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**THE LAW OF THE SEA**

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# THE LAW OF THE SEA

## CONTENTS (Deliberated)

Pages

<b>I</b>	Introduction	
	a. Background	<b>1-2</b>
	b. Deliberations at the Fifty-Second Annual Session of AALCO (9-12 September 2013, New Delhi (HQ), Republic of India)	<b>2-7</b>
	c. Summary of the Legal Experts Meeting on the Law of the Sea, held at AALCO Headquarters on 24-25 February 2014	<b>7-9</b>
<b>II</b>	Status of the United Nations Convention on the Law of the Sea (UNCLOS) and its Implementing Agreements	<b>9-9</b>
<b>III</b>	Thirty-Second, Thirty-Third and Thirty-Fourth Sessions of the Commission on the Limits of the Continental Shelf (15 July to 30 August 2013, 7 October to 22 November 2013 and 27 January to 14 March 2014, at UN Headquarters, New York)	<b>9-12</b>
<b>IV</b>	Nineteenth Session of the International Seabed Authority (15 to 26 July 2013, Kingston, Jamaica)	<b>12-13</b>
<b>V</b>	(A). Twenty-Third Meeting of the States Parties to the UN Convention on the Law of the Sea (10 to 12 June 2013, UN Headquarters, New York)	<b>13-14</b>
	(B). Twenty-Fourth Meeting of States Parties to the UN Convention on the Law of the Sea (10-12 June 2014, UN Headquarters, New York)	<b>14-17</b>
<b>VI</b>	Fourteenth Meeting of the United Nations Open-ended Informal Consultative Process on Oceans and Law of the Sea (17 to 20 June 2013, UN Headquarters, New York)	<b>17-18</b>
<b>VII</b>	Oceans and Law of the Sea: Report of the Secretary-General of the United Nations for the Sixty-Eighth Session of the UN General Assembly	<b>18-20</b>
<b>VIII</b>	Consideration of the Oceans and the Law of the Sea issues by the UN General Assembly at its Sixty-Eighth Session (December 2013)	<b>20-21</b>
<b>IX</b>	Dispute Settlement under the UNCLOS	<b>22-26</b>
<b>X</b>	Comments and Observations of the AALCO Secretariat	<b>26-31</b>
<b>XI</b>	Draft Resolution on the Law of the Sea	<b>32-33</b>

# THE LAW OF THE SEA

## I. INTRODUCTION

### A. Background

1. The 1982 United Nations Convention on the Law of the Sea (hereinafter UNCLOS or the Convention), came into force on 16 November 1994, twelve months after the deposit of the sixtieth instrument of ratification with the Secretary-General of the United Nations. This year, thus marks the twentieth anniversary of the entry into force of the Convention.

2. As of 10 January 2014, 166 parties have ratified the UNCLOS<sup>1</sup>, Niger is the 166 State to have ratified the UNCLOS. One of its implementing agreements, namely the 1994 Agreement relating to the implementation of Part XI of UNCLOS, was adopted on 28 July 1994 and entered into force on 28 July 1996; the other implementing agreement, the 1995 United Nations Fish Stocks Agreement was opened for signature on 4 December 1995 and entered into force on 11 December 2001. Together, these three agreements provide a comprehensive legal framework for all the activities in the oceans and seas. Thus, the regime for oceans and seas established by UNCLOS deals with a wide range of issues on ocean affairs and recognizes that the problems of ocean space are closely interrelated and need to be considered as a whole. The Convention is considered as the “Constitution for the Oceans”.

3. On 9 June 2014 the United Nations celebrated the “World Oceans Day” at United Nations Headquarters. The celebration of World Oceans Day coincided with the first day of the twenty-fourth meeting of the Meeting of States Parties to the United Nations Convention on the Law of the Sea. In his message, the Secretary-General of the United Nations, Mr. Ban Ki Moon the stated: “Let us reflect on the multiple benefits of the oceans. Let us commit to keep them healthy and productive and to use their resources peacefully, equitably and sustainably for the benefit of current and future generations”<sup>2</sup>.

