IX. SUMMARY RECORD OF THE FOURTH GENERAL MEETING HELD ON THURSDAY, 5TH JULY 2007, AT 10:00 AM

Her Excellency Mrs. Brigitte Sylvia Mabandla, President of the Forty-Sixth Session in the Chair.

A. The Law of the Sea

1. **Dr. Xu Jie, Deputy Secretary-General** said that he was honoured to introduce the item on "The Law of the Sea" contained in the Secretariat Document AALCO/46th/ CAPE TOWN SESSION / 2007/S 2. 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 introduce that topic in 1970 and ever since then it had been regularly considered at successive Annual Sessions. The AALCO could take reasonable pride in the fact that new concepts such as the 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).

2. The Secretariat Report, he mentioned, provided an overview of the Seventeenth and Eighteenth Sessions of the Commission on the Limits of Continental Shelf, held from 20 March to 21 April and 21 August to 15 September 2006, Seventh Meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, held from 12 to 16 June 2006, and sixteenth Meeting of the States Parties, held from 19 to 23 June 2006; respectively at the UN Headquarters in New York. The Commission proceeded with its work of considering the claims filed by coastal States concerning the outer limits of their continental shelves in areas where these limits extend beyond 200 nautical miles. At the centre of discussions before the Consultative Process was the "eco-system approaches" for the management of world oceans. The Meeting of States Parties considered statements on the progress of work in the institutions established by the Convention on the Law of the Sea, as well as took up administrative and budgetary questions. In addition, the AALCO Report also presented an overview of the work of the twelfth session of the International Seabed Authority that took place at the seat of the Authority in Kingston, Jamaica, from 7 to 18 August 2006, consideration of Oceans and the Law of the Sea issues by the Sixty-first Session of the United Nations General Assembly.

3. Dr. Xu, informed that the Golden Jubilee celebrations of the Organization, culminated at the Headquarters, in New Delhi, with a one-day "Meeting of Experts on the Emerging Issues on the United Nations Convention on the Law of the Sea" on 24 November 2006. This highly successful meeting, organized by the Secretary-General of AALCO, pursuant to the mandate received from the Forty-Fifth Session was attended by delegations from 22 Member States and one Permanent Observer – New Zealand, as well as several experts based in New Delhi. Deliberations in the Meeting had taken place in three substantive sessions: *First*, An overview of the United Nations Convention on the Law of the Sea – Contribution of Asian-African States; *Second*, Preservation and Protection of Marine Environment: Legal Regime

and Emerging Issues; and *Third*, Maritime Zones and their Delimitation: The Law and Practice. The panelists for the Meeting were a unique blend of seasoned practitioners of the Law of the Sea and eminent academics. The meeting saw some lively discussion between the Panellists and Participants from delegations of several Member States.

4. He noted that based upon this Meeting, as well as the activities of institutions established under the 1982 UN Convention on the Law of the Sea and deliberations at Informal Consultative Process and the United Nations General Assembly, the Secretariat had identified, *inter alia,* following issues for focused deliberations: first, development of legal principles for the preservation and protection of marine environment in the area beyond national jurisdiction with reference to the principle of sustainable development; second, balancing coastal State's efforts to protect marine and coastal environment with the right to passage in straits used for international navigation; third, increasing international efforts to meet the challenges posed by continuing transnational organized crime and threats to maritime safety and security; and fourth, problem of marine scientific research vis-à-vis freedom of navigation.

5. **Statement by Judge Albert Hoffman, Observer of the International Tribunal for the Law of the Sea:** Judge Hoffman stated that he was highly honored to address the Asian-African Legal Consultative Organization at its Forty-Sixth Annual Session as a representative of the International Tribunal for the Law of the Sea. As this was his home country, he was particularly delighted to be there and wished all delegates a wonderful stay and hoped that they would enjoy some true South African hospitality.

6. On behalf of the President of the Tribunal, Dr. Rüdiger Wolfrum, he thanked AALCO for inviting the Tribunal to its Session as an observer. He mentioned that his colleague, Judge Hugo Caminos, represented the Tribunal at the Forty-Fourth and Forty-Fifth Sessions of AALCO in Nairobi and New Delhi in 2005 and 2006.

7. Recalling his own association with the Organization, he said that it went back to the early 1990s. After South Africa became a democratic State, he attended the Thirty-Fourth Session of the Asian-African Legal Consultative Committee (AALCC) (as it was then known) in April 1995 in Doha, Qatar as the South African observer. This was followed by many meetings/discussions, mostly in New York, between him and the Permanent Observer of AALCO to the United Nations, Amb. Bhagwat Singh that prepared the way for South Africa joining AALCO. It was therefore personally gratifying for him when South Africa finally became a Member State of AALCO in May 2004.

8. Judge Hoffman further observed that the Tribunal valued the longstanding relationship with AALCO and followed with great interest the important work that it was doing towards the strengthening of the rule of law in international relations. In particular, he recalled the significant contribution of AALCO to the negotiations at the Third United Nations Conference for the Law of the Sea. The meetings of the AALCO from 1970 to 1982, though conducted outside of UNCLOS III, were acknowledged to have had an

important influence on the outcome of UNCLOS III and on the 1982 United Nations Convention for the Law of the Sea.[1]

9. He said that it was encouraging to note the important role that AALCO and its Members continued to play in the various institutions established under the Convention and the commitment they showed towards dealing with the many challenges confronting Asian and African States with regard to issues concerning the Law of the Sea. In this context, he referred to the AALCO Meeting of Experts on the Emerging Issues relating to the United Nations Convention on the Law of the Sea, which was held last November in New Delhi.

10. Moving on further, the Observer Delegate observed that the 1982 United Nations Convention on the Law of the Sea, was generally referred to as the "Constitution for the Oceans" [2] because of its comprehensive scope, governs all aspects of the ocean space, its uses and its resources and includes, among others, such matters as fisheries, archipelagic States, maritime delimitation, regime of islands, protection and preservation of the marine environment, marine scientific research, economic and commercial activities, technology and the settlement of disputes.

11. The Convention currently had 155 States parties, of which 40 States are members of AALCO, plus the European Community The number kept growing and was steadily moving towards achieving the stated goal of universality. There was even some prospect that the United States may soon join the Convention.

12. As regards, the International Tribunal for the Law of the Sea, it was a specialized judicial body established by the Convention to play a central role in settling disputes relating to the Law of the Sea. It was one of four means available under article 287 for the compulsory settlement of disputes. The other means were the International Court of Justice, arbitration under Annex VII or special arbitration under Annex VIII for certain categories of disputes (fisheries, protection and preservation of the marine environment, marine scientific research, or navigation including pollution from vessels and dumping).

13. There was no hierarchy between these means of dispute settlement. It was up to the parties to choose which dispute settlement procedure they preferred. In article 287, paragraph 1 of the Convention, States and entities, when signing, ratifying or acceding to the Convention, or at any time thereafter, may make declarations specifying the forums for the settlement of disputes which they accept.

14. Unfortunately, of the 155 States parties, only 36 States have made declarations under article 287 thus far. Twenty-four States have chosen the Tribunal as first choice. Twenty-three States have chosen the ICJ as first,

[1] T Koh and S Jayakumar, "The Negotiating Process of the Third United Nations Conference on the Law of the Sea", in M. H. Nordquist (ed), *United Nations Convention on the Law of the Sea 1982, A Commentary,* vol. 1, (Center for Oceans Law and Policy, University of Virginia, 1985), p. 59.

[2] The phrase "A Constitution for the Oceans" is attributed to Ambassador Tommy Koh in the statements made on 6 and 11 December 1982 at the final session of UNCLOS III, in M. H. Nordquist (ed), *United Nations Convention on the Law of the Sea 1982, A Commentary,* vol. 1, (Center for Oceans Law and Policy, University of Virginia, 1985), p. 11.

second or third choice. Fifteen States have made declarations in favour of arbitration as first, second or third choice. By default, in the absence of declarations, States are deemed to have chosen arbitration. This meant in the majority of cases arbitration will be the compulsory means of settling disputes unless the parties agree otherwise. It should be noted that written declarations in favour of the Tribunal under article 287 may be made at the time of ratification, accession or at any time thereafter.

15. Judge Hoffman emphasized that declarations under article 287 were not the only way to bring a case before the Tribunal. It was always possible for the parties to a dispute to submit a case to the Tribunal on the basis of an agreement. Two cases considered by the Tribunal have been submitted on the basis of an agreement between the parties, namely, the *M/V Saiga Case* (Saint Vincent and the Grenadines/Guinea) and the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean* (Chile/European Community). He stated that the Tribunal had competence to deal with any disputes concerning the interpretation and application of the Convention. The types of disputes which might be submitted to the Tribunal related to all legal matters concerning the ocean space and its resources, such as fishing, pollution, maritime delimitation, exploration and exploitation of natural resources, navigation, status of ships, detention or arrest of a vessel and its crew, flag and port State control, and scientific research to name a few.

16. The Tribunal was open to States Parties to the Convention. It was also possible for non-States Parties, such as the International Seabed Authority, a State enterprise or a natural or juridical person, to appear before the Seabed Disputes Chamber of the Tribunal with respect to disputes relating to the exploration and exploitation of the deep seabed area.

17. The Tribunal might also acquire jurisdiction over disputes arising out of other agreements. Article 21 of the Statute provides that the jurisdiction of the Tribunal comprises all matters provided for in any other agreement that confers jurisdiction on the Tribunal. A number of agreements have been concluded which contain provisions stipulating that disputes arising out of the interpretation or application of these agreements could be submitted to the Tribunal. As an illustration, two such agreements were the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 and the 1995 Implementation Agreement of the Convention relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. The most recent convention that had adopted the dispute settlement procedure of the Convention is the International Convention on the Removal of Wrecks, 2007.[3] A list of the agreements and the relevant provisions contained therein are published in the Tribunal's Yearbook and made available on the website of the Tribunal.[4] The list does not claim to

[3] Adopted 18 May, 2007.

[4] The other agreements in the list include the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas; the Agreement for the Conservation of Fishery Resources in the High Seas of the South-East Pacific; the Convention on the Protection of the Underwater Cultural Heritage; the Convention on the Conservation and Management of Highly Migratory Fish

be exhaustive and was based on information brought to the attention of the Registry of the Tribunal.

18. He added that the Tribunal was not only competent to deal with contentious proceedings, i.e. cases involving disputes between States. It might also give an advisory opinion on legal questions. Indeed, the Convention provided that the International Seabed Authority might address requests for advisory opinions to the Seabed Disputes Chamber, a chamber consisting of 11 members of the Tribunal.

