

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



THE LAW OF THE SEA

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THE LAW OF THE SEA

I. INTRODUCTION

1. The United Nations Convention on the Law of the Sea, 1982 (hereinafter UNCLOS or the Convention), described as “constitution for the oceans”, since its entry into force nearly seventeen years ago,¹ has been serving as a guide for the international community to safeguard the capacity of ocean’s to serve the society’s many and varied needs. However, the damaging impacts of human activities are putting the diversity of life in the oceans under ever-increasing strain. Over-exploitation of marine living resources, climate change, and pollution from hazardous materials and activities, all pose a grave threat to the fragile marine environment. Likewise, the growth of criminal activities, including piracy, has serious implications for the security of navigation and the safety of seafarers.²

2. It is important to underline that the UNCLOS is widely recognized as setting out the legal framework within which all activities in the oceans and seas must be carried out and is considered to be of strategic importance as the basis for national and regional cooperation. However, limitations in capacity hinder States, in particular developing countries, not only from benefitting from oceans and seas and their resources pursuant to the UNCLOS, but also from complying with the range of obligations under that Convention. Therefore, the capacity-building needs of States in marine science and other areas of oceans affairs and the law of the sea remains of vital importance.

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. 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 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 (ISBA), 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 topic was considered in a half-day special meeting at the Forty-Eighth Annual Session of AALCO, held at Putrajaya, Malaysia from 17 to 20 August 2009.

¹ The UNCLOS, in accordance with its Article 308 (1) entered into force on 16 November 1994.

² “Secretary-General, in Message for World Oceans Day, says Human Activities place ever-increasing Strain on Diversity of Marine Life”, *UN Press Release*, SEA/1937, dated 3 June 2010.

It was a non-deliberated item at the Forty-Ninth Annual Session of AALCO held in Dar es Salaam, United Republic of Tanzania. Vide RES/49/S 2, the Forty-Ninth Annual Session of AALCO emphasized upon the universal character of the UNCLOS and its legal framework governing the issues relating to the management of the oceans. It urged for the full and effective participation of AALCO Member States in the work of the International Seabed Authority, the Commission on the Limits of Continental Shelf and other related bodies established by the United Nations Convention on the Law of the Sea, as well as in the United Nations Informal Consultative Process so as to ensure and safeguard their legitimate interests.

6. Accordingly, the Secretariat Report prepared for the Fiftieth Annual Session provides information on the status of the UNCLOS and its implementing agreements; twenty-fifth and twenty-sixth Sessions of the Commission on the Limits of the Continental Shelf (15 March to 23 April; and 2 August to 3 September 2010, New York); Sixteenth Session of the International Seabed Authority (23 April to 7 May 2010, Kingston, Jamaica) and the Twentieth Meeting of States Parties to the Law of the Sea Convention (14 to 18 June 2010, New York) and the eleventh meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (hereinafter ICP-11 or the Consultative Process) that took place at the UN headquarters in New York from 21 to 25 June 2010; and the consideration of the Oceans and the Law of the Sea issues at the Sixty-Fifth Session of the United Nations General Assembly. This report presents an overview of all these developments. Finally, it offers comments and observations of the AALCO Secretariat. A draft of the resolution for the consideration of the Fiftieth Annual Session is also annexed to the Secretariat Report.

II. STATUS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS) AND ITS IMPLEMENTING AGREEMENTS

7. The United Nations Convention on the Law of the Sea as at 30 November 2010 had 161 Parties, of which 39 States are AALCO Member States.³ 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.

8. 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

³ UNCLOS, 1982 has near universal adherence from the AALCO member states. 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. Out of forty-seven Member States only eight states, namely, Democratic Peoples' Republic of Korea, Islamic Republic of Iran, Libyan Arab Jamahiriya, State of Palestine, Syrian Arab Republic, Thailand, Turkey and United Arab Emirates are not Parties to the UNCLOS. For details see: "Table recapitulating the status of the Convention and of the related Agreements, as at 30 November 2010", available on the website: http://www.un.org/Depts/los/reference_files/status2010.pdf.

the status of this Agreement, as at 30 November 2010, there were 140 parties to it, of which 31 States are AALCO Member States.⁴

9. The Agreement for the Implementation of the Provisions of the UNCLOS Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, was adopted on 4 August 1995 and has been signed by 59 States and as at 30 November 2010 ratified by 78 States, of which 13 are AALCO Member States. The Agreement came into force from 11 December 2001 after receiving the requisite 30 ratifications or accessions.⁵

III. TWENTY-SIXTH AND TWENTY-SEVENTH SESSIONS OF THE COMMISSION ON THE LIMITS OF CONTINENTAL SHELF (2 AUGUST TO 3 SEPTEMBER 2010 AND 7 MARCH TO 21 APRIL 2011, UN HEADQUARTERS, NEW YORK)

10. The Commission on the Limits of the Continental Shelf (CLCS) held its twenty-sixth and twenty-seventh Sessions at United Nations Headquarters from 2 August to 3 September 2010 and 7 March to 21 April 2011 respectively. Apart from the work carried out in plenary meetings, the Commission also proceeded with a technical examination of submissions made by coastal States in accordance with Article 76 of the UNCLOS, 1982.