4. It is important to underline that the UNCLOS sets out the legal framework for all activities in the oceans. However, limitations in capacity hinder States, in particular developing countries, not only from benefitting from oceans and seas and their resources pursuant to the UNCLOS, but also from complying with the range of obligations under that Convention. Therefore, the capacity-building needs of States in marine science and other areas of oceans affairs and the law of the sea remains of vital importance.

5. It may be recalled that the item “Law of the Sea” was taken up for consideration by the Asian-African Legal Consultative Organization (AALCO) at the initiative of the Government of Indonesia in 1970, since then it has been considered as one of the priority items at successive Annual Sessions of the Organization. The AALCO can take reasonable pride in the fact that new concepts such as the Exclusive Economic Zone (EEZ), Archipelago States and Rights of Land

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<sup>1</sup> Niger is the 166 State Party to have ratified the UNCLOS.

<sup>2</sup> <http://www.un.org/depts/los/wod/commemoration-2014.html> last assessed on 7 July 2014.

Locked States originated and developed in the AALCO's Annual Session and were later codified in the UNCLOS.

6. After the adoption of the Convention in 1982, the AALCO's Work Programme was oriented towards assisting Member States in matters concerning their becoming Parties to the UNCLOS and other related matters. With the entry into force of the UNCLOS in 1994, the process of establishment of institutions envisaged in the UNCLOS began. The AALCO Secretariat prepared studies monitoring these developments and the Secretariat documents for AALCO's Annual Sessions reported on the progress of work in the International Sea Bed Authority (ISBA), the International Tribunal for Law of the Sea (ITLOS), the Commission on the Limits of the Continental Shelf (CLCS), the Meeting of States Parties to the UNCLOS and other related developments. The agenda item was discussed during the Fifty-Second Annual Session of AALCO held at New Delhi (HQ) in September 2013 and in compliance with the resolution adopted there at AALCO/RES/52/S 2 (adopted on 12 September 2013), an "AALCO Legal Experts Meeting on the Law of the Sea" was subsequently held at the AALCO Headquarters on 24-25 February 2014.

7. The Secretariat Report prepared for the Fifty-Third Annual Session provides: A brief summary of deliberations held during the Fifty-Second Annual Session of AALCO; Summary of the AALCO Legal Experts Workshop on the Law of the Sea, held on 24-25 February 2014 at the AALCO Headquarters in New Delhi; Information on the status of the UNCLOS and its implementing agreements; Thirty-Second, Thirty-third and Thirty-Fourth Sessions of the Commission on the Limits of the Continental Shelf (15 July to 30 August 2013, 7 October to 22 November 2013 and 27 January to 14 March 2014, at UN Headquarters, New York); Nineteenth Session of the International Seabed Authority (15-26 July 2013, Kingston, Jamaica); Twenty-third Meeting of the States Parties to the UN Convention on the Law of the Sea ( 10 to 12 June 2013, UN Headquarters, New York); Fourteenth Meeting of the United Nations Open-ended Informal Consultative Process on Oceans and Law of the Sea ( 14 to 20 June 2013, UN Headquarters, New York); the consideration of the Oceans and the Law of the Sea issues at the 68<sup>th</sup> Session of the UN General Assembly; and Dispute Settlement under the UNCLOS. This report presents an overview of all these developments. Finally, it offers comments and observations of the AALCO Secretariat. A draft of the resolution for the consideration of the Fifty-Third Annual Session is also annexed to the Secretariat Report.

#### **B. Deliberations at the Fifty-Second Annual Session of AALCO (9-12 September New Delhi (HQ), Republic of India)**

8. **Mr. Feng Qinghu**, Deputy Secretary General, AALCO introduced the topic "The Law of the Sea". He stated that the report of the Secretariat contained information on the Status of United Nations Convention on the Law of Sea (hereinafter "UNCLOS") and its implementing Agreements; The thirtieth and thirty first Sessions of the Commission on the Limits of the Continental Shelf (CLCS); the Eighteenth Session of the International Seabed Authority (ISBA); the twenty Second Meeting of States Parties to the UNCLOS ;the meeting of the UN open-ended informal consultative process on oceans and law of the sea; and the consideration of the issue at the Sixty-Seventh Session of the United Nations General Assembly.

