SUMMARY RECORD OF THE THIRD GENERAL MEETING HELD ON TUESDAY, 4TH APRIL 2006, AT 4:00 PM

The Law of the Sea

H. E. Mr. Narinder Singh President of the Forty-Fifth Session in the Chair.

1. **Mr. Motokatsu Watanabe,** Deputy Secretary-General said that he was honoured to introduce the item the "Law of the Sea" contained in the Secretariat Document AALCO/45/HEADQUARTERS SESSION (NEW DELHI)/ 2006/SD/S 2.

2. It was his privilege to introduce that important item on AALCO's agenda, in the Golden Jubilee year with a sense of pride and nostalgia. In international law circles, the Organization was well-recognized for its significant contribution in the elaboration of the 1982 United Nations Convention on the Law of the Sea.

3. He recalled that the item had been consistently on the agenda of AALCO's Annual Sessions since 1970. The Government of the Republic of Indonesia took the initiative to propose this topic in 1970. During the entire decade of 1970's, it was one of the most important items. The AALCO could take reasonable pride in the fact that new concepts such as Exclusive Economic Zone, Archipelagic States, Rights of Land locked States originated and developed in the course of deliberations in the AALCO which later became part of the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

4. Post 1982, the AALCO's work programme was oriented towards assisting Member States in matters concerning their becoming parties to the Convention and other related matters. With the entry into force of the Convention in 1994, the process of establishment of institutions envisaged in the Convention began. The AALCO Secretariat had prepared studies monitoring these developments. This practice had continued and the Secretariat documents for AALCO's Annual Session contained reports on the progress of work in the International Sea Bed Authority, the International Tribunal for the Law of the Sea, the Commission on the Limits of the Continental Shelf, the Meeting of the States Parties to the Convention and other related developments. In addition, the Secretariat in its Reports highlighted the work of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, ever since it was established by the United Nations General Assembly in 1999. The developments in these bodies demonstrate the strengthening of the implementation mechanisms established under the Convention and its Implementing Agreements.

5. Mr. Watanabe informed that an overview of the Sixth Meeting of the United Nations Informal Consultative Process on Oceans and the Law of the Sea, held from 6 to 10 June 2005, and fifteenth Meeting of the States Parties, held from 15 to 23 June 2005 at the UN Headquarters in New York. The Consultative Process considered (a) Fisheries and their contribution to sustainable development; and (b) Marine debris. The Meeting of Parties *inter alia* elected seven new judges for a nine-year term to the International Tribunal for the Law of the Sea (ITLOS). Out of these seven judges four were eminent jurists from AALCO Member States, namely Mr. Shunji Yanai (Japan), Mr. Choon-Ho Park (Republic of Korea), Mr. James L. Kataka, the eminent Member of ILC (United Republic of Tanzania) and Mr. Albertus Jacobus Hoffman (South Africa). He took the opportunity to congratulate, on behalf of AALCO, these newly elected Judges of the Tribunal.

6. Mr. Watanabe observed that a decade had passed since the entry into force of UNCLOS. The "Constitution of the Oceans", he said that, everyone was well aware, that it was a carefully negotiated

instrument skillfully balancing the conflicting rights and duties of States governing ocean space seeking to establish a "just and equitable international economic order".

7. It was increasingly evident that the adoption of the Convention was, but the first step toward identifying and resolving the ocean-related issues. New problems, such as over-exploitation of fisheries and destructive fishing practices, degradation in the marine environment and increase in ship-related accidents and crimes had increased. This was the time to reflect upon the achievements of the Convention, as well as also to explore the areas in which the Convention could be strengthened through amendments. The Secretariat had therefore ventured to draw in the Report provisions pertaining to the Amendment of the Convention.

8. The Secretariat Report also contained an introductory note on the "Delimitation of Maritime Zones Particularly the Exclusive Economic Zone and the Continental Shelf". It builts upon the earlier Secretariat study on the subject conduced in 1985 and 1986. The purpose of this introductory note was to draw attention to the rich jurisprudence produced on the subject by the International Court of Justice, as also to the State practice evidenced through the large number of maritime delimitation treaties.

9. He stated that oceans were of enormous value to the world economy. They provided with food, water, raw materials and energy. The combined value of ocean resources was estimated to be about US $ 7 trillion per year. Fish and minerals, including oil and gas, were among the most important marine resources, while the major uses of the oceans included the recreation industry, transportation, communications and waste disposal. The drive for exploration and exploitation of mineral resources of the oceans coupled with the rapid advancement in science and technology might lead to discord amongst coastal States with opposite or adjacent coasts. Thus, States were expected to make every effort in cooperating toward an equitable solution on the basis of objectives, spirit and relevant international law principles laid down under the 1982 Convention.

10. The Deputy Secretary-General suggested that in view of the historical and well-recognized role of AALCO as a lighthouse in this important area of international law the Secretariat would like to propose to the Member States, to consider the feasibility of holding an Experts meeting on the Law of the Sea and it could be an open-ended Working Group from experts nominated by Member Governments. One may hope that such a meeting would provide a fresh impetus to the subject of the Law of the Sea in various issues pertaining to the Ocean Legal Order, taking into full consideration various international Legal inputs.