A. Twenty-Sixth Session of CLCS

11. The CLCS held its twenty-sixth session at United Nations Headquarters in New York from 2 August to 3 September 2010.⁶ The plenary part of the session was held from 16 to 23 August 2010, during which the Commission received presentations of five submissions from the following States: **Yemen, in respect of south-east of Socotra Island; South Africa, in respect of the mainland of the territory of the Republic of South Africa; France and South Africa (jointly), in respect of the Crozet Archipelago and the Prince Edward Islands; Palau; and India.**

12. Apart from the work carried out in plenary meetings, the Commission proceeded by way of subcommission with the technical examination of submissions made by coastal States in accordance with article 76 of the UNCLOS, 1982. The subcommissions established for consideration of the submissions made by **Indonesia in respect of north-west of Sumatra Island; Japan; and jointly by Mauritius and Seychelles in respect of the Mascarene Plateau** continued their work. In addition, the subcommission established for consideration of the submission made by Suriname

⁴ 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.

⁵ The AALCO Member States Parties to the Straddling Stocks Agreement are: Cyprus, India, Indonesia, Islamic Republic of Iran, Japan, Kenya, Mauritius, Nigeria, Oman, Republic of Korea, Senegal, South Africa and Sri Lanka. AALCO Member States signatories to this Agreement include: Bangladesh, Egypt, Indonesia, Pakistan, and Uganda. Ibid.

⁶ Information mentioned herein is drawn from the *UN Press Releases*, "Commission on Limits of Continental Shelf Concluded Twenty-Sixth Session", SEA/1946, 7 September 2010.

started its work. The subcommission established to consider the submission made by Indonesia in respect of north-west of Sumatra Island submitted its recommendations to the Commission. During the plenary, the Commission decided to defer the consideration of the recommendations to the twenty-seventh session in order to provide its members with further time to examine them.

13. The Commission established one new subcommission, to consider the submission made by France in respect of the French Antilles and the Kerguelen Islands.

14. The Commission reviewed the decision of the twentieth Meeting of States Parties regarding the workload of the Commission (SPLOS/216) noting that the measures proposed therein have already been largely applied by the Commission and highlighting that working on a full-time basis at United Nations Headquarters would represent the most efficient and effective measure to address the issue of the workload.

B. Twenty-Seventh Session of the CLCS

15. At its twenty-seventh Session, the Commission continued the examination of data and other materials submitted by the following coastal States parties to the 1982 UNCLOS concerning the outer limits of their continental shelf in areas where those limits extend beyond 200 nautical miles: France (in respect of the areas of the French Antilles and the Kerguelen Islands), **Indonesia in respect of the area of north-west of Sumatra Island**, **Japan, Mauritius** and Seychelles (jointly in the region of the Mascarene Plateau), as well as Suriname.⁷

16. The Commission also received formal presentations of the submissions made by Denmark in respect to Faroe-Rockall Plateau Region; Maldives; and Mozambique. Upon the request of the respective submitting States, presentations on the remaining submissions that have been included on the provisional agenda for the session (notably, France in respect of La Réunion Island and Saint-Paul and Amsterdam Islands; Iceland in the Egir Basin area and in the western and southern parts of Reykjanes Ridge; Pakistan; and Sri Lanka) have been deferred to a later session.

IV. SIXTEENTH SESSION OF THE INTERNATIONAL SEABED AUTHORITY (23 APRIL TO 7 MAY 2010, KINGSTON, JAMAICA)

17. The Sixteenth Session of the International Seabed Authority (ISBA) took place from 23 April to 7 May 2010 at its seat in Kingston, Jamaica.⁸ Ambassador Jesus Silva-Fernandez of Spain was elected President of Assembly of the Authority's 16th Session while Mr. Syamal Kanti Das of India was elected President of the Council for the 16th Session.

⁷ Information mentioned herein is drawn from: "Commission on Limits of Continental Shelf, Meeting at Headquarters, 7 March to 21 April, will hold Plenary 28 March to 8 April", SEA/1948, 25 March 2011.

⁸ Information mentioned herein is drawn from: "Seabed Authority concludes Sixteenth Session in Kingston", International Seabed Authority Press Release, SB/16/21, 7 May 2010.

18. *Adoption of Regulations for Prospecting and Exploration of Polymetallic Sulphides:* The highlight of the meeting was the approval of “Regulations for Prospecting and Exploration of Polymetallic Sulphides”. Its adoption, after six years of debate and compromise, marks a milestone in the progressive development of the “Mining Code”, a comprehensive set of rules, regulations and procedures to govern prospecting, exploration and exploitation of marine minerals in the deep seabed beyond national jurisdiction. The Regulations consist of a preamble and 44 regulations organized into 10 parts and 4 annexes. The regulations deal only with prospecting and exploration phases, and apply only to polymetallic sulphides. The Preamble spells out the principles underlying the Regulations- that the seabed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction, as well as its resources are the common heritage of mankind. It is pertinent to mention here that, subsequent to the adoption of the Regulations the China Ocean Mineral Resources Research and Development Association (COMRA) has submitted an application to the ISBA for approval of a plan of work for exploration for polymetallic sulphides. The general location of the application area is on the Southwest Indian Ocean Ridge. In accordance with the Regulations, the members of the Legal and Technical Commission (LTC) will be notified and consideration of the application will be placed on the agenda of the Commission at its next meeting.

