THE LAW OF THE SEA

I. Introduction

A. Background

1. The year 2007 marks the twenty-fifth anniversary of the opening for signature of the United Nations Convention on the Law of the Sea (hereinafter UNCLOS or the Convention) 1982. During this period, the international community has come to recognize the “pre-eminent contribution provided by the Convention to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights and to the promotion of the economic and social advancement of all peoples of the world, in accordance with the purposes and principles of the United Nations as set forth in the Charter of the United Nations, as well as for sustainable development of oceans and seas”.  

2. The Convention has been widely recognized as the “Constitution of the Sea”, as it established “for the first time one set of rules for the oceans, bringing order to a system fraught with potential conflict”. The Convention constitutes the legal framework within which all activities in the oceans and seas should be considered. Therefore, it is essential to preserve the integrity of UNCLOS as also to give priority to the full and effective implementation of its provisions. Over the years, it has provided global solidarity that has led to more coherent management of ocean affairs.

3. It may be recalled that the item “Law of the Sea” was taken up for consideration by the Asian-African Legal Consultative Organization (AALCO) at the initiative of the Government of Indonesia in 1970. Since then it has been considered as one of the priority items at successive Annual Sessions of the Organization and the deliberations in AALCO’s annual and inter-sessional meetings for nearly a decade were focused on this single most important item. The AALCO can take reasonable pride in the fact that new concepts such as the Exclusive Economic Zone (EEZ), Archipelago States and Rights of Land Locked States originated and developed in the AALCO’s Annual Session and were later codified in the UNCLOS.

4. After the adoption of the Convention in 1982, the AALCO’s Work Programme was oriented towards assisting Member States in matters concerning their becoming

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1 In accordance with Article 308 (1) of the Convention, it entered into force on 16 November 1994. Article 308 (1) states: “This Convention shall enter into force 12 months after the date of deposit of the sixtieth instrument of ratification or accession”. It may be recalled that the Convention was adopted by the Third United Nations Conference on the Law of the Sea and opened for signature together with the Final Act of the Conference, at Montego Bay, Jamaica, on 10 December 1982. The Conference was convened pursuant to resolution 3067 (XXVIII) adopted by the United Nations General Assembly on 16 November 1973. The Conference held eleven sessions, from 1973 to 1982.


Parties to the UNCLOS and other related matters. With the entry into force of the UNCLOS in 1994, the process of establishment of institutions envisaged in the UNCLOS began. The AALCO Secretariat prepared studies monitoring these developments and the Secretariat documents for AALCO’s Annual Sessions reported on the progress of work in the International Sea Bed Authority (ISA), the International Tribunal for Law of the Sea (ITLOS), the Commission on the Limits of the Continental Shelf (CLCS), the Meeting of States Parties to the UNCLOS and other related developments.

5. The Secretariat Report prepared for the Forty-Seventh Session provides information on the status of the UNCLOS and its implementing Agreements; Nineteenth and Twentieth Sessions of the Commission on the Limits of the Continental Shelf; an overview of the annual comprehensive report of the Secretary-General on Oceans and the Law of the Sea; eighth meeting of the Consultative Process; seventeenth Meeting of States Parties to the UNCLOS’ 82; Thirteenth Session of the International Seabed Authority; and the settlement of disputes under UNCLOS by the International Tribunal for the Law of the Sea in the Year 2007; and the consideration of the Oceans and the Law of the Sea issues at the 62nd Session of the UN General Assembly.

B. Deliberations at the Forty-Sixth Annual Session of AALCO
(Cape Town, Republic of South Africa, 2007)

6. Dr. Xu Jie, Deputy Secretary-General of AALCO while introducing the item, recalled the substantial contribution made by the AALCO in the negotiation and implementation of the United Nations Convention on the Law of the Sea 1982 (UNCLOS). He highlighted that Golden Jubilee celebrations of AALCO culminated with the convening of its Meeting of Experts on the Emerging Issues on the United Nations Convention on the Law of the Sea, at the AALCO Headquarters in New Delhi on 24 November 2006. The DSG then drew attention to the following points for focused deliberations: (i) Development of legal principles for the preservation and protection of marine environment in the area beyond national jurisdiction with reference to the principle of sustainable development; (ii) Balancing coastal States’ efforts to protect marine and coastal environment with the right of passage in straits used for international navigation; (iii) Increasing international efforts to meet the challenges posed by continuing transnational organized crime and threats to maritime safety and security; (iv) Problem of marine scientific research vis-à-vis freedom of navigation.

7. Judge Albert Hoffman, Observer from the International Tribunal for the Law of the Sea, mentioned that the Tribunal valued the longstanding relationship with AALCO and followed with great interest the important work that it was doing towards strengthening the rule of law in international relations. The Judge commended the important role that AALCO and its Member States continued to play in the various institutions established under the Convention and the commitment they showed to dealing with the many challenges confronting Asian and African States with regard to issues concerning the law of the sea. The Judge mentioned that in its 10-year existence the Tribunal had delivered decisions in 13 cases on several issues concerning the law of the sea, including the prompt release of vessels and their crews, protection and
preservation of the marine environment, fisheries, the commissioning of a nuclear facility and the movement of radioactive materials, reclamation activities, freedom of navigation, nationality of claims, use of force in law enforcement activities, hot pursuit and the question of the genuine link between a vessel and its flag State.

8. The delegations from Japan, the People’s Republic of China, the Islamic Republic of Iran, Malaysia, the Republic of Kenya, the Republic of Indonesia, the Arab Republic of Egypt, Bangladesh, and the Republic of Korea made statements on the agenda item. Several delegations recalled the important contribution made by AALCO in development of the UNCLOS and hoped that the Organization would continue to remain active on this very important agenda item. The delegations appreciated the convening of the Meeting of Experts by the AALCO Secretariat and observed that the discussions proved to be very fruitful.

9. Several delegations emphasized upon the protection of marine environment and marine biodiversity beyond areas of national jurisdiction. A delegation noted that the rising temperature of sea water would have devastating impact on coastal States, particularly his country. A delegation highlighted that the sustainable development of ocean resources was important for ensuring food security, alleviating poverty, promoting economic growth and preserving social stability in all countries, especially developing countries. Another delegation welcomed the consideration of “marine genetic resources” issues. Several delegations drew attention to maritime safety and security issues. A delegation noted the important role played by regional efforts in the implementation of and compliance to that effect. A delegation noted that under UNCLOS coastal States had the right to regulate, authorize and conduct marine scientific research in their Exclusive Economic Zone (EEZ) and Continental Shelf. Some delegations noted that the question of maritime delimitation constituted one of the most important themes in the law of the sea. However, the UN Convention on the Law of the Sea did not provide clearly enough for the methods of delimitation of maritime boundaries.