19. Requests for advisory opinions might also be submitted to the Tribunal pursuant to article 138 of the Rules of the Tribunal, which stated that the Tribunal "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."

20. In its 10-year existence, the Tribunal had delivered decisions in 13 cases on several issues concerning the Law of the Sea, including the prompt release of vessels and their crews, protection and preservation of the marine environment, fisheries, the commissioning of a nuclear facility and the movement of radioactive materials, reclamation activities, freedom of navigation, nationality of claims, use of force in law enforcement activities, hot pursuit and the question of the genuine link between a vessel and its flag State.

Stocks in the Western and Central Pacific Ocean; the Convention on the Conservation and Management of Fishery Resources in the South-East Atlantic Ocean.

21. On the occasion of the Tribunal's tenth-year anniversary, Judge Rosalyn Higgins, the President of the International Court of Justice, stated, "within a decade, the Tribunal has pronounced interesting law, built a reputation for its efficient and speedy management of cases and shown innovative use of information technology."

22. The General Assembly in its annual resolution on Oceans and the Law of the Sea had also recognized "the continued and significant contribution of the Tribunal to the settlement of disputes by peaceful means in accordance with Part XV of the Convention, and underlines the important role and authority of the Tribunal concerning the interpretation or application of the Convention and the Agreement."[5]

23. Unless otherwise provided, cases were dealt with by the 21 judges of the Tribunal. Parties to a case might also request that the case be heard by a chamber composed of three or more of the elected judges. They might choose a standing chamber: *Chamber for Marine Environment Disputes; Chamber for Fisheries Disputes; Chamber of Summary Procedure; and Chamber for Maritime Delimitation Disputes.*

24. They might also request the constitution of an *ad hoc* chamber, in which case the composition of the chamber will be determined by the Tribunal with the approval of the parties. He quoted what President Wolfrum had said of the many advantages of *ad hoc* chambers in his Statement before the 61st Session of the General Assembly on 8 March 2006.

[5] Paragraph 24, A/RES/61/222.

> "The system of *ad hoc* special chambers, which was used for the first time by Chile and the European Community, is a flexible mechanism that combines the advantages of a permanent court with those of an arbitral body. The parties have control over the chamber's composition, as they may choose any of the 21 judges who are to sit in the chamber and may also appoint judges *ad hoc* if the chamber does not include a member of the nationality of the parties. Under the Statute, a judgment given by any of the chambers is considered as rendered by the Tribunal. A further advantage is that the parties have at their disposal the Rules of the Tribunal, which allow the case to be processed swiftly. The parties have a certain degree of flexibility in that they may propose modifications or additions to the Rules. Interested delegations will find detailed information on the Tribunal's proceedings and its special chambers in the *Guide to proceedings before the Tribunal.*"

25. The Tribunal, at its twenty-second and twenty-third sessions, dealt with a number of legal matters that had a bearing on its judicial work. One of the issues considered by the Tribunal concerned the competence of the Tribunal in disputes on maritime delimitation. Article 288 of the Convention confers jurisdiction on the Tribunal, as well as the ICJ or an arbitral tribunal, to deal with any dispute concerning the interpretation or application of the Convention. Therefore, disputes relating to maritime boundaries are considered disputes concerning the interpretation or application of the Convention.

26. The Tribunal had noted that its jurisdiction over maritime delimitation disputes also included those, which involve issues of land or islands. In his Statement before the 61st Session of the General Assembly, President Wolfrum had stated that:

> "This approach is in line with the principle of effectiveness and enables the adjudicative body in question to truly fulfil its function. Maritime boundaries cannot be determined in isolation without reference to territory. Moreover, several provisions of the Convention deal with issues of sovereignty and the inter-relation between land and sea. Accordingly, issues of sovereignty or other rights over continental or insular land territory, which are closely linked or ancillary to maritime delimitation, concern the interpretation or application of the Convention and therefore fall within its scope".

27. The expenses relating to the functioning of the Tribunal were covered by the contributions of the States Parties. Therefore, submitting a case to the Tribunal would not require the payment of court or any administrative fees. The Parties to the case had only to bear the expenses relating to counsel and advocates, together with the accommodation expenses during their stay in Hamburg for the hearing.

28. A trust fund was set up in 2000 in order to assist developing States, which were Parties to a case before the Tribunal with respect to expenses. The fund is administered by the United

Nations Division on Ocean Affairs and the Law of the Sea (DOALOS). In 2005, the Fund awarded US $20,000 to Guinea-Bissau to defray expenses related in the *Juno Trader Case* (St. Vincent and the Grenadines v. Guinea-Bissau).[6] As of 31 December 2006, the balance of the fund stood at US $85,869.[7]

29. Judge Hoffman informed the Members States of AALCO regarding the regional workshops on the role of the Tribunal in the settlement of disputes under the Convention. So far, the Tribunal had organized four workshops. The first workshop took place in Dakar, Senegal from 31 October to 2 November 2006. It was attended by representatives of government ministries of 13 Western African States. The second workshop was held in Kingston, Jamaica from 16 to 18 April 2007 and was attended by government representatives of 19 Latin American and Caribbean States.

30. A joint workshop was also organized by the Gabonese authorities and the Intergovernmental Oceanographic Commission of UNESCO in conjunction with the Meeting of the Advisory Board of Experts on the Law of the Sea (ABELOS) in Libreville on 26 and 27 March 2007. It was attended by representatives of 17 States that participated in the meeting of ABELOS.

31. The fourth workshop was held in Singapore from 29 to 31 May 2007. The Singapore Workshop was attended by representatives of 17 States from the Northeast, Southeast and South Asia. In his statement at the opening of the Singapore Workshop, Deputy Prime Minister S Jayakumar encouraged States to turn to the Tribunal in settling disputes related to the Law of the Sea. Singapore, as you know, was the respondent State in a provisional measures case concerning land reclamation in the Straits of Johor brought by Malaysia to the Tribunal. Singapore and Malaysia subsequently resolved the dispute. Singapore has acknowledged the role played by third-party institutions, including the Tribunal, in resolving the dispute with Malaysia.

32. He also informed that the Tribunal recently entered into an agreement with the Nippon Foundation of Japan, to organize a training programme on dispute settlement under the Convention. The programme had been developed to offer young government officials and researchers working in the field of the Law of the Sea in-depth knowledge of the dispute-settlement mechanisms available to States under Part XV of UNCLOS.

33. Five participants had been selected to join the 2007-2008 programme, which will last for 8 months from July 2007 to March 2008. Lectures, case studies, and training exercises will enable participants to acquire a deeper understanding and practical experience of the dispute-settlement mechanisms under the Convention. Study visits will be made to organizations dealing with Law of the Sea matters. Lectures will be given on Law of the Sea issues, fisheries, marine environment, climate change, maritime delimitation, and the international seabed area. He encouraged, in particular, AALCO's Center for Research and Training to take note of that training programme and of the deadlines for application. This year's application process had been completed.

[6] Paragraph 55, A/60/63 of 4 March 2005.
[7] Paragraph 358, A/62/66 of 12 March 2007

34. In conclusion, he reiterated his gratitude to AALCO for its invitation to the Tribunal to participate as an observer and for granting him the opportunity to address the Organization on matters concerning the Tribunal.

35. The **Delegate of Japan** stated that his delegation greatly appreciated the efforts of the Secretariat in preparing a useful document on the subject of the Law of the Sea. He noted the significant contribution in the field of codification of the Law of the Sea over the years. It was therefore most fitting that the question of law of sea had been taken up as one of the main deliberative items in Annual Sessions. He mentioned that his country had actively participated in the Meeting of Experts by way of sending Prof. Kanehara, competent scholar as a Panellist. The meeting proved very fruitful with stimulating discussions.

36. Referring to the question of maritime delimitation, he stated that it constituted one of the most important themes in the Law of the Sea. However, the UN Convention of the Law of the Sea did not provide clearly enough for the methods of delimitation of maritime boundaries between the States. It stipulated that to achieve an equitable solution, the delimitation should be effected by agreement on the basis of international law. For this reason, it was important to see the methods actually applied in the international judgements over such cases. Over 20 years, the method of delimitation of maritime boundaries between opposite states, the coastlines of which were less than 400 nautical miles apart, has been: (1) to draw a provisional delimitation line of equidistance between the coast lines of the two states facing each other, and, then, (2) to consider whether there exist any factors which warrant modification of that provisional equidistance delimitation line. This method had been adopted all along in the past international judgments from the1985 ICJ Judgment on the *Case concerning the Continental Shelf* (Libyan Arab Jamahiriya vs. Malta) up to most recent 2006 Award of the Arbitral Tribunal on the Maritime delimitation between Barbados and Trinidad and Tobago. The increasing application of such method of maritime delimitation in actual cases would be significant in bringing about further legal stability and foresee ability in the law of sea and provide guidelines for negotiations over maritime boundaries.

37. The Delegate observed that it was only natural that in the field of Law of the Sea, not only on maritime delimitation but also on other issues, differences of views or disputes arose between states from time to time. The UNCLOS had provisions for detailed and effective means and procedures for dispute settlement. Their most important feature was that they provided for compulsory judicial procedures for settlement. His delegation believed that the rule of law should be further strengthened in the international community as Foreign Minister Aso had been stressing it as one of the pillars of foreign policy and the utilization of dispute settlement procedures, prepared in UNCLOS would certainly serve that purpose.

38. The **Delegate of the People's Republic of China** extended his delegations' appreciation to the Secretariat for the comprehensive report on the topic. He observed that with the development of science and technology, and further exploration of the oceans by mankind, capability of nations to utilize and protect the

oceans is growing, but new issues and challenges were also emerging. The protection of marine environment and marine biodiversity beyond areas of national jurisdiction were focus of attention of the international community. His delegation believed that it was necessary to take comprehensive, science-based approaches, such as "ecosystem approaches", to better manage human activities affecting marine environment and marine ecosystem. They also believed that relevant measures should be agreed upon within the framework of the UNCLOS and other relevant international conventions, and full consideration should be given to existing regimes governing the use of the high seas and the international seabed. Balance should be reached between conservation and sustainable use of the oceans and seas.

39. The Delegate stressed that the sustainable development of ocean resources was important for ensuring food security, alleviating poverty, promoting economic growth and preserving social stability in all countries, especially developing countries. For developing countries, development was not merely a question of capacity-building, but also one of the fundamental objectives of the regime of the Law of the Sea and marine order. That should be the starting point of the understanding of the development issue as well as the special interests and needs of developing countries as emphasized in the Preamble to the Convention.