19. *Election of Council Members:* The Assembly elected 17 member countries to fill vacancies on the Council for a four year term from 2011 to 2013. The Council membership is drawn from five groups of States members of the Authority. Four of these have special interests in aspects of seabed mining and the fifth is a group chosen to ensure equitable geographical balance in the Council as a whole. The countries were: *Group A* (4 States from among the largest consumers or net importers of minerals to be derived from seabed mining): Italy, Russian Federation; *Group B* (4 States from those with the largest investment in seabed mining): **Republic of Korea**, France, Germany; *Group C* (States that are major land-based net exporters of minerals found in the seabed): Australia, **Indonesia**; *Group D* (developing States representing special interests, including those with large populations, the land-locked or geographically disadvantaged, islands, major mineral exporters or potential producers, and the least developed): Fiji, Jamaica, **Egypt**; *Group E* (18 States reflecting the principle of geographical representation, as well as balance between developed and developing States): Vietnam, **Qatar**, **Cameroon**, Cote d’ Ivoire, **Nigeria**, Chile, Mexico. It may be noted that the agreed allocation of seats on the Council is 10 seats to the African Group, 9 seats to the Asian Group, 8 seats to the Western European and Others Group, 7 seats to the Latin American and Caribbean Group and 3 seats to the Eastern European Group. Since the total number of seats allocated according to that formula is 37, it is understood that, in accordance with the understanding reached in 1996 (ISBA/A/L.8), each regional group will relinquish a seat in rotation. The regional group which relinquishes a seat will have the right to designate a member of that group to participate in the deliberations of the Council without the right to vote during the period the regional group relinquishes the seat.

20. *Request for Advisory Opinion from the Seabed Disputes Chamber of ITLOS:* The Assembly of the International Seabed Authority, on the recommendation of the Council (ISBA/16/C/13), decided that the Authority, in accordance with Article 191 of the Convention, would request the Seabed Disputes Chamber of the ITLOS,

pursuant to Article 131 of the Tribunal's Rules, to render an advisory opinion on the following questions:

- What are the legal responsibilities and obligations of States parties to the Convention with respect to the sponsorship of activities in the Area in accordance with Part XI of the Convention?
- What is the extent of liability of a State Party for any failure to comply with the provisions of Part XI of the Convention by an entity whom it has sponsored under Article 153, paragraph 2 (b), of the Convention?
- What are the necessary and appropriate measures that a State Party must take in order to fulfill its responsibility under Article 139 and Annex III, article 4, of the Convention?

21. The Government of Nauru, which had sponsored an application by Nauru Ocean Resources Inc. for a plan of work to explore for polymetallic nodules in the Area, had originally requested the advisory opinion by the Seabed Disputes Chamber in a communication to the Authority's Secretary-General last March (ISBA/16/C/6). The Government of Nauru considered it as crucial that guidance be provided on the interpretation of the relevant section of Part X of the Convention pertaining to responsibility and liability of Sponsoring States. That would enable developing States to assess whether it was within their capabilities to effectively mitigate such risks and in turn make an informed decision on whether or not to participate in activities in the area. It sought clarification in a number of areas including what were the responsibilities and obligations of sponsoring States under Part XI of the Convention.

22. The seventeenth session of the Authority is scheduled to take place from 11 to 22 July 2011 at its seat in Kingston, Jamaica.

V. TWENTIETH MEETING OF THE STATES PARTIES TO THE UN CONVENTION ON THE LAW OF THE SEA (14 TO 18 JUNE 2010, UN HEADQUARTERS, NEW YORK)

23. The twentieth Meeting of States Parties to the UN Convention on the Law of the Sea took place at the UN Headquarters in New York from 14 to 18 June 2010. The meeting elected **Arif Havas Oegroseno (Republic of Indonesia)** as President while **Oana Florescu (Romania)**; **Eden Charles (Trinidad and Tobago)**; and **Namira Nabil Negam (Egypt)** and **Ingo Winkelman (Finland)** as Vice-Presidents.⁹

24. The Agenda of the meeting included the consideration of the following items: Report of the International Tribunal for the Law of the Sea to the Meeting of States Parties (2009); Information provided by the Secretary-General of the International Seabed Authority; Commission on the Limits of Continental Shelf: (a) Information provided by the Chair of the Commission (b) Workload of the Commission; Consideration of budgetary matters of the International Tribunal for the Law of the Sea; and Report of the Secretary-General under article 319 for the information of

⁹ Information mentioned herein is drawn from *UN Press Release*: "Concluding 2010 Session, States Parties to the Convention on Law of the Sea Approve International Tribunal Budget, Pay Rise for Judges", SEA/1943, 18 June 2010 and "States Parties to Convention on Law of the Sea Open Twentieth Session with Call for Universal Accession, Election of Bureau Members", SEA/1939, 14 June 2010.

States parties on issues of a general nature relevant to States parties, that have arisen with respect to the United Nations Convention on the Law of the Sea.