9. He pointed out that UNCLOS was quickly moving towards universal participation and noted that 40 members of AALCO were already part of the treaty and that it could be hoped that the remaining Member States would also join soon. He pointed out that the Law of the Sea has been an important agenda item for AALCO and made reference to the work of the Organization on this subject. He then referred to the meeting of legal experts organized by AALCO in connection with the thirtieth anniversary of the opening for signature of the UNCLOS. He then outlined the topics discussed at that meeting.

10. Mr. Qinghu drew the attention of the audience to the judgment of the International Tribunal for the Law of the Sea regarding the *Dispute concerning the delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal*, delivered in 2012. He pointed out that this was the first delimitation case that was heard by the tribunal and that the decision signified the growing recognition of the tribunal. He stated that the judgment dealt with several novel questions concerning the law of the sea and that it was likely to be of major significance for many States with extended continental shelves.

11. He then referred to the developments at the CLCS such as the decisions to establish new sub – commissions, increasing workload of the CLCS, and the need to streamline the work of the Commission. Referring to the developments at the ISBA, Mr. Qinghu recalled the re-election of Mr. Nii Odunton as the Secretary General and the adoption of Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese crusts in the Area.

12. Mr. Qinghu pointed out that the other critical issue faced by the international community was the proliferation of piracy and armed attacks against ships and the need to improve domestic law enforcement to curb such incidents and building institutional capacity to bring pirates to justice. He invited AALCO members to consider enacting adequate laws to criminalize such acts along with modern procedural laws.

13. He further stated that for ensuring sustainable development of the oceans it was essential to halt pollution, protect the marine environment and preserve the marine bio-diversity. He recalled the need for global action and cooperation to achieve these ends. The concerns with respect to “the Area” beyond national jurisdiction were also pointed out. He stated that Marine Protected Areas (“MPAs”) was an important ecosystem management tool for achieving these ends. However, a universal framework for the same was yet to be put in place and he drew the attention of the Member States of AALCO to consider developing such a framework<sup>3</sup>.

14. **The Delegate of the Republic of Indonesia** pointed out the importance the UNCLOS as a major international law treat which governs maritime issues. He stated that the International Tribunal for the Law of the Sea was an important judicial body for the resolution of disputes and stated that the ISA had an important role in the protection of the marine environment from the negative impacts caused by exploitation in the region. He called on the member states to conduct exploration of seas in accordance with laws applicable to help preserve environment for the future generations.

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<sup>3</sup> For the Verbatim Record of discussions see AALCO/52/NEW DELHI (HQ)/2013/VR page nos 100-118 available at [www.aalco.int](http://www.aalco.int)

15. **The Delegate of Thailand** stated that the issue of ocean affairs had numerous dimensions such as maritime security, exploration, exploitation of national resources, commerce, conservation and protection of the marine environment, sustainable development of marine life, scientific research and technology development and that it was his country's priority to ensure that all activities carried out in the oceans, take into account the sensitivity and delicacy of oceanic ecosystems. He pointed out the efforts taken and the active role played by Thailand at the International Maritime Organization and sought the support of the Member States for re-election to the governing council of the IMO at the forthcoming election. Outlining some of the efforts taken by Thailand towards promoting maritime security and knowledge sharing, he assured the Member States of his country's support to the International community in this matter.

16. **The Delegate of the People's Republic of China** pointed out that despite growth in the capacity of States to understand, use and protect oceans and there are still challenges faced in the implementation of the law, UNCLOS remains an important basis for solving these problems and facing these challenges. She further stated that the United Nations has launched a regular process for global reporting and assessment of the state of the marine environment and expressed satisfaction over the institution of a regular process for the same as well as the work being done to bring out an integrated global report of the state of the marine environment. She pointed out that sustainable development could be achieved only by balancing the proper protection of the ocean and its rational utilization and by facilitating capacity building of developing States- in both utilization and protection of the environment. The delegation stated that it was the view of China that the current rules of international law, in particular the definition of piracy and the obligation of states to establish universal jurisdiction over piracy and to provide judicial and administrative assistance, covered the main aspects concerning combating piracy through international cooperation. The delegation expressed the support of his country for enhancement of international cooperation, in conformity with the rules of international law for combating piracy, ensuring maritime safety and safeguarding the interests of the international community.

