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THE LAW OF THE SEA

Prepared by

The AALCO Secretariat
29 C, Rizal Marg,
Diplomatic Enclave, Chanakyapuri,
New Delhi – 110 021
(INDIA)

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(Deliberated)

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I. INTRODUCTION

A. Background

1. Oceans are key to sustaining life on the planet. They cover more than 70% of the Earth and constitute one of the most essential bases for human life, either because of the richness of their living resources and unlimited energy sources, or simply because, by connecting us all, oceans offer an essential means of transportation for people and trade. Marine biodiversity among other things produces a third of the oxygen we breathe, moderates global climate conditions, and provides valuable source of protein for human consumption. Furthermore, the potential energy output derived from oceans well exceeds current and future human energy needs. Last but not the least, 80% of the volume of global trade is seaborne, representing 70% of its value, which is expected to increase by 36% by 2020[1]. 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. The 1982 United Nations Convention on the Law of the Sea (hereinafter UNCLOS or the Convention), described as "constitution for the oceans" represents the culmination of thousands of years of international relations and conflict, the now nearly universal adherence to an enduring order for ocean space is the most significant achievement for international law since the U.N. Charter. The opening of signature of UNCLOS marked the conclusion of many years of intense negotiations, particularly dating from 1958 when the First United Nations Conference on the Law of the Sea was convened.

3. The year 2012 marked the 30th anniversary or "Pearl anniversary" of the opening of signature of the 1982 UNCLOS, which as of 23 January 2013, had 165 parties. One of its implementing agreements, namely the 1994 Agreement relating to the implementation of Part XI of UNCLOS, was adopted on 28 July 1994 and entered into force on 28 July 1996. The other implementing agreement, the 1995 United Nations Fish Stocks Agreement was opened for signature on 4 December 1995 and entered into force on 11 December 2001. Together, these three agreements provide a comprehensive legal framework for all the activities in the oceans and seas. Thus, the regime for oceans and seas established by UNCLOS deals with a wide range of issues on ocean affairs and recognizes that the problems of ocean space are closely interrelated and need to be considered as a whole.

4. 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.

[1] UNCLOS at 30 http://www.un.org/Depts/los last assessed on 27 February 2013 at 12.35 PM.

[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.

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.

5. 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.

6. 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.

7. Accordingly, the Secretariat Report prepared for the Fifty-Second Session provides information on the status of the UNCLOS and its implementing agreements; Thirtieth and Thirty-first Sessions of the Commission on the Limits of the Continental Shelf (30 July to 24 August 2012 and 21 January to 8 March 2013, UN Headquarters, New York); Eighteenth Session of the International Seabed Authority (9 to 27 July 2012, Kingston, Jamaica); Twenty-Second Meeting of the States Parties to the UN Convention on the Law of the Sea (4 to 11 June 2012, UN Headquarters, New York); Thirteenth Meeting of the United Nations Open-ended Informal Consultative Process on Oceans and Law of the Sea (29 May to 1 June 2012, UN Headquarters, New York); the consideration of the Oceans and the Law of the Sea issues at the 67th Session of the UN General Assembly; and Dispute Settlement under the UNCLOS. 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 Fifty-Second Annual Session is also annexed to the Secretariat Report.

B. Summary Report of the Second half-day Special Meeting on "Responses to Piracy: International Legal Challenges" Jointly organized by the Government of Federal Republic of Nigeria and the AALCO, Fifty-First Annual Session of AALCO (Abuja, Federal Republic of Nigeria, 2012)

8. A Half-Day Special Meeting on ―Law of the Sea - Responses to Piracy: International Legal Challenges, in conjunction with the Fifty-First Annual Session of AALCO was jointly organized by the Government of the Federal Republic of Nigeria and the AALCO on Wednesday

20th June 2012[3]. The meeting deliberated upon a wide range of issues pertaining to piracy, its root causes, its impacts on the development of States, the response of the international community and the avenues for regional and international cooperation in the fight against piracy.

9. **Dr. Xu Jie, Deputy Secretary-General of AALCO** made the introductory remarks. While drawing attention to the 30th Anniversary of the UN Convention on the Law of the Sea (UNCLOS, 1982) that is being celebrated this year, he highlighted the contribution of AALCO towards the creation of the international law of the sea as embodied in UNCLOS 1982. In his view, the contribution of AALCO consisted of the following three things;

- Providing data on economic, oceanographic, mineralogical, and engineering aspects of the various uses and resources of the sea;
- Informing Member States of the developments in international negotiations on a continual basis; and,
- Most importantly, helping the developing nations to forge a united position on the diverse facets of law-making diplomacy.

10. In this regard, he also pointed out that the new concepts such as the Exclusive Economic Zone, which is an integral part of UNCLOS, were born in the cradle of AALCO during its deliberations held on this issue in the 1970's. He added that once the Fifty-First Annual Session adopted a Resolution commemorating the 30th Anniversary of the UNCLOS, the same would officially be sent to the UN General Assembly which is planning to adopt a Resolution on the 30th Anniversary of UNCLOS. This Resolution, which would make an explicit reference to the contribution of AALCO to the UNCLOS in it, would provide an opportunity for the General Assembly to officially recognize AALCO's contributions to the creation of UNCLOS, he opined.

11. Drawing attention to the international law of maritime piracy as embodied in UNCLOS, he stated that the definition of piracy contained in it had four components: (1) an act of violence, detention or theft; (2) on the high seas; (3) committed for private ends; and, (4) by one private vessel against another vessel. This definition reflected customary international law, and hence, applied to all the States irrespective of treaty membership, he added. Pointing out the flaws obtaining in the UNCLOS law, he noted that though UNCLOS confirmed the duty of all States to cooperate to suppress piracy, made the actual prosecution of pirates discretionary and that it included no express provisions on transferring suspects to other jurisdictions, nor any requirement that States have adequate national laws for prosecuting pirates, he explained.

12. Elaborating the possible solutions to the menace of piracy, he remarked that there are three main areas that needed to be strengthened substantively in the fight against piracy. First, States should, among other measures, consider enacting adequate national legislation to criminalize all acts of piracy and armed robbery at sea as well as providing for effective and modern procedural laws that are indispensable for the suppression of piracy. Second, at the international level, States should try to reinforce the international legal framework by removing any flaws that are found in it. They should also work towards strengthening international cooperation so that the numerous complexities involved in different national systems could be

[3] For the complete record of the meeting see "*Verbatim Record of Fifty-First Annual Session, Abuja, 2012*", page 139 to 187. Also available on AALCO website www.aalco.int

overcome. Thirdly, the root causes of piracy such as political instability, lack of economic development needed to be addressed adequately, he clarified.

13. The Vice-President then invited the Panellists to make their presentations on their respective topics.

14. The first presentation was made by **Judge Albert J. Hoffmann, Vice-President of the International Tribunal for the Law of the Sea (ITLOS)** who at the outset recalled the important contributions that AALCO had made, first, in the negotiations leading up to the adoption of UNCLOS 1982 and thereafter in the setting up of institutional arrangements envisaged in the Convention as well as promoting the Convention amongst its Member States towards achieving universal acceptance and participation. He held the view that it was therefore fitting that we paid tribute to AALCO and its Member States this year on the occasion of the 30th Anniversary of the adoption of UNCLOS.

15. While noting that though the problem of maritime piracy was a centuries - old practice with its heydays in the seventeenth and eighteenth centuries, there has been resurgence in the activities of pirates in recent years. According to the figures published by the International Maritime Organization (IMO) and the International Maritime Bureau (IMB) the number of acts of piracy and armed robbery at sea has reached alarming levels not only seriously affecting international trade and maritime navigation but also resulting in loss of life and livelihood of seafarers, he added. He held the view that from these statistics it could be understood that many attacks occur in areas under national jurisdiction viz. near coasts (territorial waters) in straits and even in ports, outer harbour works and at the quayside (what is known as internal waters). When such attacks are carried out in these areas they are subject to the jurisdiction of the coastal State and no other State would be able to exercise jurisdiction even if the latter's ship or nationals are involved. State jurisdiction over ships, whether in terms of policing or enforcement or in terms of prosecution does not as a rule apply to the territorial waters of another state except as provided for in article 27 of UNCLOS, he clarified. Furthermore, he added that these acts or attacks are not regarded as 'piracy' under International Law and they are classified as "armed robbery at sea", a crime over which only the coastal State has jurisdiction and the right to prosecute. Such acts also did not fit the definition of piracy and could therefore not be considered a crime under international law over which any state may exercise jurisdiction (known as universal jurisdiction), he reasoned.

16. In this regard, he pointed out that universal jurisdiction applied only in the case of crimes under customary international law, in respect of which all states have the right to prosecute. Such crimes are limited to piracy, slave trading, war crimes, crimes against humanity, genocide, and torture. There are many international crimes that have been created by multilateral treaties, which confer wide jurisdictional powers upon States parties. Piracy is therefore recognized as an international law crime and subject to universal jurisdiction, he observed. Although already established as crime under customary international law, the first comprehensive definition of piracy was codified in the 1958 Geneva Convention on the High Seas (article 14 to 21) and later adopted without amendment in the UNCLOS (articles 100 to 107) which might now be regarded as representing the current law of piracy both as conventional and general international law, he clarified.

17. In his view, the existing rules for the suppression of piracy have proven to be inadequate to respond to modern-day attacks on shipping and threats to maritime navigation and security. Elaborating this, he pointed out that one of the major deficiencies is that the definition of piracy is too narrow in its scope and lacked clarity and that according to Article 101 of UNCLOS, only illegal acts of violence and detention, or acts of depredation, committed "for private ends" counted as piracy. Another restriction was that the act of piracy must be committed by the crew or passengers of a private ship against another ship (the so called "two ships" requirement). The seizure of a ship by its crew or passengers is excluded from the definition of piracy. This means if a ship is taken over by its crew or passengers that results in violence or killing of those on board or the depredation of cargo and property, a foreign State would lack jurisdiction to intervene since such attacks do not constitute acts of piracy according to the definition and the matter would have to be dealt with under the jurisdiction of the flag state, he explained further.

18. Drawing attention to the third limitation, he observed that, only acts committed on the High Seas might qualify as piracy thereby limiting piracy to the High Seas enabled a State to exercise jurisdiction over pirates without interfering in the sovereignty of any other state. Although Article 101 of UNCLOS refers to the High Seas only, it also included the Exclusive Economic Zone (EEZ) through the application of Article 58 of the Convention. The EEZ also encompasses the contiguous zone by reason of the spatial extend of the zone as defined in article 55, he clarified.

19. This narrow definition of piracy and its requirements as outlined above in all its complications, in his view, have led to the creation of new rules by international agreements to specifically deal with these situations. He was of the view that the inadequacies of the piracy regime had been clearly demonstrated in instances of hijacking at sea where no other ship was involved and the motive of the attack was for political purposes thus not meeting the 'two ship' and 'for private ends' requirements in the definition of piracy. He gave two examples to substantiate his case. In his view, it was only in response to Achille Lauro incident of 1985 that the Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988 (SUA) Convention was adopted. As a second example, he stated that it was only in direct response to the September 11, 2001 terrorist attacks when aircrafts were used as weapons, that the 2005 Protocol to the SAU Convention was adopted with the objective of expanding the scope of the Convention and to define more broadly the offences covered therein.

20. However, he went on to add that though the SUA Convention and the 2005 Protocol filled the gaps left by the narrow definition of piracy occurring in UNCLOS, he was of the opinion that the SUA Convention and its Protocols are only binding between those States that are party to these legal instruments and their provisions therefore have no general application. Furthermore, the SUA Convention and Protocol also provided limited sanction against parties who failed to fulfil their obligations and who declined to act against alleged offenders by neither extraditing nor prosecuting them.

21. Drawing attention to another important gap left by UNCLOS, he pointed out that UNCLOS does not require that States enact domestic anti-piracy laws, nor does it provide model laws that States can use should they wish to enact legislation for combating piracy. In his view,

what this meant was that relatively few states have anti-piracy laws in place and where such laws existed there appears to be a lack of harmonization between these laws. He was of the view that since UNCLOS gave so much of discretion to States to enact domestic legislation; this created a lack of uniformity in the laws and their application in various jurisdictions.

22. As regards the need to have international and regional cooperation in the fight against piracy, he stated that it is essential for states, organizations and enforcement agencies to work together and to coordinate their efforts towards achieving their goals and that cooperation between States organizations and enforcement agencies were crucial to resolving piracy problems. This was more so in the areas of information-sharing, enforcement, crime investigation, prosecution and punishment, he added. In this regard, he also made reference to Article 100 of the UNCLOS under which States Parties are under an obligation to cooperate to the fullest possible extent in the repression of piracy on the high seas.

23. Notwithstanding all the impediments and shortcomings found in the piracy regime, serious efforts have been made by a number of institutions and bodies to combat piracy. The United Nations and the International Maritime Organization (IMO) are among the organizations active in this endeavour, he pointed out. Among other bodies/institutions that are engaged in combating piracy, he made reference to the Contact Group on Piracy off the Coast of Somalia; the United Nations Office on Drugs and Crime (UNODC); the IMO; the International Maritime Bureau of the International Chamber of Commerce; the Djibouti Code of Conduct and others.

24. As regards the role that the United Nations Security Council has been playing, he stated that it has adopted a number of resolutions to tackle piracy and to ensure an effective response by the international community towards ensuring maritime safety and security. While making a specific reference to the UNSC Resolution 1918 adopted in 2010, he pointed out that it had requested the UN Secretary General to prepare a report on possible options to further the aim of prosecuting and imprisoning persons responsible for piracy and armed robbery at sea off the coast of Somalia including in particular, options for creating special domestic chambers possibly with international components, a regional tribunal or an international tribunal and corresponding imprisonment arrangements. Though this Report proposed a number of options including the enhancement of UN assistance to States in the region, establishment of a special chamber, establishment of a Somali Court, establishment of a Regional Tribunal, establishment of an international tribunal and the establishment of an international tribunal by a Security Council Resolution under Chapter VII, he pointed out that except for the last option, all the other options only relate to the problem of piracy occurring in the coast of Somalia and did not take into account that piracy does occur in other regions such as West Africa, South and Southeast Asia and the Caribbean. While dwelling on the possible solutions that could be found to combat piracy, he made reference to a number of short-term measures that needed to be taken. This included, regional cooperation, enactment of domestic legislation and criminalizing acts of piracy, armed robbery and related crimes at sea, an effective criminal justice system and as regards Somalia, real and meaningful efforts have to be taken towards state-building and reconstruction.

25. **Ms. Mariam Sissoko, the Country Representative of the United Nations Office on Drugs and Crimes (UNODC)** made the next presentation that focussed on the role of her

Organization in combating piracy. She stated that the mandates of UNODC are embodied in several Conventions, particularly, the three international drug control conventions (1961, 1971 and 1988); the UN Convention against Corruption; the UN Convention against transnational Organized Crime and the UN Global Counter-Terrorism strategy. Several Security Council resolutions also provide a basis for its interventions, she added.