10. Delegations also took note of the progress of work under the institutions established by the Convention. In this context, several delegations expressed concern at increasing workload of the Commission on the Limits of the Continental Shelf (CLCS) and one delegation pointed out that it was further saddled by the constraints of time and funding. As regards, the Meeting of States Parties to the UNCLOS, some delegations were of the view that it constituted the appropriate forum for the discussion on all aspects related to the implementation of the Convention.

C. Issues for Focused Deliberations at the Forty-Seventh Session of AALCO (Headquarters, New Delhi, 2008)

11. Amongst others, the following points may be considered as the issues for focused deliberations during the forthcoming Forty-Seventh Session of AALCO:

• Question of equitable geographical distribution of seats in the Commission on the Limits of Continental Shelf and the International Tribunal for the Law of the Sea
• Relevant legal regime for “marine genetic resources” in areas beyond national jurisdiction
• Right of transit passage through Straits used for international navigation.


12. The United Nations Convention on the Law of the Sea as at 1 February 2008 had 157 Parties, of which 39 States are AALCO Member States. This represents considerable progress towards universality since the entry into force of the Convention on 16 November 1994, one year after the deposit of the sixtieth instrument of ratification, when there were 69 States Parties.

13. The Agreement Relating to the Implementation of Part XI of the UNCLOS was adopted on 28 July 1994 and has entered into force on 28 July 1996. As regards the status of this Agreement, as at 1 February 2008, there were 131 parties to it, of which 31 States are AALCO Member States.

14. The Agreement for the Implementation of the Provisions of the UNCL OS Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995 was adopted on 4 August 1995 and has been signed by 59 States and ratified by 68 States, of which 10 are AALCO Member States. The Agreement came into force from 11 December 2001 after receiving the requisite 30 ratifications or accessions.

15. The UN General Assembly at its Sixty-second Session on 22 December 2007 vide resolution 62/215 reaffirmed the unified character of the Convention and the vital importance of preserving its integrity and called upon all States that have not done so, in order to achieve the goal of universal participation, to become parties to the Convention, and its Implementing Agreements. It also inter alia urged all States to cooperate, directly or through competent international bodies, in taking measures to protect and preserve objects of an archaeological and historical nature found at sea, in conformity with the

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4 The AALCO Member States Parties to the UNCLOS are: Bahrain, Bangladesh, Botswana, Brunei Darussalam, Cameroon, China, Cyprus, Egypt, Gambia, Ghana, India, Indonesia, Iraq, Japan, Jordan, Kenya, Kuwait, Lebanon, Malaysia, Mauritius, Mongolia, Myanmar, Nepal, Nigeria, Oman, Pakistan, Qatar, Republic of Korea, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, South Africa, Sri Lanka, Sudan, Uganda, United Republic of Tanzania and Yemen. For details see Table recapitulating the Status of the UNCLOS and related Agreement, as at 1 February 2008, available on the website: http://www.un.org/Depts/los/reference_files/status2008.pdf, accessed on 8 February 2008.

5 The AALCO Members who have ratified the Agreement include: Bangladesh, Botswana, Brunei Darussalam, Cameroon, China, Cyprus, India, Indonesia, Japan, Jordan, Kenya, Kuwait, Lebanon, Malaysia, Mauritius, Mongolia, Myanmar, Nepal, Nigeria, Oman, Pakistan, Qatar, Republic of Korea, Saudi Arabia, Senegal, Sierra Leone, Singapore, South Africa, Sri Lanka, Uganda and the United Republic of Tanzania. Ibid.

6 The AALCO Member States Parties to the Straddling Stocks Agreement are: Cyprus, India, Islamic Republic of Iran, Japan, Kenya, Mauritius, Republic of Korea Senegal, South Africa and Sri Lanka. AALCO Member States signatories to this Agreement include: Bangladesh, Egypt, Indonesia, Pakistan, and Uganda. Ibid.
Convention, and called upon States to work together on such diverse challenges and opportunities as the appropriate relationship between salvage law and scientific management and conservation of underwater cultural heritage, increasing technological abilities to discover and reach underwater sites, looting and growing underwater tourism. The Assembly also noted the efforts made by the United Nations Educational, Scientific and Cultural Organization with respect to the preservation of underwater cultural heritage.

**III. NINETEENTH AND TWENTIETH SESSION OF THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF (5 MARCH TO 13 APRIL 2007 AND 20 AUGUST TO 7 MARCH 2007, UN HEADQUARTERS, NEW YORK)**

16. Article 76 of the UNCLOS sets out the definition and various methods for a coastal State to establish the outer limits of its continental shelf, including beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. The same article also envisages the establishment of the Commission on the Limits of the Continental Shelf (hereinafter CLCS or the Commission). The CLCS established in 1997 consists of 21 members who serve in their personal capacity and are experts in the field of geology, physics, geophysics, or hydrography, bearing in mind the need to give consideration to equitable geographical representation. It ordinarily meets twice a year, in the spring and fall, at the UN Headquarters.

17. The functions of the CLCS are to consider the data and other material submitted by coastal States concerning the outer limits of their continental shelves in areas where those limits extend beyond 200 nautical miles; to make recommendations to coastal States in accordance with the UNCLOS; and to provide technical advice in this respect, if requested by the coastal States.

18. The CLCS held its nineteenth session at United Nations Headquarters from 5 March to 13 April 2007. The plenary part of the Session was held from 26 March to 5 April, while the periods from 5 to 23 March and 9 to 13 April were used for the technical examination of submissions at the Geographic Information System (GIS) laboratories and other technical facilities at the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs.

19. At the nineteenth session, the Commission began the examination of the submission made by Norway. After the submissions made by the Russian Federation in 2001, Brazil and Australia in 2004, Ireland in 2005, New Zealand in 2006 and the partial joint submission by France, Ireland, Spain and the United Kingdom of Great Britain and Northern Ireland in 2006, the submission by Norway was the seventh one to be received.

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7. Annex II to the Convention provides for the Commission, its composition, functions etc.
8. Details mentioned herein are drawn from “Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission”, UN Doc. CLCS/54, dated 27 April 2007; and **UN Press Release SEA/1882**, dated 20 April 2007.
by the Commission. The Norwegian submission was presented at the plenary part of the session, on 2 April 2007.

20. After this presentation, the Commission decided that the submission of Norway would be examined through the establishment of a Subcommission. This Subcommission proceeded with the preliminary examination of the submission during the week from 9 to 13 April, in the course of which it held several meetings with the delegation of Norway. On the basis of this preliminary examination, the Subcommission determined that it would continue its work during the twentieth session.

21. At the nineteenth session, the Commission continued the examination of the submissions made by Brazil, Australia, Ireland, New Zealand and the joint submission by France, Ireland, Spain and the United Kingdom. The Subcommissions, which had been established at the previous sessions to examine those submissions, reported to the Commission on the work that they had carried out intersessionally and continued the examination of their submissions.