11. **Judge Hugo Caminos, Observer of the International Tribunal for the Law of the Sea** said that it was a great honor for him to address, once again, a Session of the Asian African Legal Consultative Organization as a representative of the International Tribunal for the Law of the Sea.

12. He brought greetings and best wishes for a successful session at AALCO's Headquarters in New Delhi from the President of the Tribunal, Dr. Rüdiger Wolfrum and his colleagues in Hamburg. They all wished to congratulate AALCO on the inauguration of its new premises in this beautiful capital of India.

13. He said that AALCO was devoted to the consideration of issues related to international law, to exchange views on matters of common concern to the Member States, having legal implications, and to communicate its views on those questions to

the United Nations and to the International Law Commission.

14. As members of the Hamburg Tribunal, they were well aware of its achievements, in the field of the Law of the Sea. With good reason the brief on this subject prepared for this Session states: "The role played by the AALCO in the development of the UNCLOS had been historical and well recognized". AALCO´S contribution to the strengthening of the rule of law in international relations must also be commended.

15. The Observer said that the International Tribunal for the Law of the Sea was a specialized judicial body established by the United Nations Convention on the Law of the Sea as one of the options available to the parties to the Convention under article 287, for the compulsory settlement of disputes concerning the interpretation or application of the Convention. UNCLOS regulated all aspects of the ocean space, its uses and its resources and included, among others, such matters as fisheries, archipelagic States, maritime delimitation, regime of islands, protection and preservation of the marine environment, marine scientific research. This explained the characterization of UNCLOS as comprehensive constitution for the oceans.

16. As a specialized court of law, the jurisdiction of the International Tribunal for the Law of the Sea was limited to matters related to this area of international law, including those contained in UNCLOS as, those he had mentioned, for example, maritime delimitation or fisheries disputes. On the other hand, the Tribunal was not only open to States, but also to international Organizations which were entitled, in accordance with Annex IX of the Convention, to become Parties to it.

17. In cases over activities in the international seabed area, the Seabed Disputes Chamber, had jurisdiction in such disputes as those between States Parties, the Authority or the Enterprise, State enterprises and natural or juridical persons, and between the Authority and a prospective contractor.

18. Furthermore, entities, other than States Parties, that entered into an agreement under which the Tribunal might also have jurisdiction in disputes where the parties to it could be States, or international organizations and entities, not parties to the Convention, were allowed to have access to the Tribunal.

19. Independent of the freedom of choice of procedure by the parties to the Convention, the Tribunal had compulsory jurisdiction in two legal proceedings, which require urgent action: provisional measures and prompt release of vessels and crews.

20. The Observer said that the Tribunal had jurisdiction over all disputes concerning the interpretation and application of the Convention or of any other agreement related to the purposes of the Convention, most of the 13 cases submitted to the Tribunal until now, had been limited to the two above urgent proceedings.

21. To date, the Tribunal had received seven applications for prompt release. The Tribunal, in five of these cases, ordered the release of the ship and its crew upon the posting of a reasonable bond. In these cases, most of them related to fisheries, the Tribunal had established a consistent jurisprudence in the determination of a reasonable bond, and on the requirements to demonstrate the status as flag State. The Tribunal had also acted efficiently and expeditiously. Its judgments were delivered in full compliance with its Rules in approximately thirty days. As stated by President Wolfrum, "The urgency of these proceedings is justified in view of the financial burden resulting from the detention of a vessel, as well as the humanitarian considerations regarding detained crews. Prompt release proceedings may be considered an appropriate and cost effective

mechanism for parties faced with the arrest of vessels and crews".

22. The Tribunal had prescribed provisional measures pending the constitution of an arbitral tribunal to which a dispute was being submitted, in four cases (art. 290 para. 5 of the Convention). In these proceedings, the Tribunal must first consider that the arbitral tribunal would have prima facie jurisdiction and that the urgency of the situation required the prescription of provisional measures. The measures prescribed by the Tribunal were binding and they may be decided not only to preserve the rights of the parties, but also "to prevent serious damage to the marine environment".

23. The first two requests for provisional measures, were the *Southern Bluefin Tuna Cases*, between New Zealand and Australia, on the one hand, and Japan on the other. In its Order of 27 August 1999, the Tribunal stated "the conservation of the living resources of the sea was an element in the protection and preservation of the marine environment (para.70). It also declared that " the parties should in the circumstances act with prudence and caution to ensure that effective conservation measures are taken to prevent serious harm to the stock of southern bluefin tuna" (para. 77). It had been expressed that the Tribunal's intervention at the stage of provisional measures played a very significant role in bringing the parties back to negotiations with each other, and that the eventual result was that the Southern Bluefin Tuna Commission was revitalized.

24. In the *MOX Plant Case*, Ireland v. United Kingdom, concerning the potential harmful effects on the marine environment of the Irish Sea resulting from the extension of a nuclear plant. In its Order of 3 December 2001, the Tribunal stressed that "the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment" (para.82). It also stated that prudence and caution required that the parties exchange information concerning risks or effects of the operation of the plant (para.84).