17. **The Delegate of Mauritius** referred to the dispute between Mauritius and the United Kingdom concerning the 'marine protected area', which the United Kingdom has purported to establish around the Chagos Archipelago. He asserted that the Chagos Archipelago forms an integral part of the territory of Mauritius and that Mauritius was being prevented from exercising its sovereign rights over this area because of the unlawful control of the UK over the Archipelago, which UK acquired prior to its accession to independence. He informed the Member States that the Government of Mauritius had instituted arbitration proceedings and that the Tribunal had rejected the preliminary objections raised by the UK to its jurisdiction. He further stated that the case brought by Mauritius against the United Kingdom arose against the background of colonial legacy and that the Tribunal was being requested to interpret and apply UNCLOS in a way that does not perpetuate a status quo which is inconsistent with the applicable law under the Convention, including the right to self-determination and respect for the territorial integrity of a country at independence. The Delegation expressed gratitude for AALCO's support with respect to the sovereignty of Mauritius over the Chagos Archipelago.

18. **The Delegate of the Republic of Korea** expressed support for the "Oceans Compact" initiative announced by the Secretary General of the United Nations to set out a strategic vision for the UN system to deliver its ocean related mandates consistent with the Rio+20 outcome document "The Future We Want". He pointed out that there was a substantial reduction in piracy

related incidents off the coast of Somalia the previous year and that the global efforts to fight piracy are proving fruitful. He stated that to uproot piracy it was essential to end the practice of pirates getting away with impunity more prosecutions and punishments of those committing acts of piracy. The delegation pointed out that his government was tackling the issue by pursuing legal action under domestic and international law.

19. **The Delegate of the Islamic Republic of Iran** pointed out that incidents of piracy in Gulf of Eden, off the coast of Somalia and in the Gulf of Guinea, continued to pose increasing challenges to maritime safety and ought not be treated in isolation. He pointed out that on some occasions Iranian vessels had also been the target of these attacks. He then outlined the efforts that were taken by Iran towards combating piracy and pointed out that the same has been recognized and commended by the international community and relevant UN bodies, including the Security Council. He referred to the internal situation in Somalia and stated that the problem of piracy could not be resolved without a comprehensive plan for peace and stability. He further referred to the alarming pollution levels in seas and problems caused by land reclamation and pointed out that, the General Assembly of the United Nations has already expressed its concern over this, vide Preambular Paragraph 14 of A/RES/67/78 and recalled operative paragraph 164 of that resolution which called for land reclamation activities to be carried out in a responsible manner.

20. **The Delegate of Japan** stated that as a maritime country, and from the standpoint of considering the rule of law to be essential in the international community, it valued the roles that the International Tribunal for the Law of the Sea (ITLOS) plays in the peaceful settlement of maritime disputes and the maintenance of legal order relating to the sea. The delegation informed that at the 24<sup>th</sup> meeting of States Parties of UNCLOS, Japan would be nominating a candidate for the election of judges to the Tribunal. He also stated that the working period of the Commission on the Limits of the Continental Shelf needed to be extended to complete their workload. He further pointed out that with respect to the International Sea Bed Authority, a Voluntary Trust Fund has been established, to which Japan has been a key financial contributor, for the purpose of defraying the cost of participation of the members of the Legal and Technical Commission and the Finance Committee from developing countries in the meetings of the Commission that was held at Jamaica.

21. **The Delegate of Tanzania** pointed out that the importance of UNCLOS in the ocean affairs could not be overemphasized. He stated that the Asian and African continents have witnessed achievements in the reduction of piracy but that in order to maintain this, concerted efforts in strengthening the legal frameworks, enactment of relevant legislations, strengthening of relations and greater information sharing was required. He pointed out that the workload of the Commission on the Limits of Continental Shelf was growing due to the increase in the number of submissions and called on AALCO Member States to take concerted efforts to ensure the smooth functioning of the commission.