22. During this session, the Subcommissions established for consideration of the submissions made, respectively, by Brazil and by Australia completed their work and presented their recommendations to the Commission. The Commission also had before it the recommendations prepared by the subcommission established for consideration of the partial submission by Ireland, which had been presented at the eighteenth session.

23. The Commission decided to adopt the recommendations prepared by the Subcommissions established for consideration of the submissions made by, respectively, Brazil and Ireland, by a vote. It also decided to defer further consideration of the recommendations prepared by the Subcommissions established for consideration of the submissions made by Australia to the twentieth session, in order to provide its members with more time to examine them.

24. At the nineteenth session, the Commission again addressed the suggestions voiced at the sixteenth session of the Meeting of States Parties with regard to its work. The Commission decided that the Chairman would again address this matter in his statement to the seventeenth Meeting of States Parties and make a more detailed presentation at that Meeting.

25. The nineteenth session was the last one of the five-year term of the current members of the Commission. The election of the new members of the Commission took place during the seventeenth Meeting of States Parties to the Convention.

26. The Commission on the Limits of the Continental Shelf held its twentieth session from 27 August to 14 September 2007. The twentieth session of the Commission was the first one with the new membership, which was elected at the seventeenth meeting of

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9 As provided by Article 5 of annex II to the Convention, “unless the Commission decides otherwise, the Commission shall function by way of Subcommissions composed of seven members, appointed in a balanced manner taking into account the specific elements of each submission by a coastal State”.
States Parties for a term of five years commencing on 16 June 2007 and ending on 15 June 2012.

27. The newly elected Members of the CLCS are: Alexandre Tagore Medeiros de Albuquerque (Brazil), Osvaldo Pedro Astiz (Argentina), Lawrence Folajimi Awosika (Nigeria), Harald Brekke (Norway), Galo Carrera Hurtado (Mexico), Francis L. Charles (Trinidad and Tobago), Peter F. Croker (Ireland), Indurlall Fagoonee (Mauritius), Mihai Silviu German (Romania), Abu Bakar Jaafar (Malaysia), George Jaoshvili (Georgia), Emmanuel Kalngui (Cameroon), Yuri Borisovitch Kazmin (Russian Federation), Wenzheng Lu (China), Isaac Owusu Oduro (Ghana), Yong-ahn Park (Republic of Korea), Fernando Manuel Maia Pimentel (Portugal), Sivaramakrishnan Rajan (India), Michael Anselme Marc Rosette (Seychelles), Philip Alexander Symonds (Australia) and Kensaku Tamaki (Japan).

28. The Commission elected by acclamation Alexandre Tagore Medeiros de Albuquerque (Brazil) as Chairman, and Lawrence Folajimi Awosika (Nigeria), Harald Brekke (Norway), Yuri Borisovitch Kazmin (Russian Federation) and Yong-ahn Park (Republic of Korea) as Vice-Chairmen.

29. At the twentieth session, the Commission began the examination of the submission made by France. The submission by France is the eighth one to be received by the Commission. The submission made by France, on behalf of the Overseas Department of French Guiana and of the Territorial Collectivity of New Caledonia, was a partial submission divided in two sections containing data and information concerning the outer limits in the areas of, respectively, French Guiana and the south-east and south-west of New Caledonia. The French submission was presented at the plenary part of the session, on 31 August. After this presentation, the Commission decided that the submission of France would be examined through the establishment of a Subcommission and established it. The Subcommission determined that it would continue its work during the twenty-first session.

30. At the twentieth session, the Commission continued the examination of the submissions made by Australia, New Zealand, Norway and the joint submission by France, Ireland, Spain and the United Kingdom of Great Britain and Northern Ireland. The Subcommissions, which had been established at the previous sessions to examine those submissions, reported to the Commission on the work that they had carried out inter sessionaly and continued the examination of their submissions.

31. The Commission decided that its twenty-first session would be held from 17 March to 18 April 2008 and the twenty-second session would be held from 11 August to 12 September 2008, on the understanding that the following periods will be for plenary meetings: 31 March to 11 April and 18 to 29 August and that the following periods would be used for the technical examination of submissions at the Geographic Information System laboratories and other technical facilities of the Division: 17 to 18 March; 14 to 18 April; 11 to 15 August; 2 to 12 September.

32. The UN Secretary-General’s annual comprehensive report on developments and issues relating to ocean affairs and the law of the sea, has been prepared in compliance with the request made by the General Assembly vide its resolution 61/222. Subsequent to the release of the initial two addendums to this Report have also been issued. It is also submitted to States Parties to the UNCLOS, pursuant to Article 319 of the Convention. It also served as a basis for discussion at the eighth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea and contains information on marine genetic resources, the topic chosen for that meeting. The report also provides information on the status of Convention and its implementing Agreements, State practice regarding maritime space, and developments within the bodies established by the Convention. Recent developments regarding international shipping activities, people at sea, maritime security, marine science and technology, conservation and management of living resources, marine biodiversity, protection and preservation of the marine environment, climate change, small island developing States, settlement of disputes, and international cooperation and coordination are also presented in the Report, as well as information on the capacity-building activities of the Division for Ocean Affairs and the Law of the Sea.

33. Addendum 1 to the main Report provides an updated overview of developments relating to the implementation of the UNCLOS and the work of the UN, its specialized agencies and other institutions in the field of ocean affairs and the law of the sea, since the issuance of the main report. It provides information on the status of the Convention and its Implementing Agreements; the Meeting of States Parties to the Convention; the informal consultations to the 1995 Fish Stocks Agreement; State practice regarding maritime space; the work of the Commission on the Limits of Continental shelf and of the International Seabed Authority and a further update on other activities contained in the main report.

34. Addendum 2 to the main Report focuses on issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. It presents information on: the environmental impacts of anthropogenic activities on marine biological diversity beyond areas of national jurisdiction; coordination and cooperation among States as well as relevant intergovernmental organizations and bodies for the conservation and management of marine biological diversity beyond areas of national jurisdiction; the role of area-based management tools; genetic resources beyond areas of national jurisdiction; and whether there is governance or regulatory gap, and if so, how it should be addressed.

