Expert Opinion
regarding some international law issues
arising from the implementation of the
Hambantota Port Project

14 October 2017

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Abbreviations

ARSIWA	ILC Articles on the Responsibility of States for Internationally Wrongful Acts (2001)
CESCR	Committee on Economic, Social and Cultural Rights
CJIL	*Chinese Journal of International Law*
Collected Courses	*Collected Courses of the Hague Academy of International Law (Recueil des Cours de l'Académie de Droit International de La Haye)*
EIA	Environmental impact assessment
ff.	following
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICJ Reports	*International Court of Justice Reports*
ICSID	International Centre for Settlement of Investment Disputes
ILC	International Law Commission of the United Nations
para.	Paragraph
PRC	People's Republic of China
UN	United Nations
UNTS	*United Nations Treaty Series*

1. Introduction

1. We have acted as legal advisor to the Transnational Government of Tamil Eelam (hereafter the "**TGTE**") solely in connection with the giving of this opinion (hereinafter the "**Opinion**"). You have asked us to provide an opinion as to rules of international law relevant to an evaluation of international legal aspects and implications of the project contemplated by the Government of Sri Lanka (hereinafter the "**GOSL**") in cooperation with the People's Republic of China (hereinafter "**China**" or the "**PRC**") and with the participation of a Chinese company named China Merchants Port Holdings Company Limited (the "**Chinese Party**"), of development of the port located at Hambantota in Sri Lanka (hereinafter the "**Hambantota Port Project**" or the "**Concession**").

Photo: vehicule storage at Hambantota Port, circa 2014 (source: https://automotivelogistics.media/intelligence/the-unexpected-rise-of-hambantota-port)

2. The Opinion intends to identify certain international legal issues relating to the Project and to assist the TGTE in understanding and evaluating those issues.

2. Preliminary Remarks. Scope of the Opinion. Reservations.

3. This Opinion is given only with respect to relevant rules of international law, to the exclusion of the rules of any domestic legal system.

4. For the purposes of this Opinion, we have relied on a number of documents which are listed in **Section 6** below. We have not verified the completeness and/or accuracy of these documents or of the information otherwise publicly available regarding the Project, and we have assumed that these documents and information were true and accurate; it may be that we have not identified or analysed all the documents that ought to have been reviewed by us for the purpose of this Opinion, so that the documents listed in **Section 6** below may not contain all the information which we would consider to be material or relevant to the Opinion.

5. This Opinion is addressed to, and is for the sole benefit of the TGTE. It may not be disclosed to or relied upon by any other person, nor quoted or referred to in any public document, nor filed with anyone, without our express written consent.

6. We shall be under no obligation to update this Opinion to reflect, or to advise you or any other person of, any development, circumstance or change of any kind, including any change of law or practice, that may occur after the date of this Opinion, even if such development, circumstance or change may affect the legal analysis, legal conclusion or any other matter set out in this Opinion.

3. Factual background

7. On 29 July 2017, a Chinese company named China Merchants Port Holdings Company Limited (the "**Chinese Party**") entered into a Concession Agreement concerning the development, management and operation of the Hambantota Port in Sri Lanka. This agreement is referred to in the present Opinion as the "**Concession Agreement**". The other parties to the Concession Agreement were the Sri Lanka Port Authority ("**SLPA**"), the Government of Sri Lanka ("**GOSL**") and several other entities, as will be set out in further detail below. The present Opinion is concerned with potential international law issues likely to arise from the conclusion and implementation of the Concession Agreement and the Hambantota Port Project generally. In order to facilitate the understanding of the broader context of the Project, a brief overview of the origins and development of the Project (**Section 3.1**), its negotiation (**3.2**) and its signature (**3.3**) are set out below. It is precised that, while we have reviewed a number of documents relating to the Project (as listed in **Section 6** of this Opinion), the purpose of this opinion is not to describe in detail the specifics of the Project and the related contractual documentation, nor to analyse the project and the agreements related to it from the viewpoint of its commercial law, business law or financial law aspects. Therefore the present Opinion only sets out the basic characteristics and main features of the Project and the Concession Agreement, to a very limited extent, merely in order to facilitate the understanding of the international legal issues that form the subject-matter of the present Opinion.

3.1. The origins and development of the Hambantota Port Project

8. According to official information disclosed by the Chinese Party upon completion of the negotiation of the Concession Agreement, the Port of Hambantota is located at 6°07

North and 81°06 East at the Southern coast of Sri Lanka. The Hambantota Port Project is a project to develop a major industrial and service port with an attached industrial zone in the Port of Hambantota and it is currently expected that the project will comprise of three phases. Phase 1 of the Hambantota Port was completed in December 2011 and has commenced operation since June 2012. Construction works for Phase 2 has commenced since September 2012 and was completed in April 2015.[1]

9. Hambantota Port is a comprehensive deep-water port, with 10 berths in Phase I and II, and quay length of up to 3,487 meters; the berths are specialized to handle containers, bulk cargos, general cargos, RO-RO cargos and liquid bulk. Water depth alongside the quay and navigation channel is -17 meters, which makes Hambantota Port a deep-water port capable of handling super-mega vessels. Hambantota Port is reported to have a great potential for future expansion, with its hinterland covering the South Asia and East Africa, and as a maritime hub in the region.[2]

3.2. Negotiation of the Concession Agreement

10. On 7 April 2016, China and the GOSL entered into a Memorandum of Understanding (MoU) on "Comprehensive Implementation of Investment, Economic and Technological Agreement".[3] According to a press release of the Office of the Cabinet of Ministers of Sri Lanka,

> The Government is engaged in an attempt to encourage Chinese entrepreneurs to enhance the investment co-operation in the major economic sectors through non-traditional financial instruments, bringing a new approach towards the co-operation between the two countries. Accordingly, the proposal made by Hon. Malik Samarawickrama, the Minister of Development Strategies and International Trade, to sign the Memorandum of Understanding between the two countries for the implementation of the investment, economic and technological agreement during the Official Visit to China by the Hon. Prime Minister, was approved by the Cabinet.[4]

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[1] China Merchants Port Holdings Company Limited, Potential Discloseable Transaction, Concession Agreement in relation to Hambantota Port, Sri Lanka, 25 July 2017.

[2] China Merchants Port Holdings Company Limited, Potential Discloseable Transaction, Concession Agreement in relation to Hambantota Port, Sri Lanka, 25 July 2017.

[3] Memorandum of Understanding between the Ministry of Commerce of the People's Republic of China and the Ministry of Development Strategies & International Trade of the Democratic Socialist Republic of Sri Lanka on Comprehensive Implementation of Investment, Economic and Technological Agreement, 6 April 2017.

[4] *See* "Press briefing of Cabinet Decision taken on 2016-04-06 (Subject to Confirmation at the next Meeting)", at http://www.cabinetoffice.gov.lk/cab/index.php?option=com_content&view=article&id=16&Itemid=49&lang=en&dID=6685

11. A document entitled "Project Proposal", dated of September 2016, was submitted by the Chinese Party to the GOSL (hereinafter the "**Project Proposal**"). This document set out the main characteristics of a proposal for the development of the Hambantota port by the Chinese Party.[5]

12. Later on, a "Framework Agreement" for the future development of the Hambantota Port was entered into between the GOSL and the Chinese Party and signed in Colombo on 8 December 2016 (hereinafter the "**Framework Agreement**"). This agreement may be seen as the basis for the subsequent Concession Agreement. It was supposed to remain confidential, according to its Article 12 ("Confidentiality"). It is noteworthy that the Frameworks Agreement displays some of the formal characteristics of international agreements between sovereigns, i.e. provisions and considerations of a fundamentally political and sovereign nature: its preamble states that the parties are

> "guided by the long-established warm and friendly relationship between the Governments of the Democratic Socialist Republic of Sri Lanka (GOSL) and the People's Republic of China (PRC) and their endeavour to contribute to the further development of Sri Lanka".

The preamble of the Framework Agreement also makes clear that the latter is entered into "[p]ursuant to the Memorandum of Understanding dated 7th April of 2016, signed between the GOSL and PRC [...]".

3.3. Signature of the Concession Agreement

13. The documents pertaining to the Hambantota Port Project obtained by PILAG, as described in **Section 6** below, help us understand the various stages from the approval to the final signature of the Concession Agreement. Most importantly, it gives a legal evidence of the Project being a *"debt for equity swap"* exercise that is mostly alluded in journalistic analysis without any definitive proof.

14. As per the available document trail, it seems that the first proposal of the Hambantota Port was sent to the PM Wickremasinghe on 12 September 2016; and as mentioned in the letter itself, it was sent in response to an earlier letter sent by the Prime Minister's Office (**PMO**) on 30 June 2016. Curiously enough it was copied to the Ambassador Extraordinary and Plenipotentiary of China to Sri Lanka. Also, this letter is one of the only two documents to mention debt restructuring as a principal objective of the Project.[6]

15. In chronological order, the next set of documents is from the Chairman of the Sri Lankan Ports Authority (**SLPA**) to the Secretary, Ministry of Ports and Shipping. These letters are muted in tone when bringing to attention that the key members of SLPA were invited only at the last minute to the Hambantota Project talks in the PMO. One of these

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[5] See Section 6 of this Opinion [Index of documents examined], (no. 1) 12 Sep. 2016, 'Project Proposal'.

[6] See Section 6 of this Opinion [Table of Primary Documents], (no. 1) 12 Sep. 2016, *'Letter from Rep of CHEC to PM'*.

letters contains the second mention of debt restructuring, and importantly, the mention that the Chinese corporations present in the meeting were nominated by the PRC government.[7]

16. The next trail of documents shows a constant flow of letters from the Chairman of SLPA to different governmental authorities all protesting against the failure to involve SLPA in the negotiations and vehement derogation of its powers in the Hambantota deal.[8] Protestations were sent to the offices of the Attorney General and the Secretary of Ministry of Ports and Shipping, and the responses received carried the undertones of annoyance, and SLPA was asked to comply with the directions of the Cabinet Committee on Economic Management (CCEM).[9]

17. *Mechanics of the deal* – According to the document named "Potential Discloseable Transaction", the deal would follow the transactions designed such as – SLPA would be incorporating two private limited liability companies in Sri Lanka - "HIPG" Hambantota International Port Group (Private) Limited, and, "HIPS" Hambantota International Port Services Company (Private) Limited. Both the companies being wholly-owned subsidiary of SLPA as at the date of the agreement.

