japan would like to request further information on what kind of policy covering what kind of damage there are. Japan would like to discuss whether or not it is appropriate to introduce the insurance system just after the point raised above has been clarified.

B. Compliance with other laws and regulations

20. Paragraph 2 of Draft Regulation 28 makes it obligatory for contractors to comply with "*all laws and regulations, whether domestic, international, or other, that apply to its conduct of activities in the Area*." However, this concept is wide ranging and unclear. Although it is a matter of course for contractors to comply with domestic laws of their sponsoring States, they should not be obliged to comply with such an unclear scope of laws and regulations. Therefore, Japan is of the view that this provision should be deleted.

C. Conditions of vessels to be used

21. Paragraph 3 of Draft Regulation 34 makes it obligatory for the contractors to only

use vessels flagged to a registry of a State that is a party to and has implemented into national law all the international conventions listed in this Regulation. Japan supports this approach of limiting the vessels to be used in order to secure the safety of exploitation activities and to protect the marine environment.

22. Most of the international conventions listed in Draft Regulation 34 apply not only to vessels that navigate the waters in the Area but also to vessels which navigate the high seas, the waters superjacent to the Area. It is reasonable to limit the vessels to be used in the exploitation activities, to those that are flagged to a registry of a State that is a party to these international conventions, since exploitation activities are conducted using the vessels that navigate the high seas superjacent to the Area. However, it seems that a few of these conventions do not apply to vessels which navigate the high seas and the waters in the Area.

- the application of "International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969" in paragraph vi) is limited to pollution damage and the preventing measures to prevent such damage in the "territory of a Contracting State" including the territorial sea (A Protocol to amend this Convention was adopted in 1992, but the application of this Protocol is also limited to pollution damage and the measures to prevent such damage in the territorial sea and the Exclusive Economic Zone (EEZ) .).
- the application of "a Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage" in paragraph vii) and "International Convention on Civil Liability for Bunker Oil Pollution" in paragraph viii) is also limited only to pollution damage and the measures to prevent such damage in the territory, including the territorial sea and the EEZ.

23. Japan would like to ask the Secretariat the reason why the Conventions in vi)-viii) are listed in this Draft Regulation. Japan is of the view that it would be appropriate to delete these Conventions from the list since there is not much meaning in keeping them on the list in view of their geographical application.

D. Accounting Standards to be complied by the contractors

24. Paragraph 1 of Draft Regulation 39 and paragraph 2 of Draft Regulation 64 makes it obligatory for contractors to prepare books, accounts and financial records

"*consistent with*" (paragraph 1 of Draft Regulation 39) / "*in conformity with*" (paragraph 2 of Draft Regulation 64) International Financial Reporting Standards (IFRS). Japan is also of the view that it is very desirable that contractors prepare appropriate financial documents. However, IFRS adopted by EU is not the only internationally established accounting standards. Other than IFRS, Generally Accepted Accounting Principles adopted by the United States (US- GAAP) and the accounting principles and standards adopted by Japan are widely used as three major accounting standards. In fact, Regulations on Prospecting and Exploration for mineral resources in the Area provide that an entity is required to submit the financial documents "*in conformity with internationally accepted accounting principles*" and does not limit the accounting principles to be used to IFRS. Therefore, it is appropriate that the financial documents to be prepared by contractors should be "in conformity with internationally accepted accounting principles", and this should be reflected in the Regulations.

PART VI REVIEW AND MODIFICATION OF A PLAN OF WORK FOR EXPLOITATION

No specific comment.

PART VII FINANCIAL TERMS OF AN EXPLOITATION CONTRACT

A. Determination of fees paid by a contractor

25. In these Draft Regulations, it is provided that a contractor shall pay to the ISA in addition to Performance Guarantee in 9 above (i) annual fixed fee, (ii) royalty, and (iii) administrative fee, and that specific amount to be paid shall be determined by the Council. Japan is of the view that this system is appropriate.

26. However, the amount for each fee should be set at the level that would not dampen the incentive of contactors for exploitation since the risks that accompany the exploitation of mineral resources in the Area are considerable. It should be fully born in mind that if the fees are set too high, there will be no contractors to exploit mineral resources in the first place. With regard to the rates of payments, the Agreement itself specifies that "*the rates of payments under the system shall be within the range of those*

prevailing in respect of land-based mining of the same or similar minerals." (see Section 8.1(b), Annex of the Agreement)

27. From this point of view, it is appropriate to add such wordings as "*pursuant to relevant provisions of the Annex to the Agreement*, or "*with due regard to economic rationality*" to the relevant parts of the Regulations that deal with the decision by the Council on the amount of the fees. Also, Japan is of the view that we should look into what is meant by "*the rates of payments under the system shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals*" as in paragraph 1(b) of Section 8 of the Annex to the Agreement.