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11 UN Doc. A/62/66 Add. 1 & 2 dated 31 August and 10 September 2007 respectively.
V. SEVENTEENTH AND SPECIAL MEETING OF STATES PARTIES TO THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (14-22 JUNE 2007 AND 30 JANUARY 2008, UN HEADQUARTERS, NEW YORK)

35. The seventeenth Meeting of States Parties to the United Nations Convention on the Law of the Sea met at UN Headquarters from 14 to 22 June 2007. The meeting elected Rosemary Banks (New Zealand) as President while Sabelo Sivuyile Maqungo (South Africa), Ganeson Sivagurunathan (Malaysia), Oksana Pasheniuk (Ukraine) and Diego Malpede (Argentina) were elected Vice-Presidents by acclamation. Among the matters considered by the meeting were matters related to the International Tribunal for the Law of the Sea; information on the activities of the International Seabed Authority; matters related to the Commission on the Limits of the Continental Shelf; and future arrangements regarding the allocation of seats on the Commission on the Limits of the Continental Shelf and the equitable geographical distribution of members of the International Tribunal for the Law of the Sea.¹²

A. Matters related to the International Tribunal for the Law of the Sea

36. Judge Rudiger Wolfrum, President of the International Tribunal for the Law of the Sea presented his annual report that covered the Tribunal’s activities from 1 January to 31 December 2006 and its financial position in that year. He informed the meeting that on 19 September 2006, the Tribunal re-elected Philippe Gautier as Registrar, and on 6 March 2007, Doo-young Kim was re-elected Deputy Registrar. Both would serve terms of five years. The Tribunal held two sessions in 2006, the twenty-first and twenty-second. Those were devoted to matters relating to the court’s judicial work, as well as to other organizational and administrative matters.

37. The Tribunal, examined a question of great significance i.e., its general competence in maritime delimitation cases. In that regard, article 288 of the Convention conferred jurisdiction on the Tribunal, as well as on the International Court of Justice or on an arbitral tribunal, to deal with any dispute concerning the interpretation or application of the Convention. Maritime delimitation disputes were those concerning the interpretation or application of the Convention and, therefore, such disputes were subjected to compulsory binding settlement under Part XV, section 2, of the treaty if, and to the extent, that section 1 did not provide otherwise. At the Tribunal’s twenty-third session, on 16 March, the Tribunal adopted a resolution to form a standing special chamber. Known as the Chamber for Maritime Delimitation Disputes, it would be available to deal with disputes in that field, which the parties agreed to submit to it concerning the interpretation or application of any relevant provision of the Convention and of any other agreement that conferred jurisdiction on the Tribunal. The Chamber was composed of eight members of the Tribunal whose term would end on 30 September

2008. The Chamber was an alternative for States facing problems in that field. Its members had been selected on the basis of their special knowledge, expertise and previous experience in maritime delimitation matters. Its composition was global, and provision had also been made to safeguard the interests of particular States since, if there was no judge of the nationality of a State concerned in the Chamber, any member of it should give place to a judge of the Tribunal having the nationality of the State concerned. Should that prove impossible, the State concerned was entitled to choose a judge ad hoc. The Chamber was also ready to act whenever seized of a maritime delimitation case. Its decisions were considered decisions of the Tribunal and, therefore, final and binding. Like other proceedings before the court, States parties to the Convention would incur no court costs or fees before the Chamber.

38. As regards the court’s judicial work, he noted that a case was pending on the docket, namely the Case Concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community). It had been submitted to a Special Chamber of the Tribunal formed to deal with that particular dispute. On the basis of information provided by the parties, the Special Chamber, by its order dated 29 December 2005, extended the time limit within which preliminary objections might be made to 1 January 2008, while maintaining the rights of the parties to revive the proceedings at any time.

39. Judge Wolfrum also informed the Meeting about the tenth anniversary celebrations of the Tribunal. To mark the occasion, a ceremony had been held on 29 September 2006 in the presence of the President of the International Court of Justice, the Legal Counsel of the United Nations and the Secretary-General of the International Seabed Authority, among others. The anniversary ceremony had been a perfect time to reflect on the court’s contribution to the settlement of maritime disputes. The Tribunal had established a jurisprudence that had already contributed to the development of international law of the sea in a notable way and played an important role in the pacific settlement of disputes relating to the Convention’s application.

40. He also reported that, since he last addressed the meeting, seven States had expressed their consent to be bound by the Agreement on the Privileges and Immunities of the Tribunal, namely, Argentina, Belgium, Finland, Germany, Italy, Slovenia and Uruguay, bringing the total number of States to 30. The Headquarters Agreement between the Tribunal and Germany entered into force on 11 April 2007. The Tribunal had also taken further steps to develop its relations with other international organizations and bodies. For example, in March, it concluded an administrative arrangement with the Food and Agriculture Organization. Concerning the court’s budget, he referred to the appeal made by the General Assembly in resolution 61/222 to all States Parties to pay their assessed contributions in full and on time.

41. Following the Statement by the President of the ITLOS, several delegations expressed appreciation for the important work of the Tribunal and the significant

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13 The AALCO was represented in this event by the then Deputy Secretary-General Mr. Motokatsu Watanabe.
contribution it had made for the development of the law of the sea and the settlement of disputes and emphasized that more use could be made of the potential of the Tribunal. Delegations also welcomed the establishment of the new Chamber of Maritime Delimitation Disputes. The Meeting took note with appreciation of the Annual Report of the Tribunal for 2006.

B. Information on the activities of the International Seabed Authority

42. Mr. Satya Nandan Secretary-General of the International Seabed Authority, informed the meeting about the activities carried out by the Authority during the past 12 months. He informed that due to the failure of some members to contribute to the budget, cumulative arrears stood at $384,253. He urged all members in arrears to review the status of their contributions and pay up. According to the rules of procedure of assembly, a member in arrears would not have a vote if the amount due equalled or exceeded the amount due from it for the preceding two years. At the end of May 2007, 54 members of the Authority were in arrears for two years or more.

43. During the twelfth session, the Council of the Authority elected 25 members of the Legal and Technical Commission for a five-year term, he said. The Council also considered the draft regulations on polymetallic sulphides and cobalt-rich crusts, and requested that the regulations on the two types of deposits be separated. There was general agreement that a block system would be appropriate regarding the areas to be allocated for exploration. However, there was disagreement on the way the blocks should be configured and on the issue of the geographic proximity of the block, as well as the number of blocks to be allocated for exploration and retained for exploitation.

44. Turning to the prospects for commercial mining of minerals from the seabed, he said the economic situation was becoming increasingly favourable in the light of high commodity prices in recent years. There was increased demand for metals for commercial use in polymetallic nodules, including copper, nickel, cobalt and manganese, and in hydrothermal polymetallic sulphides, including copper, silver, lead and zinc. Since 2003, the Authority had been developing a geological model of polymetallic nodule deposits for the Clarion Clipperton zone seabed area. The Authority had issued seven exploration licenses in that zone for polymetallic nodule resources. During the twelfth session in 2006, the Legal and Technical Commission was given a progress report on the geological model, which stated that the resource evaluation of polymetallic nodule resources had been completed and that preliminary reports from consultants on bathymetry, tectonics and volcanism, carbonate compensation depth and the oxygen minimum zone had been received. All work products would be submitted for peer review by September 2007 and a final draft of suggestions from peer and internal reviews made available by year’s end.