25. *Workload of the CLCS*: The question of the increasing workload of the Commission on the Limits of the Continental Shelf has been an area of concern. At the twentieth Meeting of States Parties, the Chairman of the Commission informed the Meeting of the practical difficulties in managing the increasing number of submissions. He noted that it was not possible to complete the 51 submissions and 43 sets of preliminary information received from coastal States until 2030, assuming that four sessions were required for each submission and that no more than three subcommissions could work simultaneously. The large number of submissions, their size and high scientific complexity greatly impacted the Commission's work.

26. By the terms of the decision on the Commission's workload the Meeting requested that the Commission consider adopting, on an urgent and priority basis between the present time and the twenty-second Meeting in 2012, several measures to expedite the processing of submissions and to better manage the Commission's increasing workload. They included greater flexibility in the size of the subcommissions, holding more and extended and frequent meetings, tasking the subcommissions with more than one submission, and enabling Commissioners to work remotely, with the consent of submitting States. The Meeting also decided to continue to consider the possibility of a full-time Commission, and to assess the Commission's workload. The Meeting urged nominating States to fulfil their obligations concerning their nominees for Commission membership, in accordance with Article 2 (5) of Annex II to the Convention. It also called upon States in a position to do so to make voluntary contributions to the trust fund established to pay the expenses of developing country representatives participating in the Commission's meeting.

VI. ELEVENTH MEETING OF THE UNITED NATIONS OPEN-ENDED INFORMAL CONSULTATIVE PROCESS ON OCEANS AND LAW OF THE SEA (21 TO 25 JUNE 2010, UN HEADQUARTERS, NEW YORK)

27. The Eleventh Meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (hereinafter Informal Consultative Process or ICP-11) took place at UN Headquarters in New York from 21 to 25 June 2010. The meeting was co-chaired by **Amb. Paul Badji (Senegal)** and **Amb. Don Mackay (New Zealand)**, and as decided by the UN General Assembly vide its resolution 64/71 focused its discussions on capacity-building in ocean affairs and the law of the sea, including marine science.¹⁰

28. It may be noted that to confront growing threats and pressures from a wide range of issues facing the world's oceans, necessary capacity-building exercise to address ocean affairs and the law of the sea, including marine science is required. A lack of capacity can limit the ability of States, particularly developing countries, to

¹⁰ Information mention in this part is drawn from "Capacity-Building in Ocean Affairs, Law of the Sea, including Marine Science to be focus of discussions at United Nations Headquarters, 21-25 June", UN Press Release, SEA/1944, 18 June 2010; and "Summary of the eleventh Meeting of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea: 21-25 June 2010", *Earth Negotiations Bulletin*, vol. 25, no. 60, available online at: <http://www.iisd.ca/oceans/icp11/>.

protect the oceans and their resources from a wide variety of threats and pressures, such as marine pollution, biodiversity loss, climate change, crimes at sea and illegal, unreported and unregulated fishing. The Meeting based its discussions on the report of the Secretary-General (A/65/69) which describes the capacity building needs of States; examines the means for implementing capacity building activities and initiatives; and highlights implementation challenges and opportunities on the way forward. The meeting explored how to improve national and regional capabilities, including institution-building for effective implementation of the Law of the Sea, as well as measures for enhanced cooperation and coordination at all levels. The discussion at the meeting were structured on the following themes: Assessing the Need for Capacity Building in Ocean Affairs and the Law of the Sea, including Marine Science; New Approaches and Best Practices and Opportunities for Improved Capacity Building in Oceans and Law of the Sea; Overview of Capacity-Building Activities and Initiatives in Ocean Affairs and the Law of the Sea, including Marine Science and Transfer of Technology; Challenges for Achieving Effective Capacity Building in Ocean Affairs and the Law of the Sea, including Marine Science and Transfer of Technology. The recommendations made by the Informal Consultative Process would be submitted for the consideration of the Sixty-fifth Session of the UN General Assembly.

29. The twelfth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea will be held at United Nations Headquarters in New York from 20 to 24 June 2011. Pursuant to paragraph 228 and 231 of General Assembly resolution 65/37 of 7 December 2010, in its deliberations on the report of the Secretary-General on oceans and the law of the sea, the Consultative Process at its twelfth meeting will focus its discussions on “Contributing to the assessment, in the context of the United Nations Conference on Sustainable Development, of progress to date and the remaining gaps in the implementation of the outcomes of the major summits on sustainable development and addressing new and emerging challenges”.

VII. OCEANS AND LAW OF THE SEA: REPORT OF THE SECRETARY-GENERAL OF THE UNITED NATIONS FOR THE SIXTY-FIFTH SESSION OF THE UN GENERAL ASSEMBLY

30. The Annual Comprehensive Report of the UN Secretary-General on Oceans and Law of the Sea examines the relevance and scope of capacity-building, while presenting an overview of the capacity-building needs of States in marine science and other areas of ocean affairs and the law of the sea and reviews current capacity-building activities and initiatives in those areas.¹¹ The report also addresses the challenges that may constrain the potential of States, particularly least developed countries and small-island developing States, to benefit from the resources of oceans