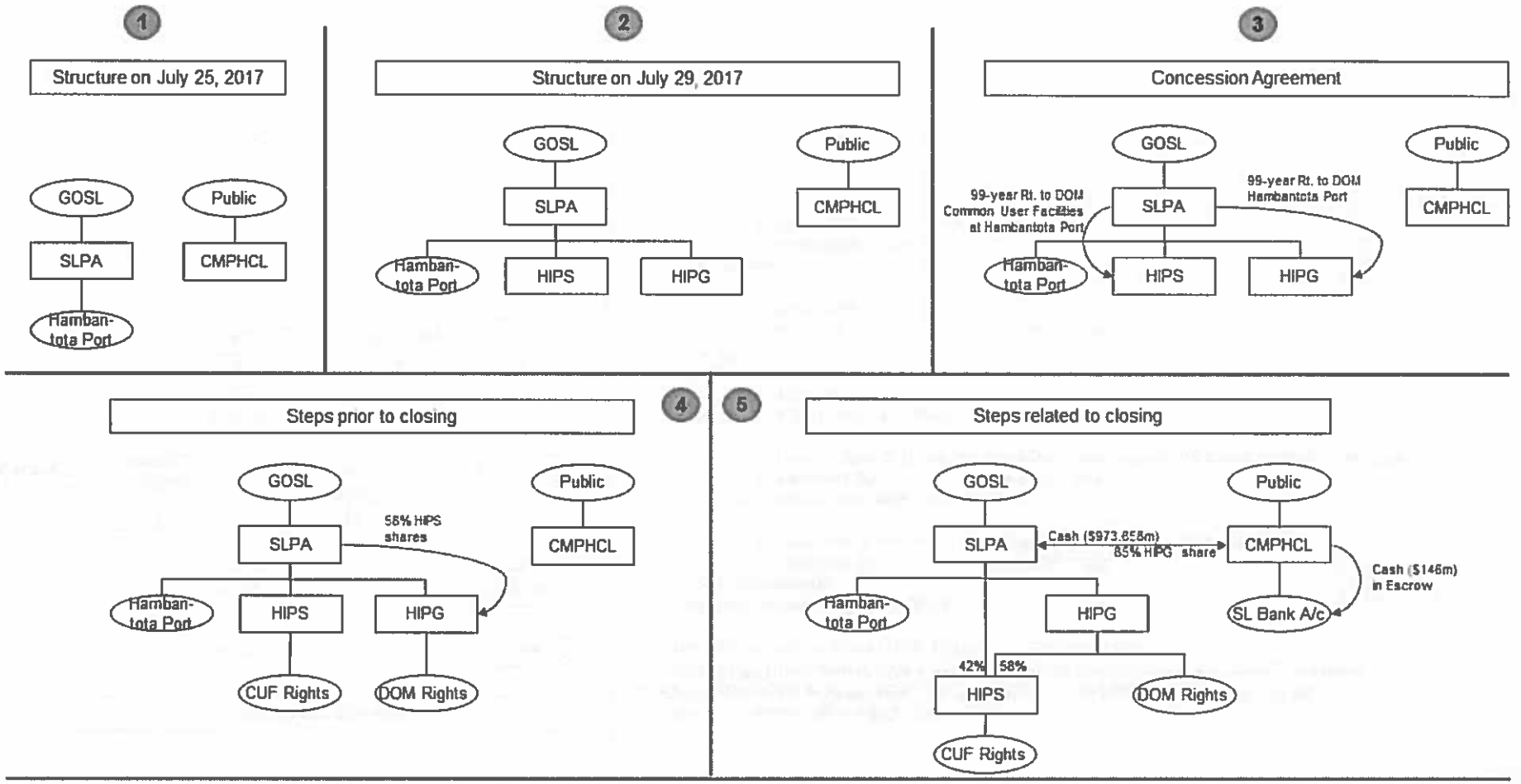
CMPort would then invest an amount of USD 1,120 million into Hambantota Port and related activities. The company will pay USD 973.658 million to SLPA for the acquisition of the 85% issued share capital of HIPG. HIPG would then use a section of that amount to acquire 58% of issued share capital in HIPS.

(For further clarity, please refer to the diagrammatical representation of the deal in following pages)

[7] Id., (no. 2) 26 Oct 2016 and (no.3) 29 Oct 2016.

[8] Id., (no.4) 31 Oct 2016; (no.9) 5 Dec 2016; (no.10) 5 Dec 2016; (no. 17) 21 Dec 2016.

[9] Id. (no.15) 15 Dec 2016; and (no. 16) 16 Dec 2016.



CMPHCL: China Merchants Port Holdings Company Limited
HIPS: Hambantota International Port Services Company (Private) Ltd.
GOSL: Government of Sri Lanka
SLPA: Sri Lanka Port Authority
HIPG: Hambantota International Port Group (Private) Ltd.

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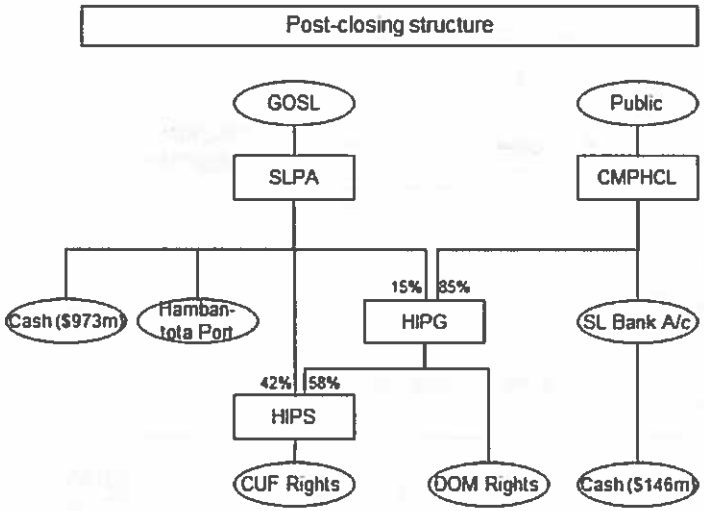

- CMPHCL's ownership in HIPG: 85%
- HIPG's ownership in HIPS: 58% - so, CMPHCL's indirect ownership in HIPS: 49.3%
- Value of HIPG (inclusive of 58% in HIPS): $1,145.48 (because $973.657 represents 85%)
- Exclusivity for first 15 years within 100 km of Hambantota port

- Divestment options: SLPA to acquire:
  - First 5 months
    - Minimum: 5% Maximum: 20%
    - Price: Same as the per share price that CMPHL will pay at closing
  - After 5 months, but within first 10 years:
    - Minimum: 5% Maximum: 20%
    - Price: Higher of (i) the per share price that CMPHL will pay at closing, or (ii) FMV
  - 70 years to 70 years 6 months
    - 100% at FMV
  - 80 years
    - Minimum: 5% Maximum: 60%
    - Price: USD 1
  - 99 years
    - Ownership: 100%
    - Price: USD 1

4. Some international legal issues raised by the Hambantota Port Project

18. We have provisionally identified certain issues of international law that may be implicated in, or that may arise from, the Project. These issues are the following:

- whether the Concession Agreement qualifies as, or entails, a territorial lease under international law; this question is examined at **Section 4.1** below;

- whether the Concession Agreement may entail sovereignty issues (**Section 4.2**);

- whether the Concession Agreement may entail human rights issues (**Section 4.3**);

- whether the Concession Agreement may entail implications regional security (**Section 4.4**);

Finally, **Section 4.5** examines the relevance of various rules of international law that may possibly affect the validity or legality of the Concession Agreement and the Project at large: these rules have been identified as (i) coercion as a cause of invalidity of international agreements; (ii) socio-economic and environmental assessments as prerequisites of infrastructure projects under international environmental law, and (iii) norms belonging to international human rights law as a possible basis for legal challenges of the Project before human rights bodies.

4.1. Does the Concession Agreement qualify as territorial lease under international law?

4.1.1. Criteria of territorial leases and application to the Project

19. As explained above, one of the main features of the Project consists in a long-term lease of the land considered necessary for the development of the Project. Among the Transaction Documents listed in the Framework Agreement of 8 December 2016 is a "Lease Agreement for land and other immovable assets". It is understood that this lease is being granted for the duration of the Concession Agreement, i.e. 99 years.[10]

20. The question arises whether this long-term lease qualifies as "territorial lease" in the meaning of international law. A lease of territory under international law is an agreement by which a subject, ordinarily a State, grants another subject of international law, also ordinarily a State, the right to use and exercise control over part of the former's territory.[11] It is generally considered that territorial leases between States can be implemented through different types of arrangements depending on their objectives – economic, military; or on the scope of territorial rights that are transferred. Even though territorial leases have been an instrument applied by States since centuries, there is no 'model text' of treaties or agreements establishing territorial leases. The variation in the texts is dependent upon the objectives of the States concerned, the area, location and nature of territory leased, the characteristics – both quantitative and qualitative of the rights

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[10] See Framework Agreement, definitions of 'Transaction Documents' and 'Concession Period'.