40. As for the international seabed area and its resources, which was the common heritage of mankind, all States, coastal and landlocked alike, should benefit from it. The Authority was currently developing rules and regulations on seabed mining, which would have a long-term impact on the system of deep seabed mining, including the potential proceeds from such activities. The effective functioning of the Authority called for efforts of the international community as a whole. His delegation hoped that all member States of the Authority paid greater attention to it, actively attend its annual sessions and participate fully in its work.

41. The work of the Commission on the Limits of the Continental Shelf was relevant not only to the delimitation by coastal States of the outer limits of the continental shelf beyond 200 nautical miles, but also to the delimitation of the international seabed. Therefore, it was of great significance to explore the resources of the Area as the common heritage of mankind. Their delegation had noted the heavy workload and the financial situation of the Commission at present. The international community should work together to ensure continued high level professionalism and effective functioning of the commission.

42. The Delegate observed that a major goal that the Convention sought to achieve was to facilitate marine navigation. The regime established by the Convention for governing the transit passage through straits for international navigation was important for ensuring freedom of navigation at sea and should be complied with by all States. They hoped that the regime of the Convention would be preserved. Laws and regulations promulgated by any coastal State to protect marine and coastal environment should be consistent with the Convention and relevant international law, and should not undermine the principle of freedom of navigation at sea.

43. Cooperation at all levels, global and regional, bilateral and multilateral, was vital to effectively preventing and combating threats to maritime security such as piracy and armed robbery. Asian countries have moved forward in this area. The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia formally entered into force on 4 September 2006. The Information Sharing Center was launched accordingly. Other important examples of international cooperation included the Jakarta and Kuala Lumpur Statements.

44. The Delegate emphasized that they would continue to work together with all other States, to promote the development of the Law of the Sea, and advance peace, justice and harmony of mankind.

45. The **Delegate of the Islamic Republic of Iran** confirmed the consideration of the developments and issues relating to ocean affairs and the Law of the Sea. One of the main issues in the recent years was the legal regime of "marine genetic resources". His delegation welcomed consideration of "marine genetic resources" at international levels and emphasized that adequate attention must be paid to the main issues, including socio-economic implications deriving from the use of marine genetic resources; dissemination of marine scientific research; transfer of technology; incentives for sustainable use of marine genetic resources; and capacity building needs of the developing countries.

46. It was considerable to draw distinction between the "marine genetic resources" located within national jurisdiction and the "marine genetic resources" located beyond national jurisdiction. The legal regime applicable to those resources within national jurisdiction was clearly regulated by UNCLOS through the recognition of coastal States' rights and prerogatives necessary for the exploration, management and exploitation of the resources.

47. The resources located beyond national jurisdiction, including the marine genetic resources, were a part of the "common heritage of mankind". With regards to those activities undertaken beyond national jurisdiction, the delegation stressed the conformity of those activities with international law.

48. Further, in the context of sustainable development, their delegation reminded that states whose nationals exploited marine resources were obliged to cooperate in accordance with principles of international law, especially the principle of equal sovereignty of states. It was important to highlight the need for transfer of technology and additional financial resources to facilitate and guarantee the adequate participation of developing countries in processes relating to Oceans and the Law of the Sea.

49. The **Delegate of Malaysia** thanked the Secretariat of the AALCO for the Secretariat Report on the Law of the Sea. Indeed the said Report provided an excellent and timely opportunity for discussions on the developments undertaken thus far in the area of the Law of the Sea since the entry into force of the United Nations Convention on the Law of the Sea 1982 (UNCLOS) more than a decade ago.

50. With regard to the development of legal principles for the preservation

and protection of marine environment, as mentioned in the General Statement, it was duly noted that Part XII of the United Nations on the Convention on the Law of the Sea 1982 (UNCLOS) provides the framework for such preservation and protection of marine environment. For areas beyond the national jurisdiction, as provided, *inter alia*, under Articles 211, 216, 217, 218, 219 and 222 of Part XII of UNCLOS, the preservation and protection of the marine environment were imposed on the flag States. This was in cognizance of the fact that under Article 94(1) of UNCLOS *"every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag"*.

51. The Delegate stated that under Part XII, the flag State was bound to take appropriate measures to implement the requirements of international rules and standards for navigation, including those concerned with the design, construction, equipment and manning of vessels as well as to provide for their effective enforcement regardless of where the violation occurred. These international rules and standards include the International Convention for the Prevention of Pollution from Ships (MARPOL) which was adopted under the auspices of the International Maritime Organization (IMO) in 1973, the Protocol to MARPOL adopted in 1978 and the Convention on the Safety of Life at Sea, 1974 (SOLAS). It should be noted, however, as provided under Article 236 of UNCLOS, the provisions of Part XII do not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service.

52. In view of the fact that UNCLOS contained only basic, general principles on the protection and preservation of marine environment, the provisions under Part XII of UNCLOS further emphasized the importance of cooperation between States on a global and regional basis be it directly or through the competent international organizations in formulating and elaborating international rules, standards and recommended practices and procedures consistent with UNCLOS. In this regard, Article 237 of UNCLOS also provided that the provisions of Part XII were without prejudice to the specific obligations assumed by states under special conventions and agreements concluded previously and to agreements which may be concluded in furtherance of the general principles set forth in UNCLOS.

53. By virtue of the above provisions, the principle of sustainable development had often been considered an important part of the protection and preservation of marine environment. Chapter 17 of Agenda 21, adopted in 1992 at the United Nations Conference on Environment and Development, remains the fundamental programme of action for achieving sustainable development in respect of oceans and seas. A large number of activities at the global, interregional, regional, sub-regional and national levels are being fostered and implemented by international organizations and national bodies, promoting, for example, safety of navigation, sustainable development of marine resources, conservation and sustainable use of marine and coastal biodiversity, protection and preservation of the marine environment, and better scientific understanding of the oceans and seas, their resources and their interactions

with the earth's ecosystem. Sustainable ocean development cannot be implemented without UNCLOS, which provided the necessary jurisdictional framework, the enforcement power and the dispute settlement system.

54. Chapter 17 of Agenda 21 is entitled *"Protection of oceans, all kind of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources"* and sets out program objectives for the sustainable development of the marine environment, including coastal areas, the oceans and the seas. It calls for an integrated approach in the management and sustainable development of these resources and relies on the provisions in UNCLOS to guide this development.

55. Referring to his country's position, the Delegate informed that Malaysia had adopted Agenda 21 and strongly supported the implementation of the Programme of Action on Chapter 17. Chapter 17 of Agenda 21 fosters the implementation of a large number of activities from the global to national levels by international organizations and national bodies promoting, among others -

- Safety of navigation
- Sustainable development of marine resources
- Conservation and sustainable use of marine and coastal biodiversity
- Protection and preservation of the marine environment
- Better scientific understanding of the oceans and seas, their resources and their interactions with the earth's ecosystem

56. Paragraph 17.2 of Agenda 21 provided that the implementation by developing countries of the activities specified in the Work Programme under Chapter 17 shall commensurate with their individual technological and financial capacities and priorities in allocating resources for development needs and ultimately depends on the technology transfer and financial resources and made available to them.

57. The Delegate emphasized that regional efforts played an important role in the implementation of and compliance to this effect. To that effect, his country realizes the lack of regional legal instruments regulating the conservation of coastal and marine environment in the ASEAN region. Although several environmental programs, projects and initiatives had been implemented in the region, those were of limited success. Better co-ordination of conservation measures undertaken within the region, which were surrounded by shared seas, such as the South China Sea, would be beneficial to ASEAN. As such, there was a need to protect and preserve the coastal and marine environment via harmonized and collective action in the form of a legally binding instrument, like a treaty or convention.

58. Malaysia had taken the initiative to develop a common stand within the ASEAN region to conserve the coastal and marine environment in the form of a binding legal instrument. A study on various international conventions, programmes as well as initiatives were undertaken by a team of the officers of the International Affairs Division of the Attorney General's Chambers of Malaysia in December 2004. After a series of

internal discussions, the *Proposal Paper on the ASEAN Agreement on the Conservation of Coastal and Marine Environment* was completed and subsequently an Executive Summary of the Proposal Paper was presented by the Honourable Solicitor General of Malaysia at the ASEAN Senior Law Officials Meeting (ASLOM) which was held from 29 – 30 January 2007 in Siam Reap, Cambodia.

59. Due to the complexity of the issues arising from the proposal, such as issues of sovereignty, sharing of resources and assessing the readiness and capacity of the ASEAN member countries to undertake and implement the obligations as provided in the proposed ASEAN Agreement, Malaysia had suggested at ASLOM, subject to the availability of time and resources, for a forum to be convened to enable a more comprehensive educative process and exchange of views to take place.

60. The conduct of marine scientific research would further assist the coastal States in their obligation to preserve and protect the marine environment. Marine scientific research was provided under Part XIII of UNCLOS. The most important provisions under Part XIII are those related to marine scientific research in the exclusive economic zone (EEZ) and continental shelf i.e. Articles 246 to 255. Under Article 246(1) of UNCLOS coastal States have the right to regulate, authorize and conduct marine scientific research in their EEZ and continental shelf.

61. The Delegate stressed that accordingly, the consent of the coastal States was required before marine scientific research could be conducted in their EEZ. In that respect, even though Article 58 of UNCLOS provided for freedom of navigation in the EEZ of a foreign coastal State, ships were not allowed to engage in activities that were likely to compromise the coastal State's interest relating to marine scientific research.

62. Such restrictions were due to the fact that marine scientific research was concerned with the physical, chemical, biological, geological and other features of the oceans. As such, the collection and evaluation of data relating to marine scientific research were considered as information concerning resources or marine environment that would inevitably allude to the presence and quality of resources. As a result, the exploitation and exploration of these resources would be inevitable. In this regard, coastal States with less sophisticated scientific knowledge and technology may loose out.

63. In addition to Articles 248 and 249 of Part XIII, Article 246(8) went on to provide that marine scientific research shall not unjustifiably interfere with activities undertaken by coastal States. In this regard, Article 253 of Part XIII gives the coastal State the right to suspend or cease a research project if conditions or requirements laid down by the coastal State are not satisfied.

64. By virtue of Article 253 it would seem that coastal States had the competence to board vessels for the purpose of ensuring that the requirements laid down are complied with before suspension or cessation is ordered. Since arrest or detentions were not envisaged under Article 253, the coastal State was not entitled to seize any property on board the vessels. So as not to become subject to claims for damages under international law, the coastal State could reserve the

right of inspection as a prerequisite for its consent for the marine scientific research to be conducted. The placement of observers on board the vessel, as permitted under Article 249(1), was another way that a coastal State would be able to counter the problem of claims for damages under international law.