22. **The Delegate of the Republic of Kenya** stated that Kenya had recently brought into operation a law designed to curb risks posed to health, safety and the environment caused by foreign flag ships that called at its ports. She further stated that the issue of piracy off the Coast of Somalia remained of grave concern and that it has affected trade and commerce in the East

African Region, fishing, tourism and shipping industries. She welcomed the efforts of the international community to combat piracy as these efforts have had deterrent effect on piracy and armed robbery in the region, and noted that such action has yielded results and that piracy cases in the Indian Ocean has considerably fallen. She further pointed out that there were several issues that were required to be addressed by public international law such as the use of private armed security guards, the use of force and transferring of suspects for trial and imprisonment, collection of evidence at the high seas and submission in courts, extradition and jurisdictional issues.

23. **The Delegate of Malaysia** noted that the lack of capacity building could limit the ability of states to protect the oceans and their resources from maritime pollution, maritime safety and security and overexploitation. He stated that capacity building was necessary to ensure that the States possess economic, legal, navigational, scientific and technical skills for the full implementation of the obligations and responsibilities as provided under the UNCLOS and for this priority had to be given in strengthening the institutions and standards to enable the least developed countries to fully benefit from the UNCLOS. He stated that national and international financial institutions could be invited to examine innovative approaches to assist low income countries, whilst academic and research institutions could contribute towards institutional developments. He stated that in addition to this, strengthening and improving standards relating to shipping, marine safety and pollution prevention requires the involvement of government as well as private actors and all stakeholders to ensure a holistic approach. He pointed out that Malaysia has joined hands with Indonesia and Singapore to undertake the appropriate measures to reinforce the safety and security in the strait of Malacca. He further pointed out the need to improve implementation of and compliance with existing international rules and standards and that enhancing regional ties particularly through regional institutions would enable States to effectively address international concerns and emerging challenges as regards the various activities that affect the marine biodiversity in areas beyond national jurisdiction.

24. **The Delegate of India** described UNCLOS to be the key instrument governing the ocean affairs and that it lies in the interest of the international community to extend full cooperation in the efforts towards ensuring the proper management and sustainable use of ocean resources. He stated that the outcome document of the Rio+20 Summit, “The Future We Want” recognized oceans and seas as an integral part of the earth’s ecosystem. He stated that the oceans are facing numerous challenges such as illegal and unregulated fishing, deterioration of the marine environment, bio diversity loss, climate change and those relating to maritime safety and security, including acts of piracy. He further stated that India was working on a comprehensive domestic legislation to provide the necessary legal framework within the country for prosecution of piracy related crimes. He also stated that the fisheries sector occupied an important place in the socio-economic development of a great number of countries and expressed support for concerted efforts of the international community towards achieving sustainable fisheries, including the adoption of measures to prevent and combat illegal, unreported and unregulated fishing, by the effective adoption of the fish stocks agreement and the relevant instruments at the regional level and by preventing over-fishing.

**C. Report on the Legal Experts Meeting on the Law of the Sea (24-25 February 2014, AALCO Headquarters, New Delhi)**

25. Based on the success trend and the increased participation level by the member States of AALCO during the Law of the Sea Meeting in 2013, a sequel was organized on 24-25 February 2014 to update on the recent major developments and trends in the field of law of the Sea. This meeting was held in collaboration with academic institutions, mainly Xiamen University, China; Universiti Malaysia Terengganu; and South Asian University, New Delhi. The Legal Experts Meeting was divided into 5 Working Sessions on contemporary challenges, (i) Marine Biodiversity; (ii) Fragmentation of International Law: Law of the Sea; (iii) Need for Piracy Legislation; (iv) Regional Cooperation on Maritime Issues; and (v) Afro-Asian Traditional Wisdom in Dispute Settlement.

26. The inaugural address was delivered by Dr. Neeru Chadha, Joint Secretary & Legal Adviser, Ministry of External Affairs, Government of India; and President of the Fifty Second Annual Session of AALCO. The keynote address and Special Address were delivered by Amb. Gudmundur Eirikkson, Ambassador of Iceland to India and former Judge of the International Tribunal for the Law of the Sea (ITLOS); and Mr. H.P.Rajan, Former Deputy Director, Division for Ocean Affairs and the Law of the Sea (DOALOS), Office of Legal Affairs, United Nations and former Secretary of the Commission on the Limits of the Continental shelf on the Law of the Sea, respectively.