45. He regretted that the meetings of the Assembly of the Authority were not well attended by States Parties and that frequent absences of a quorum had hampered decision-making on important substantive matters. He urged all members to participate in the sessions.
46. Several delegations expressed support for the work of the Authority and the
meeting took note with appreciation of the information reported by the Secretary-General
of the Authority.

C. Matters related to the Commission on the Limits of Continental Shelf

47. The Chairman of the Commission, Peter F. Croker, informed the meeting about
the activities carried out by the Commission in the preceding 12 months. The Meeting
took note with appreciation of the information provided by the Chairman of the
Commission.

48. In addition to his statement, the Chairman made a presentation on the projected
workload of the Commission during the period 2007-2012. He expected that the total
number of submissions was as high as 65, almost double the number of submissions
forecast at the time of the drafting of the Convention. The Chairman outlined three
scenarios for the future examinations of submissions by the Commission: (i) the current
arrangements allow the Commission to process two submissions per year. At this rate, the
Commission would complete the examination of all submissions by 2035; (ii) should the
Commission be in a position to hold longer sessions, the time required to complete the
examination of the submissions would be reduced. If the Commission could meet for 18
weeks per year it would be able to examine up to four submissions per year. This would
allow it to complete the examination of all the submissions by 2021. Should the amount
of time spent in session increase to 36 weeks per year, the completion of its work would
occur by 2014; (iii) a third scenario would envisage a change in the approach to the
preparation of recommendations, requiring the Secretariat to undertake more of the
background work currently carried out by the subcommittees in order to reduce the
processing time.

49. The Chairman then described the outcomes and implications of the three
scenarios. States could decide not to take any action on this matter and let the
Commission continue working under scenario (i). Alternatively, States could decide to
take action that would allow the Commission to work for increased amounts of time. This
solution would allow it to operate under scenario (ii), but it would have financial
implications for both the States parties that defray the costs of members of the
Commission and for the Division, acting as Secretariat for the Commission. Scenario (iii)
would also have financial implications for both the States parties and for the Division.
Moreover, additional technical staff would be required for the Division under scenarios
(ii) and (iii).

50. The deliberations on the agenda items related to the Commission focused mainly
on the workload of the Commission. Delegations underlined the importance of ensuring
that the Commission can perform its functions under the Convention effectively and of
providing it with the support it needs to face the projected increased workload. Several
delegations stated that, in view of the complexity of the matter, a solution to the
challenges posed by the projected workload could be found only through a
comprehensive approach that combined several options outlined by the Chairman or
addressed in document SPLOS/157. They noted that the estimated date of completion of the examination of all submissions as projected by the Chairman should the Commission continue operating under the current working arrangements, namely 2035, was a source of concern.

51. At the proposal of the President, the Meeting decided to continue deliberations on the workload of the Commission in open-ended informal consultations under the chairmanship of Mr. Ganeson Sivagurunathan (Malaysia), Vice-President. Mr. Sivagurunathan prepared a draft decision on issues related to the workload of the Commission that was adopted without a vote.

52. The decision calls upon States Parties whose experts were serving on the Commission to do everything possible to ensure those experts’ full participation in its work and to contribute voluntarily to the trust funds to help developing coastal States – particularly least developed countries and small island developing States in preparing submission to the CLCS of their respective continental shelves, in accordance with the Convention. They also called on the Commission to continue searching for ways to improve its working methods in order to ensure timeliness and efficiency and to consider adding more work hours to its regular Sessions. Further, they requested that coastal States parties inform the Commission by the end of November 2007 if they intended to make a submission and, if so, by what date. The States parties also decided to continue to address issues related to the workload of the Commission and to funding for its members attending Sessions of the Commission and subcommission as matter of priority.

53. The Meeting also elected 21 members of the Commission on the Limits of Continental Shelf for a term of five years. The term of previous members expired on 15 June 2007.

D. Future arrangements regarding the allocation of seats on the Commission on the Limits of the Continental Shelf and the equitable distribution of members of the International Tribunal for the Law of the Sea

54. On behalf of Association of South-East Asian Nations (ASEAN), Singapore introduced the proposal regarding the creation of a permanent mechanism to deal with seating in the Commission on the Limits of Continental Shelf. The proposed formula, which was a joint African and Asian draft proposal was based upon the past substantial growth in the number of, in particular, African and Asian States Parties. The proposal was made to satisfy the need for revision of, and some certainty in, the equitable geographical representation in the composition of the Commission. The proposal outlined that no regional group would have less than three seats, the members of the Commission would be elected as follows: five plus one commissioner from the African Group; five plus one commissioner from the Asian Group; three commissioners from the Eastern European Group; four commissioners from the Latin American and Caribbean Group; and three commissioners from the Western European and Other States Group.

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14 The names of the newly elected members are mentioned in paragraph 27 (Part III) of this brief.
55. The additional one seat of the African and Asian Groups in the Commission would rotate, according to the proposal. Asia would occupy six seats in the next elections to the Commission, and Africa would occupy six seats in the elections thereafter, and so on.

56. Tunisia on behalf of the African Group, outlined the proposal concerning allocating of seats on the International Tribunal for the Law of the Sea. It outlines that no regional group would have fewer than three seats, and the members of the Tribunal would be elected as follows: five plus one judge from the African Group; five plus one judge from the Asian Group; three judges from the Eastern European Group; four judges from the Latin American and Caribbean Group; and three judges from the Western European and Other States Group.

57. The additional one seat of the African and Asian Groups in the Tribunal would rotate, the proposal suggested. Asia would occupy six seats in the next elections to the Tribunal, and Africa would occupy six seats in the elections thereafter, and so on.

58. The joint Asian-African proposal drew wide support from many developing countries including Republic of Korea, Malaysia, Indonesia, India, South Africa, People’s Republic of China, Kenya, Nigeria, Arab Republic of Egypt, Sri Lanka, and Namibia. However, some developed nations, including Germany and the United States of America said the current election process in the Tribunal should remain unchanged.

59. Following deliberations in the plenary, the Meeting decided to continue its consideration of the two agenda items in informal consultations under the coordination of Mr. Diego Malpede (Argentina), Vice-President. The President of the Meeting held additional consultations with the representatives from the five regional groups. As a result of these consultations, and failing to reach consensus, the Meeting adopted a decision entitled “The allocation of seats on the Commission and the Tribunal”, without a vote. The meeting decided to further study and consider that proposal during the next meeting. The decision was adopted with the understanding that, for practical reasons, the next election of seven judges of the Tribunal, to be held at the eighteenth Meeting of States Parties, would take place on the basis of the existing arrangements.