[11] Y. Ronen, 'Lease, Territory', in R. Wolfrum (ed), *The Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2012), Vol. IX, at 904.

transferred. Overall, some of the common features that territorial leases have in common, as their presence is observed in the practice of states are the following:[12]

a) Components – a territorial lease involves two states and a defined area of territory.
b) Interests and Benefits – Both states have an interest in the territory and both derive benefits under the agreement.
c) Boundaries, Location and Size – While a territorial lease does not alter the boundaries of the states involved, the territory is often located entirely within and is smaller than the territory of the lessor state.
d) Legitimacy – the lease confirms or creates a legal connection of each state with the area it covers.
e) Sovereignty issues – there is no transfer of sovereignty, the lessor state's sovereignty is affirmed, while the lessee state is entitled to display a defined range of sovereign competences on that territory.
f) Mutual Will – territorial lease involves consent of both states.
g) Creation and Character – the lease agreement is usually a treaty, but can be any other type of agreement between the states, such as – an executive agreement or an exchange of diplomatic notes.
h) Duration – the duration of lease is fixed.
i) Onwards transfer of rights – a lessee state, within its rights as prescribed in the agreement, may revert its rights to the lessor or assign some of them to another state.

21. The Concession Agreement prima facie meets all these characteristics, except that it does not on its face involve two States, but one (the GOSL), the other party (the Chinese Party) appearing as a private (corporate) entity. However, the Concession Agreement would still qualify as a territorial lease if the Chinese Party was found to act on behalf of, or as agent of, the PRC. Whether the Concession Agreement entails a "territorial lease" in the meaning of international law thus essentially rests upon an assessment of whether the Chinese Party can be said to have acted on behalf of the People's Republic of China, which would also make the Concession Agreement an international treaty under international law.

4.1.2. Is the Chinese Party acting as agent of the PRC?

22. This question revolves mainly around factual issues. It appears that the Chinese Party is a State-owned corporation, which entered into discussion and negotiation of the Hambantota Port Project with the authorities of Sri Lanka upon a recommendation of the Chinese embassy in Sri Lanka. As explained in the Minutes of the Cabinet Committee on Economic Management of GOSL, dated 17 October 2016:

> "The Chinese embassy on behalf of the government of China has recommended the following two state owned corporates and has requested the Sri Lankan authorities to select one of them:

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[12] See generally Strauss (M.J.), *Territorial Leasing in Diplomacy and International Law* (Leiden/Boston: Brill/Nijhoff, 2015), Chapter 2.

1. China Communications Construction Company
2. China Merchants Port Holdings Company Limited".[13]

23. According to publicly available information, the Chinese Party, China Merchants Port Holding, is the largest public port operator in China. CMPort's parent company is China Merchants Group, a conglomerate established in 1872, whose three core businesses include Transportation, Finance and Property. It has been listed on the Hong Kong Stock Exchange since 1992. CMPort's largest shareholder is China State Owned Assets Supervision & Admn Commission, holding 32% of the shares. The second largest shareholder is China Merchants Union, which is a British Virgin Island Company, holding 28.7% of shares. The table below gives the data on the shareholders holding upto 68.72% of the company's shares, and it is assumed that the remaining 31.28% of shares are held by public, since it is a publicly listed company.[14]

Shareholders

Name	Equities	%
China State-Owned Assets Supervision & Admn Commission	1,026,711,635	32.4%
China Merchants Union BVI Ltd.	911,410,193	28.7%
The Vanguard Group, Inc.	41,886,503	1.32%
CAPFI DELEN Asset Management SA	37,562,000	1.18%
Harding Loevner LP	31,377,526	0.99%
Causeway Capital Management LLC	29,299,939	0.92%
BlackRock Fund Advisors	27,890,574	0.88%
Eastspring Investments (Singapore) Ltd.	27,721,934	0.87%
Hermes Investment Management Ltd.	25,242,121	0.80%
Invesco Hong Kong Ltd.	21,020,000	0.66%

Table: Shareholding in CMPort

24. In the context of the law of international responsibility, the question sometimes arises of the attribution of conduct of State-owned companies or enterprises, acting inconsistently with the international obligations of the State concerned. In general, international law considers that the fact that the State establishes a corporate entity is not a sufficient basis for the attribution to the State of the subsequent conduct of that entity. Corporate entities, although owned by and in that sense subject to the control of the State,

[13] Prime Minister's Office, Extract of the Minutes of the Cabinet Committee on Economic Management of GOSL, 17 October 2016 (meeting of 12 October 2017), 'Progress of CANC proposed to negotiate Hambantota Development Projects (Ref CCEM decision 14/09/2016/17)'.

[14] Accessed from http://www.4-traders.com/CHINA-MERCHANTS-PORT-HOLD-1412600/company/ . Last accessed on October 9, 2017 at 1.26 pm.

are considered to be separate, *prima facie* their conduct in carrying out their activities is not attributable to the State unless they are exercising elements of governmental authority within the meaning of Article 5 of the ILC Articles on State Responsibility (ARSIWA). On the other hand, where there is evidence that the corporation is exercising public powers, or that the State is using its ownership interest in or control of a corporation specifically in order to achieve a particular result, the conduct

25. The question whether CMPort can said to be an agent of PRC in this case cannot be answered only by looking at its shareholders, not all corporate entities with ties to the government are to be considered agents of the state under the state responsibility doctrines in international law.[15] Agency in such cases depends on the precise relationship of the entity with the government,[16] and often on a case to case basis.[17] Though, this information certainly gives an idea of CMPort's proximity to PRC, but in order to evaluate the attributability of its acts to the PRC, further inquiries needs to be made, regarding the purpose and nature of the deal and the applicable laws.

4.1.3. The issue of Bilateral Sovereign Debt

26. From the documents we have examined, it is clear that the Hambantota Project has been structured (and the Concession Agreement has been entered into) with a view to address the unsustainability of Sri Lanka's sovereign debt owed to the PRC. There is no settled definition of sovereign debt under international law.[18] Plainly speaking, loans provided by one State to another are called Bilateral Debts. It is largely accepted that bilateral loans do not qualify as an expression of sovereignty as long as they belong to the domain of commercial transactions.[19] However, they may assume character of an international agreement subject to international law if the text of the agreement indicates such an intention of the parties.[20]

27. This dichotomy in the nature of a sovereign loan can be understood by considering that interstate financial obligations may be encapsulated in contracts as well as in treaties.[21] Elucidating, there could be an overarching treaty between the lender state and

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[15] Crawford (J.), 'State Responsibility: The General Part' (Cambridge: Cambridge University Press, 2013), p. 128.

[16] Crawford, in International Law Commission Yearbook, 1998/I, 243.

[17] See generally, *Hyatt International Corporation v. Iran*, (1985) 9 Iran-US Claims Tribunal 72, 94.

[18] Waibel (M.), *Sovereign Defaults before International Courts and Tribunals* (Cambridge: Cambridge University Pres, 2011), pp. 12-13.

[19] Folz (H-E) "State debts", In: Bernhardt E (ed) Encyclopedia, vol IV (Amsterdam: Elsevier 2000), p 608.

[20] See Mann (F.A.), "The proper law of contracts concluded by international persons" (1959) 35 BYIL 34-57.

[21] Megliani, M., *Sovereign Debt – Genesis, Restructuring, Litigation* (The Hague: Springer International, 2015) p.97 *fn. 6*. Recent instances of interstate contracts are the Loan Agreement of 5 June 2009 between the Depositors' and Investors' Guarantee Fund of Iceland and the Commissioners of Her Majesty's Treasury, with Iceland as guarantor, and the parallel Loan Agreement of 5 June 2009

the debtor State containing general and wide provisions relating to the loan sanctioned, and rights and duties of the States pertaining to the loan. There could be then several contracts between the debtor State and other entities executing the loan amount in hard financial terms. If there is any disputed act of either party in a sovereign loan function, it must be determined whether it is qualified to be brought under the treaty regime governing the debt or should it be treated under the contractual provisions.[22]

4.1.4. Sovereign Debt Restructuring

28. When sovereign debtors face with an inability to honor their repayment obligations, an often practiced solution is the renegotiation of debts. Like the term 'sovereign debt', there is no one definition of the term 'sovereign debt restructuring'. Broadly it means when a State with unsustainable debt burden seeks modifications in originally envisaged payments, either after a default or under the threat of default.[23] In such an exercise debtor states often emphasize their willingness to pay and seek the consent of their creditors to ease their debt burdens.[24] Among the modifications sought under a restructuring agreement are rescheduling - new/extended periods for the repayment of the capital and interest; a different/lower interest rate due to the loan, and in some cases, even a change/ reduction in the amount of outstanding principal.[25] More sophisticated methods which are evolving are operations of proper debt restructuring which takes the form of an incisive modification of the terms of the loan, monetary and non-monetary alike; from a formal standpoint, this modification assumes the guise of an amendment to the existing agreement that remains in force or of a novation of the same with a new agreement replacing the old one.[26]

29. Sometimes a restructuring may substantiate in a debt conversion. Technically speaking, the conversion of the debt is based on a "swap", a mechanism elaborated by financial practice to permit the exchange of credits or assets between their respective owners.[27] Generally, it operates by way of the investor purchasing the credits on the secondary market at a price below the face value, the selling bank receives fresh money, the local enterprises are provided with new capital, the debtor States reduces its financial

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between the Depositors' and Investors' Guarantee Fund of Iceland and the State of the Netherlands, with Iceland as guarantor.

[22] Megliani, *id.*, chapter 4, p. 98.

[23] Sturzenegger (F.), and Zettelmeyer (J.), 'Debt Defaults and Lessons from a Decade of Crises (Cambridge: MIT Press, 2007).

[24] Reinisch (A.), 'Debt Restructuring and State Responsibility Issues', in Carreau D et al. (eds.), *La Dette Extérieure: The External Debt'* (Académie de Droit International de La Haye/Martinus Nijhoff: 1995), p. 543.

[25] *Id.* p. 543

[26] Megliani, *supra n. 21*, chapter 8, p. 255.