26. While noting that acts of piracy continue to be a serious issue of concern in East Africa, she pointed out that pirates might often be linked to other forms of organized crime and that a parallel economy has been created, leading to a growing dependency of coastal communities on funds obtained from piracy. Drawing attention to the role of UN Security Council in the fight against piracy, she stated that the UNSC Resolution 1816 of 2008 provided a key international response to piracy off the coast of Somalia and allowed foreign ships to take action within the territorial waters of Somalia to repress piracy and armed robbery against ships in the same way that international law did in respect of high seas, she added. While drawing attention to the Contact Group on Piracy off the Coast of Somalia, which was established pursuant to Resolution 1851 of the UNSC to suppress piracy off the coast of Somalia, she stated that her Organization is an active participant in the contact group and that successive SC Resolutions on the issue acknowledged the role of UNODC in providing technical assistance to States fighting piracy. This specifically pertained to the development of the necessary legal frameworks and judicial and law enforcement capacities that would enable States to prosecute and imprison pirates, she added. Through its Counter-Piracy programme launched in 2009, UNODC provided substantial support to Countries of the region in their efforts to bring suspected pirates captured off the coast of Somalia to justice, she added. UNODC also has started implementing the Piracy Prisoner Transfer Programme that was endorsed by the UNSC in its Resolution 2012 adopted in 2011.

27. Drawing attention to the problem of piracy in the West African Coast region, she made a reference to the 2010 Annual report of the International Maritime organization (IMO) which had listed the West African Coast among the top six piracy hotspots in the world. On the need for cooperation in tackling the problem of piracy, she observed that a Regional Summit of Gulf of Guinea Heads of States, called for by the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS), and the Gulf of Guinea Commission, should be convened in 2012 with a view to developing a comprehensive regional strategy to combat piracy in the Gulf of Guinea.

28. As regards the potential role that UNODC could play in this regard, she stated that her Organization stood ready to assist the countries of the Gulf of Guinea both at the national and regional level. The Organization would also be ready to assist other countries upon their request, to develop maritime security strategies and enhance national legal frameworks.

29. **Commodore Austin Owhkhor-Chuku of the Federal Republic of Nigeria**, who made the next presentation, discussed a number of issues on the theme: 'Piracy within the West African Coast of the Gulf of Guinea'. At the outset he pointed out that the aim of his presentation was to examine acts of piracy within the Gulf of Guinea. Towards this end, he had divided his presentation into four areas.

30. While explaining the first part of his presentation which was on the Location and Strategic Importance of the Gulf of Guinea, he mentioned that, strategically speaking, the Gulf has both global and regional importance particularly as a major trade and shipping route linking the North and South Atlantic in one hand and to some extent, the continents of South America and Africa (East to West Coasts respectively). Furthermore, in his view the Gulf provided an ample sea area for military exercises, researches and rich ecosystems and that the region has come to be regarded as one of the world's top oil and gas exploration hotspots, he added.

31. While noting that the full potentials of this great region could not be fully achieved due to the pervasive criminality by pirates operating in this area, he observed that to partly solve the problems of the region, the Gulf of Guinea Commission had been established on 3 July 2011 whose membership was limited to sovereign states bordering the Gulf of Guinea. These included: Nigeria, Cameroon, Equatorial Guinea, Gabon, Republic of Congo, Democratic Republic of Congo, Sao Tome and Principe and Angola. In his view, the Commission would: create mutual confidence and trust among members; Create an atmosphere of mutually beneficial economic activities pursued peacefully by their citizens; Harmonise the exploration of national resources (fishing, oil and gas) in overlapping areas of Exclusive Economic Zones; Provide framework for monitoring and controlling environmental degradation; Articulate and coordinate common positions on issues of interest to enhance peace and stability in the region.

32. As regards the second part of his presentation which was on 'Piracy within the Gulf of Guinea', he stated that piracy in the Gulf of Guinea affected a number of countries in West Africa and was fast becoming an issue of international concern. While trying to substantiate this, he referred to the Report of the UN International Maritime Organization and stated that the year 2010 witnessed forty five incidents and 2011 had witnessed sixty four incidents.

33. While referring to the concern expressed by the international community over the rising spate of piracy attacks in the Gulf of Guinea, he pointed out that in November 2011, the UN Secretary General Ban Ki-Moon had assembled a team to examine the situation of piracy in the region. As a result, recommendation was made to convene a regional summit to form a united front by affected African countries to tackle piracy he added. He held the view that that the increasing incidents of piracy in the Gulf had triggered the Nigerian President Dr. Goodluck Jonathan and his Beninois counterpart, Thomas Boni Yani to launch joint naval operations.

34. On the third part of his presentation that was on 'Other Atrocities Committed in the Gulf', he noted that apart from piracy, a number of other atrocities also are committed in the region that included: Illegal oil bunkering, Hostage-taking, Drug trafficking, Human trafficking, Terrorism and militancy, Poaching, Smuggling in contrabands, Gun running and environmental degradation. In this regard, he also stated that the most unfortunate part in this episode was the encouragement and/or sponsorship that some unscrupulous Western and Asian business piracy and militancy within the region extend to boost their stakes in the ―Monkey Business in oil and other issues. Hence, tackling piracy and other atrocities committed within the region would require the concerted effort and assistance of the UN, US and EU, acting sincerely, faithfully and committed, he added.

35. As regards the way forward that formed the last part of his presentation, he had a number of recommendations to offer. These included, a comprehensive and united action by the states within the region against pirates, terrorists, militants and their sponsors or patrons; the establishment of a Maritime Development Bank which would ensure the availability of capital to undertake innovative research programmes, technology and logistics acquisition; Development of maritime awareness curriculum in schools, employment generation strategy by the respective regional governments and others.

36. **H.E. Amb. Y. Ishigaki, the Leader of Delegation of Japan** at the outset stated that piracy has in recent times, re-emerged as one of major issues facing the world and that despite the efforts of the international community to address this issue, it remained to be a real and grave threat to the safe navigation of ships. He said that Japan's economy to a great extent depended on import of energy resources and raw materials and export of manufactured goods, all of which hinged on security of sea lanes. For this reason, for many years, Japan had been tackling with the question of piracy in Malacca Strait in cooperation with the countries of Southeast Asia and upon the surge of piracy along the coast off Somalia; Japan had been actively participating in the international efforts to combat piracy, he stated.

37. Amb. Ishigaki's presentation was divided into the following four parts: (i) a brief overview of the current situations of piracy, (ii) the international legal regime regarding piracy as well as some major international and regional frameworks aimed at coordinating the work of the international community in addressing the issue of piracy, (iii) the challenges, both legal and practical, and identify the major issues that need to be addressed in order to ensure effective anti-piracy responses of the international community and (iv) Japan's anti-piracy efforts and experiences.

38. While giving an overview of the current situation of piracy, he mentioned that according to the International Maritime Bureau (IMB) of the International Chamber of Commerce (ICC), in 2011, there were 439 incidents of piracy and armed robbery at sea worldwide, down by 1% from 2010. Geographically, of these, 237 incidents occurred in the Gulf of Aden and surrounding areas off the coast of Somalia, which was about 54% of the incidents worldwide.

39. In comparison, there were 80 incidents in South East Asia, including the Straits of Malacca and Singapore, which was about 18% of those, occurred worldwide. As for the statistics in 2012, according to the IMB, there had been 157 attacks and 18 hijacks worldwide as of 13 June 2012. 62 attacks and 12 hijacks occurred in the waters off the coast of Somalia, involving 219 hostages.

40. He said that as the special meeting on this subject was taking place in Africa, and given the overwhelming number of incidents occurring in waters off the coast of Somalia, in his presentation he focused on piracy in this region.

41. In the second part of his presentation, Amb. Iskigaki outlined the international anti-piracy laws and the efforts by the international community. Drawing attention to the definition of piracy contained in UNCLOS, he said that this definition contained three important conditions regarding the legality of the acts of violence. This included: committed for private ends;

committed by the crew or the passengers of a private ship or a private aircraft; and directed on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft. On the issue of universal jurisdiction, he pointed out that Article 105 of the UNCLOS provided for universal jurisdiction in that, it stipulated that every State may seize a pirate ship or aircraft and arrest the persons and seize the property on board. It further stipulated that the courts of the State which seized pirates may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, he added.

42. As regards the types of Ships and aircraft which were entitled to be seized on account of piracy, he referred to Article 107 of UNCLOS that stipulated that ―a seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect. Thus, it was only the warships, military aircrafts, and/or government ships and aircraft that were authorized to carry out the seizure and arrest, he clarified.

43. In this background he briefly outlined the various international and regional anti-piracy efforts to coordinate the actions of States. These frameworks, which served to supplement the international anti-piracy regime, included: UN Security Council Resolutions; Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP). He informed that in November 2011 the then Prime Minister Koizumi of Japan had proposed to establish a legal framework to promote regional antipiracy cooperation in Asia, and Japan led the negotiations to conclude the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia, a.k.a. ReCAAP, and the agreement was concluded November 2004. Explaining further, he brought attention to the fact that it was the first regional government-to-government agreement to promote and enhance cooperation against piracy and armed robbery in Asia and that till date, 17 States had become Contracting Parties to the ReCAAP. The main feature of the Agreement was the establishment of ReCAAP Information Sharing Center ReCAAP ISC) to facilitate exchange of information among the ReCAAP Focal Points. ReCAAP ISC was officially launched in Singapore on 29 November 2006, he elaborated.

44. On the various international and regional anti-piracy efforts, he also made reference to; IMO Djibouti Meeting: Contact Group on Piracy off the Coast of Somalia (CGPCS). The latter initiative, Amb. Iskigaki noted, was taken pursuant to UN Security Council Resolution 1851 mentioned earlier, the Contact Group on Piracy off the Coast of Somalia (CGPCS) was established on January 14, 2009 to facilitate the discussion and coordination of actions among states and organizations to suppress piracy off the coast of Somalia. He further noted that the G8 Foreign Minsters‘ Meeting was recently held in April 2012 in Washington, the Ministers agreed to the Chair‘s statement reiterating their firm condemnation of maritime piracy and armed robbery at sea off the coast of Somalia and called for the TFG to enact counter piracy legislation. The Ministers also recognized that the issues of piracy and armed robbery at sea can only be effectively addressed through broad, coordinated, and comprehensive national and international efforts, along with the strengthening of coastal states‘ as well as regional organizations‘ capabilities, he added.

45. On the various international and regional anti-piracy efforts, he also made reference to: Counter-piracy activities that included patrolling the Internationally Recommended Transit

Corridor (IRTC) in the Gulf of Aden. He also noted that in the Gulf of Aden, there were coordinated efforts by organizations and independent States to patrol the area designated as the Internationally Recommended Transit Corridor (IRTC). Currently the EU Naval Force (EU NAVFOR), EU and the Combined Task Force 151 of the Combined Maritime Forces (CMF CTF-151) had frigates, destroyers and surveillance aircrafts deployed. There were also naval ships of independent States, such as Japan, Russia, India, China, Malaysia, Saudi Arabia, Australia and Iran, joining the coordinated effort to counter-piracy.

46. Thereafter, he briefly touched upon the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, or SUA Convention, adopted in March 1988. While it was not an anti-piracy framework, it was a legal instrument aimed to prevent unlawful acts against passengers and crews on board ships, he stated. The SUA criminalized certain unlawful acts against ships, and it obliges State Parties to establish jurisdiction over the offences set forth in the Convention. The Convention further obliges State Parties either to extradite or prosecute alleged offenders, he added. He also made reference to 2005 Protocol amending the SUA Convention, which added terrorism and transportation of weapons of mass destruction using ships as offences under the Convention.

47. Thereafter, he discussed the legal and practical challenges of combating piracy. In this regard, he drew attention to two of the provisions of UNCLOS, namely Article 100 and 105 that dealt with obligation to cooperate and right of States to prosecute pirates. In this regard, he stated that the obligations of states are not clearly mentioned. Therefore, he was of the view that, in order to ensure effective seizure, arrest, extradition, prosecution and punishment of pirates, major challenges under the current legal framework needed to be met and that included the development of the judicial and other infrastructures including domestic legislation in each State. He also brought attention to some of the political challenges confronting the fight against piracy and the need to address the issue of impunity.

48. Finally, Amb. Ishigaki enumerated the efforts and experiences of Japan. He informed that Japan had enacted 'Law on Punishment of and Measures against Acts of Piracy in July 2009, which was one of the first comprehensive piracy legislation in the world after the entry into force of the UNCLOS. Another feature of Japan's anti-piracy law, in his view, was that it established a truly universal jurisdiction: under this law, acts of piracy were punishable even if it was not committed by or against Japanese nationals, and even if the suspects are arrested by non-Japanese warships etc. and transferred to the Japanese authorities, he clarified. Further, under the anti-piracy law, Japan had two destroyers of the Maritime Self-Defense Force (MSDF) deployed in the waters off the coast of Somalia. So far, they had escorted 320 times, 2,560 ships (as of 6 June 2012).

49. As regards the assistance that Japan had been extending to other countries towards strengthening their maritime capacities, he opined that Japan had contributed 14.6 million US dollars to the IMO, which is to be utilized for establishment of a training center in Djibouti. Japan had also assisted maintenance and operation of piracy information centres in Yemen, Kenya and Tanzania. Further, Japan had contributed 3.5 million US dollars to the trust fund to support prosecution of pirates. Japan had also invited coast-guard officials from Yemen, Oman, Kenya, Djibouti and Tanzania for training in Japan, he added further.

50. As regards addressing the root causes of piracy in the region, he was of the opinion that it was important to work towards stabilizing the political, economic and social situations in Somalia and that Japan, in this regard, has been extending assistance to Somalia, in areas such as improvement of security situations, humanitarian assistance and development of infrastructure.

51. He added that it was essential that the international community too provided coordinated and unified assistance to Somalia in order to truly address the issues of piracy. Towards this end Japan was planning to take-up the issue of piracy as one of the agenda items to be held next year in June, he added.

52. **Mr. Mathew Egbadon, Secretary/Legal Adviser at the Nigerian Maritime Administration & Safety Agency (NMASA), Federal Republic of Nigeria** spoke on behalf of its Director General Mr. Ziakede Patrick Akpobolokemi. His presentation focussed on the topic, Piracy in the West African Coast'. He stated that maritime piracy, which has emerged today as a major threat to shipping and related activities globally, assumed renewed global focus during the period 2008 to 2009 since this period witnessed a surge in Piracy that had not been seen in generations, with the rumblings in the Horn of Africa. Piracy and Armed robbery at Sea has threatened vital sea lanes of communication, disrupted commerce, encouraged political aggression and insurgency and in the process constricted socio-economic development. He said that those worrisome consequences had led to the current global efforts aimed at assuaging the threats posed by the menace to the barest minimum, he added.

53. While giving a brief overview on the problem of piracy in the West African sub-region, he noted that the activism in the definition of the concept particularly in the context of incidents in West Africa. Maritime zones would be considered and discussed in the report of the United Nations Assessment Mission on Piracy in the Gulf of Guinea with the attendant recommendations in marching a way forward to rid the West African region of those enemies of the Maritime domain.