25. In the *Case concerning Land Reclamation by Singapore in and around the Straits of Johor*, Malaysia v. Singapore, the Tribunal was faced with the question of the consequences on the environment of land reclamation activities carried out by Singapore. In its Order of 8 October 2003, the Tribunal reaffirmed the duty of the Parties to cooperate and, for this purpose, to enter into consultations forthwith in order to establish promptly a group of independent experts to conduct a study to determine, within a period not exceeding one year, the effects of the land reclamation activities on the marine environment.

26. On 26 April 2005, Malaysia and Singapore agreed to settle their dispute and on 1 September 2005, the arbitral tribunal rendered its award in accordance with the terms stipulated in the agreement of the Parties.

27. The Order of the Tribunal was no doubt influential in bringing the Parties to the negotiating table and facilitating an agreed solution to the dispute. In this regard, the Minister for Foreign Affairs of Singapore, as stated in a press release issued by the Ministry, speaking before the Parliament of Singapore, declared that "Singapore and Malaysia jointly implemented the Order by appointing a group of experts to carry out the joint study…Looking back, he would like to highlight two hallmarks of the joint study and settlement negotiations. One was the involvement of an objective third party – ITLOS, the Group of Experts and the Arbitral Tribunal- which made possible an impartial and objective assessment of the facts of the case and the merits of the competing arguments".

28. Regarding cases on the merits, the Parties to a dispute might submit it to the Tribunal by a special agreement at any time. In the M/V "SAIGA" (Nº 2) Case, Saint

Vincent and the Grenadines agreed to submit to the Tribunal the merits of a dispute concerning the arrest of the vessel *Saiga*. The Tribunal, in its Judgment of 1 July 1999, adopted a number of significant interpretations of the Convention, particularly concerning flags of convenience, hot pursuit, enforcement of customs laws, the espousal of claims relating to crew members not of the nationality of the applicant State, among others.

29. Another dispute submitted to the Tribunal by special agreement was the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean.* This dispute between Chile and the European Community had been submitted to a special chamber of the Tribunal composed of four judges of the tribunal and one *ad hoc* judge. This case was still pending because both parties had requested on two occasions, the extension of the time-limit for making preliminary objections

30. An *ad hoc* special chamber was, indeed, an attractive option for Parties considering arbitration since the composition of the special chamber was determined by the Tribunal with the approval of the Parties to the dispute. There were also other advantages for the parties: they were entitled to appoint a judge *ad hoc* if the chamber did not include a member of the nationality of one of the Parties; the Rules of the Tribunal may be amended at their request in certain proceedings; and last but not least, they do not have to bear the expenses of the proceedings. Quite correctly, President Wolfrum had called this option "arbitration within the Tribunal".

31. The jurisdiction of the Tribunal was not limited to disputes that required immediate action under the Convention. It could also emerge from other international agreements and comprised any dispute relating to the Law of the Sea as, for example, those concerning delimitation, marine scientific research, pollution of the marine environment, fisheries, etc. Article 288, paragraph 2, stipulated that a court or tribunal which State Parties were free to choose for the settlement of disputes concerning the interpretation or application of the Convention "shall also have jurisdiction over any dispute concerning the interpretation or application of an international agreement related to the purposes of this Convention, which is submitted to it in accordance with the agreement".

32. Moreover, Article 21 of the Statute declared that the jurisdiction of the Tribunal "comprises all matters specifically provided for any other agreement which confers jurisdiction on the Tribunal". In this case, the extent of the jurisdiction of the Tribunal shall be governed by the provisions of the agreement.

33. There were seven international agreements, which made reference to the Tribunal concerning the settlement of disputes. One of these agreements was the 1995 straddling fish stocks and highly migratory fish stocks, which provided for the application of the procedures, embodied in Part XV of the Convention. As a State which was not a Party to the Convention was allowed to become a party to Agreement, the latter specified that Part XV applies *mutates mutandis* to any dispute between States Parties to it concerning its interpretation or application, "whether or not they were also parties to the Convention".

34. International agreements related to the purposes of the Convention were a potential source for the jurisdiction of the Tribunal as they extended its competence to decide on a wide range of disputes concerning Law of Sea matters. In accordance with article 288, paragraph 4, in the event of a dispute as to whether the Tribunal has jurisdiction, the matter shall be decided by the Tribunal (competence de la competence).

35. He then proceeded to refer to the advisory opinions. Besides its competence to deal with different categories of disputes concerning activities in the Area, the Seabed Disputes Chamber had another important function: to give advisory opinions at the request of the Assembly or the Council of the International Seabed Authority on legal questions arising within the scope of their activities.

36. The Convention did not contain any provision conferring advisory jurisdiction to the Tribunal. However, any other agreement which conferred jurisdiction to the Tribunal under article 21 of its Statute may provide for the request of advisory opinions. On this basis, article 318, paragraph 1 of the Rules of the Tribunal states that it "may give an advisory opinion on a legal question if an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion".