¹¹ *Oceans and law of the sea: Report of the Secretary-General*, UN Doc. A/65/69 dated 29 March 2010. The UN Secretary-General’s Report has been prepared pursuant to the request of the General Assembly in paragraph 202 of its resolution 64/71 that the Secretary-General submit to the Assembly at its sixty-fifth session a comprehensive report on oceans and the law of the sea, and make the section of the report relating to the topic of focus of the eleventh meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea. It was also submitted to States Parties to the United Nations Convention on the Law of the Sea, pursuant to article 319 of the Convention.

and seas, thwarting their ability to implement the Convention and other legal instruments. It presents an overview of the capacity-building needs of States in marine science and other areas of ocean affairs and the law of the sea. The report contains a review of means of implementation of capacity-building activities and initiatives in marine science and other areas of ocean affairs and the law of the sea, based mainly on the information provided by intergovernmental organizations. Lastly, it addresses the challenges in implementing capacity-building activities and initiatives and identifies opportunities for ways to move forward.

31. The Report notes that increasing the marine science capacity of States, particularly in developing countries, could enhance scientific understanding of the oceans as a whole and support sustainable development and management of marine resources on a global level, the report also stresses that capacity-building among developing States would benefit the international community as a whole. A comprehensive assessment of the existing capacities and needs of States in ocean affairs and the law of the sea, including marine science, and of possible ways to enhance those capacities, would be an essential starting point for the development of sustained capacity-building programmes and activities, it says.

32. The comprehensive report has to be read in conjunction with an addendum,¹² which provides submissions received from nine States, as well as the European Union and its member States, pursuant to General Assembly resolution 64/71, in which the Assembly invited States to submit their views to the Secretary-General on the fundamental building blocks of the on the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socio-economic Aspects.

33. Another addendum¹³ is intended to assist the General Assembly in its annual review and evaluation of the implementation of the United Nations Convention on the Law of the Sea and other developments related to ocean affairs and the law of the sea. The report provides an overview of the challenges still faced by the international community in sustainable development of the oceans and their resources as human activities are taking a toll on the world's oceans and seas. In particular, vulnerable marine ecosystems, such as corals, and important fisheries, were being threatened by over-exploitation, illegal, unreported and unregulated fishing, marine pollution and other actions.

VIII. CONSIDERATION OF THE OCEANS AND THE LAW OF THE SEA ISSUES BY THE UN GENERAL ASSEMBLY AT ITS SIXTY-FIFTH SESSION (DECEMBER, 2010)

34. The UN General Assembly at its Sixty-fifth Session on 7 December 2010¹⁴ considered the agenda item on "Oceans and the Law of the Sea" and adopted two

¹² UN Doc. A/65/69/Add.1.

¹³ UN Doc. A/65/69/Add.2.

¹⁴ For details see "General Assembly Concludes Annual Debate on the Law of the Sea Adopting Two Texts Bolstering United Nations Regime Governing Ocean Space, its Resources, Uses", *UN Press Release GA/110331* dated 7 December 2010. The following AALCO Member States participated in the deliberations: Arab Republic of Egypt, Indonesia, Japan, People's Republic of China, Republic of Korea, Kuwait, South Africa and Libya.

resolutions namely; Oceans and the law of the sea;¹⁵ and Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments.¹⁶

35. Vide these two resolutions, the General Assembly reiterated its deep concern at the serious adverse impacts on the marine environment and biodiversity, and highlighted the links between the health of the world's oceans and sustainable human development, and called on all States to bolster their support for the United Nations framework established by the 1982 United Nations Convention on the Law of the Sea.

36. The Assembly adopted its 38-page omnibus resolution on oceans and the law of the sea, reiterating, among other things, the essential need for cooperation, including through capacity-building and transfer of marine technology, to ensure that all States, especially developing countries, small islands and coastal African States, were able to implement the Convention and to benefit from the sustainable development of the oceans and seas, as well as to participate fully in all forums and processes dealing with related legal issues.

37. Noting with concern the continuing problem of transnational organized crime committed at sea, as well as threats to maritime safety and security, including piracy, the Assembly urged States to ensure the full implementation of resolution A.1026(26) of the International Maritime Organization (2009) on acts of piracy and armed robbery against ships in waters off the coast of Somalia. It further called on States that had not yet done so to become parties to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing related United Nations conventions, and to take appropriate measures to ensure their effective implementation.

38. By its wide-ranging text on sustainable fisheries, the Assembly called upon all States that had not done so to apply widely, in accordance with international law, the precautionary and ecosystem approaches to the conservation, management and exploitation of fish stock. It called upon States to commit to urgently reducing the capacity of the world's fishing fleets to levels commensurate with the sustainability of fish stocks, through the establishment of target levels and plans or other appropriate mechanisms for ongoing capacity assessment.

39. While the Assembly deplored the fact that fish stocks in many parts of the world were overfished or being seriously affected by the impact of climate change, it also expressed particular concern that illegal, unreported and unregulated fishing constituted a serious threat to fish stocks and marine habitats, to the detriment of sustainable fisheries, as well as food security and the economies of many States, particularly in developing countries. It urged States "to exercise effective controls over their nationals [...] in order to deter and prevent them from engaging in" illegal fishing activities.

¹⁵ UNGA Res. A/65/37 adopted on 7 December 2010. The resolution was adopted by a recorded vote of 123 in favour to 1 against (Turkey), with 2 abstentions (Colombia and Venezuela).