[27] See generally, Goris P., *The Legal Aspect of Swaps: An Analysis based on Economic Substance* (London/Dordrecht/Boston & New York: Graham & Trotman Ltd & Kluwer Law International, 1994).

burden and encourages foreign investments.[28] Such exchange offers are typically in the 'take-it-or-leave-it' form.[29] Similar to the equity swap that has taken place in the Hambantota Port Project.[30]

4.1.5. Debt Restructurings and International Law

30. There is no coherent regime of law governing sovereign debts and restructurings, which increases the uncertainties in dealing with international law rules on any aspect of sovereign debt. Rules on sovereign indebtedness which has relevant provisions have been found in financial laws, state practices, investment laws, additionally the jurisprudence on the topic has been enriched with practices from Paris Club, HIPC Initiative, TPC, reports and recommendations from IMF and other regional monetary bodies. This indicates that law of State indebtedness and rescheduling shows a close affinity to international "soft law" – the law evolving outside the traditional sources of international law (treaty, custom, general principles of law).[31] To some extent there have been attempts to bring sovereign debts and defaults under International Investment Law, but such have been limited in their scope and application to the contractual violations between the sovereign debtor and a private creditor, and the treaty violations between the States have so far not been entertained under International Investment Law.

31. In absence of hard law governing sovereign debts, creditor states usually rely on their stronger bargaining power in restructuring negotiations. If the debtor state refuse to accept its creditor's terms in a restructuring agreement, they could ultimately prevent any further lending to it and stop economic relations with the debtor state altogether.[32] This perhaps explains why there has been no willful force to create or effect a body of international law governing these transactions.

32. In the present agreement between GOSL and the Chinese Party, the concession to Hamabantota Port has been executed as a part of the *"debt-for-equity swap"* between the PRC and Sri Lanka. On *prima facie* reading, the Concession Agreement displays the typical features of a commercial contract. However, alluding to the discussion above, it would be worth examining the overarching debt agreement between the PRC and Sri Lanka - or if there is any, the agreement pertaining to the debt restructuring of the loan(s) on which Sri Lanka was at risk of defaulting – under the principles of State responsibility in international law, and to test whether this agreement, which displays the 'form and structure' of a commercial contract, is attributable to the sovereign State. Unfortunately,

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[28] Loungnarath V Jr (1995) *Les cadres juridiques de la capitalisation des dettes commerciales des Etats,* in Carreau (D.) et al. (eds.) *The external debt (La dette exterieure), op.cit.*, p. 403.

[29] L. Reiffel,' Restructuring Sovereign Debt: The case for Ad Hoc Machinery' (Washington, DC: Brookings Institution Press, 2003), pp. 193-205.

[30] Please refer to List of examined documents, (no. 3) 29 Oct 2016, *'Letter from Addl Managing Dir., SLPA to Chairman, SLPA'*.

[31] See Reinisch, *op. cit.* pp. 554-555.

[32] *Id.*

these agreements are not available in the public domain, and hence PILAG was unable to access them.

4.1.6. Sovereign Debt and State Responsibility

33. We briefly examine here the issue of State responsibility in relation to sovereign debt restructuring from a general viewpoint. As is well known, the modern concept of State Responsibility is succinctly summarized in Article 1 of the ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA)[33]:

> "[e]very internationally wrongful act of a State entails the international responsibility of that State".[34]

34. A State, however, not being a natural person, carries out its functions through the intermediate involvement of others.[35] *Attribution* is a process by which international law establishes whether the conduct of a natural person or other such intermediary can be considered an 'act of state', and thus be capable of giving rise to state responsibility.[36] Article 5 of ARSIWA provides that

> "The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance".

In the case of the Concession Agreement, it appears that there could be a possibility of attribution of acts of the Chinese Party (CMPort) to the PRC. However, it is worth reiterating that the mere shareholding of the PRC in CMPort does not make the latter an 'agent' of the State.[37] International jurisprudence on the agent relationship has developed in such a way that the International Court of Justice has iterated emphasis on requiring "proof of a particularly great degree of State control over the entity in question" in the

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[33] Yearbook of the International Law Commission 2001/II(2), 26.

[34] Article 1, Draft Articles on Responsibility of States for Internationally Wrongful Acts, text adopted by the International Law Commission at its fifty-third session in 2001 (A/56/10), annexed to UN General Assembly Resolution 56/83 of 12 December 2001.

[35] *German Settlers in Poland* (1923) PCIJ Ser. B No. 6, 22: 'States can only act by and through their agents and representatives.'

[36] Commentary on ILC Articles on State Responsibility for Internationally Wrongful Acts, Pt. I, Ch. II, para 2.

[37] Not all corporate entitites with ties to the government are to be considered agents of the state. See, *Hyatt International Corporation v. Iran*, (1985) 9 Iran-US CTR 72, 94.

Nicaragua[38] and the *Bosnian Genocide*[39] cases. This is explained further in the commentary to the Art 7(2) of the ARSIWA:

> "The fact that an entity can be classified as public or private [...] the existence of a greater of lesser State participation in its capital or in the ownership of its assets, and the fact that it is not subject to State control, or it is subject to State control to a greater or lesser extent [...] do not emerge as decisive criteria for the purpose of its organs... [T]he most appropriate solution is to refer to the real common feature which these entities have: namely that they are empowered, if only exceptionally and to a limited extent, to exercise specific functions which are akin to those normally exercised by the organs of the State [...]".

35. Since a mere ownership of State in an entity is not an evidence of the control, the international jurisprudence directs us to find the evidence of "delegated government authority". Very relevant to the present Hambantota Concession Agreement is the ICSID case of *EDF (Services) Limited v. Romania*, in which the arbitral tribunal differentiated between the acts pursued with commercial and corporate objectives of two State-owned corporations, as opposed to exercising governmental functions. In the absence of acts exercised in pursuance of the delegated government authority, the claimant failed to convince the tribunal of the status of the corporations as agents of Romania.[40]

36. The Commentary to ARISWA offers a set of criteria for determining whether the acts of an entity can be designated as governmental authority.[41] It posits that such a designation will depend on

(a) *Content of the powers* – if the state ordinarily reserves such a conduct for itself.

(b) *Manner in which they are conferred on the entity* – if there is a specific delegation rather than legality under general law.

(c) *Purposes for which the powers are to be exercised* – if the power been bestowed in order to advance classically sovereign objectives.

(d) *Extent to which the entity is publicly accountable for their exercise* – the extent to which the government is entitled to supervise those on whom it has bestowed governmental authority.

Where a state instructs a private person or entity to do something on its behalf, the attribution of such act is without any doubt.[42] Understanding of the concept of "governmental control" is refined further by Article 8 of ARISWA according to which

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[38] *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. USA), ICJ Rep. 1986 p. 14, 62-3.

[39] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia & Herzegovina v. Serbia and Montenegro), ICJ Rep. 2007 p. 43, 205.

[40] *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, 8 October 2009.

[41] ARISWA Commentary, Art. 5, para 6.

[42] *United States Diplomatic and Consular Staff in Tehran (US v. Iran)*, ICJ Rep. 1980 p. 3, 29-30.

"[t]he conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of that State in carrying out the conduct".

37. The commentary to Article 8 of ARSIWA explains further that even general instructions given by a State which may leave open the preference for execution would suffice for Article 8 to apply. It further adds that where ambiguous or open-ended instructions are given, acts which are considered incidental to the task in question or conceivably within its expressed ambit may be considered attributable to the State.[43]

38. Further, international courts and tribunals, have refined the question of 'direction' or 'control' to indicate the level of control or direction required in customary international law for attribution to occur. From 'effective control' test devised in the *Nicaragua* case to 'overall control' test formulated by the ICTY Appeals Chamber in the *Tadic*[44] case.

Bringing the application of this provision to the present case – attribution may also occur where a state actually instructs a corporation to do a certain thing: where this occurs, one need not have reference to anything more than the fact of the directive.[45]

4.1.7. Interim conclusion

39. The enquiry that was initiated in the present section of the Opinion was plain and simple, and the legal document on which it was initiated (the Concession Agreement) was *prima facie* an investment transaction. That is until cross woven legal issues were identified with respect to the debts, investments and State responsibilities. To summarize, the question posed was – whether the Hambantota Concession Agreement amounts to a territorial lease. In order to determine that, we raised questions into the motivations behind the Concession Agreement – which we identified to be debt easing to a great degree. From here, we attempted to find the loci of sovereign debt restructuring in international law. After examining relevant provisions of international law, including relevant rules on State responsibility, we have found ourselves rich with several legal possibilities.

40. Layers of legal questions that have been attempted to be separated and answered above, have helped arrive to some understandings and conclusions.

(i) First, the jurisprudence of international courts and tribunals on sovereign debt and debt restructurings is not straightforward, especially when accounting for the creditor State's regime of responsibility.

(ii) Second, the determination whether creditor State's obligations (and the breach thereof) is governed primarily by the provisions of financial law or shall be subject to the law of international responsibility, will depend on the breach itself. It can fall under either and it may fall under both, because of 'internationalization of the contract' and if the

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[43] ARISWA Commentary, Art 8, para 2.
[44] *Prosecutor v. Tadic*, Appeal against Conviction, (1999) 124 ILR 63.
[45] Crawford, *supra n. 11*, pp. 160-164.

breach qualifies both as a violation of the treaty governing the debt and of the contract which is executing it *vis-à-vis* a private entity.

(iii) Third, international law at present does not have a clear answer as to whether sovereign debt restructuring is an *acta jure imperii* – sovereign act, or an *acta jure gestionis* – a commercial act of a sovereign. Thus further complicates the question – whether a private entity, in this case the Chinese Party (CMPort) – nominated to execute at least some part of the debt restructuring – is authorized for an act which a sovereign would usually reserve for itself, or, a mere commercial act as in the ordinary course of business. This can be unraveled to some extent if the overarching debt treaty or the terms of agreement on debt restructuring between Sri Lanka and PRC are available for a primary inspection.