65. In this regard, UNCLOS provided a framework within which a State could conduct marine scientific research in the EEZ of a foreign coastal State while at the same time the freedom of navigation was preserved.

66. The Delegate hoped that in the years ahead, efforts to cooperate in ensuring the preservation and protection of marine environment would be up to the world community as a whole building upon the principles of international law in particular UNCLOS.

67. The cooperation with regard to maritime safety and security were usually guided by international instruments such as the United Nations Convention on the Law of the Sea 1982 (UNCLOS) and International Maritime Organization (IMO) Conventions. As regards to maritime safety and security, the Delegate informed that he had emphasised in his General Statement about the importance of the ISPS Code. In this respect, even though Malaysia has ratified SOLAS, domestically the law relating to ISPS Code had yet to be in placed since the Bill was currently being tabled in Parliament. As such Malaysia has administratively implemented the ISPS Code.

68. Another initiative being undertaken is the one being led by the United States, that is, the Proliferation Security Initiative (PSI). The PSI establishes a coalition of countries that will impede and stop shipments of weapons of mass destructions and related materials flowing to and from States and non-States actors of proliferation concern. Currently, there are 16 participating countries to the PSI, namely; Australia, Canada, Denmark, France, Germany, Italy, Japan, the Netherlands, Poland, Portugal, Singapore, Spain, United Kingdom, United States and Turkey.

69. In the Malaysian context, he mentioned that the maritime safety and security of the Straits of Malacca and Singapore were the primary concerns of the littoral States bordering these straits. The Straits of Malacca and Singapore were straits used for international navigation. As such Part III of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) was applicable to the Straits of Malacca and Singapore.

70. Article 38(1) of Part III of UNCLOS provided that, in straits used for international navigation, all ships and aircraft enjoy the right of transit passage. Article 38(2) of Part III of UNCLOS went on to provide that transit passage is the unimpeded exercise of the freedom of navigation and over flight solely for the purpose of continuous and expeditious transit of the strait.

71. Article 39(2) further provides that while in transit ships must comply with generally accepted international regulations, procedures and practices for safety at sea and the prevention of pollution. The same went for aircraft as provided under Article 39(3). With regards to ships, the generally accepted international regulations include the 1972 Convention on the International Regulations for Preventing Collisions at Sea (COLREG), the International

Convention for the Prevention of Pollution from Ships (MARPOL) and its Protocol, SOLAS and the 1978 International Convention on Standards of Training, Certification and Watch keeping for Seafarers (STCW).

72. Whereas, as for States bordering the straits, Article 42 of Part III of UNCLOS provides that such States may adopt laws and regulations in respect of, *inter alia*, the safety of navigation and the regulation of maritime traffic; and the prevention, reduction and control of pollution, by giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the strait.

73. Even though, Part III of UNCLOS does not specifically impose any duty on foreign ships and aircraft engaged in transit passage to obey the national laws of the coastal State bordering the strait, Article 34 of Part III of UNCLOS does provide that the regime of passage through straits used for international navigation established in Part III shall not in other respects affect the legal status of waters forming such straits or the exercise by the States bordering the straits of their sovereignty or jurisdiction over such waters and their air space, bed and subsoil.

74. To that extent, Article 233 of UNCLOS provided that *"[n]othing in sections 5, 6 and 7 [of Part XII} affects the legal regime of straits used for international navigation. However, if a foreign ship other than those referred to in section 10 [of Part XII] has committed a violation of the laws and regulations referred to in article 42 paragraph 1 (a) and (b), causing or threatening major damage to the marine environment of the straits, the States bordering the straits may take appropriate enforcement measures and if so shall respect mutatis mutandis the provisions of [section 7 of Part XII]"*.

75. The Delegate noted that the above provisions duly ensured that the interests of the coastal States bordering the straits in protecting their marine and coastal environment and the right of passage in straits used for international navigation are balanced without imposing unreasonable burden on ships and aircrafts transiting the straits.

76. With regards to the Straits of Malacca and Singapore, his country, together with Indonesia and Singapore held consultations during UNCLOS III in 1982 with delegations of States that were major users of the straits. The outcome of these deliberations was an Interpretative Statement on Article 233 of UNCLOS, officially recorded as UN Doc. A/CONF./62/L/145.[8]

[8] Interpretative Statement on Article 233 of UNCLOS, officially recorded as UN Doc. A/CONF./62/L/145 reads as follow:

"1.Laws and regulations enacted by States bordering the Straits under article 42, paragraph 1 (a) of the convention, refer to laws and regulations relating to traffic separation schemes, including the determination of under keel clearance for the Straits provided in article 41.

2. Accordingly, a violation of the provision of resolution A.375 (X), by the Inter-Governmental Maritime Consultative Organization adopted on 14 November 1977, whereby the vessels referred to therein shall allow for an under keel clearance of at least 3.5 metres during passage through the Straits of Malacca and Singapore, shall be deemed, in view of the peculiar geographic and traffic conditions of the Straits, to be a violation within the meaning of article 233. The States bordering the Straits may take appropriate enforcement measures, as provided for in article 233. Such measures may include preventing a vessel violating the required under keel clearance from proceeding. Such action shall not constitute denying, hampering, impairing or suspending the right of transit

77. To further ensure the safety of the Straits of Malacca and Singapore for international navigation, in 1971 his country together with Indonesia and Singapore initiated the establishment of the Tripartite Technical Experts Group (TTEG) Meeting on the Safety of Navigation in the Malacca and Singapore to implement preventive measures against the threat of marine pollution from maritime activities in the Straits of Malacca and Singapore.

78. The Delegate informed that the TTEG Meeting on Safety of Navigation comprises technical officials from the three littoral states and its discussions are aimed at enhancing safety of navigation in the Straits. Subjects covered include routeing of ships, traffic separation schemes, deep-water routes, hydrographic surveys of the Straits, aids to navigation, production of up-to-date navigational charts and verification of wrecks and shoals and their removal or marking as necessary.

79. The TTEG Meeting on Safety of Navigation had been able to make many achievements over the years. A direct result of this successful partnership was the implementation of the IMO's Traffic Separation Scheme in 1981, following the *Showa Maru* incident, to regulate and enhance overall navigational safety in the Straits as well as the recent development of the Marine Electronic Highway pilot project in 2005 to develop and establish a marine electronic highway system in the Straits of Malacca and Singapore for enhanced maritime services, improved navigational safety, integrated marine environment protection and sustainable development of the coastal and marine resources of the three littoral States of Indonesia, Malaysia and Singapore.

80. Due to the events of September 11, the TTEG is currently working towards organizing a series of familiarization meetings with major user states and other stakeholders to introduce them to its efforts in maintaining safety in the Straits, as well as on the new safety measures that it hopes to introduce in co-operation with stakeholders.

81. In this respect, at the IMO Jakarta Meeting held from 7 – 8 September 2005 which was organized in co-operation with the Governments of Indonesia,

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passage in breach of articles 42, paragraph 2 or 44 of the draft convention.

3. States bordering the Straits may take appropriate enforcement measures, in accordance with article 233, against vessels violating the laws and regulations referred to in article 42, paragraph 1 (a) and (b) causing or threatening major damage to the marine environment of the Straits.

4. States bordering the Straits, shall, in taking the enforcement measures, observe the provisions on safeguards in Section 7, Part XII of the draft convention.

5. Article 42 and 233 do not affect the rights and obligations of States bordering the Straits regarding appropriate enforcement measures with respect to vessels in the Straits not in transit passage.

6. Nothing in the above understanding is intended to impair:

(a) The sovereign immunity of ships and the provisions of article 236 as well as the international responsibility of the flag State in accordance with paragraph 5 of article 42;

(b) the duty of the flag State to take appropriate measures to ensure that its ships comply with article 39, without prejudice to the rights of States bordering the Straits under Parts III and XII of the draft convention and the provisions of paragraphs 1, 2, 3 and 4 of this statement."

Malaysia and Singapore, it was agreed that the work of the TTEG on Safety of Navigation in enhancing the safety of navigation and in protecting the marine environment in the Straits, including the efforts of the TTEG in relation to the implementation of article 43 of the United Nations Convention on the Law of the Sea 1982 in the Straits of Malacca and Singapore should continue to be supported and encouraged.

82. It was further agreed at the IMO Jakarta Meeting that a co-operative mechanism be established by the three littoral States i.e. Malaysia, Indonesia and Singapore to meet on a regular basis with user States, the shipping industry and others with an interest in the safe navigation through the Straits of Malacca and Singapore to discuss issues relating to the safety, security and environmental protection of the Straits of Malacca and Singapore, as well as to facilitate cooperation in keeping the Straits safe and open to navigation, including exploring the possible options for burden sharing.

83. At the IMO Kuala Lumpur Meeting, which was held from 18 – 20 September 2006, the proposed co-operative mechanism was further discussed by the three littoral States. The proposed co-operative mechanism was finalized by the three littoral States at the 31st TTEG Meeting, which was held in Singapore. With the establishment of the co-operative mechanism a forum for open dialogues and discussions would be formed under the TTEG, which would focus on matters pertaining to safety of navigation and environmental protection in the Straits. The forum would allow for the participation of user States and other interested parties with an interest to contribute in the maintenance of safety of navigation and marine environmental protection in the Straits of Malacca and Singapore. The Delegate hoped that the co-operative mechanism initiated by the littoral States would further enhance the safety of international navigation in the Straits.

84. Moving on further, the delegate drew attention to the increasing workload of the Commission on the Limits of the Continental Shelf, and informed that it was duly noted that at the point of the conception of the Commission it was only estimated that there would be 33 submissions. Now it was projected that at least 65 submissions would be presented to the Commission before the 13 May 2009 deadline.

85. The increasing workload of the Commission had been discussed since the 15th session of the Meeting of the State Parties to the United Nations Convention on the Law of the Sea. The increasing workload was further saddled by the constraints of time and funding.

86. In view of the fact that the Commission had an essential role in the process of establishing the outer limits of the continental shelf, increasing the manpower and resources would be necessary to meet the increasing workload. In that respect, the contributions by States to the voluntary trust fund established by the Secretary-General, which financed the participation of members of the Commission from developing States, are welcomed and appreciated.

87. Apart from the above, the establishment of three GIS laboratories equipped with adequate hardware and software by the Secretariat has greatly assisted the Commission in carrying out its work.