37. He provided a brief overview of the competence and judicial work of the Tribunal, by quoting President Wolfrum on his statement to the Informal Meeting of Legal Advisers of Ministries of Foreign Affairs in October 2005, at the Headquarters of the United Nations: " In conclusion, I would like to reiterated that the Tribunal had already made a substantial contribution to the development of international law. Under the Convention on the Law of the Sea, it had competence and means to deal with a wide range of disputes and well equipped to discharge its functions speedily, efficiently and cost-effectively"

38. The **Delegate of the People's Republic of China** thanked H. E. Mr. Hugo Caminos, Judge, ITLOS for his extensive speech on the topic of Law of the Sea. He believed that the basic framework set out in the 1982 United Nations Convention on the Law of the Sea remained the effective regime governing the contemporary international order for the oceans and hoped to see more States Parties to this Convention. The Delegation identified three important issues in the context of strengthening the implementation of the Convention. Firstly, provisions of the Convention pertaining to the protection and conservation of the Marine Environment, research in Marine Science and the Development and Transfer of Marine Technology. Secondly, the capacity building of developing countries to enable them to effectively use marine resources; thirdly, the strengthening of co-operation and co-ordination among relevant international organizations and mechanisms in addressing ocean issues.

39. With regard to the first issue the Delegate said that his country attached great importance to the protection of the marine environment and to the promotion of sustainable use of ocean resources and also acknowledged their support for the early establishment of the regular process for global reporting and assessment of the state of marine environment within the United Nations framework.

40. With regard to the Review of the 1995 United Nations Fish Stocks Agreement, he said that the review conference would be a United Nations Review Conference and open to all interested States. The broad participation, on an equal footing, of both States Parties and States that were not parties to the Agreement, as provided for in Article 36 of that Agreement, would be essential to the success of the Review Conference.

41. On the issue of fishing the Delegate believed that the objective of the international community should be aimed at both regulating fishery activities and achieving sustainable development and particularly protecting the right of developing countries to share fishery resources.

42. With regard to the issue of conservation and sustainable use of marine biological diversity beyond areas of national

jurisdiction, the Delegation welcomed the result of meeting of the ad hoc open-ended informal working group. The Delegation believed that the protection of biodiversity beyond areas of national jurisdiction should take full account of existing regimes concerning the high seas and international seabed and give full play to the role of existing international organizations and institutions. He also stressed that equal attention should be given to ensure both the sustainable use of the marine bio diversity and the equitable use of such resources by all countries.

43. On the issue of the capacity building of developing countries, the Delegation believed that this issue was a difficult issue confronting the international community, as many developing countries lacked such capacities in both use and conservation of marine resources. He was of the view that the developing countries make their own efforts and he also urged that the developed countries facilitate the transfer of marine technologies to developing countries under fair and reasonable conditions. He also stressed the need to urge the relevant international organizations to assist the developing countries in securing appropriate international funding for marine research and personal training. In his concluding views he said that the Ocean related issues were closely interlinked and must be addressed in an integrated and holistic manner. The Delegation extended their support to the AALCO to play an important role in facilitating the Asian and African countries to coordinate their common position in this regard.

44. The **Delegate of India** congratulated the Deputy Secretary-General of AALCO for the preparation of an excellent brief on the topic of the Law of the Sea. He said that India attached high importance to the effective functioning of the institutions established under the United Nations Convention on the Law of the Sea and also continued to extend full cooperation and to participate actively and constructively in all activities pertaining to the Convention and related agreements. Given the geography of India, with a coastline extending four thousand miles and with 1300 islands, India had a traditional and abiding interest in maritime and ocean affairs. The large population in India's coastal areas and in the islands had always looked to the sea for sustenance. India's accession recently to the Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, and to the Protocol on the Privileges and Immunities of the International Seabed Authority demonstrated India's commitment to work closely with the institutions established under UNCLOS.

45. He was of the view that all subsidiary institutions under the Convention, namely the International Sea-bed Authority, the International Tribunal for the Law of the Sea and the Commission on the Limits of the Continental Shelf, had made considerable progress in their respective areas of work over the past year. India had been working closely with all these institutions. He also disclosed India's investment in the exploration of minerals in the deep-sea bed and also continued to incur considerable expenditure for collection of data as a primary investor and now as a Contractor. The International Sea-bed Authority was currently involved in the development of a legal regime for prospecting and exploration of poly-metallic sulphides and cobalt-rich crusts. The Delegation appreciated the role of the Authority in the conservation of biodiversity in the Area, especially elaboration of the rules, regulations, and procedures to ensure the effective protection of the marine environment, the protection and conservation of the natural resources of the Area, and the prevention of damage to its flora, and fauna, from harmful effects that may arise from activities in the Area.