60. The eighteenth Meeting of States Parties would be convened from 13 to 20 June 2008. It would inter alia elect seven members of the International Tribunal for the Law of the Sea.

E. Special Meeting of States Parties

61. A Special Meeting of States Parties to the UNCLOS was convened on 30 January 2008 in order to fill a vacancy in the ITLOS following the resignation of Judge Guangjian Xu, from People’s Republic of China, who resigned on 15th August 2007. The meeting elected Mr. Zhiguo Gao of the People’s Republic of China as a judge of the ITLOS for the remainder of the term of Judge Xu, which would have ended on 30 September 2011.

62. The United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (hereinafter ICP), was established by the General Assembly in its resolution 54/33 of 24 November 1999 and renewed for three years in resolution 57/141 of 12 December 2002, in order to facilitate the annual review of development in ocean affairs. In view of the contribution made by the Consultative Process in strengthening the annual debate of the General Assembly, over the past six years, the General Assembly vide resolution 60/30 of 29 November 2005 decided to continue with the work of the Consultative Process for the next three years and would review its effectiveness and utility at its Sixty-third Session.

63. The eighth meeting of the UN Open-Ended Informal Consultative Process on Oceans and the Law of the Sea (ICP-8 Consultative Process) took place from 25 to 29 June 2007, at the UN Headquarters in New York. The meeting was co-chaired by Lorraine (Lori) Ridgeway (Canada) and Cristian Maquieira (Chile). The area of focus for this year’s meeting was Marine genetic resources. The three main areas for the discussion were: understanding marine genetic resources, their vulnerability and the services they provide; current activities relating to marine genetic resources; and international cooperation and coordination.\(^{15}\)

64. Chapter X of the UN Secretary-General’s Report on Oceans and Law of the Sea deals comprehensively with the topic of the “Marine genetic resources”. It includes a broad range of macro and micro organisms of direct value to humans, for example by providing the material necessary to develop novel drugs, or of indirect value in the light of their role in maintaining ecosystem health. Both scientists and industry use marine genetic resources to improve our understanding of the Earth’s ecosystems develop new products and create cleaner and cost-effective industrial processes.

65. The Report stressed that conservation and sustainable use of marine genetic resources, as well as socio-economic aspects, capacity-building and the transfer of technology, are among the issues that need to be addressed. Countries have begun considering these issues and assessing whether further action is required to find a balance between the need to support activities that may lead to the development of valuable products, the need to ensure the equitable and efficient utilization of marine genetic resources and the need to conserve these resources and their ecosystems.

66. It further brings out that marine genetic resources are playing an increasingly larger role as the basis for drugs used against a host of diseases. Compounds derived from

marine micro-organisms are being tested and used in pharmacology for the development of antioxidant, antivirals, anti-inflammatory, anti-fungal, anti-HIV, antibiotic, anticancer, antituberculosis and antimalarial drugs.

67. The Report brings out succinctly that apart from their economic value, marine micro-organisms also have great environmental value, as they influence the climate. Nearly half of the oxygen in the atmosphere is derived from the photosynthetic process of planktonic microalgae and marine angiosperms and macroalgae. Planktonic marine microalgae contribute between 80 to 90 per cent to the ocean’s productivity, both in terms of carbon assimilation and oxygen generation.

68. However, research and other activities relating to marine genetic resources are an expensive endeavour, in particular in extreme environments such as the deep sea. As a result, such activities are usually carried out through partnerships, including between public research institutes and biotechnology companies. This may lead to an increasingly unclear distinction between scientific investigation to study the marine environment and research and development of new products. It also raises issues of intellectual property rights.

69. As regards the relevant “international instruments”, the Report points out that the United Nations Convention on the Law of the Sea provided the legal framework within which all activities in the oceans and sea must be carried out, including those relating to marine genetic resources. A number of other more specialized instruments, like the Convention on Biological Diversity and various treaties addressing intellectual property rights, complement the Law of the Sea Convention by dealing with various issues related to marine genetic resources.

70. It highlights that while genetic resources within national jurisdiction are managed by coastal States, there are divergent views on the legal regime applicable to genetic resources in areas beyond national jurisdiction. Views also differ as to the issues that need to be addressed by the international community, which include how best to ensure the conservation and sustainable use of genetic resources, access to such resources and how to share the benefits arising out of their utilization.

71. Amongst other things, the law and policy related to marine genetic resources was a subject of intense discussion at the ICP-8. Delegations focused upon definition issues, such as that the term “marine genetic resources” was not used in the UNCLOS, or what bio prospecting meant; regulatory framework at national levels; and law and policy at the international level. A number of delegations raised legal issues related to marine genetic resources. It was stressed that issues concerning such resources in areas within and beyond national jurisdiction should be dealt with separately. Delegations emphasized that the UNCLOS established the legal framework within which all the activities in the oceans and seas were to be carried out. Several delegations further underlined that the Convention should be fully implemented and its integrity preserved.
72. Some delegations highlighted the Convention on Biological Diversity as constituting the relevant legal framework for marine genetic resources. They recalled that the objectives of the Convention on Biological Diversity were the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to those resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding. They pointed out that article 22 of the Convention established that it was to be implemented with respect to the marine environment consistently with the rights and obligations of States under the law of the sea.

73. However, the delegates were unable to agree on key language referring to the relevant legal regime for marine genetic resources in areas beyond national jurisdiction, no consensus element was forwarded to the General Assembly for consideration. There was agreement that the list of issues identified at the seven previous meetings of the Consultative Process remains valid. Additional issues suggested at the eighth meeting were: (a) Combating illegal, unregulated and unreported fishing; and (b) Ocean pollution – a constant and increasing challenge for marine conservation.

74. The UN General Assembly at its Sixty-second Session, vide resolution 62/215 recognized the abundance and diversity of marine genetic resources and their value in terms of benefits, goods and services they can provide, as well as also the importance of research on marine genetic resources for the purpose of enhancing scientific understanding, potential use and application and enhanced management of marine ecosystems. The Assembly took note of the work of ICP-8 and acknowledged the need to discuss the issue of marine genetic resources in the Ad Hoc Open-ended Informal Working Group in accordance with paragraph 91 of resolution 61/222, taking into consideration the possible elements suggested by the co-chairpersons of the Consultative Process. It also noted that the discussion on the relevant legal regime on marine genetic resources in areas beyond national jurisdiction in accordance with the Convention and called upon States to further consider that issue in the context of the mandate of the Ad Hoc Open-ended Informal Working Group, with a view to making a further progress on the issue.

75. The General Assembly decided to convene ICP-9 in New York, from 23 to 27 June 2008 with the focus of its discussion on the topic “Maritime security and safety”.