54. He stated that Article 101 of UNCLOS 1982 defined piracy on the High Seas. In his view, there were essentially five maritime zones in International law that are relevant to our discourse which included; Internal waters (including the ports); The territorial seas;The Archipelagic waters, The contiguous zones; The Exclusive Economic Zone; and The High Seas. He mentioned that the characteristics of each maritime zone and possible maritime offences, in internal waters, was the narrow belt of water running along the coast, lying landward of the baselines from which the breadth of the territorial sea was measured. The Coastal States exercised full sovereignty over that area and was regarded in International law, as equivalent to land. The Territorial seas was also an area where the coastal state exercises sovereignty, but subject however, to the right of innocent passage of foreign ships, he added. He was of the view that in archipelagic waters, the coastal state had sovereignty subject to the right of innocent passage of foreign ships and that the Exclusive Economic Zone was a product of compromise by those who negotiated the 1982 UNCLOS treaty. The EEZ was the body of waters beyond the territorial sea, up to a maximum of 200 nautical miles from the baselines from which the breadth of the territorial sea was measured. The High Seas were those parts of the seas that were not included in the EEZ, in the territorial sea or internal waters of a state, or in archipelagic waters of an archipelagic state, he clarified.

55. With regard to 'Piracy in West Africa (Gulf of Guinea)', he reiterated that piracy was an age-old scourge and the incidents had risen significantly and have become diverse in form in the West African Region since 2010. In his view, this has made the region the second most acute Piracy prone region on the African continent and among the top six piracy hotspots in the world. He also explained this in terms of numbers by pointing out the fact that the IMO had confirmed that 58 attacks had been reported in the region during the first ten months of 2011 as opposed to 45 in 2010. Twenty one of the reported attacks in 2011 occurred off the coast of Benin, 14 off the coast of Nigeria, 7 off the Coast of Togo, 4 off the coasts of the Democratic Republic of Congo, the Republic of Congo and Guinea, 2 off the coast of Ghana and 1 off the coasts of Angola and Cote D'Ivoire, he detailed.

56. Explaining why there was strategic importance attached to the Gulf of Guinea, the Panellist mentioned that those incidents of piracy unlike those off the coast of Somali should be viewed against the background of the Gulf of Guinea as a region with abundant energy resources typified by the proximity of large oil producers such as Nigeria and Angola, and other oil producers such as Congo Brazzaville, Cameroon, Gabon, Equatorial Guinea and lately Ghana. Africa provided a substantial percentage of the United States oil requirement and that trend was expected to be sustained as the western world latches on to fuel sources other than the Middle East. It was also pertinent to observe that countries in the Gulf of Guinea such as Angola were relatively close to most European and US Refineries located on the East Coast, a fact which significantly reduces shipping costs. Apart from Hydrocarbon, there are other natural resources, fisheries and agricultural commodities located in the region with significant economic importance to the increasing food security challenge globally.

57. He held the view that the countries in the Gulf of Guinea with a coastline of about 5,500 km provided a significant market for imported goods which made the sea lanes ever busy. All of these strategic features made the region a critical piece in the global Economic and Political jigsaw puzzle. He briefly said about the UN Assessment Mission of Piracy in the Gulf of Guinea. On July 2011, President Boni Yayi of the Republic of Benin appealed to the International Community for help to fight Piracy in his country and throughout the Gulf of Guinea. That request was contained in a letter to the Secretary-General of the United Nations. Subsequently on October 19 during an open debate in the Security Council on the matter of Peace and Security in Africa: Piracy in the gulf of Guinea convened by Nigeria in its capacity as President of the Security Council, the Secretary General confirmed his intention to dispatch an assessment mission to the region and appealed to ECOWAS and ECCAS (Economic Community of Central African States) to work together to develop a comprehensive and integrated regional anti-piracy strategy for the Gulf of Guinea. The Committee report considered the scope of the threat noting that more than 5 million barrels of oil were produced per day in the region. That was in addition to the fact that the region supplied more than three quarters of the World supply of Cocoa, aside the abundant riches in minerals. These riches and other political considerations had unfortunately accounted for the surge in those incidents which no country in the region could singularly confront. The report in that regard took cognizance of the efforts of the Nigerian government to assist neighbouring Benin Republic. He pointed out certain recommendations amongst others to combat Piracy in the Region.

58. While portraying the measures adopted by Nigeria to combat this menace, he stated that they included; the Support of the Regional Maritime Rescue Coordinating Centre (RMRCC); Maritime Domain Awareness Initiatives; Implementation of Long Range identification and Tracking of Ships (LRIT), Establishing a Legal Framework that define offence/Criminalization, explain jurisdiction, nature and extent of punishment; Collaboration with Private Sector to Procure Boats (PPP); Collaboration of Relevant SubRegional Bodies; Funding, and Information Exchange and so on.

59. The Panelist concluded his presentation by expressing deep concern on the challenges posed by piracy and armed robbery at sea in the West African coast as in other parts of the globe. There was a compelling need to take urgent and pragmatic steps towards addressing this problem. It was his conviction that firstly there was the need for a strong government buy-in, supported by relevant private sector interests in the project to rid our waters of Piracy and armed robbery. The problems of poverty, food insecurity, political manipulations and rising insurgencies, as well as inequitable distribution of National resources must also be addressed in a bid to eliminate the root causes of the penchant for criminality in our waters, he elaborated. Finally, there was a need for the collaboration of Security Agencies and forces in the West African Coast and it was also necessary to collaborate for ensuring access to intelligence and relevant data. He expressed optimism that the totality of those efforts would no doubt go a long way in addressing the problem and significantly reduce the present persistence of the crime in West African waters.

60. After the presentations by the Panellists, the Delegations from **Indonesia, Kenya, Thailand, Tanzania, Malaysia, Sri Lanka, Saudi Arabia, Ghana, People's Republic of China, India,** and **Republic of Korea** made their statements. Details of these statements can be found in the Verbatim record of Discussions of the Fifty-First Session available at www.aalco.int at pages 173-187.

C. Summation of the Legal Experts Meeting to Commemorate the 30th Anniversary of the United Nations Convention on the Law of the Sea, held at the AALCO Headquarters on 5th March 2013

INTRODUCTION

61. The United Nations Convention on the Law of the Sea (UNCLOS), 1982 sets out a comprehensive framework within which all activities in the oceans and seas must be carried out. In December 2012 it completed 30 years of its existence. Indeed, the treaty is a firm foundation — a permanent document providing order, stability, predictability and security — all based on the rule of law. While it works every day to contribute to international peace and security and ensure equitable and efficient use of ocean resources, the Convention is also an important tool for sustainable development. Yet, oceans continue to face many challenges — pollution, acidification, over-exploitation of resources, piracy and maritime boundary disputes.

62. With a view to addressing some of the above mentioned concerns and as per the mandate from its Member States the Asian-African Legal Consultative Organization (AALCO) and the Legal and Treaties Division, Ministry of External Affairs, the Government of India have deemed

it appropriate to jointly convene a one day "**Legal Experts Meeting to Commemorate the 30th Anniversary of the United Nations Convention on the Law of the Sea (UNCLOS)" on Tuesday, 5th March 2013, in New Delhi.** The objective of the Legal Experts Meeting would be to decipher the achievements of the UNCLOS and to ponder over the future issues and challenges facing the Convention.

63. Around 100 delegates attended the meeting, including representatives from 21 AALCO Member States, 5 non-members, academics of several prominent universities and students. A comprehensive Record of the meeting has been published and would be circulated at the forthcoming Fifty-Second Annual Session[4].

INAUGURAL SESSION

64. The meeting commenced at 9:30am on 5 March 2013 with the Master of Ceremonies welcoming all the attendees to the Legal Experts Meeting to Commemorate the 30th Anniversary of the United Nations Convention of the Law of the Sea (UNCLOS) jointly organized by the Asian-African Legal Consultative Organization (AALCO) and the Legal and Treaties Division, Ministry of External Affairs, Government of India.

65. His Excellency, Professor Dr. Rahmat Mohamad, Secretary-General of AALCO welcomed the attendees and representatives from AALCO Member States. He thanked the distinguished speakers for the first session, Mr. B. Sen, a founding father of AALCO and its first Secretary-General; Chief Guest Mr. Pinak Ranjan Chakravarty, Secretary (ER), Ministry of External Affairs, Government of India; Mr. Stephen Mathias, Assistant Secretary-General for Legal Affairs, United Nations; and Dr. Neeru Chadha, Joint Secretary, Legal and Treaties Division, Ministry of External Affairs, Government of India, for accepting the invitation to speak at the meeting.

66. H.E. Prof. Dr. Rahmat Mohamad recalled that the creation of AALCO in 1956 coincided with increasing awareness of issues relating to the Law of the Sea following President Truman's Proclamation of US jurisdiction over the submarine areas adjacent to the West-Coast, the decision of the International Court of Justice (ICJ) in the Anglo-Norwegian Fisheries Case, and Indonesia's claim to archipelagic seas. He also recalled that Sri Lanka and India referred the Question relating to the Regime of High Seas at AALCO's First Session in New Delhi. He referenced the dynamic role played by AALCO and Mr. B. Sen in facilitating Asian-African participation in the UNCLOS negotiation process between 1973 and 1982, which followed the proposal by Arvid Pardo, Ambassador of Malta to the United Nations, to the United Nations General Assembly of an agenda item on the law of the sea in August 1967. Prof. Dr. Rahmat Mohamad also recalled the Special Half-Day Meeting held at AALCO's 51st Annual Session in Abuja, in June 2012 on the theme "Responses to Piracy: International Legal Challenges", and at the AALCO Legal Advisers Meeting in New York on 5 November 2012. Prof. Dr. Rahmat Mohamad articulated his hope that the day's presentations would provide insight into the achievements of UNCLOS in its 30-year history as well as the challenges facing it in the future.

[4]Document AALCO/EGM/VR/LAW OF THE SEA/5 MARCH 2013.

67. Chief Guest Shri Pinak Ranjan Chakravarthy, Secretary (ER), Ministry of External Affairs, Government of India felicitated the AALCO Secretariat for organizing the Legal Experts Meeting and extended his appreciation to the Legal and Treaties Division, Ministry for External Affairs for supporting the initiative.

68. Mr. Pikan Ranjan Chakravarthy commented on the seminal nature of UNCLOS and its importance to all aspects of ocean governance while also noting its nearly universal acceptance. He acknowledged the importance of the Exclusive Economic Zone (EEZ) regime and AALCO's role in the development of the EEZ concept while also touching upon the importance of provisions in UNCLOS relating to transit and international navigating linking them to interdependence, the security and economic prosperity of nations. Mr. Chakravarthy also elucidated on piracy, trafficking in drugs, arms and humans, as well as the environmental impact of anthropogenic activities in coastal regions while asserting India's commitment to the protection of sea-lanes, and the need for protecting coastal areas and monitoring ocean health.

69. Finally Mr. Chakravarthy touched on the perception of mineral resources of the seabed beyond national jurisdiction as common heritage of mankind as per Part XI of UNCLOS and cited India as a "pioneer investor" for seabed mining. He concluded by expressing the hope for the development of UNCLOS as a normative influence on international law, and for AALCO's role in capacity building efforts in Asian-African countries.

70. Dr. Neeru Chadha, Joint Secretary and the Legal Adviser, Ministry of External Affairs, Government of India thanked AALCO for organizing the meeting and expressed the enthusiasm of the Legal and Treaties division, Ministry for External Affairs for being a part of the event. She also reiterated that UNCLOS as the "Constitution of the Oceans and Seas" is one of the most important legal instruments of the 21st century.

71. The main focus of Dr. Chadha's remarks was on threats to the health of oceans beyond national jurisdiction. Dr. Chadha stressed the critical importance of the long-term sustainability as any changes in the state of oceans can have serious socio-economic consequences. Dr. Chadha named over fishing, destructive fishing practices and Illegal, Unreported and Unregulated (IUU) fishing as grave threats to the high seas and pointed out the importance of compliance and enforcement measures such as the Agreement on Port State Measures. Dr. Chadha also noted the landmark step taken by the UNGA to prohibit bottom fishing in high seas.

72. Dr. Chadha named Marine Protected Areas (MPAs) as important marine ecosystem management tool for securing protection from threats to marine biological diversity while Bio-prospecting – the search for, and commercial development of, natural compounds – and geo-engineering activities like open ocean iron fertilization constitute new threats to oceanic health. Dr. Chadha then called attention to the Outcome Document of the Rio + 20 Summit and the Oceans Compact. Dr. Chadha concluded by saying it is imperative to have increased flow of scientific data and transfer of knowledge to developing countries to improve their understanding and knowledge of oceans and its uses and vulnerabilities.

73. **Mr. B. Sen, the former Secretary-General of AALCO** stated that it was a great privilege to speak at the 30th anniversary of UNCLOS. He described AALCO's contribution to

UNCLOS as three-fold; assisting the participation in negotiations of developing countries in the Asian African region; building consensus among the Asian African States on issues and bringing about understanding with Latin American States; and, developing some concepts, such as EEZ, the archipelagic States, and the regime for the Straits used for international navigation, which ultimately found acceptance in the world community.

74. Mr. Sen then described the historical background of UNCLOS to the years following World War I and the creation of the League of Nations including the failure of the Committee of jurists within the League of Nations and the creation of the International Law Commission (ILC) where the law of the sea was taken up as one of its priority items. Mr. Sen noted that in 1969 when the UNGA decided to convene a third United Nations Conference the question arose as to how the newly independent countries of Asia and Africa were going to prepare themselves to participate in the debate and the preparatory work of the Sea Bed Committee. The Asian African Legal Consultative Committee (ALCC, now AALCO) was called upon to assist in the process and ALCC sessions virtually became a mini negotiating forum for various ideas and proposals. Mr. Sen also related in detail how the proposals that emerged out of the discussions in the ALCC, including the economic zone beyond the territorial seas, the rights of archipelagic states, the special regime for passage through straits and the interest of land-locked countries, were discussed and found wide acceptance.

75. **Mr. Stephen Mathias, Assistant Secretary-General for Legal Affairs, United Nations** delivered the inaugural address and conveyed the greetings of the Legal Counsel of the United Nations, Ms. Patricia O'Brien. Mr. Mathias acknowledged several other tributes to the UNCLOS milestone. He then recognized AALCO's role in UNCLOS as well as the contributions and influence of Asian and African countries and diplomats in the law of the sea.

76. Mr. Mathias addressed the matter of piracy, reiterating the provisions in UNCLOS that constitute the legal regime on piracy as well as commenting on the progress made in the implementation of the regime and measures and initiatives taken by states and by the United Nations Office on Drugs and Crime (UNODC). He then expounded the role of marine ecosystems and biodiversity in sustainable development while cautioning against the impact of human activities on the oceans. Mr. Mathias also referenced the Rio+20 Conference, and UNGA Resolutions 66/288 entitled "The future we want" and 67/78 entitled "Oceans and the law of the sea". Mr. Mathias then touched on the UNGA's emphasis the importance of sustainable fisheries for food security and sustainable development and the renewed commitments made at the 2012 United Nations Conference on Sustainable Development.