88. The Delegation was well aware that a well-prepared submission would further assist the Commission in its work. However, States, especially that of developing States, faced insurmountable difficulties in obtaining the necessary data due to limited budget and lack of technical, financial and scientific resources. In view of this many States had completed their desktop studies on their own based on existing data and information which may lack scientific accuracy. This could be disadvantageous to the States concerned since such data and information may be insufficient and incorrect.

89. In view of the fast approaching deadline for submission, States concerned should co-operate together and consider undertaking joint survey in gathering the necessary data and information.

90. Such an undertaking would enable States, which have the necessary expertise and resources to take the lead whilst at the same time it would ensure that no State would be left behind in meeting the deadline for the submission.

91. States concerned should seriously consider such co-operation since Article 76(10) of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) explicitly provides that the provisions relating to the establishment of the outer limits of the continental shelf under Article 76 are without prejudice to the delimitation between States. As such Article 76 is not concerned with the delimitation of overlapping claims between States. In fact Article 76 guarantees the rights of the States concerned in cases where the delimitation of the continental shelf are at issue.

92. The **Delegate of the Republic of Kenya** observed that most of the Member States of AALCO derived considerable part of their livelihood from the sea and its resources. So far, 155 countries had ratified the United Nations Convention on the Law of the Sea (UNCLOS). Out of the 155 State Parties to UNCLOS, Africa and Asia had 41 and 42 states respectively. This translated to a total of 47.6% of the total percentage of members to UNCLOS. He stated that his country ratified UNCLOS in 1989.

93. Under the NEPAD Shared Action Programme, his Government had taken the lead in championing Africa's voice on Ocean and Marine issues at the United Nations. Under UNCLOS, States were required to have established their continental shelf ten years after ratification. The deadline was extended to the year 2009 and like most States, Kenya had approximately 22 months to make submission to the Commission on the Limits of the Continental Shelf under UNCLOS. In this regard, Kenya established a Task Force in the year 2005 to delineate the outer continental shelf and to formulate an integrated ocean management policy. The Task Force had already completed preparation of the Desk Top Study and had taken steps to initiate the acquisition of the relevant data required for determining the outer limit of Kenya's continental shelf.

94. The Delegate emphasized that the implementation of Article 76 of

UNCLOS continued to pose serious financial and technical challenges to the coastal developing states. The circumstances that defined whether a coastal State could extend its jurisdiction beyond 200 nautical miles was based on a complex set of rules that involved the analysis of the depth and shape of the seafloor, as well as the thickness of the underlying sediment. Thus the proper implementation of Article 76 required the collection, assembly, and analysis of a body of relevant hydrographic, geologic, and geophysical data in accordance with the provisions outlined in the Scientific and Technical Guidelines. The complexity, scale and the costs involved in such programmes, though varying from State to State according to the different geographical and geophysical circumstances required enormous amounts of resources.

95. The provisions in Article 4 of Annex II to the Convention provided for the ten-year time limit for the submission on the extended continental shelf by States. States Parties made a decision that the deadline be kept under review.

96. It was fundamental to safeguard the rights of developing coastal states over their continental shelves beyond 200 nautical miles. To that end and in view of the difficulties experienced in the preparation of submissions, States Parties should undertake constant review of the ability of States to meet the deadline and make necessary recommendations. These recommendations could include putting in place modalities for acceptance by the Commission on the Limits of the Continental Shelf of late submissions on a "case-by-case" basis or in the alternative a general extension for the developing coastal States be considered.

97. However in order not to be time barred, states should expedite the work in this regard. Submission of Desk Top Study is sufficient for stopping the clock with regard to the submission deadline even as states work on the data required. While the important work being carried out by the Commission on the Limits of the Continental Shelf was appreciated, the report of the Chairman of the Commission to the just concluded seventeenth meeting of States Parties to UNCLOS indicated that due to the constantly increasing work load of the Commission, it required more resources in terms of time and finances.

98. The Delegate informed that the Commission Chairman, Mr. Peter Croker informed the seventeenth meeting of State Parties to UNCLOS that there were about 65 states with extended continental shelves as of 2005, up from 33 in 1978. Africa is the main growth area. In a rush to beat the deadline for submissions, states are making more submissions that are overwhelming the seven-member Commission.

99. At the current rate the Commission processed 2 submissions per year since it meets 10 weeks per year. It meant processing 65 submissions at the current rate would be finished in 2035 which was unacceptable to coastal states that need to exploit the resources in their extended continental shelves. In these circumstances, it would become burdensome for nominating member States to support members of the Commission as required under paragraph 5 Article 2 of Annex II to the Convention. However, due to the

impending deadline, submissions from States are queued in the order they are received.

100. The proposal that members of the Commission receive emoluments and expenses while performing Commission duties concerning the consideration of submissions made by coastal states on the outer limits of their continental shelf should be considered. Such emoluments and expenses may be defrayed through modalities agreed by States including through the regular budget of the United Nations.

101. The Delegate emphasized that the need for capacity building and technology transfer for the benefit of developing countries was important. There was a need for the sharing among all States of knowledge from research programmes, including the availability and maintenance of data, samples and research findings. The Division of Ocean Affairs and Law of the Sea (DOALOS) and other UN agencies had in the past undertaken training and sensitization campaigns. He called upon the AALCO to continue working with these organizations on targeted approaches for maximum return.

102. The Delegate informed that while a Trust Fund was established to assist developing coastal States to comply with the requirements relating to submissions to the Commission, he believed that the objective was not being achieved. This was because, among others, States were required to expend resources first and thereafter seek reimbursement from the Trust Fund. The reason a State would apply to the Fund is because it does not have the funds. This therefore defeated the purpose for which the Fund was established.

103. In order to achieve the objectives of the Trust Fund, there was need to review the Rules of the Fund to make it easier for developing coastal states to access the funds. The most complex and expensive part in the preparation of a submission was the data acquisition, yet this component was not supported under the Trust Fund. The Delegate urged the State Parties to explore the possibility of expanding the scope of the Trust Fund to cover this component and to encourage and promote cooperation in data sharing between Member States in the spirit of Article 244 of the Convention.

104. The work of Informal Consultative Process on marine genetic resources was critical in the preservation and protection of marine environment. Due to the usefulness of the informal process the future session should focus on other related topics. His delegation supported the expanded role of the meeting of the States Parties to UNCLOS. They believed the deliberations of meetings of state parties should not be limited to budgetary and administrative issues. They found it useful that this being the supreme organ under UNCLOS it should continue to discuss substantive issues concerning the implementation of the Convention.

105. The Delegate observed that out of the 155 State Parties to UNCLOS, Africa and Asia were 41 and 42 states respectively. This represented 23.8% each for the total percentage of members to UNCLOS. Based on the principle of proportional equitable geographical representation enshrined in the Convention, the Asian-African Group were entitled to 5 permanent seats each to the two bodies with one extra seat rotating between them.

Although there was no consensus on the joint Asian-African proposal on this item during the just concluded seventeenth meeting of State Parties to UNCLOS, it should be noted that it was agreed that the agenda be in the next meeting of the States Parties. Member States of AALCO should continue pursuing the matter in order to achieve the representation equitable to the membership to UNCLOS.

106. The **Delegate of the Republic of Indonesia** stated 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. His delegation was therefore pleased to recognize that the number of State Parties to this Convention was significantly increasing. 155 States Parties to the UNCLOS represented considerable progress towards universality since the entry into force of the Convention on 16 November 1994.

107. The Delegate further observed that despite the achievements of the Convention, the international community faced challenges in the governance of ocean affairs such as the issue of maritime security, safety of navigation and marine environment particularly in straits used for international navigation.

108. The Delegate stated that the maritime security had always been a significant concern for his Government. However, any attempt to deal with threat to the maritime security should not prejudice international law, in particular the 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.

109. In this regard, his Government was of the view that maritime security had to be perceived both from the perspective of traditional and non traditional issues. Furthermore, 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 safety of navigation and environmental matters.

110. However, it was of the essence that any attempt dealing with threat to the maritime security should not prejudice international law, in particular the 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. Furthermore, his delegation would like to recommend that the annual formal meeting of the State Parties of the UNCLOS should be the appropriate forum for the discussion on all aspects related to the implementation of the Convention.

111. The Delegate stated that before the adoption of the 1982 Convention on the Law of the Sea, the right of navigation through straits, which are used for international navigation, had been recognized under customary international law as confirmed by International Court of Justice in 1949 and under international law as stipulated in the 1958 Territorial Sea Convention. Furthermore, the 1982 Convention had established a regime governing transit passage through straits used for international navigation which differed from the regime governing innocent passage through

territorial seas, as set forth in Article 34 concerning legal status of the straits used for international navigation and rights and duties of ships while exercising its right as prescribed in Article 38 and 39 of the Convention. The 1982 Convention had also regulated that states bordering straits might adopt laws and regulations to transit passage through straits as stated in Article 42.

112. With regard to the above mentioned, his country as one of the States bordering Straits of Malacca, the well known straits in the world used for international navigation, had responsibility under the provisions of the Convention on the Law of the Sea, to enhance the safety of navigation along the strait as well as maritime security and preservation of marine environment. Moreover, his Government had conducted various measures to enhance safety of navigation in the Straits among others by applying IMO standards regarding the Automatic Identification System to avoid further grounding or collision of ships and also increased the number of navigational aids such as lighthouses. Due to the increasing traffic of the ships in the Straits, his country recognized the need to further enhance the provisions of aids to navigation in order to avoid accidents. In this regard, assistance and contribution of user States in the form of technical assistance and capacity building to enhance these capabilities are welcome.

113. Under Article 43 of the 1982 Convention regarding cooperation to promote safety of navigation and environmental protection in the Straits used for international navigation, his Government was cooperating closely with other states, particularly with other states bordering the mentioned strait, to overcome the challenges posed by continuing transnational organized crime and threats to maritime safety and security. It was within this context that under Indonesian proposal, which had been approved by the 93rd Session of the International Maritime Organization Council, to convene an IMO-sponsored conference on the Straits of Malacca and Singapore to consider ways and means not only to enhance security but also safety and environmental protection therein.

114. The said meeting which was convened by the three coastal states, namely, the Governments of the Republic of Indonesia, Malaysia and the Republic of Singapore, in cooperation with International Maritime Organization, took place in Batam in August 2005, followed by the meeting in Jakarta in September 2005, and Kuala Lumpur in September 2006. During those meetings which entitled "Meeting on the Straits of Malacca and Singapore: Enhancing Safety, Security and Environmental Protection", the three Governments have reached an agreement, among others, on the principle of "burden sharing" which welcomed the assistance of the user states, relevant international agencies and the shipping community in the area of capacity building, training, technology transfer, and other forms of assistance in accordance with the 1982 Convention.