B. Engagement of the Finance Committee in the determination of the fees to be paid

28. The Draft Regulations do not provide for the engagement of the Finance Committee in the Council's decisions on annual fees, royalty, and administrative fee. However, according to paragraph 7 of Section 3 of the Annex to the Agreement, Decisions by the Council having financial or budgetary implications "*shall be based on the recommendations of the Finance Committee*." This should be added in the Regulations.

PART VIII INFORMATION GATHERING AND HANDLING

29. The provisions on confidential information in Regulation 75 are different from those stated in the Regulations on Prospecting and Exploration for mineral resources in the Area. We do not see the necessity of differentiating the scope of confidential information between exploration stage and exploitation stage, and the provisions on this matter should be the same. If the Secretariat considers that the scope of confidential information should be different between the stages of exploration and exploitation, it would be appreciated that the Secretariat explains the reason.

PART IV GENERAL PROVISIONS

No specific comment.

PART X ADMINISTRATIVE FEES

See comments 25-27 above.

PART XI INSPECTIONS

A. Basic views on inspections

30. Inspections are the system to ensure that exploitation of mineral resources in the Area are undertaken appropriately, but it should be born in mind that inspections may bear unnecessary burden on States, contractors, and the Secretariat of the ISA depending on how they are implemented. To minimize the burden of States, contractors, and the Secretariat of the ISA including financial burdens, Japan is of the view that it is appropriate not to have inspections by Inspectors on a regular basis but to have them only when deemed necessary.

B. Cases where the inspection should be considered

31. As mentioned in 30 above, Japan is of the view that inspections on a regular basis are not necessary and that they should be carried out only when deemed necessary. Our idea of cases where an inspection should be considered is as follows. They should be clearly stipulated in the Regulations;

-where doubts arise from the documents submitted by a contractor

As a contractor is to submit relevant information such as the EIS, annual report, and royalty returns to the Secretary-General (see Draft Regulations 24, 37 and 58), if doubts arise from these documents regarding compliance by the contractor with the Regulations and the contract, the LTC should consider whether or not an inspection should be carried out.

-where doubts arise from the location information transmitted by a contractor

Under the Draft Regulation, a mining vessel is to be fitted with an electronic monitoring system, which records the date, time and position of mining activities, and the Secretary-General is to issue a compliance notice when he or she reasonably suspects that unapproved mining activities have occurred or are occurring (see Draft

Regulation 31). In this regard, Japan is of the view that the Secretary-General should request the LTC as necessary to consider whether or not an inspection is necessary prior to issuing a compliance notice.

-where doubts arise from information provided by a third-party

A third-party may also provide information on non-compliance to the Secretariat. In such a case, if the Secretary-General deems appropriate, the LTC should be requested to consider whether or not an inspection should be carried out.

C. Decision to carry out an inspection

32. As mentioned in 31 above, Japan is of the view that in all cases the LTC should consider whether or not an inspection is necessary first, and then the Council should make its decision based on the recommendation by the LTC. This should be clearly stated in the Regulations. Such a system is consistent with the functions of the LTC as set out in paragraph 2(m) of Article 165 of UNCLOS.

D. Appointment of Inspectors

33. Creating a permanent post of Inspectors will lead to imposing heavy financial burden on State Parties. Main purposes of inspection would be to check mainly on i) compliance with accounting rules (whether appropriate declaration is made on the quantities of mineral resources exploited in the mining area), and ii) compliance with environmental rules (whether appropriate environmental measures are taken based on the EMMP and CP). However, items to be verified vary largely between i) and ii) above, and the expertise required are also different. Therefore, Japan is of the view that it is appropriate to appoint Inspector(s) with necessary expertise each time the Council decides to carry out an inspection, rather than to hire Inspectors on a permanent basis. This should be clearly stated in the Regulations.

34. With regard to the appointment of Inspectors, there may be two options. One is to delegate the inspection work to an appropriate entity such as a consulting firm. (Under this option, it would be appropriate to provide for the criteria that the entity to which inspection work will be delegated need to fulfill in the "guidelines.").The other is for the State Parties to nominate Inspector candidates in advance and select the Inspector(s) from a list of nominated and registered candidates. (Under this option, it

would be appropriate to provide for the criteria for nomination and selection of Inspector(s) in the "guidelines." The expenses for inspection should be borne by the State Party/Parties which nominated the Inspector(s) in charge of that inspection.).A thorough discussion is necessary to consider which option is more appropriate.

E. Participation of sponsoring States

35. Sponsoring States should be permitted to participate in the inspection to make sure that the inspection is carried out appropriately. This should be clearly provided for in the Regulations.

PART XII ENFORCEMENT AND PENALTIES

A. Identification of breach

36. Draft Regulation 89 provides that the Secretary-General shall issue "a compliance notice" (which identifies the breach and requires a contractor to take remedial action) to a Contractor at any time on reasonable grounds and require the Contractor to take necessary action. However, this Regulation does not provide for engagement of the LTC and the Council in this process. Since the decision on inspections on the contractor's work involve the recommendation of the LTC to the Councils, decision to issue a "compliance notice", which is more important, should also involve the recommendation of the LTC to the Council. Therefore, Japan is of the view that identification of breach and remedial actions to follow shall be by decision of the Council based on the recommendation of the LTC. This should be clearly stated in the Regulations.