VII. THIRTEENTH SESSION OF THE INTERNATIONAL SEABED AUTHORITY (9 - 20 JULY 2007, KINGSTON, JAMAICA)

76. The International Seabed Authority (hereinafter ISA) was established under UNCLOS of 1982, as modified by the 1994 Agreement relating to the Implementation of Part XI (seabed provisions) of the UNCLOS. Its task, as set out in the UNCLOS, is to organize and control all resource-related activities in the seabed area beyond the jurisdiction of any State, an area underlying most of the world’s oceans. The UNCLOS defines this deep-seabed area and its resources as “the common heritage of mankind”. All
parties to the Law of the Sea Convention are *ipso facto* Members of the Authority and the current membership is 149. It was established on 16 November 2004 following the entry into force of the UNCLOS. The three principal organs of the Authority are: the Assembly, in which all members are represented, and a 36-member Council elected by the Assembly and the Secretariat. A 24-member Legal and Technical Commission and a 15-member Finance Committee are the organs of Council.

77. The thirteenth Session of the International Seabed Authority took place from 9 to 20 July 2007 at the seat of the Authority in Kingston Jamaica. Of the Authority’s 155 members, 56 were in attendance. Chief Olufolajimi Modupe Akintola (Nigeria) was elected President of the Seabed Assembly. Ambassador Raymond Wolfe (Jamaica) was elected as President of the Seabed Council of the Authority.

78. The Seabed Council completed the provisional first reading of regulations that would govern the exploration and exploitation of metallic sulphides in international deep seabed Area beyond national jurisdiction. It completed a detailed reading of regulations 1 to 43, agreeing on revisions to some of the provisions and agreed to take up the remaining 12 pending provisions at the Authority’s next Session.

79. In another important development, the Council adopted a draft decision on the future size and composition of the Legal and Technical Commission, an expert body which advises the Council on all matters relating to the exploitation and exploration of non-living marine resources.

80. The fourteenth session of the International Seabed Authority would take place at its headquarters from 26 May to 6 June 2008.

VIII. DISPUTE SETTLEMENT UNDER UNCLOS

81. States Parties to UNCLOS involved in a dispute when they have not reached a settlement by peaceful means in accordance with the UN Charter are obliged to resort to the compulsory dispute settlement procedures entailing binding decisions, subject to limitations and exceptions provided. UNCLOS provides for four alternative fora for the settlement of disputes: ITLOS, ICJ, an Arbitral Tribunal constituted in accordance with Annex VII to UNCLOS or a Special Arbitral Tribunal constituted in accordance with annex VIII to UNCLOS. States Parties may choose one or more of those fora by written declaration made under article 287 of UNCLOS and deposited with the Secretary-General of the United Nations.

82. The International Tribunal for the Law of the Sea (ITLOS) was established by the Convention to adjudicate disputes arising out of the interpretation and application of the Convention. It has exclusive jurisdiction in disputes concerning deep seabed mineral resources and provides advisory opinions when requested to do so. The jurisdiction of the Tribunal is mandatory in cases relating to the prompt release of vessels and crews or with

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16 For details see www.itlos.org.
regard to requests for the prescription of provisional measures, pending the constitution of an arbitral tribunal. It is composed of 21 judges elected for nine-year terms.

83. As regards the judicial work, in the year 2007, two applications were submitted to the ITLOS by Japan against the Russian Federation for release of two arrested fishing vessels on 6 July 2007. The first application concerned the release of the 88th Hoshinmaru and of 17 members of the crew. The second application concerned the release of the 53rd Tomimaru. According to the applications, the 88th Hoshinmaru and the 53rd Tomimaru were boarded by officials from a Russian coastguard patrol boat in the Russian exclusive economic zone for alleged violations of Russian fisheries legislation on 1 June 2007 and 31 October 2006 respectively. They were then rerouted to a Russian and were detained. The crew of the 53rd Tomimaru was allowed to leave while the crew of the 88th Hoshinmaru was detained.

84. On 6th August 2007, the Tribunal ordered the prompt release of the fishing vessel 88th Hoshinmaru upon the posting of a bond of 10 million roubles (approximately US $392,000).\(^{17}\) In the Tomimaru case the Tribunal found that the application for the release of the vessel was without object and that the Tribunal was therefore not called upon to give a decision thereon. The Tribunal took note of the fact that the decision of the Supreme Court of the Russian Federation brought to an end the procedures before the domestic courts. The Tribunal therefore considered that the decision under article 292 of the Convention to release the vessel would contradict the decision, which concluded the proceedings before the appropriate domestic fora and encroach upon national competences, thus contravening article 292, paragraph 3, of the Convention. The Tribunal therefore decided that the application was without object and did not consider it necessary to pronounce expressly upon the submissions of the parties.\(^{18}\)

85. The Special Chamber of the Tribunal also acceded to the request of the parties for a further postponement of time limits of the proceedings for one year until 1 January 2009, in the Case between Chile and the European Community concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean.\(^{19}\)

86. As regards organizational matters, the International Tribunal for the Law of the Sea, in March 2007, formed a standing special chamber to deal with maritime delimitation disputes pursuant to article 15, paragraph 1, of the Tribunal’s Statute. The Chamber, to be known as the Chamber for Maritime Delimitation Disputes, would be available to deal with maritime delimitation disputes, which the parties agree to submit to it concerning the interpretation or application of any provision of the United Nations Convention on the Law of the Sea and of any other agreement, which confers jurisdiction on the Tribunal.

\(^{17}\) The “Hoshinmaru” Case (Japan v. Russian Federation), Prompt Release, Case No. 14, details are drawn from ITLOS/Press 112, 6 August 2007.

\(^{18}\) The “Tomimaru” Case (Japan v. Russian Federation), Prompt Release, Case No. 15, details are drawn from ITLOS/Press 113, 6 August 2007.

\(^{19}\) Details are drawn from ITLOS/Pres 117, 30 November 2007.
87. The Chamber is composed of eight members of the Tribunal. If the number of members available to sit in a given case falls below the required quorum of six, new members will be selected by the Tribunal in order to bring the number to six at least. The Tribunal selected the following members of the Tribunal to serve on the Chamber with immediate effect: President of the Tribunal Rüdiger Wolfrum (President of the Chamber ex officio) Judges: L. Dolliver M. Nelson, P. Chandrasekhar Rao, Tafsir Malick Ndiaye, José Luis Jesus, Jean-Pierre Cot, Stanislaw Pawlak, and Shunji Yanai. The term of office of the current members will end on 30 September 2008.

AALCO’s Participation in Bahrain Workshop convened by ITLOS

88. The International Tribunal for the Law of the Sea, the International Foundation for the Law of the Sea and the Kingdom of Bahrain organized a workshop on “The Role of the International Tribunal for the Law of the Sea in the Settlement of Disputes Relating Law of the Sea in the Gulf Area” in Bahrain from 4 to 6 February 2008. Deputy Secretary-General Dr. Xu Jie represented the Organization in this important workshop and made a presentation on “AALCO and its Work”.