115. In relation to the preservation and the management of shared stocks and straddling and highly migratory fish stocks with reference of sustainable development, the Delegate said that it was essential that international community continuously encourage for the improvement of the implementation, supervision, and development of the specific conditions

for the developing countries. In addition, it was necessary to share obligations and rights between the coastal states and long distance water fishing nations in the implementation of the conservation of shared stocks and straddling and highly migratory fish stocks.

116. In view of the ecosystem approach in the management and conservation of ocean resources, the importance of giving consideration to the state sovereignty and sovereign rights of coastal states, should be reaffirmed, particularly the developing coastal states as acknowledged by the legal principles of international law and international customary law. It was also important to find mutual understanding among states on the definition of ecosystem approach to avoid different perception on that issue between developed countries and developing countries. This would ensure the balance of interest among states.

117. The Delegate informed that Indonesia has and would continue to implement the Convention through the adoption of the relevant provisions of the Convention, including their administrative arrangement. Furthermore, it believed that their discussion on the Law of the Sea in AALCO forum would lead to fruitful outcomes for the benefit of Asian-African countries.

118. The **Delegate of the Arab Republic of Egypt**[9] observed that his country followed very carefully the developments on the very important topic of the Law of the Sea. It had very actively participated in the Third United Nations Conference on the Law of the Sea (UNCLOS III) that after several years of hard work adopted the UN Convention on the Law of the Sea. After the entry into force, and the subsequent establishment of institutions under the Convention, namely the ISA, CLCS, and ITLOS, it had been taking keen interest in the work of these bodies. As regards, maritime delimitation, it was holding talks with Cyprus and Saudi Arabia.

119. The Delegate underscored the importance of the UN General Assembly mandated Informal Consultative Process and said that the consideration of the topic of "marine genetic resources" by the ICP was timely. He also underlined the importance of the sovereignty of coastal states over the resources of seabed and said that developing countries required scientific expertise and technology transfer for seabed mining.

120. The **Leader of Delegation of Bangladesh** said that the area beyond the national jurisdiction had been declared as the common heritage of mankind. Her delegation believed that resources in that area should be equitably distributed. All living marine resources should be protected and the present biodiversity in this area should be preserved. They attached special attention to the rising temperature of the sea water, which would have devastating effect on Bangladesh in future. In this respect, her country, believed that drastic action should be taken to reverse the trend of continuous degradation of the environment of that area and the capacity of the developing countries should be strengthened to deal with this challenging problem.

121. The Delegate stated that her country was concerned with the

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

increasing rate of crime committed in territorial waters and in high seas and felt that proper action should be taken to curb this crime. With this end in view, her country was an active member of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships (ReCAAP), which was the government-to-government agreement to enhance the security of regional waters.

122. On the issue of marine scientific research vis-à-vis freedom of navigation, her delegation felt that AALCO should make useful contribution to study this topic further as marine scientific research was a very important issue for all countries especially developing countries.

B. The Status and Treatment of Refugees

1. **Amb. Dr. Wafik Z. Kamil, Secretary-General** stated that it was his privilege and honour to introduce the item "The Status and Treatment of Refugees" contained in the Secretariat Document AALCO/46/CAPE TOWN SESSION/2007/S 3. While explaining the importance of the item he stated that it could be realized from the fact that the problem of refugees had found its way to the global policy agenda. He added that a major challenge for countries today was the management of complex flows of refugees, asylum seekers, economic migrants and others on the move in a manner that takes into account principles of human rights and humanitarian law.

2. While trying to explain away the shortcomings of the international refugee protection regime that was established at the end of the second world war, he noted that, though the UN Convention Relating to the Status of Refugees of 1951 and its 1967 Protocol constituted the fulcrum around which the refugee protection regime revolved, they were not envisaged to cover all the situations wherein refugees might be in need of protection. He added that large-scale and protracted refugee situation and the 'secondary movement of refugees' were some of the issues not adequately taken care of by the 1951 Convention and its 1967 Protocol. He added that these shortcomings were compounded by the practice of many States, especially in the era of post cold war, which not only interpreted the provisions of the 1951 Convention and its 1967 protocol in a very restrictive way, but also had embarked upon many restrictive mechanisms which included, visa requirements, carrier sanctions and safe third country rules to deny asylum seekers access to their territory.

3. He also observed that the ongoing nature of many refugee situations underscored the need for new approaches particularly in this region of the world, which had witnessed the tragic plight of millions of refugees. He added that in the North East Africa, there was a total displacement of people; the misery, starvation and poverty add another dimension to the refugee situation.

4. He was of the opinion that the question whether the 1951 Convention was capable of encompassing claims based on economic destitution or not, which was critical to the developing countries, required the identification of the conceptual and analytical challenges that 'mixed flows' present. He expressed hope that these issues would be deliberated elaborately by the delegates in the light of the

international and regional refugee protection regime.

5. While releasing the joint study undertaken by both AALCO and the UNHCR entitled; "Statelessness: An Overview from the African, Asian and Middle Eastern Perspective", he observed that, the study was conducted with a view to assist Member States in dealing with the problems of stateless persons found in their territories. He added that though the number of persons who were stateless remained uncertain, what was certain was they face innumerable hardships whether they are refugees or not, since they could not claim the protection of any state. He also emphasised that this study was only the first step in a 'series' of studies to be undertaken by both AALCO and UNHCR jointly, focusing on Africa and Middle East on a case study basis.

6. **The Delegate of Islamic Republic of Iran** while commenting on the way how his country has been dealing with refugees opined that despite its meagre economic resources and the absence of international assistance it had hosted a large number of refugees. Referring to the specific instances of mass influxes from Afghanistan and Iraq, he added that this had a negative impact on the society and its security situations. He further mentioned that such generosity had been recognised by the international community itself. He went on to add that the number of refugees living in Iran according to the latest re-registration plan (Amayesh-2), was over 920 thousand Afghan Refugees who were in desperate need of international assistance.

7. Dwelling on the way as to how the Islamic Republic of Iran dealt with Afghan refugees, he pointed out that the most preferred solution to the refugee problem, namely, voluntary repatriation, was tried and to that end a "Joint Repatriation Program between the Government of the Islamic Republic of Iran, the Government of Afghanistan and UNHCR for Voluntary Repatriation of Afghan Refugees and Displaced Persons" was signed in April 2002. Under this programme over 1.46 million Afghan refugees and displaced persons returned home from Iran, he added. He reiterated the need for international assistance in this regard.

8. While exploring the various solutions available to the refugees he opined that, voluntarily repatriation continued to be the most preferable durable solution to the plight of refugees. He cited the unprecedented number of refugees who voluntary repatriated to Afghanistan from Iran to substantiate his contention. He also added that his Country was firmly committed to the voluntary repatriation of refugees. Commenting on the role of UNHCR he stated that it should focus on its own mandate concerning refugees and its attention to the issue of IDPs should not distract it from dealing with the issue of refugees effectively.

9. Commenting on the situation of Iraqi refugees in Iran he stated that about 100,000 out of over 200,000 registered Iraqi refugees went back to their homeland and most of which took place spontaneously. He added that though voluntary repatriation remained the most preferred solution the importance of resettlement in third countries as a durable solution also should not be underestimated.

10. Commenting on the definitional aspects the term 'refugee' he stated that since it was primarily and

originally meant to take care of the situation of European refugees, the ambit of that term has to be expanded so as to incorporate the views and aspirations of the Asian and African States. He added that the OAU Convention Governing the Specific Aspects of Refugee Problems of 1969 and the Cartagena Declaration of Refugees of 1984 could be utilised in this regard. He further maintained that the principle of non-refoulement, which forms the cornerstone of the international refugee protection regime, should not be interpreted narrowly so as to prevent those at risk from having access to the territory.

11. Commenting on the need to have an international mechanism to assist those countries that are unable to host the burden of refugees on account of various reasons, he pointed out that the principle of burden sharing was of critical importance in this regard. He also added that the nature of refugee movements had undergone a significant change in the recent era and this made the principle of burden sharing all the more important.

12. The **Delegate of Tanzania** observed that his country was one of Africa's leading refugee receiving country and therefore a key actor in the global refugee regime. It had provided shelter and protection for refugees from a number of sending neighbourhood States that experienced wars and other forms of insecurity. From 1994 to 2002, Tanzania was providing shelter and protection for over a million refugees at each particular time.

13. The Delegate emphasized that the problem of Refugees was a global one. It believed that the problem of refugee ought to be adequately addressed. He pointed out that refuges had caused enormous problems in the host countries, including Tanzania. Therefore, any discussion about how best to treat refugees, one should not avoid looking at the negative impacts of refugees in some host States. As legal principles for the protection of refugees were evolved, some of the receiving States had to bear blame for actions or decision they took in addressing the problems of refugees. For example, the approach to participate in addressing problems in the sending States giving rise to the refugees followed by voluntary repatriation as per the laws of nations had sometimes been provided as forcible repatriation.

14. In order to highlight the magnitude of problems faced by his country to highlight the increased influx of refugees, he said it was pertinent to reflect at the history. In the 1960's to early 1980's the Government of Tanzania had practiced an 'Open Door' refugee policy, in that refugees were liberally admitted and were awarded magnanimous social-economic rights. They could be repatriated to their countries of origin after conditions improved and were conducive for their return. However, in the 1990's the open door policy was no longer feasible. Temporary protections were awarded to refugees and were to be voluntarily repatriated as soon as conditions in their countries stabilized. This was necessitated by negative impacts of refugees that escalated in the 1990s. Instead of allowing refugees to stay anywhere in the country, they were to be confined in 'safe zones'. This move was taken in order to mitigate the negative effects brought by the increased number of refugees. The negative impacts leading to the turn of policy could be summarized as follows:

15. Firstly, the influx of refugees in the 1990's resulted in the compromise of external and internal security. For example, Tanzania's relation with some of its neighbours was strained. Some of them for example repeatedly accused Tanzania of harbouring, training, and arming rebels. At first the Government responded by asserting its sovereignty and obligation to protect refugees on Tanzanian soil at whatever cost. But, later, it reviewed this position in order to build confidence in international relations and to avoid the possibility of a costly war with its neighbours.

16. Internal peace and security had been affected by the increase in heinous criminal activities such as murder, armed robbery and the use of arms and ammunition. The impact of these crimes on local population had been devastating, resulting in internal displacement of host populations, individuals, families, communities and even villages. Agricultural activities and other businesses for the subsistence of their people were disturbed resulting in tension between refugees and the host population.