41. Since publicly available documents are unsufficient to reach a conclusion as to the exact nature and scope which Sri Lanka and the PRC intended to give to this debt restructuring, it is not possible to give a yes-or-no answer to the question whether the Concession Agreement amounts to a territorial lease. A more practical approach will be to keep the distinction clear, in case more accurate information comes to light such as (a) the precise terms of the umbrella agreements, (b) the extent of diplomatic intervention by the PRC in the Hambantota Project, (c) the discussion/affects of the Project in national policy dialogues of the PRC. Such elements would contribute to clarifying whether the debt restructuring and the nomination of CMPort by the PRC to execute such restructuring fall under *acta jure imperii*. Such elements could eventually point to the conclusion that CMPort acted as an agent of the State, and if so would give way to a stronger possibility that the Concession Agreement amounts to territorial lease. On the other hand, if the debt restructuring qualifies as *acta jure gestionis*, then the acts of the Chine Party in concluding the Conclusion Agreement is an ordinary commercial transaction as well, and then the Concession Agreement would fail to cross the threshold of territorial lease under international law.

4.2. Sovereignty issues raised by the Concession Agreement

42. Assuming that the Concession Agreement qualifies as a territorial lease under international law, this may raise certain issues in terms of sovereignty over the leased land (or territory). One of the basic features of a territorial lease is that the sovereignty over the leased territory does not pass onto the lessee.[46] However, as a matter of fact the granting by a State of a lease over part of its sovereign territory is quite often an expression of weakness or dependency vis-à-vis the lessee, as has often been the case throughout modern history.[47]

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[46] Y. Ronen, 'Lease, Territory', in R. Wolfrum (ed), *The Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2012), Vol. IX, at 905. See also M. J. Strauss, *Territorial Leasing in Diplomacy and International Law* (Leiden/Boston: Brill/Nijhoff, 2015) at 97.

[47] See Strauss (M.J.), *Territorial Leasing in Diplomacy and International Law* (Leiden/Boston: Brill/Nijhoff, 2015), esp. at pp. 97-98.

43. It is accepted that, although the sovereignty over the leased territory remains with the lessor, international responsibility may be shared between the lessor and the lessee in case of commission of an internationally wrongful act by the lessee from the leased territory. Strauss thus explains that

> "international law has been moving toward allocating at least some responsibility to states that allow their sovereign territory to be used by other states whose activities on the territory cause responsibility to be generated. Thus, a lessor that suspends its active involvement with a leased territory while retaining nominal sovereignty there shares liability if the lessee uses the territory to launch a space object that subsequently causes damage in a third state; similarly, the de jure sovereign may be shown to share responsibility under certain conditions when a lessee's activities on the territory constitute internationally wrongful acts".[48]

44. Further, a legal argument could possibly be made, that the Concession Agreement infringes in some way the sovereignty of Sri Lanka. The Charter on the Economic Rights and Duties of States (adopted by the UN General Assembly by means of Resolution 3281 (1974)) asserts that economic and political relations between States should be governed by, *inter alia*, the principles of non-aggression and non-intervention. More specifically, Article 32 states that:

> "No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights".

45. As far as China is concerned, it may be said that, should a finding that China has engaged into unlawful interference with the sovereignty of Sri Lanka, amounting to illicit intervention, be made (assuming pro tem that a competent international organ be entitled to make such a finding), such finding would potentially entail the international responsibility of China. It is probably unlikely that any appropriate jurisdictional basis exists for an international body to be competent to make such finding. Then, from the perspective of Sri Lanka, the issue is essentially related to the question whether the country has been subjected to some form of unlawful coercion in the negotiation and the conclusion of the Concession Agreement, that may entail the invalidity of the latter. This question will be dealt with below at **Section 4.5.**

4.3. Human rights implications of the Concession Agreement

46. The human rights obligations potentially incumbent on the PRC and the Chinese Party *vis-à-vis* the populations of Sri Lanka possibly affected by the Project (assuming pro tem

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[48] See Strauss (M.J.), *op. cit.*, pp. 101-102 (footnotes omitted).

that the Project entails such adverse effects, which is an issue that clearly lies outside the scope of this Opinion) are examined below at paras.

4.4. Regional Security implications of the Concession Agreement

47. It is obvious that, even if presented as a pure commercial endeavour, the Hambantota Port Project has significant strategic implications.[49] It is made clear in the official information disclosed by China Merchants upon finalization of the Concession Agreement, that the Port of Hambantota

> located on the Southern coast of Sri Lanka occupying a prime location within 10 nautical miles to the main shipping route from Asia to Europe and is also *in a strategic position along the "Silk Road Economic Belt and the 21st Century Maritime Silk Road"*.[50]

It is widely assumed that the Maritime Silk Road Initiative (MSRI), although it relates mainly to the development of international trade and investment activities of China, necessarily incorporates a geopolitical aspect, and thus a strategy and security dimension.[51]

48. There has been much discussion and controversy both in Sri Lanka and the region regarding the possible military dimension of the Hambantota Port, and particularly its possible use by the military (naval) forces of China. It is well known that China has a strategic interest in Sri Lanka. The Chinese Foreign Minister Wang Yi labelled Sri Lanka in 2015 a "dazzling pearl on the Maritime Silk Road".[52] In 2013 the two countries elevated their relationship to a "strategic partnership" and signed a joint communiqué calling for closer maritime security and defence cooperation and enhanced Chinese involvement in infrastructure projects.[53] On previous occasions, GOSL granted access to the port of

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[49] See e.g. Smruti S. Pattanaik, 'New Hambantota Port Deal: China Consolidates its Stakes in Sri Lanka', 14 August 2017, on the website of the Institute for Defence Studies and Analyses (IDSA) (India), at http://www.idsa.in/idsacomments/new-hambantota-port-deal-china-consolidates-its-stakes-in-sri-lanka_sspattanaik_140817; Narayani Basu, 'China Buys Hambantota Port: Should India Be Concerned?', *The Diplomat*, 29 July 2017, at https://thediplomat.com/2017/07/china-buys-hambantota-port-should-india-be-concerned/.

[50] China Merchants Port Holdings Company Limited, Potential Discloseable Transaction, Concession Agreement in relation to Hambantota Port, Sri Lanka, 25 July 2017, p. 7 (emphasis added).

[51] See e.g. Jean-Marc F. Blanchard & Colin Flint, 'The Geopolitics of China's Maritime Silk Road Initiative' (2017) 22 *Geopolitics*, Issue 2, available at http://www.tandfonline.com/doi/full/10.1080/14650045.2017.1291503?src=recsys.

[52] 'Wang Yi: Expect Sri Lanka to Become Pearl on "Maritime Silk Road of the 21st Century"', 28 February 2015, website of the Ministry of Foreign Affairs of the People's Republic of China, at http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1241672.shtml.

[53] See David Scott, 'Musical Chairs in Sri Lanka for China and India?' China-India Brief #48 (March 24-April 15, 2015), http://lkyspp.nus.edu.sg/cag/publication/china-india-brief/china-india-brief-48.

Colombo to a Chinese submarine, prompting a negative reaction from India.[54] The military-security dimension of the China-Sri Lanka relation in the context of the Maritime Silk Road has been highlighted for example by professor Renping Zhang, Director of the Centre for International Maritime Convention Studies (CIMCS) at Dalian Maritime University (China). In his article adapted from a presentation made at an international workshop on "Perspectives on the Maritime Silk Route: Prospects, Directions and Framework for Long-Term International Cooperation", held in Colombo (Sri Lanka) from 27 to 29 May 2015, he emphasized that security-military dimension as follows:

> "Maritime security is the concept of maintaining the freedom of the high seas unhindered by piracy and other man-made threats. The 21st Century Maritime Silk Road also contributes to regional maritime security. It calls for all-round cooperation in maritime fields. In recent years, maritime security in the region has been increasingly threatened by piracy, maritime terrorism, maritime crimes, and maritime disasters. Countries along the road share a common interest in addressing these challenges to maritime security. Therefore, measures for combating piracy and maritime crime are one of the important parts of the Maritime Silk Road. China has and continues to be committed to promoting information exchange and maritime cooperation between countries along the road in the areas of maritime safety and security and marine environmental protection.
>
> Implementation of the Belt and Road Initiatives is a long-term strategy as well as a systematic project. It therefore requires step-by-step efforts to expand comprehensive cooperation between China and Sri Lanka".[55]

Along the same line, Mr. Zhou Bo, Honorary Fellow at the Chinese People's Liberation Army (PLA) Academy of Military Science, authored in 2014 a piece aiming at "debunking" the narrative according to which China was adopting a "string of pearls" strategy of naval bases stretching from the Middle East to southern China (including in Sri Lanka). But in doing so, the author admitted that "China has only two purposes in the Indian Ocean: economic gains and the security of Sea lines of Communication (SLOC). The first objective is achieved through commercial interactions with littoral states. For the second purpose, the Chinese Navy has, since the end of 2008, joined international military efforts in combating piracy in the waters off the coast of Somalia".[56]

49. The GOSL has tried to alleviate the public concerns, expressed in Sri Lanka, India and elsewhere, regarding the possible military use of the Hambantota Port by China. It has been reported that the Concession Agreement has two exclusive clauses that relate to

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[54] See e.g. Smruti S. Pattanaik, 'New Hambantota Port Deal: China Consolidates its Stakes in Sri Lanka', 14 August 2017, at http://www.idsa.in/idsacomments/new-hambantota-port-deal-china-consolidates-its-stakes-in-sri-lanka_sspattanaik_140817.

[55] Renping Zhang et alii, 'The 21st Century Maritime Silk Road: Sino-Sri Lanka Bilateral Maritime Cooperation' (2015) 2 *China Oceans Law Review* 273-281, at 276-277.