77. Mr. Mathias also spoke on establishment by the UNGA of the regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects (the "Regular Process"), pursuant to a recommendation of the 2002 World Summit on Sustainable Development, the Ad Hoc Working Group of the Whole to oversee and guide the Regular Process, and Group of Experts, which includes five members form Africa and four from Asia, to carry out the assessments within the framework of the Regular Process. Mr. Mathias finally addressed the Oceans Compact, which would assist Member States to implement UNCLOS and other relevant instruments, and capacity-building programmes, such as the United Nations-Nippon Foundation Fellowship Programme, undertaken by the UN. Mr. Mathias

concluded his address by expressing his hope that UNCLOS would provide a basis for facing challenges to conservation and sustainability in the future, and his confidence that AALCO and its Member States will continue playing a positive role in UNCLOS.

SESSION I: DISPUTE SETTLEMENT UNDER UNCLOS

78. Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO in the Chair expressed his pleasure at the large turnout for the session and attendance of representatives from AALCO member and non-member states. He then introduced His Excellency Gudmundur Eiriksson, Ambassador of Iceland to India, while naming his numerous achievements as a scholar and former ITLOS judge. He then invited H.E. Gudmundur Eiriksson to make his presentation.

79. H.E. Ambassador Gudmundur Eiriksson of Iceland began his presentation by reflecting on his unique role in all three branches of UNCLOS; the legislative, judicial and secretariat and recognizing the work done by Legal and Treaties Division, Prof. Dr. Rahmat Mohamad, and AALCO. Ambasaddor Eiriksson also observed that it was during the UNCLOS III negotiations that third world countries and scholars began to assert themselves in the field of international law, particularly Hamilton Shirley Amerasinghe and Tommy Koh.

80. Amb. Eiriksson focused mostly on the dispute settlement mechanism of UNCLOS. He noted the "forum outside the forum" negotiations that led to the creation of the third-party arbitration system despite opposition to the idealistic outlook of the principal negotiators. He then described the teething problems and scepticism faced by the International Tribunal for the Law of the Sea (ITLOS) in its initial stages, based the views that ITLOS was a "maverick court" and would lead to the "fragmentation" of international law, as well as the work done by himself and the other judges of ITLOS to dispel this notion.

81. Amb Eiriksson used the Bay of Bengal as a centre-point for his thoughts in making five points about ITLOS. The first point was that it was, in his opinion, the first decision by the Tribunal on merits. Despite the Court's first case, the *MV Saiga* case being decided on merits, it was decided on a very narrow point of law and did not make a significant contribution to the substance of jurisprudence of the law of the sea in Amb. Eiriksson's opinion. The second point was that the court took the opportunity to make contributions to the substance of the law of the sea in the field of prompt release of vessels which poses legal questions outside the narrow topic, and also in the field of environmental law in the case to the development or reaffirmation of the principle of the obligation of states to consult on possible trans-boundary environmental harm. The third point was that the Bay of Bengal case was a case on delimitation, which is the bread-and-butter of international law and the law of the sea and is one of the two-dozen or so cases which have been decided on delimitation in any forum.

82. The fourth point made by Amb. Eiriksson was that it was the first case dealing substantively with the continental shelf beyond 200 miles, a question that has arisen in only two or three other cases where those courts said it was either not relevant or chose not to deal with it. The fifth point was that the Bay of Bengal was the first delimitation case in Asia, providing the hope that even difficult legal questions about the South China Sea might someday find their way to ITLOS or other courts for arbitral settlement. With that, Amb. Eiriksson concluded that

ITLOS is a very viable format for this kind of issue and expressed his hope that ITLOS is able to meet the expectations of the architects of the dispute settlement mechanism of UNCLOS.

83. **Prof. Dr. Rahmat Mohamad** then concluded the session, after Amb. Eiriksson answered a few questions from the floor, by thanking Amb. Eiriksson for his presentation and for his contributions to AALCO, and invited him to participate in future AALCO events.

SESSION II: PRESERVATION AND PROTECTION OF MARINE ENVIRONMENT: CURRENT CHALLENGES

84. Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO in the Chair greeted the attendees of the second session of the Legal Experts meeting and introduced the topic of discussion. He then introduced Dr. Moritaka Hayashi (Japan) as an international lawyer, scholar and author, and a leading expert on the impact of human activity on the world's oceans for 40 years before inviting him to make his presentation.

85. Dr. Moritaka Hayashi from Japan began his presentation by thanking the Legal and Treaties Division of the Ministry of External Affairs and the Asian-African Legal Consultative Organization for organizing the meeting and for giving him the opportunity to speak. Dr. Hayashi stated that his presentation would focus on the legal status of marine genetic resources, and the implementation of marine protected areas, and environmental impact assessment.

86. Dr. Hayashi described how positions of governments are sharply divided between those who consider that they are regulated by Part VII of UNCLOS relating to the High Seas, and those who contend that they are governed by Part XI relating to "the Area", namely the deep-seabed beyond areas of national jurisdiction. According to the former, marine resources in areas beyond national jurisdiction are living resources, and thus fall under the region of the high seas whereas according to the latter, the genetic resources in question are located in the Area, and UNCLOS declares the Area itself to be the common heritage of mankind. To resolve this deadlock, a third approach was suggested to focus on practical measures to enhance the conservation and sustainable use of marine genetic resources, such as options for facilitating access to their collected samples and for sharing the benefits in a fair and equitable manner. Dr. Hayashi also mentioned the concerns expressed with the third view that a new legal regime for benefit sharing regarding marine genetic resources would impede research and development and that the greatest benefits from these resources would come from the availability of the products that are made and the contributions of these products to public health, food security and science.

87. Dr. Hayashi also spoke about the second key issue "area-based management tools", particularly marine protected areas, which are considered effective tools in the conservation and sustainable use of marine biodiversity in areas not only under national jurisdiction but also beyond. With regard to the legal basis for MPAs in areas beyond national jurisdiction, Dr. Hayashi mentioned that no specific reference is made to MPA in UNCLOS, but that UNCLOS imposes a general obligation on all States to protect and preserve the marine environment.

88. With respect to environmental impact assessment, Dr. Hayashi noted that UNCLOS in Article 204 imposes on States a general obligation to regularly monitor, evaluate and report the

risks or effects of pollution of the marine environment. Dr. Hayashi also highlighted the divergent views in the Working Group on the importance of environment impact assessment as well as the future course of action of the UNGA. In conclusion, Dr. Hayashi recommended that the Working Group work on all issues of substance until negotiations to reach consensus are completed before it takes its decision on a possible international instrument.

89. Dr. Luther Rangreji, South Asian University was introduced by Prof. Dr. Rahmat Mohamad and spoke in great detail on his topic "Issues for Developing Countries under the Nagoya Protocol". Dr. Rangreji recapped the main elements of the Nagoya Protocol; the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety as well as Nagoya Protocol on Access and Benefit Sharing (ABS) and noted the historic adoption of both protocols.

90. Dr. Rangreji remarked that the ABS was a compromised treaty. Dr. Rangreji then spoke about the ABS and how signatory countries felt that there should be stronger benefit-sharing provisions in the Nagoya Protocol. He also noted that the mandate of the Convention on Biological Diversity is laid down in Article 14, which deals with access to genetic resources only the word 'access' to genetic resources and not 'access and benefit-sharing' is used. He mentioned that the scope of 'utilization' is a limited one, and the geographical scope was clearly areas within national jurisdiction. Dr. Rangreji also touched upon how number of treaty processes impacted how the treaty was being negotiated. This included the International Treaty on Plant and Genetic Resources for Food and Agriculture, the Convention for the Protection of New Varieties of Plants, the Law of the Sea Convention, the Antarctic Treaty System, and WHO work on pathogens.

91. The Nagoya Protocol described its relationship with existing international instruments. The first is that Article 4 clearly says that the Nagoya Protocol will not affect rights and obligations under other treaties. The second is that there would be no hierarchy of international instruments. The third is that it would not tie the hands of countries to have new specialized areas on ABS. Dr. Rangreji surmised that one of the reasons for the ABS being weakened was so that developed countries could pursue more access-oriented treaties with developing countries which form the bulk of mega-diverse countries. He also addressed the issue that the ABS protocol would only be an instrument of implementation for access and benefit-sharing provisions of the Convention on Biological Diversity, which is reflective of countries' preference to have sectoral regimes in different fields. He went on to state that the Protocol's flexibility is simultaneously a weakness and a strength.

92 Dr. Rangreji then noted the advantages of the ABS protocol, namely, it's legal certainty as regards access and benefit-sharing and wide latitude for national laws. He concluded his presentation by recommending that AALCO take up as an agenda item and study how to look at the ABS protocol not only for areas within national jurisdiction, but also areas under other international treaty regimes and processes.

93**. Prof. Dr. Rahmat Mohamad** then called an end to the session. During the break between sessions, a paper by **Dr. Roy S. Lee Professor, Yale University School of Forestry and Environmental Studies** entitled "Genetic Resources and Developing Countries: Access and

Benefit Sharing under the Nagoya Protocol" was disseminated to participants. In the paper, Dr. Lee addressed the issues of whether the Nagoya Protocol would be useful in a country's Management of Access to Genetic Resources and Sharing of Benefits, Raising Awareness and Maximizing the Usefulness of the Protocol, and Preparing Policies, Rules and Regulations for Different Uses of Genetic Resources.

SESSION III: ISSUES RELATING TO PIRACY AND MARITIME SECURITY

94. **Mr. Narinder Singh, Secretary-General, Indian Society of International Law, in the Chair** welcomed participants to the third session of the Legal Officers Meeting and introduced the panel consisting of Ms. Ticy Thomas, from the National University of Singapore, Dato Zulkifli Adnan from the Ministry of Foreign Affairs of Malaysia, Dr. Sunil Agarwal from the National Security Council's Secretariat, and Mr. Rajiv Walia, the Regional Programme Coordinator of the UN Office on Drugs and Crime (UNODC) in New Delhi.

95. **Mr. Rajiv Walia, Regional Programme Coordinator of the UN Office on Drugs and Crime (UNODC) in New Delhi** introduced and reiterated the mission and activities of the UNODC, particularly concerning international organized crime and that includes counter-terrorism activities, anti-money-laundering activities, and countering piracy.

96. While acknowledging the global cost of piracy, Mr. Walia highlighted UNODC's efforts in combating piracy off the coast of East Africa in conjunction with the countries in the region. The four pillars of UNODC's anti-piracy efforts included support to local police, support to the coast guard and prosecutors, support to legislators, and support to the countries themselves in the form of funding for efforts to prosecute pirates. Mr. Walia also highlighted the procedural and logistical measures undertaken by UNODC particularly in trying and repatriating pirates.

97. **Dr. Sunil Agarwal's** presentation focused on the legality of the carriage of guns on board ships. Dr. Agarwal asserted that it is up to each individual State to legislate on the matters related to Privately Contracted Armed Security Personnel (PCASP) and that a ship has to comply with coastal/port state regulations whose waters it enters. He also highlighted provisions of the International Convention for the Safety of Life at Sea Convention (SOLAS), which subsequently was developed into the International Ship and Port Facility Security (ISPS) Code, as well as the Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict and the International Code of Conduct for Private Security Providers.

98. Dr. Agarwal then discussed the *MV Enrica Lexie* case and came to the conclusion that as the incident occurred in international waters, Indian courts were erroneously exercising jurisdiction in the matter. He also noted that as Safety Committee of the IMO has specifically ruled out allowing seafarers to use arms the practice of carrying dedicated security guards had become popular. Dr. Agarwal concluded his presentation by stating that IMO guidelines aim at promoting safe and lawful conduct at sea, and do not endorse privately contracted armed security personnel as it would amount to deviation from UNCLOS provisions, that India's assertion of jurisdiction, to try two Italian marines for murder in *MV Enrica Lexie* case highlight the risks that armed guards and their employers run, and that there are no easy solutions.

99. **Dato Zulkifli Adnan's** presentation focused on maritime security in the Straits of Malacca. He first reiterated Malaysia's commitment to implement UNCLOS since ratifying it in 1982 and the resolution to refer the numerous boundary disputes between Malaysia, Brunei, Indonesia, Singapore, Thailand and Vietnam and other nations in the area to the ICJ.

100. Mr. Dato Zulkifli Adnan then highlighted the importance of the Straits of Malacca and the sheer volume of sea traffic in the region and the importance of anti-piracy efforts to the security of the Straits and consequently to international trade. He then described the efforts taken by Malaysia to combat piracy; including the setting up of the Malaysian Maritime Enforcement Agency and upgrading its monitoring capabilities to ensure better surveillance of maritime activities in the Straits. He also mentioned the efforts of the Malaysian Navy to assist in anti-piracy efforts off the east coast of Africa as well as Malaysia's opposition to the practice of using PCASP. He concluded his presentation by highlighting efforts to simplify and streamline security measures in Malaysian ports.

101. **Ms. Ticy Thomas** addressed the maritime piracy regime, identifying the problems in the regime and the UNCLOS regime, and highlighted the developments and progresses that have happened in this regime.

102. Ms. Thomas noted that the main reasons for piracy can be geography, inefficient coastal states and changes in shipping technology, the adverse effects of piracy on international trade, development and security. She also noted that piracy is a complex problem, which is compounded by the non-homogeneous nature of States. Ms. Thomas then asserted that UNCLOS provides the legal framework applicable to combating piracy under international law and that it reflects customary international law. She then enumerated the relevant provisions of UNCLOS, Articles 100-107, which define piracy and provide the recourses available to states to criminalise and combat it. For the limitations of the UNCLOS regime, Ms. Thomas identified the geographical scope of the regime being limited to areas beyond national jurisdiction, the regime's universal jurisdiction being permissive not obligatory, and the right of visit, arrest and seizure being limited to military vessels and subjected to reasonable grounds without defining what is "reasonable" as limitations.

103. However, Ms. Thomas also asserted that UNCLOS provides a sufficient framework and the critical issue is implementation. She highlighted various international and national instruments whose implementations supplement the framework provided by UNCLOS. She recognized India's efforts to combat piracy, including the 2012 anti-piracy bill and the setting up of Inter-Ministerial Crisis Management Group, among others. In addressing legal challenges to combating piracy, Ms. Thomas mentioned lack of harmony between and among international and domestic piracy regimes differences in criminal trial procedure and rules of evidence in different jurisdictions, long term burden of prosecution, imprisonment and repatriation issues, and complexities in the legal systems governing piracy and limitations. In conclusion, Ms. Thomas was of the opinion that the piracy regime is progressing but in random directions.

104. **Mr. Narinder Singh** subsequently called the session to an end after summarizing the salient points of the presentations given by the panelists.

SESSION IV: UNCLOS AND AALCO

105. **Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO in the Chair** introduced the final session of the Legal Experts meeting and introducing Professor Yogesh Tyagi and inviting him to the podium.

106. **Prof. Yogesh Tyagi, Dean, Faculty of Legal Studies, South Asian University, New Delhi** began his presentation by commenting on the high quality of the presentations. He also stated that UNCLOS is a feather in the cap of the international legal community, not just AALCO. He stated that his presentation would focus on UNCLOS as a process; as a product; as a special treaty; as a legal revolutionary; as a development strategy; as a trend-setter and as a grand failure and reassured that in failure lies the seed of success.