17. Secondly, the increased number of refugees brought to bear to their country, pressure on the environment. There had occurred a serious deforestation, devegetation, soil degradation, and pollution of water sources and catchments areas, poaching, illegal fishing and overgrazing. Efforts by humanitarian organizations, and the Government, to try to mitigate these impacts by implementing environmental education, awareness and conservation programmes did not bear good results. The areas occupied by refugees had not and may never be the same again.

18. Thirdly, heavy influx of refugees in the early 1990's had an impact on physical and social infrastructure. This was compounded by the subsequent roll-off in international humanitarian agencies. Road bridges, airstrips and school buildings were destroyed, and social services such as education, health and water were severely strained.

19. Fourthly, increase in refugee population had an impact on local governance and administration. The administration of refugees' related issues, especially those related to security consumed up to 50% of local government officials' time and energy and the increase in population and crime had placed additional pressure on the police and the courts. It was understandable that Tanzania as a member to the 1951 Convention, had an obligation to ensure security of the refugees, but it must also be realized that the pressure resulting from those social disturbances negatively impacted on poor economies such as that of Tanzania.

20. Fifthly, there was also impact on socio-economic development. Internal insecurity resulted in loss of property, valuables and in some cases, life. The cultural norms and values of the locals were heavily affected as well.

21. All these matters made his country to reconsider its policies in order to address the problem of refugees in a sustainable manner. The Tanzanian Government believed that concerted efforts to find a solution to the refugees' problem should focus on addressing root causes for development. For that reason his country was in the forefront in supporting peace efforts in all the major neighbouring States life

Democratic Republic of Congo, Burundi and Rwanda.

22. The Delegate stated that it was in this background that his country strongly supported the revision of the 1951 UN Refugee Convention, in the light of the Bangkok Principles in order to establish 'safety zones' in the sending States where displaced persons and people in need of asylum could be resettled. Whereas the 2003, National Refugees Policy of Tanzania allowed asylum seekers to be admitted into their country for the first one year, it also provided that within that time efforts must be made to ensure they were taken back home where concerted efforts were made by involving all the concerned parties to restore peace, build confidence and to establish 'safety zones' for their resettlement.

23. The Delegate emphasized that this change of policy was done in good faith. Peace efforts, which had proved to be very successful in Rwanda, Burundi, and the DRC, were a clear sign of success of prompt peaceful resettlement. There was no justification for the continued stay in receiving country like Tanzania, of refugees from such States where efforts to resettle them were sustainable. These efforts could also address the challenge brought by illegal immigrants. There were strong rules against illegal immigrants all over the world. So their admissibility to the country should not be viewed in the right of the principle of *non-refoulement* as if such persons were refugees.

24. The Delegate emphasized that it ought to be remembered that had the principle of cost sharing been enforced appropriately in a manner that addressed all the foregoing concerns, a country could not be obliged to undertake a commitment, such as of hosting refugees single handedly, at the expense of its own subjects. Refugees, properly so-called, were not allowed to engage in criminal activities that disturbed the security of the host population that also created tension among the local population thereby rupturing their relationship with the host population. The increase in banditry, robbery, rape and widespread use of arms and the presence of illegal arms in refugee hosting areas had resulted in a perceived culture of violence to their peace loving people.

25. The Delegate observed that Tanzania was committed to its obligations under International Law to protect refugees and ensure that refugees were accorded all rights and benefits defined under the UN Convention on Refugees, the 1967 Protocol and other regional instruments related to refugees. His Government, however, was of the view that the international community should strive to solve the root-causes of refugees. Efforts should be made to address conflicts before they escalated into wars and consequently created a refugees' crisis. The international community ought to encourage creation of 'safety zones' within the country of origin or Sending States that would serve for quick reintegration of refugees to their communities once the root causes of their problems were addressed and mechanisms to resolve disputes must be evolved and formed an important part of the solution to the problems of refugees.

26. The **Delegate of Pakistan** after congratulating the Secretary-General for presenting a wonderful report on the item stated that though Pakistan was not a Party to both the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, it had made outstanding contributions

towards protecting the refugees from Afghan over the last twenty-five years. He maintained that though Pakistan was not under any obligation to do so, it had done so even at the cost of enormous social, economical and ecological costs. Commenting on the need to abide by the principle of burden sharing he pointed out that the application of that principle was indispensable if the international community were to deal with the issue in a meaningful manner. He also stressed the need to create a congenial and conducive environment for the safe and voluntary return of Afghanistan refugees to their country. Commenting on the role of the UNHCR in the protection of refugees he observed that, international community should make sure that adequate financial facilities were made available to it. He also stressed the need to improve the social, political and economic situation of the countries of origin in an effort to prevent the refugee flows in the first place.

27. The **Delegate of Indonesia** while trying to stress the importance of the problem of refugees stated that this had been recognised by the United Nations as early as 1950s when it adopted the Convention Relating to the Status of Refugees in 1951 and its 1967 Protocol. He added that though the international refugee protection regime primarily revolved around these two instruments there were a number of other instruments that had a bearing on this issue. Commenting on the salient features of the 1951 Convention he stated that Indonesia considered article 31 of the 1951 Convention, which prohibited the imposition of penalties on people who cross an international border in an irregular manner to be very important. Also important was the principle of non-refoulement codified in article 33 of the 1951 Convention, which prohibited States from sending back asylum seekers who face persecution on their going back.

28. While explaining the practise of Indonesia in the context of protection of refugees, he stated that though Indonesia was not a Party to the 1951 Convention it applied a standard of treatment, which upheld human rights and human dignity effectively taking into account the humanitarian aspects involved. Commenting on the domestic legal regime he informed that refugees and asylum seekers were principally protected. He added that those who sought asylum were not deported under the immigration law and instead Indonesia had sought the advice of UNHCR to decide their case. This policy he maintained had become a burden to the Indonesian government in so far as it provided accommodation and other costs during their living in Indonesia. Most of this burden has been the responsibility of IOM and UNHCR. However he added that, those who had been rejected by UNHCR were taken care of by the government of Indonesia. Commenting on the need to share the burden of hosting refugees he observed that, the burden should be shared by the country of origin, the transit country the country of destination as well as the international organizations concerned in an even manner.

29. Commenting on the cooperation that Indonesia has had with both IOM and the UNHCR he observed that the cooperation focused on supervising the permanent settlement of refugees, voluntary repatriation and resettlement in third country. With regard to the plight of those whose claim for the refugee status has been rejected, he suggested that a new international legal

instrument be adopted which he hoped would create binding legal obligations for all the stakeholders which include the country of origin, country of transit and the country of destination and the relevant international organizations. He also expressed optimism that the Session would result in concrete joint actions to solve the problem of refugees in Asian African region.

30. The **Delegate of Japan** commenting on the position of Japan, maintained that, Japan had been party to the 1951 Geneva Convention and the 1967 Protocol on the Status of Refugees and has been accepting refugees in accordance with the domestic law entitled "Immigration Control and Refugees Recognition Act." Which adopts the definition of refugees stipulated in that convention. He added that, though the total numbers of refugees accepted by Japan has been rather limited, but has been increasing annually in recent years. He also added that the procedures for refugee application had been easened over the years. He tried to substantiate this by giving the example that, the period in which an application for refugee status used to be 60 days after the entry into the country but now has been extended to six months and, under special circumstances, could be a further longer period in which an applicant can continue a provisional stay.

31. With regard to the specific situation of Indo-China Peninsula, he stated that, when the outflow of a large number of refugees was caused from the Indochina peninsula in 1970's, Japan had actively participated in the international cooperation to accept them. The numbers of Indochina refugees accepted for settlement in Japan totalled more than 11300 persons during the period from 1978 to 2005 when the program for Indochina refugee came to an end, he added.

32. On the cooperation of Japan to the work of the Office of United Nations High Commissioner for Refugees, he maintained that Japan has been giving unstinted support to it. In this regard, it was stated further that, She has been one of major (second or third largest) financial contributor in recent years. The fact that, the scope of the work of the office of UNHCR was expanded largely so as to include assistance for internally displaced persons during the tenure of Ms. Sadako OGATA of Japan, who served as UNHCR for 10 years, was also pointed out.

33. He also informed that recently Japan had taken measures to provide emergency assistance for internally displaced persons in Chad and Central African Republic caused by the Darfur Conflict. More specifically, the Government of Japan, on June 26 had decided to extend emergency assistance totalling about 4 million dollars to the Office of UNHCR, UNICEF, and the ICRC with a view to improving the humanitarian situation of the internally displaced persons in the eastern part of Chad and the north-eastern part of Central African Republic who had been displaced by the Darfur Conflict in Sudan, he added.

34. The **Delegate of Senegal** while commenting on the need to observe laws to protect the rights of refugees stated that as long as there is conflict there would be flow of refugees. He added that States should give utmost respect to laws to prevent the flow of refugees. He also stressed the need to have effective cooperation among the Members of the international community to deal with the problem in a holistic and effective way. He

further maintained that those who are responsible for conflicts should not be allowed to go scot free. He also emphasised that no country in the world should provide 'safe haven' to perpetrators of armed conflict and this duly belonged to the entire international community.

35. The **Delegate of the Republic of South Africa** at the outset congratulated the Secretary-General for providing a thoughtful and insightful statement on the item. While commenting on the importance of the item he observed that his country had itself witnessed the tragic plight of the refugees when there was a period in which it was realised by innumerable people, what it meant to be far away from home because of the political and humanitarian situation in our own country. He added that this first-hand experience of South African people gave his country a reason to speak on the item.

36. The delegate commented that the Republic of South Africa was a signatory to the international legal framework on refugee protection such as the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol thereto, as well as the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. He maintained that these had further been translated and found expression in the domestic legislation through the Refugees Act 1998. He clarified that at the end of 2006 South Africa had hosted approximately 2,65, 680 asylum seekers and about 36,471 recognised refugees. He added that these legal instruments provided a solid foundation for the protection of refugees and asylum seekers in his country.

37. Explaining the importance of the Constitution of the Republic of South Africa to the situation of asylum seekers and refugees, he observed that, the Preamble which states that "South Africa belongs to all who live in it, united in diversity", had profound implications in this regard. He further added that this pronouncement was based on the common humane principle that all of us were human beings of equal value, irrespective of our backgrounds and diversity and that it was this principle that taught them that asylum seekers and refugees were no less human than they were. With regard to the domestic institutional mechanisms operating in his country he stated that, the Department of Home Affairs of the Republic of South Africa had established a Directorate specifically to deal with matters connected to refugees including making sure that they stood documented. He also emphasised the need to engage in active cooperation to deal with the issue effectively.