¹⁶ UNGA Res. A/65/38 dated 7 December 2010. The resolution was adopted without a vote.

40. The Assembly also expressed deep concern over the impact of recognizing the economic and cultural importance of sharks in many countries, the biological importance of sharks in the marine ecosystem as key ocean predators, the fact that some are threatened with extinction, and the need for measures to promote the long-term conservation, management and sustainable use of shark populations and fisheries. The resolution reiterates the Assembly's request to the Food and Agriculture Organization (FAO) to prepare a report containing a comprehensive analysis of the implementation of the International Plan of Action for the Conservation and Management of Sharks.

IX. DISPUTE SETTLEMENT UNDER UNCLOS

A. Tribunal Delivers Order in The M/V "Louisa" Case (Saint Vincent and the Grenadines v. Spain)¹⁷

41. On 23 December 2010, the ITLOS delivered its Order *in The M/V "Louisa" Case (Saint Vincent and the Grenadines v. Spain)*, prescribing provisional measures.

i. The Dispute

42. Saint Vincent and the Grenadines instituted proceedings against Spain on 24 November 2010, regarding the MV Louisa, a vessel flying the flag of Saint Vincent and the Grenadines, which was arrested on 1 February 2006 by the Spanish authorities. The Application instituting proceedings before the Tribunal included a request for provisional measures under article 290, paragraph 1, of the Convention, in which the Tribunal was requested, *inter alia*, to order the Respondent to release the MV Louisa and return the property seized.

43. Pursuant to article 290, paragraph 1, of the Convention, the Tribunal may, if it finds that *prima facie* it has jurisdiction over the dispute, prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending the final decision.

ii. The Order of 23 December 2010

44. In its Order of 23 December 2010, the Tribunal finds, by 17 votes to 4, that "the circumstances, as they now present themselves to the Tribunal, are not such as to require the exercise of its powers to prescribe provisional measures under article 290, paragraph 1, of the Convention."

45. Finding that it has *prima facie* jurisdiction over the dispute, the Tribunal considers that, at this stage of the proceedings, it does not need to establish definitively the existence of the rights claimed by Saint Vincent and the Grenadines. In this context, the Tribunal refers to its earlier jurisprudence in the M/V "SAIGA" (No. 2) case, in which it had stated that "before prescribing provisional measures the Tribunal need not finally satisfy itself that it has jurisdiction on the merits of the case

¹⁷ "Tribunal Delivers Order in The M.V "Louisa" Case (Saint Vincent and the Grenadines v. Spain), ITLOS/Press 158 dated 23 December 2010.

and yet it may not prescribe such measures unless the provisions invoked by the Applicant appear prima facie to afford a basis on which the jurisdiction of the Tribunal might be founded.”

46. In the circumstances of the case, the Tribunal does not find that there is a real and imminent risk that irreparable prejudice may be caused to the rights of the parties in dispute before the Tribunal so as to warrant the prescription of the provisional measures requested by Saint Vincent and the Grenadines.

47. Furthermore, the Tribunal notes that the Applicant contended that “there is a definite threat to the environment by leaving this ship docked in El Puerto de Santa María for any significant additional time.” In this respect, the Tribunal places on record the assurances given by Spain that “the Port authorities are continuously monitoring the situation, paying special attention to the fuel still loaded in the vessel and the oil spread in the different conducts and pipes on board” and that “[t]he Capitanía Marítima of Cadiz has an updated protocol for reacting against threats of any kind of environmental accident within the port of El Puerto de Santa María and the Bay of Cadiz.”

48. The Tribunal also notes that the present Order in no way prejudices the question of the jurisdiction of the Tribunal to deal with the merits of the case or any questions relating to the admissibility of the Application, or relating to the merits themselves, and leaves unaffected the rights of Saint Vincent and the Grenadines and Spain to submit arguments in respect of those questions.

49. Finally, the Tribunal reserves for consideration in its final decision the submissions made by both parties for costs in the present proceedings.

50. Judge Paik appended a separate opinion to the Order. Judges Wolfrum, Treves, Cot and Golitsyn appended dissenting opinions to the Order.

B. Unanimous Advisory Opinion by the Seabed Disputes Chamber on Responsibilities and obligations of states sponsoring persons and entities with respect to activities in the area¹⁸

51. The Seabed Disputes Chamber on 1 February 2011 rendered its Advisory Opinion on the Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area. The Advisory Opinion is the first decision of the Seabed Disputes Chamber of the Tribunal and the first advisory opinion submitted to it. The eleven judges of the chamber, President Tullio Treves (Italy) and Judges Vicente Marotta Rangel (Brazil), L. Dolliver M. Nelson (Grenada), P. Chandrasekhara Rao (India), Rüdiger Wolfrum (Germany), Shunji Yanai (Japan), James Kateka (United Republic of Tanzania), Albert Hoffmann (South Africa), Zhiguo Gao (China), Boualem Bouguetaia (Algeria) and Vladimir Vladimirovich Golitsyn (Russian Federation) decided unanimously upon the Advisory Opinion.