107. As a process, Prof. Tyagi charted UNCLOS' long gestation. As a product, Prof. Tyagi noted that UNCLOS is one of the 75,000 treaties that have been adopted in the 20th century. As a special treaty, Prof. Tyagi asserted that UNCLOS has special standing as the "charter of the oceans" and for several important organs such as ITLOS and the International Seabed Authority, and as the most comprehensive codification of the law of the sea. The revolutionary aspect of UNCLOS was stated to arise out of its creation of the dispute settlement mechanism of ITLOS, which made the treaty into one which makes law, has the mechanism to implement that law and also a mechanism to settle disputes that arise out of the interpretation and application of the law. The development strategy aspect arises out of UNCLOS laying the normative seeds of the concept of sustainable development through promotion of optimum utilization of resources and simultaneous conservation of living resources. Prof. Tyagi then expounded that the trend-setter aspect of UNCLOS lay in the fact that not only did it set a trend in terms of negotiations, but also on the confidence of the developing countries that if they could succeed on the Law of the Sea front they could also succeed on other fronts by coming together.

108. The grand failure of UNCLOS, according to Prof. Tyagi, lay in its adoption in a form far different from that originally envisaged, due to the regime change in the United States and subsequent breakdown in negotiations until compromises were reached regarding Part XI of UNCLOS, "The Area" in other words the "Heart of the Convention". However, the success of UNCLOS law in its adoption of measures that were attractive to developing countries such as EEZ, and sovereign rights of coastal states. Prof. Tyagi reminisced about how the powers of the day were not interested in an open negotiation openly arrived at, which was the spirit of UNCLOS and how, despite the compromises made in the final iteration of Part XI, the United States continues to avoid ratification of UNCLOS. However, one of the surprising outcomes of the UNCLOS negotiation process was the rise of Third World Approaches to International Law (TWAIL), and Prof. Tyagi credited the genesis of TWAIL to AALCO and Mr. B. Sen.

109. Regarding question of how to move forward, Prof. Tyagi outlined ten suggestions, namely: Studying ratification difficulties; finding out implementation impediments; Comparing domestic legislation; Collating best practices; Identifying customary norms of international law; Not focusing on state centric issues; Identifying areas of international cooperation; Develop law

of the sea expertise; Exploring inter-regime linkages; and, Developing a regional or sub-regional dispute settlement mechanism. With that, Prof. Tyagi concluded his presentation.

110. Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO in the Chair stated that he had taken note of Mr. Tyagi's suggestions and invited Mr. H.P. Rajan, formerly a legal officer of AALCO to speak to the gathered audience.

111. Mr. H.P. Rajan thanked the Secretary-General of AALCO for extending the invitation to him to participate in this meeting in the very same place where he started his career and where he had the honour of working with Mr. B. Sen. He acknowledged Prof. Tyagi's tracing of the history of the Law of the Sea, but disagreed with his conclusion regarding the apparent failure of UNCLOS. Mr. Rajan asserted that the decisions and compromise formula have always been reached through understandings by sovereign States through formal, informal, regional and interest group consultations and that it is important to understand the process as a whole as well as the entire chain of events, and that the codification of rules governing maritime issues is always a political endeavor and that states will always represent their own interests.

112. Mr. Rajan addressed on criticism of UNCLOS, that it did not allow the participation of individuals or non-States in the law-making process by citing the creation of the United Nations Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS). Mr. Rajan also addressed the statement that the US is not a party to UNCLOS and had voted against it by stating that while it is yet to accede to the Convention for whatever domestic reasons; the US is a strong supporter of the principles enshrined in UNCLOS as seen in its participation. Mr. Rajan noted that without US efforts to involve industrialised western nations in UNCLOS the convention would have been difficult to implement, because there are several provisions relating to deep sea-bed mining, transfer of technology, marine environment and number a of other scientific and technical issues where much of the knowledge and information rested with the western world. Mr. Rajan concluded by stating that UNCLOS is one of the greatest achievements in the field of progressive development and codification of international law, and that the opportunity for AALCO to once again take the lead role in the implementation of some of the important provisions whereby the Asian and African States stand to benefit lies ahead.

113. **Prof. Dr. Rahmat Mohamad** subsequently thanked Mr. Rajan as well as all the other participants in the Legal Experts Meeting for their participants and called the session and the meeting to an end.

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

114. The United Nations Convention on the Law of the Sea as at 23 January 2013 had 165 Parties, of which 40 States are AALCO Member States.[5] This represents considerable progress

[5] 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, Thailand, and Yemen.

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.

115. 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 23 January 2013, there were 144 parties to it, of which 32 States are AALCO Member States.[6]

116. 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 23 January 2013 was ratified by 80 States, of which 14 are AALCO Member States. The Agreement came into force from 11 December 2001 after receiving the requisite 30 ratifications or accessions.[7]

III. THIRTIETH AND THIRTY-FIRST SESSIONS OF THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF

117. The Commission on the Limits of the Continental Shelf (CLCS) held its thirtieth and thirty-first Sessions at United Nations Headquarters from 30 July to 24 August 2012 and 21 January to 8 March 2013 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. Thirtieth Session of the CLCS

118. The Commission on the Limits of the Continental Shelf held its thirtieth session at United Nations Headquarters from 30 July to 24 August 2012[8]. The period from 13 August to 24 August 2012 was devoted to the technical examination of submissions at the Geographic Information Systems facilities of the Division[9].

Out of forty-seven Member States only seven states, namely, Democratic Peoples' Republic of Korea, Islamic Republic of Iran, Libyan Arab Jamahiriya, State of Palestine, Syrian Arab Republic, 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 23 January 2013", available on the website: http://www.un.org/Depts/los/reference_files/status2013.pdf.

[6] 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, the United Republic of Tanzania and Thailand. Ibid.

[7] The AALCO Member States Parties to the Straddling Stocks Agreement are: Bangladesh, 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.

[8] Information mention herein is drawn from the UN Press Releases "Commission on the Limits of the Continental Shelf concluded Thirtieth Session" SEA/1982, 31 August 2012.

[9] See CLCS/74, para. 61

119. This was the first session of the Commission following the election of 20 members of the Commission at the twenty-second Meeting of States Parties to the 1982 United Nations Convention on the Law of the Sea, held from 4 to 11 June 2012. At the request of the Group of Eastern European States during that Meeting, the election of the remaining, twenty-first member of the Commission was postponed in order to allow for additional nominations from that Group. Another Meeting of States Parties to the Convention is to be held by the end of 2012 with a view to filling in that vacancy.

120. At the outset of its thirtieth session, the Commission elected its officers — Lawrence Folajimi Awosika as Chairperson, and Galo Carrera, George Jaoshvili, Yong Ahn Park and Walter R. Roest as Vice-Chairpersons. All the officers were elected for a term of two and a half years. The Commission also appointed members of its subsidiary bodies.

121. To advance the examination of submissions and in furtherance of the request by the twenty-first Meeting of States Parties (SPLOS/229, para. 1), the Commission took important decisions. Notably, it decided to hold, in 2013, three sessions of seven weeks each (a total of 21 weeks of meetings). Four of these 21 weeks would be devoted to plenary meetings, subject to General Assembly approval. The thirty-first session will be held from 21 January to 8 March 2013 (with plenary parts to be held from 28 January to 1 February and from 25 February to 1 March 2013). The thirty-second session will be held from 15 July to 30 August 2013 (plenary parts from 12 to 16 and from 26 to 30 August). The thirty-third session will be held from 7 October to 22 November 2013, with no plans for plenary meetings.

122. The Commission also decided to establish four new Subcommissions for the submissions made by Argentina, Ghana, Iceland in the Egir Basin area and in the Western and Southern parts of Reykjanes Ridge, and Denmark in the area North of the Faroe Islands and appointed their members. Thus, together with the previously established Subcommissions, namely those examining submissions made by Uruguay and by the Cook Islands in respect of the Manihiki Plateau, there are now six Subcommissions actively considering submissions. All Subcommissions held meetings during the thirtieth session. The new ones elected their officers and initiated the examination of the submissions. One of them already held its first meeting with the delegation of the submitting State.

123. During the plenary part of the thirtieth session, the United Republic of Tanzania made a presentation to the Commission on its recent submission transmitted in January 2012. Upon its request, Argentina also made presentation of its submission to the Commission, for the benefit of the newly elected members of the Commission. It is recalled that Argentina had made its submission in April 2009 and presented it for the first time on 26 August 2009, during the twenty-fourth session of the Commission[10].

B. Thirty-First Session of the CLCS

[10] See CLCS/64, paras. 72-77

124. The Commission on the Limits of the Continental Shelf held its thirty-first session at United Nations Headquarters from 21 January to 8 March 2013[11]. The thirty-first session included two weeks of plenary meetings and five weeks devoted to the technical examination of submissions at the geographic information systems laboratories and other technical facilities of the Division.

125. Three presentations were delivered during the plenary meetings of that session: Iceland gave a presentation on its Submission in respect of the Egir Basin area and in the Western and Southern parts of the Reykjanes Ridge; Denmark made a second presentation on its partial Submission in the area North of the Faroe Islands; and Gabon made a presentation in respect of its submission.

126. Also during the thirty-first session, the six existing Subcommissions continued the examination of submissions and held meetings with delegations of the submitting States. The six submissions that are now being actively considered are those made by Uruguay, the Cook Islands concerning the Manihiki Plateau, Argentina, Ghana, Iceland in respect of the Ægir Basin area and in the Western and Southern parts of the Reykjanes Ridge, and the partial submission of Denmark in the area North of the Faroe Islands.

127. The Commission's remaining vacancy has now been filled following the election of Mr. Szymon Uścinowicz (Poland) at the Meeting of States Parties to the 1982 United Nations Convention on the Law of the Sea held on 19 December 2012. At the thirty-first Session, he was appointed as a member of the Subcommissions established to examine the above-mentioned Submissions of Uruguay and Denmark. The details of the thirty-first session have been reflected in the statement of the Chairperson of the Commission on the progress of work of the Commission, which was issued as document CLCS/78.

128. The thirty-second session will be held from 15 July to 30 August 2013 (plenary meetings from 12 to 16 and from 26 to 30 August). The thirty-third session will be held from 7 October to 22 November 2013, with no plans for plenary meetings.

IV. EIGHTEENTH SESSION OF THE INTERNATIONAL SEABED AUTHORITY (9 TO 27 JULY 2012, KINGSTON, JAMAICA)

129. The Eighteenth Session of the International Seabed Authority (ISBA) took place from 9 to 27 July 2012 at its seat in Kingston, Jamaica[12]. Mr. Milan J.N. Meetarbhan of Mauritius was elected President of the Council for the 18th Session. The session also elected Mr. Nii Odunton as Secretary-General for a second four year term.

130. Adoption of Regulations on Prospecting and Exploration for Cobalt -rich Ferromanganese crusts: The highlight of the meeting was the adoption of Regulations on Prospecting and Exploration for Cobalt -rich Ferromanganese crusts in the Area

[11] Information mention herein is drawn from the UN Press Releases "Commission on the Limits of the Continental Shelf concluded Thirtieth Session" SEA/1987, 15 March 2013

[12] Information mentioned herein is drawn from: "Seabed Authority concludes Eighteenth Session in Kingston, International Seabed Authority Press Release, SB/18/17, 27 July 2012.

(ISBA/18/C/L.3) by the Council on 26 July and approved by the Assembly the next day. The regulations, which take effect immediately, are the third set emerging from the Authority in its quest to develop a Mining Code to control all mining of the seabed and subsoil beyond the limits of national jurisdiction. Deliberations on the regulation took place over three sessions since 2010. By the end of the seventeenth session in 2011, there were only a few outstanding issues dealing with certificate of sponsorship total area covered by application , the fee for processing an application , and size of area and relinquishment. After much discussion at this session, a compromise was reached on the remaining issues related to the size of a cluster of cobalt crust blocks in regulation 12, and regulation 21 dealing with contractor's application fees. It also agreed on the size of allotted area to be relinquished by a contractor during the course of an exploration contract.

131. The text is in 10 parts, with 44 articles and four annexes setting out the legal rules that seabed contractors must follow in any future work to locate and evaluate crusts deposits. Part 1 introduces the use of terms and scope of the regulations, while part II explains how prospecting shall be conducted in accordance with the Convention, as well as the notification and reporting process between prospectors and the Authority, and protection and preservation of the marine environment during prospecting.

132. The general provisions and content of applications for approval of plans of work for exploration in the form of contracts are contained in part III. Total area covered by the application shall not exceed 200 cobalt crust blocks arranged in two groups of equal estimated commercial value, measuring not more than 550 kilometres by 550 kilometres. The fee for processing a plan of work for exploration shall be fixed at 500,000 United States dollars or its equivalent in a freely convertible currency.

133. The provisions of part IV of the text stipulates that after a plan of work for exploration has been approved by the Council, it shall be prepared in the form of a contract between the Authority and the applicant. Part V contains provisions for the protection and preservation of the marine environment, environmental baselines and monitoring, the process for reporting marine accidents to the Secretary-General, the rights of coastal states, as well as the treatment of human remains and objects and sites of an archaeological or historical nature.

134. Part VI has a confidentiality provision to protect proprietary data and information submitted by contractors, as well as procedures for ensuring confidentiality. The remaining parts of the text includes general procedures concerning notices, the settlement of disputes, the treatment of resources other than cobalt crusts, and the contract review process.

135. Elections of Council members: On 27 July the Assembly elected 20 members to the Council for a four - year term from 2013 to 2017. 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 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 other than the Eastern European 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. Council members elected at this session begin for a four - year term as from 1 January 2013, subject to the understandings reached in the regional and interest groups.

136. Group A (States from among the largest consumers or net importers of minerals to be derived from seabed mining): China, Japan *Group B* (States from those with the largest investment in seabed mining): India *Group C* (States that are major land - based net exporters of minerals found in the Seabed): Canada, South Africa *Group D* (Developing States representing special interests, including those with large populations, the land - locked or geographically disadvantaged, islands, major mineral importers, or potential producers, and the least developed: Bangladesh, Brazil, Uganda *Group E18* (States reflecting the principle of geographical representation, as well as balance between developed and developing States): Argentina, Czech Republic, Guyana, Kenya, Mozambique, Namibia, Netherlands Poland, Senegal, Spain, Trinidad and Tobago, and United Kingdom.

137. Spain is elected for a four - year term with the understanding that it will relinquish its seat after one year to Norway for the year 2014; the United Kingdom will relinquish its seat after two years to Norway for the year 2015; and after serving for three years, The Netherlands will relinquish its seat to Norway for the last remaining year of its term.

138. Amendments to Nodules Regulations: The Legal and Technical Commission has been requested by the Council to address as a priority at the next session, the consideration of amendments to the Regulations on Prospecting and Exploration and of polymetallic nodules in the Area.

139. Work plan for exploitation: The Council approved a work plan elaborating regulations for exploitation for polymetallic nodules in the Area by 2016 though some delegates questioned whether the Authority had sufficient human and financial resources to complete regulations in that time.