46. He expressed that the Commission on the Limits of the Continental Shelf was now becoming increasingly active as four

coastal States had submitted their claims under Article 76 of the UNCLOS and a number of countries had indicated the submission of their claims between 2005 and 2008. The developing countries that were in the process of preparing submission to the Commission might require help in some cases to enhance their capacity. In this regard, the Delegation appreciated the regional training courses conducted by the Division for Ocean Affairs and the Law of the Sea in Fiji and Sri Lanka and welcomed the efforts made by the Division to organize training courses in Ghana and Argentina. The Delegation believed that States, which had expertise in the delineation of outer limits of the Continental Shelf, must also extend such cooperation by providing assistance to developing States, which require expertise to submit their claim under Article 76 of the UNCLOS. In this regard, he reiterated that India had the requisite expertise for assessment and mapping of the Continental Shelf, has been and is willing to extend cooperation in training other developing countries for this purpose. He also welcomed in this context the efforts of the Division of Ocean Affairs and Law of the Sea in bringing out a training Manual to assist States in developing the requisite knowledge and skills in preparing their submission in respect of the outer limits of the Continental Shelf.

47. He said that, the international community continued to focus over the past year on issues relating to navigation, conservation and management of living marine resources, and conservation and management of biological diversity of the seabed in areas beyond national jurisdiction. Discoveries of highly complex and diverse ecosystems in areas beyond national jurisdiction, coupled with advanced biotechnology sector, had led to increasing interest and activities in relation to genetic resources beyond national jurisdiction. As a corollary to these developments a general debate over the legal status of genetic resources located in the seabed area beyond national jurisdiction was also getting increasingly intense. In this regard, an *ad hoc* working group established by a GA Resolution recently held its deliberations in New York and its report would be made available for the 61st Session of the General Assembly. For these reasons, the need for devising new approaches within the confines of UNCLOS to promote international co-operation aimed at conservation and sustainable use of living resources of the high seas and benefit sharing of seabed resources located in the areas beyond national jurisdiction could not be over emphasized. India had consistently emphasized that genetic resources located in the sea in areas beyond national jurisdiction was part of the common heritage of mankind. This view had gained approval from the G-77 and People's Republic of China composed of developing countries. He was of the view that it was important that AALCO should generate a debate on this issue.

48. While concluding, the Delegation suggested that AALCO could possibly consider taking up and identification of emerging legal issues originating from certain perceived gaps in the UNCLOS 1982 and other post UNCLOS developments in cross-cutting fields such as the Convention on Biodiversity.

49. The **Delegate of Japan** expressed his support for the work done by the AALCO Secretariat on the Law of the Sea and said that the AALCO played an important role in the process of the codification of the Law of the Sea, should continue to show strong interest in the interpretation of the UNCLOS. He pointed out the pending disputes related to maritime delimitation and was of the view that AALCO could play an objective and constructive role in promoting discussion on the interpretation of the provisions of the UNCLOS related to maritime delimitation.

50. He said that the reference prepared by the Secretariat on the issue of the delimitation of the Exclusive Economic

Zone (EEZ) and the Continental Shelf between States with opposite or adjacent coasts, had rightly pointed out the Text of the UNCLOS. In such circumstance, he said that one had little choice but to rely on the jurisprudence of International Courts in order to determine the methods to achieve an "equitable solution".

51. He was of the view that the jurisprudence of the ICJ led to a somewhat general method to be followed in the delimitation of the EEZ and the Continental Shelf and also highlighted that, in all the recent cases, the ICJ first drew an equidistance line and then considered whether there were circumstances which must lead to an adjustment of that line. By recalling the judgment in *Land and Maritime Boundary between Cameroon and Nigeria*, he was of the view that, such a consolidation of the method to be applied in the maritime delimitation, not only enhanced the stability and predictability of judgments once a delimitation issue was submitted to an international Court, but also gave States an authoritative guidance in negotiations to achieve an equitable solution based on international law.

53. He recalled that Japan had several EEZ's and continental shelves that need to be delimited with neighboring States and entities. He also added that the jurisprudence of international courts elucidated the method and factors to be considered for the delimitation. Once again he stressed that, AALCO should continue to show strong interest in the interpretation of UNCLOS.

54. The **Delegate of the Republic of Indonesia** thanked the President of AALCO and also praised H. E. Judge Hugo Caminos for his extensive presentation on the topic of the Law of the Sea. He said that the 1982 United Nations Convention on the Law of the Sea represented a landmark document providing a universal legal framework for the world's oceans and seas, including the sustainable development of its resources. The Delegation had recognized the significant increase in the number of State Parties to this Convention and was of the view that the process should be maintained to allow wider and more universal participation by States to the Convention.

55. He said that the Convention set legal norms for achieving this goal through balancing the interest of the legitimate rights of coastal states to explore the natural resources within their maritime boundaries while simultaneously ensuring the interest of the international community for having safe navigation. Further achievements of the Convention were also reflected in the dynamic operations of its three main institutions, namely, the International Sea-bed Authority; the International Tribunal of Law of the Sea; and the Commission on the Limit of the Continental Shelf.

56. Being an Archipelagic State and being among the earliest State Parties of the Convention, he said that Indonesia had consistently attached the utmost importance to questions pertinent to the Law of the Sea. He also added that, the support for UNCLOS was reflected in Indonesia's active participation in all the bodies since the outset, and this would continue for many years in the future. Since the ratification of UNCLOS in 1985, the Indonesian Government had adopted new regulations as well as harmonized its existing legislation inconformity with the Convention.