[56] Zhou Bo, 'The String of Pearls and the Maritime Silk Road', *China-US Focus*, 11 February 2014, at https://www.chinausfocus.com/foreign-policy/the-string-of-pearls-and-the-maritime-silk-road/.

the issue of management of the port.[57] These clauses are reportedly aiming at giving assurances to India that no new episode of Chinese submarine at dock in a Sri Lanka port will occur.[58] The clauses have been quoted as stating the following:

> "It is expressly understood and agreed… [by the parties] that the use of the port property and the common user facilities shall be strictly dedicated for the purposes of port- and marine-related commercial and development activities… and is specifically prohibited from using or carrying out any non-port or non-marine related… activities involving military personnel and/or any kind/type of activities of military nature whatsoever… the sole authority for granting all requisite permissions, clearances, and approvals for bringing in or berthing warships, submarines or storing, warehousing of any military equipment and machinery, installation of communication networks, facilities, shall only be with GoSL".[59]

50. While the wording of this clause is reproduced on various websites, and it is reported that such wording was submitted to the Parliament of Sri Lanka prior to finalization of the Concession Agreement,[60] we have been unable to verify that such clause is actually present in the Concession Agreement (or another of the Project Documents). The reason is that the Concession Agreement, to our knowledge, remains confidential to this day. More generally, to our knowledge and based on extensive research on relevant materials publicly available, there is no certainty as to the existence of an agreement on formal exclusion of military use of the Hambantota Port. The Project documentation publicly available does not contain a clause to that effect. It cannot be excluded that such clause exists, or that an agreement on formal exclusion of military use of the Hambantota Port was formalized by means of a separate instrument, that may have been kept confidential. It is to be added that, should the clause quoted above actually be found in the Concession Agreement (or another of the Project Documents), this does not affect the fact that, due to the situation of vulnerability and dependence of the GOSL vis-à-vis its Chinese creditor, the effectiveness of such clause would still be subject to caution.

51. It is to be further noted that the Memorandum of Understanding (MoU) on "Comprehensive Implementation of Investment, Economic and Technological Agreement" entered into by GOSL and China on 7 April 2016[61] expressly mentions as

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[57] See e.g. Smruti S. Pattanaik, 'New Hambantota Port Deal: China Consolidates its Stakes in Sri Lanka', 14 August 2017, at http://www.idsa.in/idsacomments/new-hambantota-port-deal-china-consolidates-its-stakes-in-sri-lanka_sspattanaik_140817.

[58] See e.g. Smruti S. Pattanaik, 'New Hambantota Port Deal: China Consolidates its Stakes in Sri Lanka', 14 August 2017, at http://www.idsa.in/idsacomments/new-hambantota-port-deal-china-consolidates-its-stakes-in-sri-lanka_sspattanaik_140817.

[59] Quoted by Smruti S. Pattanaik, 'New Hambantota Port Deal: China Consolidates its Stakes in Sri Lanka', 14 August 2017, at http://www.idsa.in/idsacomments/new-hambantota-port-deal-china-consolidates-its-stakes-in-sri-lanka_sspattanaik_140817.

[60] 'Geopolitics, home stress in Colombo's new Hambantota deal', The Indian Express, 28 July 2017, at http://indianexpress.com/article/explained/geopolitics-home-stress-in-colombos-new-hambantota-deal-4770451/.

[61] Memorandum of Understanding between the Ministry of Commerce of the People's Republic of China and the Ministry of Development Strategies & International Trade of the Democratic Socialist

one of the areas of cooperation to be developed between the two countries, the area of defence:

> "The two sides expressed the willingness to maintain close relations between the two countries in the area of defense. They reiterated the need to continue to cooperate and work together on defense and security related issues".[62]

The MoU also refers to the development of bilateral cooperation in security-related areas such as the struggle against piracy, and to cooperation in areas having at least partially a security-related dimension, such as maritime resource management. This is set out in the Joint Statement that was released upon signing the MoU of 7 April 2016:

> "Both sides agreed to convene the second meeting of the Joint Committee on Coastal and Marine Cooperation and convene the first Workshop on Marine and Coastal Cooperation at an early date and to promote the cooperation in the fields of ocean observation, marine meteorology, ecosystem protection, maritime resource management, underwater joint archaeology, search and rescue, combating piracy, navigation security and maritime personnel training, etc. The two sides agreed to carry out exchanges between the relevant departments of the two countries in the area of supervision and anti-corruption, promoting mutual understanding and cooperation in this regard".[63]

4.5. International law challenges to the validity of the Concession Agreement

52. We have identified the following potential issues that may, under certain conditions, affect the validity of the Concession Agreement from the viewpoint of international law: (i) coercion as a possible cause of invalidity under the law of treaties, (ii) possible consequences of insufficient socio-economic and environmental assessments of the Project, and (iii) implications of the right to self-determination in relation to the Project. These issues are briefly examined in the subsections below.

4.5.1. Economic coercion in the conclusion of the Concession Agreement as a possible cause of invalidity

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Republic of Sri Lanka on Comprehensive Implementation of Investment, Economic and Technological Agreement, 6 April 2017.

[62] See "Joint Statement between the People's Republic of China and the Democratic Socialist Republic of Sri Lanka at the conclusion of the Official Visit of Prime Minister Ranil Wickremesinghewebsite", website of the Ministry of Foreign Affairs of Sri Lan, at http://www.mfa.gov.lk/images/stories/pdfs/docs/Joint_Statement-revf-pdf.pdf.

[63] See "Joint Statement between the People's Republic of China and the Democratic Socialist Republic of Sri Lanka at the conclusion of the Official Visit of Prime Minister Ranil Wickremesinghewebsite", website of the Ministry of Foreign Affairs of Sri Lan, at http://www.mfa.gov.lk/images/stories/pdfs/docs/Joint_Statement-revf-pdf.pdf.

53. It is publicly known that Sri Lanka has a huge debt vis-à-vis China, currently standing at about $8bn, part of which is related to the financing granted by China for the initial development of the Hambantota port (since 2010). The total sovereign debt of Sri Lanka is reported to stand at $64bn. About 95% of all government revenues are said to be allocated towards debt repayment.[64] The International Monetary Fund (IMF) has expressed grave concerns about the sustainability of Sri Lanka's external debt, and the risks of debt distress faced by the country.[65] Sri Lanka has recently obtained from the IMF a bailout (April 2016), under the form of an Extended Arrangement under the Extended Fund Facility (EFF). It gives Sri Lanka access to a three-year funding of $1.5bn, supposed to "meet balance of payments needs arising from a deteriorating external environment and pressures which may persist until macroeconomic policies can be adjusted". Among the stated key objectives of this IMF financing are the reduction of "public debt relative to GDP and [lowering] Sri Lanka's risk of debt distress".[66]

Against that background, the failure of the initial development of Hambantota port through Chinese funding has been described as follows:

> [...] what was envisioned as a booming port city, thriving on international sea lanes and providing employment to thousands of locals, was transformed into a debt-trap of colossal proportions.

The same analyst asserts that:

> [w]ith its debt to China mounting to over $8 billion, and despite a recent International Monetary Fund (IMF) bailout, Sri Lanka has had no choice but to revise the deal in a bid to clear the slate with a power that is possessed of palpably larger economic and geopolitical clout.

54. This constrained situation is reflected in the documents of the GOSL that we have seen. For example, an extract of the Minutes of the Cabinet Committee on Economic Management of GOSL, dated 31 October 2016, explains that:

> "...during the Prime Minister's two visits to China, this matter [Hambantota] has been discussed with the Chinese authorities in great detail and the necessity to reduce the debt burden on the Hambantota Port had been explained. It had been decided that the best way to do this was convert the debt to equity. There after a request was made to the Chinese authorities to

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[64] See'Sri Lanka: A country trapped in debt', *BBC News*, 26 May 2017, at http://www.bbc.com/news/business-40044113;

[65] See e.g. IMF, Staff Report for the 2016 Article IV Consultation and Request for a Three Year Extended Arrangement under the Extended Fund Facility, 19 May 2016, at https://www.imf.org/external/pubs/ft/scr/2016/cr16150.pdf.

[66] See also 'IMF agrees $1.5 billion bailout for Sri Lanka to avert balance of payments crisis', *Reuters*, 29 April 2016, at http://www.reuters.com/article/us-imf-sri-lanka/imf-agrees-1-5-billion-bailout-for-sri-lanka-to-avert-balance-of-payments-crisis-idUSKCN0XQ063.

take the maximum equity on the Hambantota port, which would immediately reduce the burden from the huge loan".[67]

It appears that Sri Lanka is thus in a position of significant weakness and dependence *vis-à-vis* its Chinese creditor. This is further acknowledged in the Minutes of the Cabinet Committee on Economic Management of GOSL, dated 17 October 2016:

> "The Secretaries committee had recommended the acceptance of the offer made by the China Merchants Port Holdings Company Limited due to the huge benefit for the Sri Lankan government, relieving a big burden of the debt of the Hambantota port".[68]

55. Therefore the question arises whether agreement on the Project, and specifically the conclusion of the Concession Agreement, may have been obtained by the Chinese Party (and possibly by China) through some form of coercion. As is well known, coercion under certain conditions is a cause of invalidity of international agreements.[69] Thus, Article 51 of the 1969 Vienna Convention on the Law of Treaties is concerned with coercion of a representative of a State:

> "The expression of a State's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him shall be without any legal effect".

We have seen no evidence in the documents examined of such threats that could have been exerted on representatives of the GOSL in entering into the Project Documents and especially the Concession Agreement.

56. Article 52 of the Vienna Convention addresses the situation of coercion of a State in the conclusion of a treaty by the threat or use of force, as follows:

> "A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations".

57. The question has long been debated whether "threat or use of force" in the meaning of Article 52 of the Vienna Convention may encompass "economic coercion". For example, during the discussion at the United Nations Conference on the Law of Treaties (that negotiated the Vienna Convention of 1969), Afghanistan and a large number of other developing countries had put forward an amendment to the draft which would have made a treaty void if its conclusion had been procured by the threat or use of force "including economic or political pressure" in violation of the principles of the Charter of the United

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[67] Prime Minister's Office, Extract of the Minutes of the Cabinet Committee on Economic Management of GOSL, 31 October 2016, 'Interim Report on Development of Hambantota Port'.