140. In accordance with its mandate, derived primarily from the provisions of section 1 of the annex to the 1994 Agreement relating to the implementation of Part XI of the Convention, the Authority has so far elaborated three sets of regulations governing prospecting and exploration for polymetallic nodules (adopted in 2000) and polymetallic sulphides (adopted in 2010), and regulations for the exploration for cobalt-rich ferromanganese crusts, adopted at this session.

141. With regard to the timing for elaborating the exploitation code, the Secretary-General pointed out that the first contracts for exploration for nodules would expire in 2016 and it was expected that contractors would proceed to exploitation. It was important, therefore, to establish a regulatory framework for exploitation to be established prior to 2016.

142. Work of Legal and Technical Commission: The summary report of the Legal and Technical Commission on its work during the eighteenth session (ISBA/18/C/20) was presented

to the Council by its Chairman Russell Howorth (Fiji). The Commission met from 9 to 19 July 2012 and held 17 meetings.

143. Environmental Management Plan: The Council adopted a decision to establish an environmental management plan for the Clarion - Clipperton Zone. This issue had not been placed on the agenda of the Council at this session, but was included at the request of several delegations which called for immediate adoption of the environmental management plan.

144. The plan was formulated by the Legal and Technical Commission over a three -year period and was built around data and assumptions from workshops held in 2007 and 2010. The plan called for the establishment of nine areas of environmental interest to protect the biodiversity and ecosystem structure, and functioning of the zone, from the impact of seabed mining.

145. The Commission Chairman stated that although critical data such as a standardized taxonomy report was absent, there was enough information for the plan to be approved. He added that as additional data was gathered, there could be modifications to the document.

146. Secretary General's Report: The Secretary - General presented his report to the Assembly on 25 July, 2013. The 36 - page report (ISBA/18/A/2) provided an account of the Authority's work over the past twelve months, including the status of regulatory regime for activities in the deep oceans. It also provided an overview of scientific research related to the marine environmental, and current world metal market trends, conditions, prices,and trends with regard to seabed mining activities.

147. The Secretary-General's report, submitted to the Assembly under article 166, paragraph 4 of the United Nations Convention on the Law of the Sea, reviews the Authority's activities since the last session and outlines its plans and projects under the current work programme (2012-2014). The report also covers administrative matters, the Authority's budget as well as special funds held by it such as the Voluntary Trust Fund, and the Endowment Fund for Marine Scientific Research.

148. As at 12 May 2012, there were 162 members of the Authority (161 States and the European Union). Since the last sessions of the Authority, no States have become parties to the Convention or the 1994 Agreement. Twenty States and the European Union maintained permanent missions to the Authority in Kingston, Jamaica as at 30 April 2011.

149. Report on National Legislation: The report by the Secretariat on laws, regulations and administrative measures adopted by sponsoring States and other members of the International Seabed Authority with respect to the activities in the Area (ISBA/18/C/8, and SBA/18/C/8/Add.1) was presented to the Council on 19 July. The report was prepared in response to a request by the Council to the Secretary -General, that the Authority prepare model legislation to assist sponsoring States in fulfilling their obligations with respect to ensuring compliance on the part of their contractors with the provisions of the Convention.

150. Article 153, paragraph 4, of the 1982 United Nations Convention on the Law of the Sea states that the obligation of the sponsoring States, in accordance with article 139 of the Convention, entails "taking all measures necessary to ensure" compliance by the sponsored contractor.

151. The Secretariat reported that the following members of the Authority had provided the secretariat with information on, or texts of, their respective legislation: China, Cook Islands, the Czech Republic, Germany, Mexico, and the United Kingdom. Relevant information was also provided by the secretariat of the Pacific Community Applied Geoscience and Technology Division (SOPAC).

152. Nauru and Tonga had both commenced collaborative work with the Applied Geoscience and Technology Division (SOPAC) of the secretariat of the Pacific Community (SPC) on its deep- sea minerals project funded by the European Union and had been provided with drafting instructions for a Bill to regulate deep-sea mining activities under its control. Tonga expected that draft legislation will be formulated by June 2012. Guyana and Zambia have no national laws or regulations in relation to the Area.

153. In the discussion of the Council it was suggested that a database containing the text of national legislation on the deep seabed be developed on the Authority's website so as to ensure access by all members. The Secretariat said it would continue efforts to build its database of information as quickly as resources would allow.

V. TWENTY-SECOND MEETING OF THE STATES PARTIES TO THE UN CONVENTION ON THE LAW OF THE SEA (4 TO 11 JUNE 2012, UN HEADQUARTERS, NEW YORK)

154. The twenty-second Meeting of States Parties to the United Nations Convention on the Law of the Sea (New York, 4 - 11 June 2012) completed its work on 11 June with the adoption of the budget of the Tribunal for 2013-2014.[13] The Meeting elected Isabelle F. Picco (Monaco) as President, while Mateo Estreme (Argentina), Tarunjai Reetoo (Mauritius), Palitha T. B. Kohona (Sri Lanka) and Oleksiy Shapoval (Ukraine) as Vice- Presidents[14].

155. 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 (2011); Fnancial and Budgetary matters; Information on activities of the International Seabed Authority; Matters related to the Commission on the Limits of the Continental Shelf; Report of the Secretary- General under article 319 of the United Nations Convention on the Law of the Sea; and Commemoration of the thirtieth anniversary of the United Nations Convention on the Law of the Sea

156. At the beginning of the Meeting, on 4 June, the President of the International Tribunal for the Law of the Sea, Judge Shunji Yanai, presented the Annual Report of the Tribunal for 2011. The President highlighted the substantial growth in the Tribunal's judicial activities with

[13] Information mentioned herein is drawn from ITLOS press release: ITLOS/PRESS 177 dated 12 June 2012.
[14] Report of the Twenty-second meeting of states parties, SPLOS/251 dated 11 July 2012.

regard not only to the number of cases but also to the complexity and variety of matters before it. He emphasized that the Tribunal had sought to establish and meet exacting schedules with a view to conducting its judicial procedures in a cost-effective and timely manner.

157. President Yanai recalled that on 14 March 2012 the Tribunal delivered its judgment in the first maritime delimitation case submitted to it: the *Dispute concerning the delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*. He pointed out that the decision in the case had been delivered a little more than two years after proceedings were instituted.

158. The President further noted that the Tribunal's first advisory opinion, delivered by the Seabed Disputes Chamber on 1 February 2011 in respect of the *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, had also been handled expeditiously and completed in slightly less than nine months from receipt of the request. He observed that the advisory opinion had been well received within the framework of the International Seabed Authority.

159. Referring to *The M/V "Louisa" Case* (Case No. 18), the President explained that all written pleadings had been duly filed by the Parties and that the hearing in the case was scheduled to take place in October 2012, while the Judgment was expected to be delivered in the second quarter of 2013.

160. Turning to *The M/V "Virginia G" Case* (Case No. 19), President Yanai informed the Meeting that the time-limits for the filing of written pleadings in the case had been set by Orders dated 18 August, 30 September and 23 December 2011 and that the first round of written pleadings had concluded on 30 May 2012.

161. The President pointed out the Tribunal's continuing efforts to promote knowledge of the Convention and its dispute settlement system, citing the Tribunal's internship programme, the Summer Academy of the International Foundation for the Law of the Sea and the capacity-building and training programme on law of the sea dispute settlement procedures, organised by the Tribunal with the support of the Nippon Foundation. In concluding his statement, President Yanai informed the Meeting of the establishment of a new trust fund in May 2012 with financial support from the China Institute of International Studies. The text of the President's statement may be found on the website of the Tribunal.

162. Workload of the CLCS: Delegations highlighted the importance of the work of the Commission to coastal States and the international community as a whole, emphasizing its role in contributing to the establishment of the outer limits of the continental shelf of coastal States and, consequently, to the delineation of the extent of the Area. In carrying out that work, the Commission helped give practical meaning to the concept of the common heritage of mankind. Some delegations noted that both the interests of coastal States and those of the international community as a whole were central to the work of the Commission. The view was expressed that the work of the Commission was relevant to, and complemented, the work of the Tribunal and the Authority, and vice versa.

163. The question of the increasing workload of the CLCS has been an area of concern. At the Twenty-second meeting of States Parties, the Chairman of the Commission informed that delegations welcomed the high priority given, by the Commission to addressing its workload, and the measures taken in that regard. They noted that the issue remained of serious concern in light of the continuous increase of the workload. Attention was drawn to the challenges faced by some States, especially developing States, in preparing their submissions to the Commission and retaining the technical teams and expertise up to and during the consideration of the submission by the Commission. It was also pointed out that, according to the timeline projected for the consideration of submissions, many coastal States would experience a delay in the exercise of their sovereign rights over the continental shelf. Several delegations considered that the implementation of the decision regarding the workload of the Commission adopted by the twenty-first Meeting of States Parties (SPLOS/229) was a matter of high priority. Many delegations recalled the need to ensure that members of the Commission could participate in meetings of the Commission and its subcommissions, taking into account the obligation under the Convention for States to defray the expenses of the experts they had nominated to the Commission while in the performance of their duties. Attention was also drawn to the need to provide the newly elected members with medical insurance. Referring to paragraph 64 of General Assembly resolution 66/231, some delegations noted with satisfaction the addition of three new posts to strengthen the capacity of the Division to service the Commission under its new working arrangements.

164. Addressing some of the concerns expressed, the Chairperson of the Commission highlighted the high degree of careful scrutiny with which the Commission examined all submissions, which often contained very complex and extensive data sets. He reiterated the importance of addressing the workload of the Commission in light of the continuous increase in the number of submissions received, noting that the initial estimate of 33 potential submissions, on the basis of which the Third United Nations Conference on the Law of the Sea had proceeded when drafting article 76 and annex II of the Convention (see SPLOS/64, note 2), was no longer valid. A more accurate calculation might be of up to 120 submissions, a number almost four times larger than the initial estimate. He assured delegations that the Commission would carefully consider the request of the twenty-first Meeting of States Parties for the Commission and its subcommissions to meet in New York for up to 26 weeks but not less than an intended minimum of 21 weeks a year for a period of five years.

165. The Meeting of States Parties celebrated the 30th anniversary of the opening for signature of the United Nations Convention on the Law of the Sea with a panel discussion held on 8 June 2012.

166. Opening the panel discussion, the Secretary-General of the United Nations, Mr Ban Ki-moon, said that the Convention had historic significance as "an important contribution to the maintenance of peace, justice and progress for all peoples of the world".

167. United Nations Under-Secretary-General for Legal Affairs, the Legal Counsel, Ms Patricia O'Brien stated in her opening remarks that the Convention provided "a flexible framework for adapting to new challenges — for the maintenance and development of the law of the sea, as well as for the strengthening of international peace and security."

168. In his statement the Chairman of the Nippon Foundation of Japan, Dr Yohei Sasakawa, addressed the importance of human capacity in the implementation of the Convention.

169. The ensuing panel discussion included participation by the President of the Tribunal, Judge Shunji Yanai, the Secretary-General of the International Seabed Authority, Mr Nii A. Odunton, and the Chairman of the Commission on the Limits of the Continental Shelf, Mr. Galo Carrera, as panellists. The discussion was chaired by H.E. Mr Raymond Wolfe, Permanent Representative of Jamaica to the United Nations.

170. In his remarks, the President of the Tribunal recalled that the Convention "redefined the continental shelf within and beyond 200 nautical miles", "set up a new regime for maritime navigation" and "established an innovative, complex yet flexible system of dispute settlement to ensure the proper interpretation and efficient application of its provisions".

171. Following the round table, delegations made statements to mark the commemoration. On the occasion the Meeting also adopted a declaration marking the 30th anniversary of the Convention.

VI. THIRTEENTH MEETING OF THE UNITED NATIONS OPEN-ENDED INFORMAL CONSULTATIVE PROCESS ON OCEANS AND LAW OF THE SEA (29 MAY TO 1 JUNE 2012, UN HEADQUARTERS, NEW YORK)

172. The thirteenth meeting of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea (Consultative Process or ICP-13) took place from 29 May - 1 June 2012, at UN Headquarters in New York. The meeting was co-chaired by Amb. Don MacKay (New Zealand) and Amb. Milan Jaya Meetarbhan (Mauritius), and as decided by the UN General Assembly resolution focused its discussions on marine renewable energies (MRE's), which was a part of the wider debate on sustainable development[15].

173. The thirteenth session of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea (Consultative Process or ICP-13) convened in the shadow cast by the concurrent proceedings of the third round of "Informal-Informal" Negotiations on the zero-draft outcome document of the UN Conference on Sustainable Development. During the session delegates exchanged views on MREs; inter-agency cooperation and coordination; the process for the selection of topics and panelists so as to facilitate the work of the UN General Assembly; issues that could benefit from attention in future work of the General Assembly on oceans and the law of the sea; and the outcome of the meeting. In addition, three discussion panels were held to consider: MREs: types, uses and role in sustainable development; ongoing or planned MREs projects and work at the global and regional levels; and opportunities and challenges in the development of MREs, including for cooperation and coordination

[15] Information mentioned in this part is drawn from "Summary of the thirteenth Meeting of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea: 29 May to 1 June 2012", Earth Negotiations Bulletin, vol. 25 No. 88, available online at : http://www.iisd.ca/oceans/icp13/.

174. Nevertheless, ICP-13's theme of marine renewable energies (MREs) provided a good opportunity for participants to engage with a new topic that was critical to both ocean affairs and sustainable development. During the four-day session, delegates highlighted key opportunities and challenges, from energy-security concerns, such as dependence on fossil-fuel imports, to the need to identify, assess and address the economic, environmental and social effects of new energy-generating technologies. Given the salience of energy supply and demand issues, especially in remote and isolated regions, such as small island developing states, many participants agreed that MREs merit attention and a sound governance regime. This was important particularly in light of the review of the effectiveness and utility of the Consultative Process during the 67th session of the General Assembly held in October 2012.

175. According to the Secretary-General's report on oceans and the law of the sea (A/67/79), MREs derive from natural processes in the marine environment. They can be usefully categorized into four types: ocean energy; wind energy from turbines located in off-shore areas; geothermal energy derived from sub-marine geothermal resources; and bio-energy derived from marine biomass, particularly ocean-derived algae.

176. The mix of topics covered spurred two central themes. First, delegates focused on the legal and governance gaps presented by MREs. Several presentations noted the need for regulatory frameworks and increased coordination and cooperation among states, and the volume of questions from the floor seeking greater clarification on this highlighted that these issues demand further investigation. A number of delegates made general statements recognizing that the legal framework for MRE is the UN Convention on the Law of the Sea (UNCLOS). However, UNCLOS does not specifically refer to MREs, and possible ways to operationalize attention to MREs within UNCLOS were not discussed in depth. For some this was not a cause for concern, since they wanted to learn more about the technologies before engaging in legal discussions; for others, the question was when and where the legal issues would be addressed, since MREs will likely not be revisited again in this forum. Delegates were also not clear about the allocation of responsibility for dealing with MREs among existing international bodies. They raised a number of questions about the roles of the well-established International Energy Agency and the recently established International Renewable Energy Agency, and some delegates noted the logical role the former might play on this topic. These concerns reflect that when discussing technical issues, such as MREs, the ICP provides an opportunity to identify and consider the relevant global governance gaps and opportunities.