B. Obligation of sponsoring States to ensure compliance by Contractors

37. Draft Regulation 91 provides that without prejudice to generality of their obligations under Article 139, paragraph 2, Article 153, paragraph 4, and Annex III, Article4 (4) of the Convention, sponsoring States shall take all necessary measures to secure compliance by Contractors whom they have sponsored and lists the obligations of which sponsoring States shall ensure compliance. This formulation could be understood to mean that this Regulation creates obligations of sponsoring States. Furthermore, the scope of measures to be taken by the sponsoring States is unclear.

38. On the other hand, the responsibility of sponsoring States to ensure compliance by contractors is already provided for in paragraph 4 of Article 4 of Annex III to the Convention. Furthermore, it is clearly provided that the scope of such responsibility remains "*within their legal systems*", and also that "*A sponsoring State shall not, however, be liable for damage caused by any failure of a contractor sponsored by it to comply with its obligations if that State Party has adopted laws and regulations and taken administrative measures which are, within the framework of its legal system, reasonably appropriate for securing compliance by persons under its jurisdiction*." Japan is of the view that the text of Draft Regulation 91, which is intended to specify the obligations of a sponsoring State to ensure compliance by contractors, should be modified to make its intention clearer.

PART XIII SETTLEMENT OF DISPUTES

A. The reason to limit the procedures of settlement of disputes

39. Paragraph (c)(i) of Article 187 of the Convention provides that the Sea-Bed Disputes Chamber shall have jurisdiction in disputes between parties to a contract concerning the interpretation or application of a relevant contract or a plan of work. Paragraph 2(a) of Article 188 of the Convention also provides that these disputes shall be submitted, at the request of any party to the dispute, to binding commercial arbitration, unless the parties otherwise agree. Furthermore, paragraph 2(c) of Article 188 of the Convention provides that commercial arbitration shall be conducted in accordance with "*the UNCITRAL Arbitration Rules*" or "*such other arbitration rules as may be prescribed in the rules, regulations and procedures of the Authority*". Therefore our understanding is that under UNCLOS, with regard to disputes concerning the interpretation or application of contracts or plans of work, 3 fora for settlement of disputes are in place, namely, i) commercial arbitration in accordance with "*the rules, regulations and procedures of the Authority*", ii) commercial arbitration in accordance with "*the UNCITRAL Arbitration Rules*" and iii) the Sea-Bed Disputes Chamber.

40. However, with regard to "*dispute concerning the interpretation or application of the exploitation contract*", where "*the Contractor seeks a review of any decision made or action taken by or on behalf of the Authority against a Contractor"* (paragraph 2 of Draft Regulation 92), Draft Regulation 92 seems to exclude commercial arbitration in

accordance with "*the UNCITRAL Arbitration Rules*" and the Sea-Bed Disputes Chamber, and to provide that only procedures to be applied are those provided in paragraphs 3 to 7 of this Draft Regulation.

41. Japan is of the view that it is not appropriate in principle to deny the application of disputes settlement procedures offered in the Convention, the superior document of the Regulations, and to apply only the procedures provided by the Regulations, a document subordinate to the Convention. Therefore, Japan is of the view that it would be more appropriate for the procedures provided in paragraphs 3 to 7 of Draft Regulation 92 to be placed under paragraph 2(c) of Article 188 of the Convention, as a part of "*the rules, regulations and procedures of the Authority*" (this means that settlement of disputes by commercial arbitration in accordance with "*the UNCITRAL Arbitration Rules*" or the Sea-Bed Disputes Chamber is not excluded). Japan would like to ask for explanation on the backgrounds against which this Regulation was formulated.

B. Requirement of an expert in a panel of experts

42. With regard to the selection of members in the commercial arbitration described in paragraphs 4 and 5 of Draft Regulation 92, if the Secretary-General and the Contractor cannot agree upon a single expert to determine the dispute, the dispute shall be referred to a panel of experts, and if they fail to agree on the composition of the panel within thirty days, they shall each nominate one member of the panel, and the two members so nominated shall agree upon the third member of the panel. Japan is of the view that, unless the parties agree, the third member should have no interest with the parties, and should have high expertise on the subject of the disputes. Japan proposes making guidelines which clarifies the criteria for the appointment of the third member of the panel.

43. Paragraph 5 of Draft Regulation 92 provides that if the two members nominated by the Secretary-General and the Contractor are unable to agree within thirty days on the third member, the President of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea shall nominate the third member of the panel. Japan would like to ask for explanation on the backgrounds against which this Regulation was formulated.

PART XIV REVIEW OF THE AUTHORITY'S REGULATIONS

No specific comment.