[68] Prime Minister's Office, Extract of the Minutes of the Cabinet Committee on Economic Management of GOSL, 17 October 2016 (meeting of 12 October 2017), 'Progress of CANC proposed to negotiate Hambantota Development Projects (Ref CCEM decision 14/09/2016/17)'.

[69] See e.g. de Jong (H.G.), "Coercion in the conclusion of treaties: A consideration of Articles 51 and 52 of the Convention on the the Law of Treaties" (1984) 15 *Netherlands Yearbook of International Law* 209-247.

Nations.[70] In a spirit of compromise, that amendment had later been withdrawn following the consent of the Conference to include as an annex to its Final Act a detailed "Declaration on the Prohibition of Military, Political or Economic Coercion in the Conclusion of Treaties".[71]

58. It is unclear whether under present-day international law the notion of "threat or use of force" in the meaning of Article 52 of the Vienna Convention 1969 extends to "economic coercion" of a State. Some commentators are of the view that economic coercion is not covered,[72] while others argue that it is.[73]

59. Be it as it may, one should recall that the doctrine of "unequal treaties" was developed precisely to address the issue of validity (and legal consequences in general) of international agreements entered into in (factual) situations of imbalance between the parties, whether formal or substantive, and/or displaying nonreciprocal rights and obligations and/or a coercive form of conclusion.[74] The relevance of the doctrine has been questioned, and the very existence of the concept of "unequal treaties" has been put into doubt.[75] However, it is noteworthy that China has historically been a leading proponent of that doctrine, which it invoked inter alia with a view to justify the termination of its territorial leases concluded during the 19th century with some Western Powers.[76]

4.5.2. Environmental assessments as prerequisites of infrastructure projects under international environmental law

60. While reviewing the documentation available on the Project, as summarized in **Section 6** of this Opinion, we have been unable to find evidence of any provision in the Project documentation regarding the requirement of conduct of an environmental impact assessment ("**EIA**") of the Project. We have not identified any reference to such EIA being contemplated, or actually conducted by the GOSL or the Chinese Party, or any other party. We do not, however, exclude the possibility that the conduct of an EIA be contemplated under the terms of the Project.

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[70] See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 172, document A/CONF.39/14, para. 449 (a); also statement of Mr. Tabibi in records of the 1372nd meeting of the International Law Commission (19 May 1976), in *ILC Yearbook* 1976, vol. I, p. 62.

[71] *Ibid.*, p. 172, para. 454; and *ibid.t* p. 285, document A/CONF. 39/26, annex.

[72] See e.g. Villiger (M.E.), *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Leiden/Boston: Martinus Nijhoff, 2009), p. 644.

[73] See e.g. Michael Reisman in 'Validity of the Settlement Under International Law' (1981) 46 *University of Miami Inter-American Law Review* at p. 56.

[74] See Craven (M.), 'What Happened to Unequal Treaties? The Continuities of Informal Empire' (2005) 74 *Nordic Journal of International Law* 335-382.

[75] See Caflisch (L.) "Unequal Treaties" (1992) 35 *German Yearbook of International Law* 52-81.

[76] Ronen (Y.), 'Lease, Territory', in R. Wolfrum (ed), *The Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2012), Vol. IX, at p. 905.

61. It is appropriate at this point to stress that the conduct of an environmental impact assessment is now widely considered as a prerequisite to the implementation of any project such as infrastructure, industrial, urbanistic or other project of such a nature as to entail environmental impacts.[77] The need for an EIA is seen as a fundamental principle of international law, and as such is deemed relevant to any international agreement or contract related to a project likely to entail environmental consequences, as is the case of the Concession Agreement. The requirement of an EIA for any environmental-sensitive project under international law was recently clearly reiterated by the International Court of Justice (ICJ) in the *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* judgment rendered in 2010.[78]

4.5.3. Possible challenges before human rights bodies

62. As a matter of principle, should the implementation of the Concession Agreement be found to entail adverse human rights consequences for the affected populations present in the area of the Project (including, but not limited to, adverse consequences for the environment in the area concerned), this may give rise to legal claims by the affected parties before international human rights bodies. The following developments briefly examine the validity of these legal claims, assuming pro tem, for the purpose of analysis, that the Project actually entails such adverse human rights- or environmental-related effects, which is an issue that clearly lies outside the scope of this Opinion.

63. Should the Chinese Party be found to be acting on behalf of the PRC in the implementation of the Project, so that its actions be attributable to China under international law, the international responsibility of China under human rights instruments could be incurred in particular in view of the growing recognition of extra-territorial nature and extent of human rights obligations of States under human rights treaties.[79] As it has been observed, "it is now widely agreed that human rights treaties may, in principle, impose on States parties obligations not only when they adopt measures applicable on their own territory, but also extraterritorial obligations, which may include positive obligations going insofar as the State can influence situations located abroad".[80] This principle was articulated in the specific context of international economic sanctions: This may be deemed relevant in other contexts than

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[77] See generally Craik (N.), *The International Law of Environmental Impact Assessment* (Cambridge: Cambridge University Press, 2008).

[78] See *I.C.J. Reports* 2010, p. 14.

[79] See e.g. F. Coomans, 'The Extraterritorial Scope of the International Covenant on Economic, Social and Cultural Rights in the Work of the United Nations Committee on Economic, Social and Cultural Rights' *Human Rights Law Review* 11:1(2011), 1-35.

[80] O. De Schutter, A Human Rights Approach to Trade and Investment Policies (November 2008), at para. 3.2, available at https://www.iatp.org/sites/default/files/451_2_104504.pdf.

sanctions, for example in the context of implementation of an international infrastructure project such as Hambantota.

64. Even if the Chinese Party was not to be considered as acting on behalf of the PRC under international law in the context of the Project, the principles governing the conduct of private (business) entities would still attract the international responsibility of the PRC in the event of adverse effects on human rights in the area concerned by the Project. It is uncontroversial that a State "is under the duty to control the activities of private persons within its State territory and the duty is no less applicable where the harm is caused to persons or other legal interests within the territory of another State".[81]

65. This rule was recently restated by the Committee on Economic, Social and Cultural Rights (CESCR) which made clear that States parties to the Covenant on economic, social and cultural rights are subject to an extraterritorial obligation to protect that requires them to "take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective".[82]

66. The obligation to respect economic, social and cultural rights under the Covenant is being considered as violated, for example, when States parties prioritize the interests of business entities over Covenant rights without adequate justification, or when they pursue policies that negatively affect such rights. This may occur for instance when forced evictions are ordered in the context of investment projects.[83] Also, indigenous peoples' cultural values and rights associated with their ancestral lands are considered as particularly at risk.[84] The CESCR has found that States parties and businesses should respect the principle of free, prior and informed consent of indigenous peoples in relation to all matters that could affect their rights, including their lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired.[85]

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[81] I. Brownlie, *System of the Law of Nations. State responsibility* (Oxford: Clarendon Press, 1983) at 165.

[82] Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities (E/C.12/GC/24), 2017.

[83] See the CESCR's general comment No. 7 (1997) on forced evictions, paras. 7 and 18; and OHCHR and UN-Habitat, *Forced Evictions*, Fact Sheet No. 25/Rev.1, pp. 28 and 29. See also, for example, A/HRC/25/54/Add.1, paras. 55 and 59-63.

[84] See CESCR, General Comment No. 21 (2009) on the right of everyone to take part in cultural life, para. 36. See also the United Nations Declaration on the Rights of Indigenous Peoples, Art. 26.

[85] See United Nations Declaration on the Rights of Indigenous Peoples, Arts. 10, 19, 28, 29 and 32.

5. Executive Summary

67. The findings of the present Opinion may be summarized as follows.

68. The question of the legal nature of the Concession Agreement is difficult to answer, in light of available documents. It is *prima facie* an investment transaction. But it also displays most of the characteristic features of a 'territorial lease' in the meaning of international law, except that it is not prima facie an agreement between two sovereigns. An enquiry into the shareholding structure of the Chinese Party (CMPort) leaves open the possibility that the latter has been acting as an agent of the PRC in the context of the Project and the Concession Agreement. Beyond that, the question arises of the motivations behind the Concession Agreement – which we identified to be basically the easing of sovereign debt stress for Sri Lanka.

In that context, we reached the following conclusions:

(i) First, the jurisprudence of international courts and tribunals on sovereign debt and debt restructurings is not straightforward, especially when accounting for the creditor State's regime of responsibility.

(ii) Second, the determination whether creditor State's obligations (and the breach thereof) is governed primarily by the provisions of financial law or shall be subject to the law of international responsibility, will depend on the breach itself. It can fall under either and it may fall under both, because of 'internationalization of the contract' and if the breach qualifies both as a violation of the treaty governing the debt and of the contract which is executing it *vis-à-vis* a private entity.

(iii) Third, international law at present does not have a clear answer as to whether sovereign debt restructuring is an *acta jure imperii* – sovereign act, or an *acta jure gestionis* – a commercial act of a sovereign. This further complicates the question – whether a private entity, in this case the Chinese Party (CMPort) – nominated to execute at least some part of the debt restructuring – is authorized for an act which a sovereign would usually reserve for itself, or, a mere commercial act as in the ordinary course of business. This can be unraveled to some extent if the overarching debt treaty or the terms of agreement on debt restructuring between Sri Lanka and PRC are available for a primary inspection.

69. Since publicly available documents are insufficient to reach a conclusion as to the exact nature and scope which Sri Lanka and the PRC intended to give to this debt restructuring, it is not possible to give a yes-or-no answer to the question whether the Concession Agreement amounts to a territorial lease. A more practical approach will be to keep the distinction clear, in case more accurate information comes to light such as (a) the precise terms of the umbrella agreements, (b) the extent of diplomatic intervention by the PRC in the Hambantota Project, (c) the discussion/affects of the Project in national policy dialogues of the PRC. Such elements would contribute to clarifying whether the debt restructuring and the nomination of CMPort by the PRC to execute such restructuring fall under *acta jure imperii*. Such elements could eventually point to the conclusion that CMPort acted

as an agent of the State, and if so would give way to a stronger possibility that the Concession Agreement amounts to territorial lease. On the other hand, if the debt restructuring qualifies as *acta jure gestionis*, then the acts of the Chine Party in concluding the Conclusion Agreement is an ordinary commercial transaction as well, and then the Concession Agreement would fail to cross the threshold of territorial lease under international law.