177. A mere discussion of technical issues and potential governance gaps, however, does not skirt the ongoing challenge the ICP faces in finding an acceptable balance among the different social, economic and environmental issues relevant to ocean affairs. This issue was the second central theme throughout the week.

178. Participants raised concerns that, while informative and interesting, the scope of presentations did not really cover all the potential adverse impacts of all types of MREs, with some delegates seeking more information on the impacts referenced in the Secretary-General's report. These include: reduction of marine current velocity; decrease in the heights of waves, caused by the extraction of wave or tidal energy; alteration of benthic habitats; killings or

changes in the behavior of fish and mammals from noise in electromagnetic fields; and interference with movement, feeding, spawning and migration paths of marine fauna.

179. These gaps in coverage could have been addressed by presentations and plenary discussions on well-known tools that contribute to the implementation of ecosystem based management, such as environmental impact assessments, as required by Part XII of UNCLOS on the protection and preservation of the marine environment, and also marine spatial planning, strategic environmental assessments, and marine protected areas (MPAs). Other participants were more content with the lack of specific focus on environmental concerns, given that the mandate of the Consultative Process is to address ocean issues in the context of sustainable development. Similarly, an overarching point that was raised throughout the week from all sides, especially in accordance with Part XIV of UNCLOS on marine technology transfer, was the need for the transfer of knowledge and technology from developed to developing countries.

180. Considering the many challenges facing the world's oceans, the role of the Consultative Process, established in 1999 to facilitate the annual review of developments in ocean affairs by the General Assembly, has never been more important. The Co-Chairs prepared a long list of issues identified by delegates at previous ICP meetings that could benefit from the General Assembly's attention, suggesting that the ICP can still serve a useful function in assisting its annual ocean deliberations. Some of these issues include: MPAs; implementation of international instruments; uses of the oceans; science, technology and data, including capacity building; ecosystem approaches to oceans; food security; conservation and management of living marine resources; marine environment; marine biological diversity and genetic resources; flag state responsibilities; hazard preparedness and mitigation; social aspects of oceans and the law of the sea; and climate change and oceans. While some expected extensive discussions on the suitability of any of these topics for a future theme of the ICP, this was not the case. In plenary, only two delegations spoke on the matter, putting forward the following topics for the General Assembly's consideration: assessing the outcomes of the UNCSD; and climate change and oceans, particularly as they relate to security and survival for low-lying nations and islands. While climate change and oceans was on the original list, the suggestion of a review of Rio+20 was new. In spite of this, no further opinions were expressed in plenary on the topic.

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

181. The Annual Comprehensive Report of the UN Secretary-General on Oceans and Law of the Sea was prepared pursuant to paragraph 249 of General Assembly resolution 66/231, with a view to facilitating discussions on the topic of focus of the thirteenth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, namely marine renewable energies[16]. The deliberations on the report of the Secretary- General on oceans

[16] Oceans and law of the sea: Report of the Secretary-General, UN Doc. A/67/79 dated 4 April 2012. It constitutes the first part of the report of the Secretary-General to the Assembly at its sixty-seventh session on developments and issues relating to ocean affairs and the law of the sea. It is also being submitted to States parties to the United Nations Convention on the Law of the Sea pursuant to article 319 of the Convention.

and the law of the sea were discussed in the Open-ended Informal Consultative Process on Oceans and the Law of the Sea ("the Informal Consultative Process") at its thirteenth meeting on marine renewable energies[17].

182. The background to this issue being that heavy dependence on fossil fuel, with rising costs and the associated environmental concerns was making alternative sources of energy a vital component of future development. According to the International Energy Agency, energy demand would increase by 40 per cent over the next 20 years, with the most notable rise occurring in developing countries.[18] Global interest in new and renewable energy technologies has been growing rapidly.

183. The 2002 World Summit on Sustainable Development adopted the Johannesburg Plan of Implementation[19], called for substantially increasing, with a sense of urgency, the global share of energy obtained from renewable sources. New and renewable sources of energy thus constitute an integral element of the global vision for sustainable development and the achievement of the Millennium Development Goals.

184. However, ocean energy technologies face considerable challenges in their development. Although their cost is expected to become lower than coal in the next decade, their current development requires considerable government incentives. Moreover, the use of ocean energy today faces an uncertain state of regulation under domestic legal systems, including issues related to managing hazards to navigation, providing further financial incentives for wide-scale commercialization of this technology (such as increased research and development funding and feed-in tariffs) and managing its relatively benign environmental impacts[20].

185. Section II of the Secretary-General's report provides information on the various marine sources of renewable energies, while section III recalls the policy framework and legal aspects of the activities relating to marine renewable energies. Sections IV and V, respectively, attempt to identify developments at the global and regional levels, as well as the related opportunities and challenges within the context of sustainable development. In light of the fact that marine renewable energies are still a nascent but growing field of endeavour in many countries, it was not possible to be exhaustive in the presentation of the information on their development and deployment status, or on the national and regional regulatory frameworks related thereto.

186. Some of the conclusions that the report offers are that a sustainable future will involve a combination of renewable energy and energy efficiency solutions. The oceans contain a large amount of energy with different origins that can usefully be exploited. These gifts of nature can assist in alleviating poverty, promoting green growth, combating climate change and enhancing

[17] These discussions have been highlighted in part VI of the present report.

[18] See Secretary-General's message to the Bloomberg New Energy Finance Summit, London, 19 March 2010 (www.un.org/sg/statements/?nid=4447).

[19] See *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August-4 September 2002* (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 2, annex.

[20] Contribution of the Institute of Advanced Studies of the United Nations University.

energy security[21]. Renewable energy, including marine renewable energies, can play a significant role in meeting sustainable development goals, enhancing energy security, creating jobs and meeting the Millennium Development Goals. Yet, marine renewable energies constitute untapped potential in many regions of the world.

187. Economic, regulatory and policy mechanisms are needed to support the wide dissemination of renewable energy technologies, unleash innovation and investments and promote the scaling up of successful models. Marine renewable energy sources are crucial alternatives for sustainable development[22].

188. Countries could consider systematically increasing the use of renewable energy sources, including marine renewable energies, according to their specific social, economic, natural, geographical and climatic conditions.[23] In order to support the development and deployment of marine renewable energies, further investments in technology, research and development are required together with increased efforts to undertake resource potential assessments and mapping, data collection and monitoring and economic modeling.[24] Building the technological know-how and establishing regulatory frameworks that encourage investments, cooperation and coordination, capacity-building and technology transfer, could facilitate the scaling up of marine renewable energy to its full commercial potential. Such measures are necessary if we are to reach the goal of doubling the renewable energy share in the overall global energy mix by 2030 as envisioned in the Secretary-General's initiative "Sustainable Energy for All".

VIII. CONSIDERATION OF THE OCEANS AND THE LAW OF THE SEA ISSUES BY THE UN GENERAL ASSEMBLY AT ITS SIXTY-SEVENTH SESSION (DECEMBER 2012)

189. The plenary meetings of the UN General Assembly at its Sixty-seventh Session, on 10 and 11 December 2012 considered the agenda item on "Oceans and Law of the Sea" and adopted three resolutions namely: Commemoration of the thirtieth anniversary of the opening of signature of the United Nations Convention on the Law of the Sea[25]; Oceans and Law of the Sea[26]; 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[27].

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[21] Special address by Sha Zukang, Under-Secretary-General for Economic and Social Affairs and Secretary-General of the 2012 United Nations Conference on Sustainable Development, at the second session of the IRENA Assembly, Abu Dhabi, 14 January 2012.

[22] United Nations News Centre, "At Abu Dhabi forum, Ban calls for ensuring clean energy future for all", at ww.un.org/apps/news/story.asp?NewsID=40947.

[23] Programme for the Further Implementation of Agenda 21 (General Assembly resolution S/19-2, annex), para. 46.

[24] "Ocean sustainability: Monaco message" at www.earthsummit2012.org/preparatory-processnews/ocean-sustainability-monaco-message.

[25] UNGA Res A/RES/67/5 adopted on 29 January 2013.

[26] UNGA Res A/RES/67/78 dated 18 April 2013.

[27] UNGA Res A/RES/67/79 dated 30 April 2013.

190. Vide these three resolutions, the General Assembly expressed satisfaction at the thirtieth anniversary of the opening for signature of the Convention on 10 December 1982 at Montego Bay, Jamaica, and recognized 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 to the sustainable development of the oceans and seas, and emphasized the universal and unified character of the Convention, and reaffirming that the Convention sets out the legal framework within which all activities in the oceans and seas must be carried out and is of strategic importance as the basis for national, regional and global action and cooperation in the marine sector, and that its integrity needs to be maintained, as recognized also by the United Nations Conference on Environment and Development in chapter 17 of Agenda 21[28].

191. The Assembly adopted its 45 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, in particular the least developed countries and small island developing States, as well as coastal African States, are able both to implement the Convention and to benefit from the sustainable development of the oceans and seas, as well as to participate fully in global and regional forums and processes dealing with oceans and law of the sea issues, as well as to participate fully in all forums and processes dealing with related legal issues.

192. The resolution also recalled that marine science is important for eradicating poverty, contributing to food security, conserving the world's marine environment and resources, helping to understand, predict and respond to natural events and promoting the sustainable development of the oceans and seas, by improving knowledge, through sustained research efforts and the evaluation of monitoring results, and applying such knowledge to management and decision-making, and reiterated its deep concern at the serious adverse impacts on the marine environment and biodiversity, including the current and projected adverse effects of climate change on the marine environment and marine biodiversity, and emphasizing the urgency of addressing this issue.

193. Noting with concern the continuing problem of transnational organized crime committed at sea, including illicit traffic in narcotic drugs and psychotropic substances, the smuggling of migrants and trafficking in persons, and threats to maritime safety and security, including piracy, armed robbery at sea, smuggling and terrorist acts against shipping, offshore installations and other maritime interests, and noting the deplorable loss of life and adverse impact on international trade, energy security and the global economy resulting from such activities.

194. The resolution also noted the importance of the delineation of the outer limits of the continental shelf beyond 200 nautical miles and that it is in the broader interest of the international community that coastal States with a continental shelf beyond 200 nautical miles

[28] *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992*, vol. I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex II.

submit information on the outer limits of the continental shelf beyond 200 nautical miles to the Commission on the Limits of the Continental Shelf (the Commission), and welcoming the submissions to the Commission by a considerable number of States Parties on the outer limits of their continental shelf beyond 200 nautical miles, that the Commission has continued to fulfill its role, including of making recommendations to coastal States, and that the summaries of recommendations are being made publicly available[29] and the important role being played by the Commission for the coastal states and the international community.

195. 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 sustainability of fish stocks, through the establishment of target levels and plans or other appropriate mechanisms for ongoing capacity assessment.

196. While the Assembly deplored the fact that fish stocks, including straddling fish stocks and highly migratory fish stocks, in many parts of the world are overfished or subject to sparsely regulated and heavy fishing efforts, as a result of, inter alia, illegal, unreported and unregulated fishing, inadequate flag State control and enforcement, including monitoring, control and surveillance measures, inadequate regulatory measures, harmful fisheries subsidies and overcapacity, as well as inadequate port State control, as highlighted in the report of the Food and Agriculture Organization of the United Nations, *The State of World Fisheries and Aquaculture 2012*. It urged States "to exercise effective controls over their nationals in order to deter and prevent them from engaging in" illegal activities.

197. The Assembly also recognized the need to further integrate ecosystem approaches into fisheries conservation and management and, more generally, the importance of applying ecosystem approaches to the management of human activities in the ocean, and noting in this regard the Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem[30], the work of the Food and Agriculture Organization of the United Nations related to guidelines for the implementation of the ecosystem approach to fisheries management and the importance of this approach to relevant provisions of the Agreement and the Code, as well as decision VII/11[31] and other relevant decisions of the Conference of the Parties to the Convention on Biological Diversity.

198. It further recognized the economic and cultural importance of sharks in many countries, the biological importance of sharks in the marine ecosystem as key predatory species, the vulnerability of certain shark species to overexploitation, the fact that some are threatened with extinction, the need for measures to promote the long-term conservation, management and sustainable use of shark populations and fisheries, and the relevance of the International Plan of Action for the Conservation and Management of Sharks, adopted by the Food and Agriculture Organization of the United Nations in 1999, in providing guidance on the development of such measures, and welcomed in this regard the review by the Food and Agriculture Organization of

[29] Available from www.un.org/depts/los/index.htm.
[30] E/CN.17/2002/PC.2/3, annex.
[31] See United Nations Environment Programme, document UNEP/CBD/COP/7/21, annex.

the United Nations of the implementation of the International Plan of Action for the Conservation and Management of Sharks, and its ongoing work in this regard.

199. However, it noted with concern that basic data on shark stocks and harvests continue to be lacking and that not all regional fisheries management organizations and arrangements have adopted conservation and management measures for directed shark fisheries and for the regulation of by-catch of sharks from other fisheries.

IX. DISPUTE SETTLEMENT UNDER THE UNCLOS

200. During the last year (2012) the International Tribunal for the Law of the Sea (ITLOS) has worked on four complex cases related to a variety of issues, encompassing maritime delimitation, requests for the release of detained vessels, including a warship, and claims for damages arising out of the arrest of vessels. In terms of procedure, the work of the Tribunal was also varied, ranging from cases on the merits to urgent proceedings and, for the first time, a counter - claim brought before the Tribunal. Of the four cases dealt with in 2012, two were disposed of by the Tribunal in the same year and a third was completed in the first half of 2013.

A. "Dispute Concerning Delimitation of the Maritime Boundary between Myanmar and Bangladesh in the Bay of Bengal" (Bangladesh/Myanmar) (14 March 2012)

201. In its 14 March 2012 judgement, the International Tribunal for the Law of the Sea ("ITLOS") settled a dispute concerning the delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal with respect to the territorial sea, the exclusive economic zone and the continental shelf. It is the first case in the history of the Tribunal relating to the delimitation of maritime boundaries, as the ICJ is usually the forum of choice for the settlement of such disputes. Fears of fragmentation of International Law due to the use of disparate fora for the settlement of issues of maritime delimitation were however laid to rest by the ITLOS's decision.

202. The Tribunal delivered the judgment that found that ITLOS did indeed have jurisdiction to delimit the maritime boundary of the territorial sea, the exclusive economic zone and the continental shelf between the Parties; that its jurisdiction includes the delimitation of the continental shelf beyond 200 nm; and, that there was no existing agreement as per Article 15 of UNCLOS between Bangladesh and Myanmar concerning maritime delimitation. The Tribunal then proceeded to delimit the maritime boundary between the countries.