57. Despite the achievements of the Convention, the Delegation pointed out some of the new challenges in the governance of ocean affairs, such as the issue of maritime security and sea piracy. He said that maritime security had always been an important matter for Indonesian maritime policy. However, any attempt to deal with threat to the maritime security should not prejudice international law and Law of the Sea. International law provided a strong legal basis for coastal States by virtue of their sovereignty and sovereign rights to take appropriate measures to deal with maritime threat. He also added that

international law also provided legal basis for international navigation as reflected in the article 43 of UNCLOS 1982. In this regard, the Government of Indonesia was of the view that maritime security had to cover all integrated aspects of transnational crimes and addressed the issue comprehensively, not only covering one isolated issue but also other related maritime issues, namely maritime safety, smuggling of goods, people and guns, armed robbery at sea and environmental matters.

58. With regard to the issue of sea piracy, Indonesia attached great importance of securing its waters from any illegal acts at sea, including armed robbery against ships at sea. In this regard, the Government of Indonesia welcomed cooperation of other countries in the effort to combat piracy and armed robbery against ships at sea.

59. He expressed the importance of the proper definition of piracy and also added that, the Government of Indonesia was of the view that UNCLOS 1982 had provided clear provisions on piracy. The Indonesian Government, therefore consistently rejected unilateral declaration on the definition of piracy that also included criminal cases at the ships while docking at ports that were not only inconsistent with international law but also provided misleading picture of the maritime security at sea.

60. He said that Indonesia had and would continue to implement the Convention through the adoption of the relevant provisions of the Convention, including their administrative arrangement. Furthermore, Indonesia believed that the discussion on the Law of the Sea would lead to fruitful outcomes for the benefit of Asian-African countries.

61. The **Delegate of Arab Republic of Egypt**[1] stated that ocean space beyond national jurisdiction was the common heritage of mankind. It was for the benefit of entire humankind. It was also essential to preserve and protect the marine environment of the Exclusive Economic Zone within the framework of the UNCLOS. He observed that the Asian-African Legal Consultative Organization had played an important role by raising awareness about the Convention in its Member States and contributed to its ratification and entry into force. However, some of the developed countries, particularly the United States of America was not a Party to the Convention. He commended the work done by the Jamaica based International Seabed Authority, in drawing up the Guidelines for mining in high seas as well as the work being done by the Committee on the Limits of Continental Shelf in the delimitation of the continental shelf. He drew attention to the rapid escalation in the disputes pertaining to maritime boundary delimitation and said that many of these cases had been decided by the International Court of Justice, as well as that several cases were pending before the Court. He was confident that AALCO would continue its important work on the Law of the Sea and would continue the consideration of this topic at its Annual Sessions.

62. The **Delegate of Pakistan** stated that the developments in the International Law of the Sea and particularly the emergence of the United Nations Convention on the Law of the Sea in 1982 (UNCLOSE) and other associated agreements, had provided an essential framework to establish an adequate system of ocean governance. The Delegate pointed out that UNCLOS had an elaborate comprehensive regime for governance of the oceans, and covered all aspects of ocean space from delimitation to environment control, scientific research, fishing and other economic and commercial activities technology and the settlement of disputes relating to ocean matters. Apart from emphasizing on the rights and duties of the coastal State, especially its "sovereign rights for the purpose of exploring and exploiting,

[1] Statement delivered in Arabic. Unofficial translation from the Interpreter's version.

conserving and managing the natural resources, whether living or non-living", he also dealt with the establishment of Exclusive Economic Zones (EEZ) terming it as one of the most significant innovation in relation to the governance of marine fisheries resources during the second half of the twentieth century. He stated that one of the important rights of the coastal States was its right to set a total allowable catch on the basis of the best scientific evidence available to it.

63. The Delegate observed that during early 1990s, there was a consensus among States that the general provisions of the UNCLOS requiring co-operation between States in the conservation and management of high seas fisheries resources should be strengthened which resulted in the adoption of 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 (UN 1995), otherwise known as the United Nations Fish Stocks Agreement. The said Agreement was formulated to deal with two provisions of the UNCLOS, namely; on the States' duty to ensure that their nationals would comply with the conservation measures adopted for high seas stocks and regarding the jurisdiction over vessels flying their flag of States on the high seas. The Delegate referred to the provision in the Convention to establish regional fisheries management organizations, which would have the competence to cover scientific research, stock assessment, monitoring, surveillance, control and enforcement, etc. He named many international legal instruments, which dealt with related issues of evolving set of rules for the governance of fisheries. The list included the Code of Conduct for Responsible Fishing (1995) inter alia spelled out flag state responsibilities for the activities of fishing vessels flying its flag and sought to advance management measures, by agreement among States that improve the optimal and sustainable use of fisheries resources. The Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Resolution 15/93), known also as the Compliance Agreement, similarly builds on flag State responsibility for fishing vessels flying its flag Fishing Vessels on the High Seas (Resolution 15/93), known also as the Compliance Agreement, similarly builds on flag state responsibility for fishing vessels flying its flag and operating on the high seas. Other important agreement, which had significant implications for the management of fisheries resources were the 1992 Biological Diversity Convention, the 1982 Convention on the Conservation of Antarctic Marine Living Resources, and the 1972 World Heritage Convention. A range of other global and regional treaties exist which, in some cases, had a direct bearing on the governance of the fisheries sector. He concluded his statement by reiterating that Pakistan has been actively participating in the matters relating to UNCLOS as it has enacted laws compatible with the respective provisions of UNCLOS. He expressed the concern by stating that a claim should be filed under Article 76 of the Convention against the decision of extension of outer limits of the continental shelf beyond 200 nautical miles.