70. Assuming pro tem that the Concession Agreement qualifies as a territorial lease under international law, this may raise certain issues in terms of sovereignty over the leased land (or territory). In particular, international responsibility may be shared between the lessor and the lessee in case of commission of an internationally wrongful act by the lessee from the leased territory.

71. It is obvious that, even if presented as a pure commercial endeavour, the Hambantota Port Project has significant strategic implications, as it takes place in the context of the development of the *"Maritime Silk Road"*, which is widely considered as having a strong strategic and security dimension. It is well known that China has a strategic interest in Sri Lanka, labelled a "dazzling pearl on the Maritime Silk Road". The military-security dimension of the China-Sri Lanka relation in the context of the Maritime Silk Road has been highlighted by renowned scholars from the PRC.

72. While the GOSL has tried to alleviate the public concerns, expressed in Sri Lanka, India and elsewhere, regarding the possible military use of the Hambantota Port by China, we have been unable to verify that clauses prohibiting military use of the Hambantota Port to the naval forces of the PRC are actually present in the Concession Agreement (or another of the Project Documents).

73. The MoU entered into by GOSL and China on 7 April 2016 expressly mentions as one of the areas of cooperation to be developed between the two countries, the area of defence.

74. Given the position of GOSL as a debtor vis-à-vis the PRC and the stated mid-term unsustainability of its sovereign debt, the question arises whether agreement on the Hambantota Project may have been obtained by the Chinese Party (and possibly by China) through some form of coercion. It is a debated question in current international law whether "economic coercion" may qualify as a cause of invalidity of, or possibly of termination of, treaties concluded under such conditions. However, it shall be noted that the doctrine of "unequal treaties" was developed precisely to address the issue of validity (and legal consequences in general) of international agreements entered into in (factual) situations of imbalance between the parties. China has historically been a leading proponent of that doctrine, which it invoked inter alia with a view to justify the termination of its territorial leases concluded during the 19th century with some Western Powers.

75. We have been unable to find evidence of any provision in the Project documentation regarding the requirement of conduct of an environmental impact assessment (EIA). It is to be noted that the requirement of an EIA is seen as a

fundamental principle of present-day international law, and as such is deemed relevant to any international agreement or contract related to a project likely to entail environmental consequences, as is the case of the Concession Agreement.

76. As a matter of principle, should the implementation of the Concession Agreement be found to entail adverse human rights consequences for the affected populations present in the area of the Project (including, but not limited to, adverse consequences for the environment in the area concerned), this may give rise to legal claims by the affected parties before international human rights bodies. Should the Chinese Party be found to be acting on behalf of the PRC in the implementation of the Project, the international responsibility of China under human rights instruments could be incurred in particular in view of the growing recognition of extra-territorial nature and extent of human rights obligations of States under human rights treaties. But even if the Chinese Party was not to be considered as acting on behalf of the PRC under international law in the context of the Project, the principles governing the conduct of private (business) entities – and the obligations of States to control the activities of their business entities abroad – would still attract the international responsibility of the PRC in the event of adverse effects on human rights in the area concerned by the Project.

77. We remain ready and willing to further assist if so requested.

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7. Index of documents examined

No.	Date	Name of the Document	Subject Matter	Remarks
1	12 Sept 2016	Letter: Rep of CHEC to PM Wickremasinghe Cc: *Ambassador Extraordinary Plenipotentiary of the PRC to Sri Lanka*	Proposal of Hambantota Port and SEZ Integrated Dev.	Proposal sent in response to a letter from PMO dated June 30, 2016. Attach: Proposal of Hamb Port & SEZ Integrated Dev – mentions ***'easing of debt stress'*** as a key principle theme.
2	26 Oct 2016	Letter: Managing Dir. SLPA to Chairman, SLPA	Meeting of Sept 30 at PMOs Office	(i) No prior knowledge or documentation of the Hambantota Project; (ii) Indicated the impossibility of effecting a change in status of SLPA without amending the SLPA act and relevant legislations.
3	29 Oct 2016	Letter: Addl. Managing Dir. SLPA to Chairman, SLPA	*Id.*	(i) CCEM appointed Secretaries Committee to review and negotiate and submit recommendation to the CCEM ***the debt for equity swap proposed by the Chinese Corporate who were nominated by the Chinese Government through their embassy in Colombo***; (ii) Sec Committee decided on Sep 23 to invite contenders for presenting their proposals.
4	31 Oct 2016	Letter: Chairman SLPA to Secretary, Ministry of Ports & Shipping	Report to CCEM – Interim Report on Development of Hambantota Port	To inform the Cabinet of Ministers that the SLPA officers were invited to take part in proceedings only at the final stage, and that of their variation in opinion in the matter.
5	31 Oct 2016	Letter: Chairman SLPA to Secretary, Ministry of Ports & Shipping	Framework Agreement on Fin, Constr, Operation & Manag. of Hambantota Port	(i) have held meeting with D-G Dept External Resources; (ii) Request for valid signed report of CCEM to PM.

No.	Date	Name of the Document	Subject Matter	Remarks
6	31 Oct 2016	Letter: Chairman SLPA to D-G Department of External Resources	*Id.*	Request for soft copy of FA, and, extension of 5 working days.
7	31 Oct 2016	Letter: Secretary of Min of Ports and Shipping to Chairman SLPA	*Id.*	Request to nominate a team of officials from SLPA to negotiate on the matter.
8	2 Dec 2016	Letter: Secretary, Min. Ports & Shipping to Chairman, SLPA	FA Hambantota Project	(i) Per CCEM's instructions, accepted the offer of CMPort to manage Hambantota Port jointly with SLPA; (ii) Obtain approval of Board of Dir of SLPA and Submit the FA to the ministry before Dec. 6.
9	5 Dec 2016	Letter: Chairman SLPA to Sec., Min. Ports & Shipping	FA Hambantota Port	(i) Art. 4, 8, 9, 16 out of the scope of the statutory powers of SLPA; (ii) In case of involve of any other SL authority, recourse can be taken to Art 17; (iii) No opinion expressed as to the technical & financial viability of the project.
10	5 Dec 2016	Letter: Chairman, SLPA to Attorney General	FA Hambantota Port Project	(i) SLPA submitted its own version of FA on Nov 29 to Sec, Min of Ports & Shipping; (ii) Requested advise on the following -: a) course of action with respect to Key Terms Agreement b/w SLPA and CHEC; b) under SLPA Act, can a third party be permitted to operate a Port and c) whether SLPA could sign such an FA; (d) Whether SLPA should proceed with its own version of FA or the version provided by CCEM.
11	5 Dec 2016	Letter: Addl Solicitor General to Chairman, SLPA	FA Hambantota Port	SLPA has been duly authorized by GOSL to enter into the Agreement.
12	5 Dec 2016	Joint Cabinet Memorandum of Ministerial Committee - *originating from* Ministry of Development Strategies and International Trade		(i) CCEM meeting of 30 Nov – FA with CMPort finalized and submitted for review to Attn Gen, which was approved; (ii) A prior

No.	Date	Name of the Document	Subject Matter	Remarks
				Sep 2014 SOT Agreement with CHEC & CMPort has been declared ineffective by Attn Gen; (iii) Intention to launch project on 7 Jan 2017; (iv) Approval of Cabinet Ministers sought on – a) restructure Hambantota Port on PPP basis with CMPort; b) Sep 2014 Agreement b/w SLPA with CHEC & CMPort to be treated as cancelled; c) execute framework agreement with CMPort; iv) Sec Min of Ports & Shipping to initiate negotiations and submit documents of transaction for the approval of Cabinet.
13	8 Dec 2016	Framework Agreement between Government of SL and CMPort: *entered between* GOSL and CMPort		
14	14 Dec 2016	Letter: Chairman, SLPA to Attorney General	FA Hambantota Port Project	Request opinion on FA
15	15 Dec 2016	Letter: Secretary of Ministry of Ports and Shipping to Chairman on SLPA	Framework Agreement b/w GOSL and CMPort	(i) Attn invited to Art 12 (Confidentiality) & 15 (Excusivity); (ii) Reqd due diligence to be conducted and be finalized as a matter of priority; (iii) provide CMPort with reqd information.
16	16 Dec 2016	Letter - Addl. Sol. Gen *(for Attn. Gen.)* to SLPA In response to: Letters from Charman, SLPA dated Dec 5 & 14 *(see above).*	FA Hambantota Port Project	Opinions rendered -: (i) Key Terms Agreement with CHEC stands ineffective due to conditions precedent not being met; (ii) SLPA to deal exclusively with CMPort as mentioned in Art 15 of FA; (iii) any concerns of SLPA should be allayed as GOSL has undertaken the responsibility for the implementation of the project.

No.	Date	Name of the Document	Subject Matter	Remarks
17	21 Dec 2016	Managing Dir., SLPA to Attorney Gen.		Mentions the concern of SLPA that, (i) its powers have been gravely hampered, undermined, transgressed and superseded by the FA; (ii) FA contemplates imposing several liabilities and duties against SLPA; (iii) No approval of Board of Directors was sought prior to the execution of FA; (iv) Any directions to SLPA amounts to unlawful dictation and usurpation under SLPA Act.
18	25 Dec 2016	Confidential First Draft of Hambantota Project		
19	25 July 2017	China Merchants Port Holdings Company Limited, Potential Discloseable Transaction, Concession Agreement in relation to Hambantota Port, Sri Lanka, 25 July 2017		
20	30 July 2017	China Merchants Port Holdings Company Limited, Discloseable Transaction, Execution of the Concession Agreement in relation to Hambantota Port, Sri Lanka		