89. The UN General Assembly considered the agenda item on “Oceans and the Law of the Sea” and considered the annual comprehensive report of the UN Secretary-General and its two addendum and adopted two resolutions namely;
   i. Oceans and the law of the sea; \(^{20}\)

90. By the 17-part resolution \(^{22}\) on oceans and the law of the sea the General Assembly called upon States to become parties to the Convention, the Agreement on implementing part XI of the Convention and the Agreement relating to the Conservation and

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\(^{21}\) UNGA Res. A/61/105 dated 8 December 2006. The resolution was adopted without a vote.

\(^{22}\) The resolution is divided into following parts: Preamble; Implementation of the Convention and related agreements and instruments; Capacity-building; Meeting of States Parties; Peaceful Settlement of disputes; The Area; Effective functioning of the Authority and the Tribunal; The continental shelf and the work of the Commission; Maritime safety and security and flag State implementation; Marine environment and marine resources; Marine biodiversity; Marine science; Regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects; Regional cooperation; Open-ended informal consultative process on oceans and the law of the sea; Coordination and cooperation; Activities of the Division for Ocean Affairs and the Law of the Sea; and Sixty-third session of the General Assembly.
Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. States were also called upon to deposit with the Secretary-General their charts or lists of geographical coordinates as called for by the Convention, as also urged to cooperate by protecting and preserving objects found at sea that are of an archaeological or historical nature. They were called upon to work together on diverse challenges and opportunities, including the relationship between salvage law and scientific management of underwater cultural heritage, increasing abilities to access underwater sites, looting and the growing area of underwater tourism.

91. With regard to capacity-building, the Assembly called upon States and international financial institutions to continue strengthening capacity-building activities, particularly in developing countries, in the field of marine scientific research. Those activities include training of personnel, provision of equipment, facilities and vessels, and transfer of environmentally sound technology. States were encouraged to assist developing countries in preparing submissions to the Commission on the Limits of the Continental Shelf regarding the establishment of the outer limits of the shelf beyond 200 nautical miles.

92. The General Assembly vide resolution 62/177 reaffirmed the importance of the long-term sustainability of marine resources, and the obligation of States to cooperate to that end, and urged for strengthening existing regional fisheries management organizations, and considering the development of a global register of fishing vessels to better counter illegal, unreported and unregulated fishing. The 13-part consensus resolution on sustainable fisheries, calls on States, directly or through regional fisheries management organizations, to widely apply the precautionary approach and an ecosystem approach to the conservation, management and exploitation of fish stocks, including straddling fish stocks, highly migratory fish stocks and discrete high seas fish stocks. It also called on States party to the Fish Stocks Agreement to fully implement article 6 relating to the precautionary approach as a matter of priority. The Assembly also urged countries to take effective measures at national, regional and global levels to deter activities – including illegal, unreported and unregulated fishing of any vessel – which undermined conservation and management measures adopted by regional and subregional fisheries organizations. It further called on States to prohibit flagged vessels from engaging in fishing on the high seas or in areas under the national jurisdiction of other States, unless duly authorized. In the area of monitoring and enforcement, the Assembly urged enhanced coordination among all relevant States and regional fisheries management organizations, and encouraged further work by international organizations, including the Food and Agriculture Organization, to develop guidelines on flag State control of fishing vessels. To address fishing overcapacity, the Assembly called on States to urgently reduce fishing fleets to levels commensurate with the sustainability of fish stocks, notably by establishing target levels and plans for ongoing capacity assessment.

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X. COMMENTS AND OBSERVATIONS OF AALCO SECRETARIAT

93. The year 2007 marks the twenty-fifth year of the adoption of the United Nations Convention on the Law of the Sea. With 155 Parties, the Convention was growing and it was steadily moving towards achieving the stated goal of universality. There was some prospect that even the United States of America might also soon join the Convention, this would further pave the way towards universality. Perhaps, the twenty-fifth anniversary of the Convention is an opportune moment for non States Parties to consider becoming Party to the “Constitution of Oceans”, that governs all aspects of the ocean space, its uses and its resources and includes, among others, such matters as fisheries, archipelagic States, maritime delimitation, regime of islands, protection and preservation of the marine environment, marine research, economic and commercial activities, technology and the settlement of disputes.

94. It may be noted that the joint Asian-African proposal regarding the allocation of seats on the Commission on the Limits of Continental Shelf and the equitable geographical distribution of members of the International Tribunal for the Law of the Sea under consideration of the Meeting of Parties of UNCLOS needs to be taken to its logical conclusion. The proposal based upon substantial growth in the number of, in particular, African and Asian States, seeks to ensure equitable geographical representation in both the Commission and the Tribunal. Under-representation of Asian-African regions in these bodies was certainly an issue that needs to be urgently addressed.

95. The lack of consensus on relevant legal regime for “marine genetic resources” in areas beyond national jurisdiction at ICP-8 is an area of serious concern. The G-77/China position that marine genetic resources should be regarded as the “common heritage of mankind” like the mineral resources of the Area is in conformity with principles of international law. Although, the Convention is silent on the status of the living resources of the Area, General Assembly resolution 27/49 of 1970, which predates the adoption of UNCLOS in 1982, declares “all resources” of the Area to be the common heritage of mankind and that this should include living resources such as marine genetic resources.

96. The right of transit passage through straits used for international navigation, has become an area of concern in view of adoption by some States of laws, such as providing for compulsory pilotage that restrained that right. In this context, it may be recalled that Article 42 (2) of the UNCLOS states that the laws and regulations adopted by States bordering straits should not “have the practical effect of denying, hampering or impairing the right of transit passage”. This was pertinent to preserve the delicate balance in the Convention between the interests of coastal States and of user States. Port States should also exercise sovereignty in managing their ports, thus preserving the Convention’s
sanctity. Adherence to this was critical, as 85 to 90 per cent of global trade was conducted using the oceans.\textsuperscript{24}

\textsuperscript{24} Delegates from following AALCO Member States raised this issue, while discussing the resolution on Oceans and the law of the sea in the UN General Assembly Japan, Republic of Korea, Nigeria and Singapore. The issue came to the fore as Australia had enacted measures to provide safety of navigation and environmental safety of the Torres Strait (which lies between Australia, Singapore and Papua New Guinea). While Australia believed that such measures were necessary to allow safe and expeditious travel though treacherous waters and were governed by international law, Singapore said that such measures imposed compulsory pilotage as a means of providing safety of navigation. The Strait, in its opinion was a waterway used for international navigation and under, Part III of the Convention, all ships transiting through such Straits should enjoy the right of transit passage. Details are drawn from UN Press Release GA/10681 dated 18 December 2007.