64. The **Delegate of the Republic of Yemen**[2] stated that conservation of living resources of the oceans and the preservation and protection of the fragile marine environment were issues of immense importance. He drew attention to the ten-year deadline stipulated by the United Nations General Assembly in 1999 for filing claims before the Commission on Limits of Continental Shelf regarding the delineation of the extended continental shelf of coastal states. In his view such a short deadline was against the interest of developing countries. Rather it protected the interest of developed countries, as the developing countries did

[2] Statement delivered in Arabic. Unofficial translation from the Interpreter's version.

not have access to adequate scientific, technical and financial resources for making their submission to the Commission. His country had formed a Committee to map out its continental shelf. This Committee would be able to submit its Report in about two years and would be able to submit its claim before the Commission within the prescribed time limit. In this context, he advocated in the interest of developing countries, the extension of this deadline and sought for consensus view amongst the AALCO Member States for settling this issue.

65. The **Delegate of Malaysia** thanked the AALCO Secretariat for an excellent and timely report on the recent developments on the Law of Sea since the entry into force of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS). The Delegate supported the proposal put forth by the AALCO Secretariat of holding a meeting of AALCO Group of Experts on the Law of the Sea, which would be constituted by the Member States by nominating the experts from amongst them. They supported on convening such a meeting that would not only provide a fresh impetus to the subject of the Law of the Sea in all aspects but would also strengthen the role played by AALCO in the developments of UNCLOS. The Meeting of Experts might also deliberate upon what amendments could be suggested to UNCLOS and the law on the delimitation of maritime areas.

66. The Delegate observed that the Members States of AALCO being well aware on the importance of UNCLOS as a framework of rules governing States' rights and duties in the territorial sea, continental shelf, exclusive economic zone and high sea, all the negotiations that took place on that Convention saw varied positions of States on many issues. Hence, it was agreed upon that States would proceed with negotiations by way of consensus. The provisions contained in UNCLOS were drafted in working committees and presented as stating the common, predominant, or accepted view. The text of UNCLOS was finally adopted on 30 April 1982 by 130 votes to four, with seventeen abstentions. It was duly noted that some of the provisions contained in UNCLOS reflected pre-existing customary international law.

67. The importance that Malaysia gave to the Law of the Sea matters could be understood by the country being a party to UNCLOS with effect from 13 November 1996, and therefore, being a party to UNCLOS it has participated in the State Parties Meetings of the Law of the Sea (SPLOS) and takes note of the work of the International Tribunal on the Law of the Sea (ITLOS) and the Commission on the Limits of the Continental Shelf (CLCS).

68. The Delegate pointed out that since the adoption of UNCLOS the most significant additions to it had come in the form of the 1994 Agreement Relating to the implementation of Part XI of UNCLOS and the 1995 Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. These agreements stood significant as it interpreted, amplified and developed the existing provisions of UNCLOS. Besides this, the role of international organizations in developing the Law of the Sea, such as the International Maritime Organization (IMO), the International Atomic Energy Agency (IAEA), the Food and Agriculture Organization (FAO) and the World Health Organization (WHO) was noteworthy. The recommendations and conventions deliberated by such international organizations greatly influenced the States in the implementation of their obligations under UNCLOS. Relating the same, the Delegate opined that even without formal amendments, further evolution of UNCLOS was possible by virtue of a wide variety of mechanisms such as legally binding international treaties. UNCLOS still could be considered as one of the important international legal instrument and it becoming obsolete in the immediate future was impossible if State Parties to UNCLOS

continued to cooperate within the framework of UNCLOS. On the issue of delimitation of the maritime boundaries, it was duly stated that the drawing of boundaries was essentially a task for the States involved, because these States may conclude bilateral agreements also that established such maritime boundaries as provided for under UNCLOS. However, due to geographical diversity and differing views as to what equity required, there was a difficulty in concluding such agreements. As such there has been much international litigation on the delimitation of maritime boundaries.

69. He emphasized that International tribunals guided by UNCLOS and the 1958 Geneva Conventions had extensively developed customary law on this matter. In theory, each maritime zone demanded a separate delimitation. However, in practice there was an increasing tendency to have a single maritime boundary without distinguishing the different zones. The Delegate noted that the principles for the delimitation of the maritime boundaries laid down by the international tribunals differed since each maritime boundary delimitation case was subject to the unique characteristics of each situation as well the special or relevant circumstances that may be applied. Therefore, it would be difficult to predict the boundary lines to be drawn by the international tribunals as the boundaries for the States concerned. A perusal of the cases decided by the international tribunals illustrated that in determining an equitable solution the circumstances that would be considered relevant were likely to be wider and would seem potentially to include any factors connected to the rights which the States enjoyed in the maritime areas as could be seen in the cases such as the North Sea Continental Shelf Cases (1969), Continental Shelf (Tunisia v Libya) (1992), the Gulf of Maine case (1984), the Continental Shelf (Libya v Malta) (1985), Jan Mayen case (1993), Qatar v Bahrain (2001) and Cameroon v. Nigeria (2002).