¹⁸ For details see “Seabed Disputes Chamber Renders Unanimous Advisory Opinion in Case No. 17”, ITLOS/Press 161, 1 February 2011.

52. The Advisory Opinion relates to the recovery of resources from the ‘Area’, a zone established by the United Nations Convention on the Law of the Sea as the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction. The Convention declares the Area and its resources to be the common heritage of mankind. The resources of the Area, such as polymetallic nodules and polymetallic sulphides, are managed by the International Seabed Authority.

53. The Authority regulates deep seabed mining and endeavours to ensure the protection of the marine environment. The Authority has established regulations for the prospecting and exploration for both polymetallic nodules and polymetallic sulphides. Countries already involved in the prospecting or exploration of resources in the Area include China, France, Germany, India, Japan, the Republic of Korea, the Russian Federation and a consortium of Bulgaria, Cuba, the Czech Republic, Poland, the Russian Federation and Slovakia.

54. The question of the responsibility and liability of States who sponsor entities undertaking mining activities in the Area was raised in 2009 and discussed during meetings of the Authority. The outcome of these discussions was the approval by consensus of the proposal made to the Council to request an advisory opinion from the Chamber.

C. Arbitrators Appointed in the Arbitral Proceedings Instituted by Mauritius against the United Kingdom in respect of the Dispute concerning the ‘Marine Protected Area’ Related to Chagos Archipelago¹⁹

55. On 15 March 2011, the President of the International Tribunal for the Law of the Sea, Judge José Luis Jesus, appointed three arbitrators to serve as members of the Annex VII arbitral tribunal instituted in respect of the dispute between Mauritius and the United Kingdom concerning the ‘Marine Protected Area’ related to the Chagos Archipelago. The arbitrators are Ivan Shearer (Australia), James Kateka (Tanzania), and Albert Hoffmann (South Africa). The President appointed Ivan Shearer as the president of the arbitral tribunal. These appointments were made in consultation with the two parties to the dispute.

56. In accordance with article 3 of Annex VII of the United Nations Convention on the Law of the Sea, if the parties are unable to reach an agreement on the appointment of one or more of the members of the tribunal to be appointed by agreement, or on the appointment of the president of the arbitral tribunal, these appointments shall be made by the President of the International Tribunal for the Law of the Sea at the request of a party to the dispute and in consultation with the parties.

57. In a letter dated 21 February 2011, the Solicitor-General of Mauritius, acting on behalf of the Government of Mauritius, requested the President of the International Tribunal for the Law of the Sea to appoint the three arbitrators, since the two parties were unable to reach an agreement thereon.

¹⁹ Details are drawn from “Three Arbitrators Appointed by the President of the Tribunal in the Arbitral Proceedings Instituted by Mauritius Against the United Kingdom in Respect of the Dispute Concerning the ‘Marine Protected Area’ Related to the Chagos Archipelago”, ITLOS/Press 164, dated 25 March 2011.

X. COMMENTS AND OBSERVATIONS OF THE AALCO SECRETARIAT

A. United Nations Convention on the Law of the Sea

58. The United Nations Convention on the Law of the Sea (UNCLOS) had served the international community well for three decades. The Convention as the “constitution of the oceans” was fast moving towards universal participation and it may be hoped that all the Member States of AALCO would soon accede to the Convention and also to the two implementing agreements. The number of States Parties, to the UN Convention on the Law of the Sea, having reached 161 is demonstrative of international community’s efforts to benefit from a strong, universally accepted and implemented legal regime applicable to the oceans. It was essential for maintaining international peace and security, sustainable use of ocean resources, and the navigation and protection of marine environment. The integrity of the Convention should be safeguarded as it was the cornerstone of maritime order.

59. As globalization had shrunk the world, including its oceans, and as resources available in the oceans remained scarce, it is vital that the international community work together to manage those resources. In this regard, the discussions that are sometimes focused solely on the technical, scientific or environmental aspects of the issue, often threatened to undermine the complex web of interlocking rights and obligations so carefully balanced in the Convention. Therefore, there is a need to adopt holistic approach to the complex issues abovementioned which are closely related to the use of oceans and the seas. Furthermore, capacity-building in the field of ocean affairs and the Law of the Sea is important, as it would guarantee that all States, and developing countries in particular, would benefit from the sustainable development of oceans and seas.

B. Safety and Navigation of Shipping

60. An increase in piracy and armed robbery against ships is a major threat to international commerce and maritime navigation. It posed threat to the lives of seafarers and the safety of international shipping, causing considerable economic disruptions through higher transportation costs, including insurance costs were serious challenge to the international community. All acts of piracy and hijacking of commercial vessels, as well as acts of terrorism at sea, particularly piracy in the Gulf of Aden. Recent reports suggest that piracy off the coast of Somalia and in the Gulf of Aden had expanded to areas along the eastern African coast and into the Indian Ocean.

61. Furthermore, the illegal and unjustified attacks by Israel in international waters against the humanitarian flotilla carrying assistance to the Palestinian people in Gaza and condemned those acts which constituted a clear violation to the safety and security of navigation as laid out both in international law and international humanitarian law.