38. Commenting on the problems that South Africa was facing he stated that the mixed flow of movements posed a serious challenge to the administration. He added that the abuse of their refugee system by those who pose themselves as refugees but who are infact economic migrants created huge problems so far as the refugee processing system was concerned. He added that economic migrants were neither recognised under the 1951 Convention nor under the laws of the Republic of South Africa. He also acknowledged the importance of integrating the genuine refugees into local communities.

39. Commenting on the multilateral system necessary to deal with this issue he observed that South Africa attached much emphasis on building

alliances with the United Nations, the African Union, and the SADC, which are at the heart of the international multilateral system. He added that the success of the struggle against apartheid was primarily because of the international multilateral institutions and hence they possessed a very important moral voice in the world, most often standing on the side of the oppressed, dispossessed and vulnerable. He also added that without the active participation of multilateral organizations it would be very difficult to achieve development, economic growth, stability and the democratic dispensation, which Africa needs, to stop producing refugees.

40. With regard to the role that South Africa had played vis-à-vis the peace process and the elections in the Democratic Republic of Congo (DRC), he mentioned that South Africa with others, had contributed to the stability and the chance for democracy and economic growth in the DRC. He added that South Africa was convinced that stability and peace were the minimum requirements for ensuring that their continent steered away from conflicts, which force people to flee their homes and the countries of their birth.

41. The **Delegate of the Republic of Korea,** after thanking both the AALCO and the UNHCR for preparing the special study, stated that though some regions of the world had witnessed positive developments in terms of repatriation and resettlement of refugees, some parts of the world still posed formidable challenges to the refugee protection system. He added that the policies of many States in the context of migration, human trafficking and terrorism provided for this.

42. Commenting on the role of the UNHCR, he observed that it was doing a wonderful job by carefully planning strategies and expertise so as to enhance the protection available to refugees. He also maintained that those Member States of AALCO who are Parties to the 1951 Convention and its 1967 Protocol should do their bid by striving to comply with the obligations contained therein.

43. The **Delegate of Arab Republic of Egypt**[10] while stressing the importance of the problem stated that this was neither a regional nor an internal problem of a specific country. Hence he advocated that the whole of international community should come together in finding solutions to this problem. With regard to the main features of the 1951 Convention, he maintained that, Egypt was in favour of reconsidering the definition of the term 'refugee' since the definition of that term did not take into account victims of armed conflict and civil war but was confined to oppression alone. In this regard he maintained that the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, was more fair and realistic and this he added could be used as a reference point.

44. With regard to the question of mixed flows he maintained that a distinction should always be maintained between economic migrant and the refugees and that those who commit terrorism and crime against humanity should necessarily be excluded from the definition of the term refugee. The delegate made a proposal that an international conference be convened which could focus on three issues; first, to try to

[10] Statement delivered in Arabic. Unofficial translation from the Interpreters version.

define the term 'refugee' in a manner agreeable to all the members of the international community. Second, to explore more ways and means within the ambit of the 1951 Convention and its 1967 Protocol to enhance the protection available to refugees under them and third, to deliberate upon the problem of financial assistance to be given to the poor countries.

45. The **Delegate of Malaysia** at the outset congratulated the Secretariat for preparing an informative paper on the item. He specifically highlighted that part of the report, which dealt with the shortcomings of the international refugee protection regime. He added that all the information's and analysis found in the report in general and that part which pertained to the regional protection regime would be considered positively by Malaysia in its efforts to deal with the issue.

46. Commenting on the practice of Malaysia in the context of refugee protection he maintained that Malaysia was not a Party to the 1951 Convention as well as its 1967 Protocol. He added that under the Malaysian Law, the Immigration Act 1959/63 (Act 155), and the Immigration Regulation 1963 was the main legislations that governed and regulated the entry and stay of foreigners into Malaysia. Any non-citizen who entered Malaysia and who did not comply with the Act 155 would be regarded as an illegal immigrant and is punishable under the Act. He added that hence by virtue of these existing immigration legislations no distinction was made between refugees, asylum seekers and illegal immigrants.

47. Commenting on the practice of Malaysia vis-à-vis the protection of refugees he maintained that despite the fact that Malaysia was a non-party to the International Conventions, she had fulfilled her obligations to those who had entered Malaysia claiming to be refugees on humanitarian grounds. This, he added, was made possible largely through the assistance and cooperation of UNHCR. With regard to the issue of mixed flow of migratory movements, he observed that the issue of economic migrants could better be dealt with under a specific and separate regime such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990. This was necessary since economic migrants move out not because of persecution but because of their poverty.

48. He also suggested that the concept of voluntary repatriation, burden sharing and non-rejection at the frontiers could be used as possible solutions to the problem of refugees.

49. The **Delegate of Bangladesh** stated that the plight of refugees over the years has worsened. In the name of security measures, the States had taken measures that went against the spirit and letter of the international legal instruments. While stating that providing security and long-term solutions for refugee problems was essential, she maintained that this was not going to be easy.

50. Commenting on the practice of Bangladesh vis-à-vis the protection of refugees she maintained that though her country was not a Party to the 1951 Convention and its 1967 Protocol, it remained committed to the principles of international refugee law. This also reflected their broader commitment to the protection of all human rights and respect for humanitarian law. She tried to substantiate this by citing the fact that Bangladesh had provided shelter

and protection to the refugees from Myanmar for the last three decades. She also stated that Bangladesh never pursued the policy of forceful repatriation of refugees. She added that voluntary repatriation remained the most preferred solution to the refugee problem.

51. While dealing with the root causes of refugee problem, she stated that the entire issue of refugee generation should be seen within the development matrix. The need to find ways and means for a more egalitarian growth, which would alleviate the suffering of the poor, was also stressed by her. She also observed that all efforts to reduce poverty and to prevent a rise in the income inequality should be undertaken with utmost sincerity. She also emphasised that attempts should be made to ensure that the liberalization of trade did not result in loss of jobs and pauperization.

52. The **Observer Delegate from the UNHCR, Deputy Regional Representative, Pretoria, South Africa:** The Observer Delegate on behalf of the United Nations High Commissioner for Refugees (UNHCR) thanked AALCO for providing UNHCR with an opportunity to say a few words on the agenda item on the Status and Treatment of Refugees which was one of the long-standing subjects that had attracted attention of the AALCO Member States since 1963 when Arab Republic of Egypt proposed to put the item on the agenda. On behalf of UNHCR, the Delegate expressed his organization's gratitude to AALCO Member States for providing protection assistance and solutions to refugees and stateless persons.

53. The Delegate informed that last month; UNHCR released its statistics report for 2006. The report indicated that for the first time in many years, the world experienced a huge increase in the number of people who require international protection as refugees. The increase includes some 1.2 million Iraqis who have sought asylum in neighbouring states; and an additional 2 million Iraqis who are displaced within their own country. Both in Africa and Asia, AALCO member states host, protect and assist considerable numbers of refugees, internally displaced persons and stateless persons. UNHCR also continues to benefit from the generous donations from AALCO Member States in cash and in materials.

54. Following many challenges posed by refugees who use the seas for reaching places of safety, last year following the Madrid consultations, UNHCR published a short guidance to shipmasters and others on principles and practices that would apply to those rescued at sea. These guidelines were available to AALCO Member States if so requested. Similarly, UNHCR continued to collaborate with other UN agencies on matters related to trafficking in persons. UNHCR was aware that among the trafficked persons are refugees who require specific protection. UNHCR was also aware of the specific risks faced by children who had been sold by their own parents to traffickers. As more and more refugees were caught up in the mixed migratory movements, identification of those in need of protection as refugees becomes a major challenge. Countries in the Mediterranean region as well as South Africa faced this problem in its daily dealings with refugees.

55. UNHCR was concerned that in dealing with such important issues as terrorism, human trafficking and

international crime, refugees including trafficked women and children, were at times barred from accessing international protection through the application of stringent immigration laws and the use of very wide interpretation of exclusion clauses under the refugee conventions. This in turn, affects refugees generally, as they search for safety and normal life. UNHCR had been associated with the work of AALCO for a number of years. UNHCR valued the contribution of Member States to the problems and solutions to refugee problems. Recently, it had worked closely with AALCO on a study on statelessness. While numbers of refugees continued to swell in Africa, Asia and the Middle East, the protection of refugees and stateless person had become very complex. More governments had shown interest to deal with the question of statelessness.

56. A stateless person was one who was not recognized as a citizen or national of any state by operation of law. These people cannot enjoy any fruits of a citizen or any diplomatic protection. Potentially stateless persons had no rights. They may be undocumented, unrecognisable, but were part of our human beings with rights and who deserve state protection. UNHCR was happy to note that many states including Member States of AALCO were taking steps to reduce statelessness through application of naturalization laws.

57. The Delegate said that UNHCR was happy to be associated with AALCO in publishing results of a research on stateless persons for selected countries in Asia and Africa. The joint AALCO and UNHCR publication would be widely available in future. In conclusion, the Delegate thanked governments that host refugees and that make the life of refugees and stateless persons secure, stable, meaningful and dignified. UNHCR was ready to work with AALCO, Governments, and NGOs to achieve the maximum protection of refugees, internally displaced persons and stateless persons.

58. The **Leader of Delegation of Malaysia** stated that Malaysia would submit its written response in due course on the Joint UNHCR-AALCO report on "Statelessness: An Overview from the African, Asian and Middle East Perspectives" in Chapter 2 - Case Study "Statelessness and Refugee Flows in South East Asia" which dealt with the case study of Malaysia, at page 25 under the heading "The categories of potentially stateless people and stateless people", in the statistics provided for Sabah wherein, it was stated "that in April 1999, a National Registration Department Official in Sabah stated that over two million people living in Sabah did not have birth certificates (footnote 26)", was an incorrect figure. The Leader of Delegation very strongly criticized the inaccuracy of the information, and said that he was a native of Sabah, where the population was only about a million, and that he does possess a birth certificate. He mentioned that the voluminous authorities from the joint publication seemed to be based on *Malaysiakini*, an internet newspaper, and *Tenaganita* an NGO, apart from a few other sources. There are other newspapers and NGOs whose views are completely independent and more cited. He further strongly urged the Secretariat and the Secretary-General to maintain the exclusivity of the legal aspects and not to allow any political manipulation. The **Leader of Delegation of Senegal** also expressed its displeasure over this inaccuracy in the factual information and said that

the studies prepared by AALCO in conjunction with any international organization should be verified factually. The Secretary-General assured the delegations that he would take up the matter with the UNHCR and would issue a corrigendum to rectify this inadvertent error.

The Meeting was thereafter adjourned.