70. Accentuating on the practical value and application of these judgments in the above mentioned cases to States, the Delegate pointed out they played a pivotal role in countries such as Malaysia for they were engaged in negotiations with its neighbouring countries on the issues of delimiting their maritime boundaries. Thus, an objective balancing to achieve an equitable solution would assist States in their negotiations relating to maritime boundary delimitation. It was stated that it would be interesting to see the scope of the applicability of the special or relevant circumstances in achieving an equitable solution to the delimitation of maritime boundaries, as there was yet to be an exhaustive list of such special or relevant circumstances. The possibility of the inclusion of new special or relevant circumstances, such as port limits, in addition to the existing special or relevant circumstances, such as traditional fishing ground and oil concession activities, to achieve an equitable result between States would present a significant impetus to States in delimiting their maritime boundaries.

71. He accentuated that Malaysia understood that the search for a solution that would be workable in practice was vital for the delimitation of the maritime boundaries. However, placing his above observations and the uncertainty of the special or relevant circumstances that could contribute to the delimitation of the maritime boundaries to achieve an equitable result between States, it might not be easy to find a solution that could be workable in practice. He urged that the States should be mindful of the negotiating history of UNCLOS and the almost universal acceptance of UNCLOS and as such any amendments to UNCLOS should be based on negotiated multilateral agreements that represent the balance of interests acceptable to the international community as a whole. Thus it would be less vulnerable to unilateral or regional challenges.

72. He further stated that Malaysia supported the proposal of Secretariat that Member States must consider the feasibility of holding a meeting of AALCO Group of Experts on the Law of the Sea which may, *inter alia*, deliberate upon the amendments that could be proposed to UNCLOS and the law on the delimitation of maritime areas. A meeting of AALCO Group of Experts on the Law of the Sea would also be able to explore the areas in which UNCLOS could be strengthened. He also proposed that the Secretariat may present the findings and recommendations of the proposed meeting to Member States at the subsequent Session of AALCO.

73. The **Delegate of Republic of Korea** observed that the Law of the Sea was an area to which AALCO has contributed much, especially coming up with new concepts for the governance of oceans, for example, the Exclusive Economic Zones. The *United Nations Convention on the Law of the Sea* in 1982 and was living up to its name, "a Constitution for the Oceans" and as of this year 149 States Parties were participating in the Convention. The necessity to rethink on what the Convention could not achieve is important because it had attained its universality. One of the areas, which the delegate stressed, was the protection of living resources on the high seas. Even the drafters of the UNCLOS were aware that the overriding principle of the freedom on the High Seas inevitably would lead to inadequate protection measures for the living resources on the high seas, and that is why the 1995 United Nations Fish Stocks Agreement was adopted along with the UNCLOS.

74. The Delegate referred to the review Conference on the 1995 *United Nations Fish Stocks Agreement*, which would be held at the UN Headquarters from 22 to 26 May 2006, and highlighted the issues relating to the same. She observed that the Fish Stocks Agreement was launched in order to stem the serious decline of fishery resources on the high seas, which the *1982 UN Convention on the Law of the Sea* turned out to be ineffective in resolving. As a significant attempt to develop a coherent management regime for fish stocks throughout their migratory range, the Agreement incorporates new principles such as precautionary approach, compatibility of conservation and management measures, ecosystem approach and non-flag state enforcement. The Agreement had marked an evolution of the Law of the Sea, challenging traditional concepts including the flag-state jurisdiction on the high seas and freedom of fishing, drawing the attention of about sixty States, it had yet to reach universal application.

75. She stated that even though Republic of Korea was yet to become a Party to the said Agreement it shared the concerns and objectives enshrined in the Agreement. It had participated in international and regional efforts to ensure sustainable use of straddling fish stocks and high migratory fish stocks. The Delegate hoped that on the occasion of the Review Conference, the international community had the timely opportunity to review the adequacy of the provisions of the Agreement and strengthen the effectiveness of international regimes for the management of the fish stocks set forth by the Agreement. Her delegation believed that in order to better strike a balance between the interests of coastal States and those of States fishing on the high seas and to uphold the long-established principle of flag-state jurisdiction. Thereby, strengthening the Agreement would garner global participation and further contribute to a more managed ocean regime in fisheries and long-term management and conservation of the fish stocks. In concluding her statement she hoped that the cooperation on this issue between the Asian and African countries would be further strengthened, so that the voices of Asian and African States could be heard in the Review Conference of the *United Nations Fish Stocks Agreement* in New York this coming May.

The meeting was thereafter adjourned.