203. ITLOS's delimitation of the continental shelf beyond 200nm is also a landmark and unprecedented decision in that such issues have not been settled in other international tribunals or courts before and the decision sets the precedent for all such future instances. The Tribunal established its jurisdiction on the basis of Part XV of the UNCLOS to delimit the continental shelf beyond 200 nm even in the absence of recommendations by the Commission on the Limits of the Continental Shelf. The Tribunal also arrived at the conclusion that the notion "natural prolongation" and "continental margin" were, for the purposes of Article 76 UNCLOS, the same thing, thus settling some of the disagreement over these geological/geomorphological concepts.

B. M/V "Virginia G" Case (Panama/Guinea-Bissau*) (*6 November 2012*)*

204. The dispute in the present case deals with the arrest and impounding of the Panamanian flagged oil tanker, *M/v Virgina G*, by the Republic of Guinea-Bissau in Guinea-Bissau's Exclusive Economic Zone (EEZ) in August 2009.

205. The original claim filed before the International Tribunal for the Law of the Sea (ITLOS) by Panama was for the release of *M/v Virginia G* by Guinea-Bissau on the grounds that Guinea-Bissau had breached its obligations under the 1982 United Nations Convention on the Law of the Sea (UNCLOS) which caused the interested persons in the vessel losses because of the impounding and detention of the vessel. Panama also claimed damages on these grounds.

Guinea-Bissau filed a counter claim on two grounds:

1. That Panama had violated Article 91 of UNCLOS in granting its flag of nationality to a vessel without any connection to Panama and which then engaged in illegal actions by bunkering without permission in Guinea-Bissau's EEZ; and,
2. That Guinea-Bissau is entitled to claim damages from Panama for the actions of *M/v Virginia G*, by virtue of the fact that it was flying the Panamanian Flag.

206. On 6 November 2012, the Court ruled that the counter-claim filed by Guinea-Bissau was admissible under Article 98 para. 1 of the Rules of the Tribunal and authorized the submission by Panama of additional filings related to its pleadings by 21 December 2012.

C. "ARA Libertad Case" (Argentina v Ghana) (15 December 2012)

207. On 1 October 2012, the Argentine naval frigate, ARA Libertad, arrived in the port of Tema, near Accra, Ghana, but Ghanaian authorities, pursuant to a decision of the High Court of Accra, prevented its departure, scheduled for 4 October 2012. On 30 October 2012, Argentina instituted arbitration proceedings against Ghana concerning the detention of the frigate. On 14 November 2012, Argentina also submitted a request for the prescription of provisional measures under article 290, paragraph 5, of the United Nations Convention on the Law of the Sea to the Tribunal (UNCLOS) pending the formation of an arbitration tribunal.

208. After satisfying itself that the Applicant's claims and the invoked provisions fell within the jurisdiction of an arbitration tribunal as per Article 32 of the UN Convention on the Law of the Sea, dealing with immunities of warships, the Tribunal concluded that, "under the circumstances of the present case, pursuant to article 290, paragraph 5, of the Convention, the urgency of the situation requires the prescription by the Tribunal of provisional measures that will ensure full compliance with the applicable rules of international law, thus preserving the respective rights of the Parties." The Tribunal, in its Order, considered that "in accordance with general international law, a warship enjoys immunity" and that "any act which prevents by force a warship from discharging its mission and duties is a source of conflict that may endanger friendly relations among States", and ordered Ghana to "forthwith and unconditionally release the frigate ARA Libertad".

209. The Tribunal consequently ordered the immediate release of the frigate, ARA Libertad, and directed the parties to submit their initial reports to initiate the arbitration process.

D. "Tribunal Delivers Order in The M/V "Louisa" Case (Saint Vincent and the Grenadines v. Kingdom of Spain)" (28 May 2013)

210. 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.

211. In its recent Judgment of 28 May 2013, the Tribunal found that no dispute concerning the interpretation or application of the Convention existed between the Parties at the time the Application was filed and that, therefore, it had no jurisdiction *ratione materiae* to entertain the case.

Territorial Dispute and Maritime Delimitation (*Nicaragua v Colombia*) 19 Nov 2012

212. The International Court of Justice (ICJ) passed a judgment on 19 Nov 2012 regarding the territorial dispute between Nicaragua and Colombia that had begun in 2001. The dispute between Colombia and Nicaragua arose over which nation maintained sovereignty over the islands of Alburquerque Cays, East-Southeast Cays, Roncador, Serrana, Quitasueño, Serranilla and Bajo Nuevo in the Caribbean Sea. The ICJ judgment also dealt with the claim by Nicaragua for the delimitation of a continental shelf extending beyond 200 nautical miles. Finally the Court delimited the maritime boundaries of Nicaragua and Colombia.

213. With regard to the sovereignty over the disputed islands, the Court ruled in favour of Colombia on the basis of *effectivités* (State acts manifesting a display of authority on a given territory). The Court found that the evidence supported Colombia's assertion of continuously and consistently acted *à titre de souverain* (as sovereign) in respect of the disputed islands and, furthermore, there was no evidence supporting Nicaragua's sovereign claim.

214. With regard to the claim by Nicaragua for delimitation of the continental shelf beyond 200 nautical miles, the Court first ascertained that, as Colombia was not a party to the UN Convention on the Law of the Sea (UNCLOS), the applicable law was customary international law. However, the Court held that Article 76 para. 1 of UNCLOS, which defined a "continental shelf", formed a part of customary international law. The Court also held that, as Nicaragua was a party to UNCLOS, the requirements for showing that its continental shelf exceeded 200 nautical miles, as per Article 76 para 4-6, was applicable to Nicaragua, and that these requirements had not been met. The Court thereby did not uphold Nicaragua's claim.

215. Despite the unanimous opinion of the judges on the merits of the decisions, several judges delivered separate opinions with certain reservations. Judge Xue and *Ad hoc* Judges Mensah and Cot expressed the opinion that the boundary line drawn by the Court ran the risk of

invalidating existing bilateral agreements and drastically changing maritime relations in the area by affecting the rights of third-States in the region. Judges Mensah and Cot also expressed reservations to the idea of Article 76 of UNCLOS constituting customary international law and noted that this would set a troubling precedent for other states who are not parties to UNCLOS.

X. COMMENTS AND OBSERVATIONS OF THE AALCO SECRETARIAT

A. United Nations Convention on the Law of the Sea

216. In December 2012 the 30th anniversary of the United Nations Convention on the Law of the Sea (UNCLOS), which is often referred to as a "Constitution for the Oceans", was celebrated with great fanfare. The year 2012 witnessed a flurry of activities to mark this important milestone at United Nations Headquarters and around the world. They included, a panel discussion on World Oceans Day (8 June 2012), a commemoration held and a declaration adopted at the twenty-second Meeting of States Parties to UNCLOS, as well as full day of plenary meetings devoted to the Convention by the General Assembly on the very day of the anniversary, 10 December 2012, as well as many other outreach activities.

217. One of the most significant outcomes of the 30th Anniversary celebrations was the launch of the "Oceans Compact"[32] an initiative of UN Secretary-General to strengthen the United Nations system-wide coherence to deliver on its ocean-related mandates. The new Compact, "Healthy Oceans for Prosperity" aimed to bring together all parts of the UN system to improve the coordination and effectiveness of the work of the UN on oceans. It also aims to mobilize and enhance the UN system's capacity to support actions by Governments, and promote the engagement of intergovernmental and non-governmental organizations, scientists, the private sector and industry to tackle challenges in protecting and restoring the health and productivity of the oceans for the benefit of present and future generations.

218. The Compact sets out a strategic vision for the UN system on oceans, consistent with the Rio+20 outcome document, "The Future We Want", in which countries agreed on a range of measures to be taken to protect the oceans and promote sustainable development. It also supports the implementation of existing relevant instruments, in particular the 1982 United Nations Convention on the Law of the Sea. With the goal of achieving "Healthy Oceans for Prosperity", the Compact establishes three objectives: (i) protecting people and improving the health of the oceans; (ii) protecting, recovering and sustaining the oceans' environment and natural resources; and (iii) strengthening ocean knowledge and the management of oceans.

219. The number of States Parties, to the UN Convention on the Law of the Sea, having reached 165 is demonstrative of international community's efforts to benefit from a strong, universally accepted and implemented legal regime applicable to the oceans. The regime is also 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 is the cornerstone of maritime order. As the UNCLOS is fast moving towards

[32] Launched at Yeosu International Conference, in Yeosu, Republic of Korea on 12 August 2012.

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.

220. Globalization in many different ways has shrunk the world, including its oceans, and as resources available in the oceans remain scarce, it is vital that the international community works 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 a holistic approach to the complex issues abovementioned which are closely related to the use of oceans and the seas. Furthermore, capacity-building and transfer of technology 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

221. 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. 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.

222. 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.

223. It needs to be pointed out, however that lack of sufficient laws alone cannot explain the reluctance of nations to help end impunity for piracy because many nations have neither tried to use the laws that exist nor adopted domestic legislation criminalizing the conduct that comprises modern piracy. For example, even with sufficient laws, the lack of domestic law enforcement capabilities in certain interested states may make it virtually impossible for them to prosecute many acts of piracy. Some territorial states or states whose nationals are committing pirate attacks are either failed states or otherwise lack the institutional capacity to bring pirates to justice, making it unrealistic to expect that these states could alone manage the burden of prosecutions. International response and cooperation is thus urgently needed.

224. The difficulties inherent in prosecuting pirates point out the need for the development of model legislation and reliance on international courts that would help domestic legal systems reform their substantive law and prosecute in a manner consistent with international law. In this context, AALCO could indeed play a very vital role in developing any such legislation that could be used by its Member States to prosecute and punish alleged pirates. In this regard, AALCO

would be more than willing to collaborate with other inter-governmental organizations such as IMO and UNCLOS who have expertise in anti-piracy efforts.

C. Capacity-Building

225. The focus of discussion at the thirteenth 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. In this scenario AALCO may wish to initiate new programmes in capacity building. Member States willingness and support in terms of finance, technology, experience and expertise are the very key to this initiative.

D. Sustainable Development of Oceans

226. There were considerable challenges that continued to threaten the sustainable development of the oceans and their resources, as human activities were taking a toll on 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. Over-fishing, destructive fishing practices and IUU fishing continues to be grave threats to the conservation, management and sustainable use of biodiversity on the high seas.

227. To combat IUU fishing it is essential to give priority to compliance and enforcement measures, including effective port State measures, listing of vessels, and developing and implementing integrated monitoring, control and surveillance packages. The Agreement on Port State Measures adopted by FAO to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA, or Agreement) provides a set of highly effective tools to be used by port States to combat IUU fishing. The application of the measures set out in the Agreement is expected to contribute to harmonized port State measures, enhanced regional and international cooperation and block the flow of IUU-caught fish into national and international markets.

228. Further, in a landmark step United Nations General Assembly prohibited bottom fishing in high seas unless environmental impact assessments are conducted and regulations are put into place beforehand to prevent the destruction of deep-sea biodiversity. Though there has been some progress in identifying and protecting some vulnerable marine ecosystems, measures taken till date by States and Regional Fishing Management Organizations are still far from comprehensive.

229. Furthermore, marine pollution is one of the major concerns and the accident involving the offshore BP drilling unit in the Gulf of Mexico in April 2009 had shown that the marine environment was highly vulnerable to pollution resulting from accidents linked to activities at sea. It also highlighted that there should be no room for complacency or delay in efforts to protect the marine environment.

230. The management and governance of high seas areas presents a formidable challenge for the international community as development of an effective regime for the protection of biodiversity in areas beyond national jurisdiction is seen to be circumscribing some of the traditional high seas freedoms. The challenges of protecting, conserving and ensuring sustainable management of marine biodiversity beyond national jurisdiction are thus enormous.

231. In view of the foregoing 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 fourteenth meeting of the Informal Consultative Process would in this regard serve as an important forum for deliberating upon the sustainable development of oceans focusing on marine renewable energies.

E. Workload of the CLCS

232. 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.

233. 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.

234. 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.

235. In light of the fact that there are around 20[33] pending submissions from Asian and African States and preliminary information from about 30 Asian/African States regarding upcoming submissions to the CLCS, a possible Meeting of the Member States, with a view to exchanging their experiences could be thought of after the Annual session.

[33] Following Member States of AALCO either individually or jointly have made submissions to the CLCS pursuant to article 76, para 8 of UNCLOS namely: Indonesia, Japan, Mauritius, Yemen, Ghana, Pakistan, South Africa, Malaysia, Kenya, Mauritius, Nigeria, Sri Lanka, India, Bangladesh, United Republic of Tanzania, People's republic of China, and Republic of Korea. Ref Submissions to CLCS http://www.un.org/depts/los/clcs_new/commission_submissions.html assessed on 6/12/2013 at 12.39 PM

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

236. Another area of concern is the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction, where there is a need to balance the protection and use of biodiversity in such areas, taking into account developing nations' dependence on oceans.

237. Marine Protected Areas (MPAs) are seen to be an important marine ecosystem management tool for securing protection from threats to marine biological diversity. The developing literature on MPAs reveals the potential benefits that they could offer not only to the resilience of vulnerable marine ecosystems, but also to the productivity of fisheries. However, in respect of MPAs in areas beyond national jurisdiction, information on governance aspects and costs and benefits is still very sparse and it is not possible to apply area based management tools consistently across all oceans. This is an area where more information on both scientific and economic aspects would be useful and helpful.

238. 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 maintain sustainable use of marine biodiversity in areas beyond national jurisdiction.

SECRETARIAT'S DRAFT
AALCO/DFT/RES/52/S 2
12 SEPTEMBER 2013

THE LAW OF THE SEA
(Deliberated)

The Asian-African Legal Consultative Organization at its Fifty-Second Session,

Considering the Secretariat Document No.AALCO/52/HEADQUARTERS (NEW DELHI) / 2011/S 2;

Noting with appreciation the introductory remarks of the Deputy Secretary-General**;**

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;

N**oting with appreciation** the world-wide celebrations to commemorate the 30th Anniversary of the UNCLOS in 2012 and the important initiatives adopted thereafter, including the "Oceans Compact" building upon the Rio+20 Conference, and UNGA Resolutions 66/288 entitled "The future we want" and 67/78 entitled "Oceans and the law of the sea";

Also noting with appreciation the convening and outcome of the successful "Legal Experts Meeting to Commemorate the 30th Anniversary of UNCLOS" jointly organized by the AALCO Secretariat and the Legal and Treaties Division, Ministry of External Affairs, Government of India, held at the AALCO Headquarters on 5th March 2013;

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. **Requests** AALCO Member States not yet parties to the UNCLOS and its implementing instruments to consider the possibility and ratify or accede thereto as early as possible, in order to boost the universality of UNCLOS.

3. **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.

4. **Encourages** its Member States to use the ITLOS and other international tribunals and forums to peacefully resolve their disputes within the sphere of the seas and oceans in accordance with the UNCLOS and other applicable principles and rules of international law.

5. **Requests** the Secretariat of AALCO to assist the capacity building of Member States within the field of law of the sea through varied ways such as joint training programmes with States and inter-governmental organizations, and calls upon its Member States to offer all possible support and assistance.

6. **Decides** to place this item on the provisional agenda of the Fifty-Third Annual Session.