62. Reaching a lasting comprehensive settlement of the situation in Somalia was closely tied to the spread of piracy in that region, and more attention by the international community ought to be given to that issue. In this regard, the long-term

efforts through cooperative mechanism in the Straits of Malacca and Singapore remained one of the best practices and applicable mechanisms on combating piracy and armed robbery at sea. The Security Council, the Assembly and the Contact Group on Piracy off the Coast of Somalia had all underscored the need for improving the capacity of States to counter that persistent scourge. Unfortunately, many of the AALCO Member States lack national legislation to check the modern piracy. Therefore, the need of the hour is to enact adequate national legislation to criminalize acts of piracy and armed robbery at sea, and associated crimes, as well as modern procedure laws, which are sine qua non for the effective suppression of piracy.

C. Capacity-Building

63. The focus of discussion at the eleventh meeting of the Informal Consultative Process on capacity-building in the areas of ocean affairs and the law of the sea, including marine science is timely. Such capacity building activities were of particular importance to the developing States and developing capacities contributes for their effective participation in economic activities. Such capacity building was necessary for the sustainable development of the oceans and seas nationally, regionally and globally. Priority should be given to strengthening institutions and standards, and providing least developed countries with the necessary human and technical tools to fully benefit from the Convention.

D. Sustainable Development of Oceans

64. There were considerable challenges that continued to threaten the sustainable development of the oceans and their resources, as human activities were taking a toll the viability of vulnerable marine ecosystems and important fisheries were being threatened by over-exploitation, illegal, unreported and unregulated fishing, as well as destructive fishing practices. Furthermore, marine pollution remained as one of the major concerns and the accident involving the offshore BP drilling unit in the Gulf of Mexico last April had shown that the marine environment was highly vulnerable to pollution resulting from accidents linked to activities at sea. It also showed that there should be no room for complacency or delay in efforts to protect the marine environment.

65. In view of that there was a need to further enhance the efforts and programmes to tackle the threats caused by increased sea temperatures, sea level rise and ocean acidification caused by climate change. It was important in this regard that efforts be exerted at the international level to strengthen and develop the field of marine scientific research, particularly in the context of the International Seabed Authority, and in the study of the effects of mining activities on the marine environment at sea bottom. The international community must work more quickly to take appropriate measures to protect the marine environment, halt pollution at sea and preserve all marine species. The forthcoming twelfth meeting of the Informal Consultative Process would in this regard serve as an important forum for deliberating upon the sustainable development of oceans.

E. Workload of the CLCS

66. The increasing workload of the CLCS remains a matter that merited future consideration to expedite the submissions in a timely manner. Given the large number of submissions made by coastal States, it was important to improve its workload. It is hoped that the Commission in fulfilling its responsibilities and consideration of submissions by coastal States would both meet international expectations and stand the tests of science, law and time. There was a need to adopt a balanced approach that ensured the speed and quality of its consideration of submissions, and the need to expedite consideration should not be allowed to compromise the serious, scientific and professional nature of the Commission's work.

67. However, questions remained with regard to the amount of resources required, their source and ways to effectively apply them so as to achieve results. In this regard, suggestion by the United Republic of Tanzania at the Twentieth Meeting of States Parties to consult with neighbouring countries before submitting disputes to the Commission, as a way to minimize disputes and reduce costs merits serious consideration.²⁰

F. Conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction

68. On the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction, there was a need to balance the protection and use of biodiversity in such areas, taking into account developing nations' dependence on oceans. A universally accepted legal framework had yet to be established and States must exercise caution in establishing protected areas. Towards achieving this objective, AALCO Member States shall take lead in formulating such a legal framework in order to conserve as well as sustainable use of marine biodiversity in areas beyond national jurisdiction.

²⁰ *UN Press Release SEA/1942*, 17 June 2010.

THE LAW OF THE SEA
(Deliberated)

The Asian-African Legal Consultative Organization at its Fiftieth Session,

Considering the Secretariat Document No. AALCO/50/COLOMBO/ 2011/S 2;

Recognizing the universal character of the United Nations Convention on the Law of the Sea 1982 (UNCLOS), and its legal framework governing the issues relating to the management of the oceans;

Mindful of the historical contribution made by the Asian-African Legal Consultative Organization in the elaboration of the UNCLOS;

Conscious that the AALCO has been regularly following the implementation of the UNCLOS and its implementing agreements;

Hopeful that in view of the importance of the law of the sea issues, AALCO would maintain its consideration on the agenda item and continue to perform its historical role on the law of the sea matters;

Taking note of the deliberations at the United Nations Open-ended Informal Consultative Process established by the United Nations General Assembly to facilitate annual review of the developments in ocean affairs;

Welcoming the active role being played by the International Tribunal for the Law of the Sea (ITLOS) in the peaceful settlement of disputes with regard to ocean related matters:

1. **Reaffirms** that in accordance with the UNCLOS, the "Area" and its resources are the common heritage of mankind.
2. **Urges** the full and effective participation of its Member States in the work of the International Seabed Authority, and other related bodies established by the United Nations Convention on the Law of the Sea, as well as in the United Nations Informal Consultative Process and also through effective contribution to the work of the Commission on the Limits of Continental Shelf, so as to ensure and safeguard their legitimate interests.
3. **Decides** to place this item on the provisional agenda of the Fifty-First Annual Session.