27. Working Session-1 on *Marine Biodiversity*, witnessed presentations on “Interest and Importance of Marine Biodiversity” and “Access to Marine Genetic Resources and Benefit Sharing under the Biological Diversity Act, 2002” by Dr. Balakrishna Pisupati, Former Chairman, National Biodiversity Authority (NBA), India; and Dr. Malathi Lakshmikumaran, Director, Lakshmikumaran and Sridharan, New Delhi, respectively.

28. At the Working Session-2 on the *Fragmentation of International Law: Law of the Sea*, there were three presentations; namely, “The International Seabed Authority and its Recent Developments” by Prof. Kening Zhang, Professor of Law, South China Sea Institute and Director of Centre for Oceans Policy and Law, Xiamen University, China; “Interface between Law of the Sea and Environmental Issues: Marine Environment” by Dr. Luther Rangreji, Associate Professor, Faculty of Legal Studies, South Asian University; and “Forum Shopping and Parallelism of Treaties (Southern Bluefin Tuna Case – Australia and New Zealand v. Japan)” by Mr. Takero Aoyama, Counsel for International Legal Affairs, Ministry of Foreign Affairs, Japan.

29. On the topic Need for “Piracy Legislation” at Working Session-3, Ms. Zhen Lin, Assistant Professor, South China Sea Institute, Xiamen University, China, presented on “Combating Piracy”. Prof. Dr. M. Gandhi, Professor and Executive Director, Centre for International Legal Studies, Jindal Global Law School, India, made a presentation on “Maritime Security Issues: Piracy”. On State’s experience sharing, Ms. Adina Kamarudin, Director, Department of Maritime Affairs, Ministry of Foreign Affairs, Malaysia discussed about “Maritime Security Measures By Malaysia In Combating Piracy”.

30. The 4<sup>th</sup> Working Session was on Regional Cooperation on Maritime Issues. Presentations were made on “Oil Pollution from Shipping Activities in the Straits Malaaca and its Legal Implications” by Dr. Mohd Hazmi Mohd Rusli, Associate Fellow, Institute of Oceanography and Environment, UMT, Malaysia; “Oceanic Health & Sustainability througih Scientific Explorati and its Legal Perspective” by Dr. Wan Izatul Asma Wan Talaat, Associate Professor at the Institute of Oceanography and Environment, Kuala Terrenganu, Malaysia. On State’s experience sharing, an Indonesian Legal Expert Ms. Dyah Harini, Head of the Legal Sub-Division on Division on Directorate General of Capture Fisheries, Ministry of Marine Affairs and Fisheries, Indonesia presented on “Indonesia and RFMOS:Challenges and Opportunities”.

31. At the 5<sup>th</sup> Working Session on “Dispute Settlement: Afro-Asian Traditional Wisdom”, presentations were made on “Freedom of the Seas in the Malay Archipelago: An unsung International Custom” by Dr. Mohd Hazmi Mohd Rusli; and “ASEAN and Dispute Settlement Practices” by Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO. Each Working session was followed by Question and Answer sessions.

32. The highlights of this meeting were the following observations. The genetic resources in the world’s oceans are not only of commercial use and exploitation but also needs to be protected and preserved. The ratio of potentially useful natural components are of higher order in marine than terrestrial organisms, hence, the commercial interest aspect leads to increasing patenting in the various uses. The close nexus with the Intellectual Property Rights regime, science and policy matters shows that this subject highly sought after. The resources are spread across national and international jurisdictions, and hence there is an overlapping application of UNCLOS as well as Convention on Biological Diversity (CBD). The nuances of the same vests with categorizing marine genetic resources as: Common heritage/global good; common property which involves developing the IP regime; and exploitation of physical components.

33. The importance of the protection of marine environments brings with it an additional responsibility in terms of effective management of the utilization of marine genetic resources. It is of paramount importance because protecting the marine environments means to prevent unsustainable exploitation of the genetic resources. Marine pollution is a widespread problem that also requires intense scrutiny and effective solutions. While conducting scientific exploration, States are required to adhere to the environmental standards. This requirement ensures that there is no fragmentation in the law relating to law of the sea but there is a strong inter-linkage because general principles of international environmental law such as duty to cooperate, obligation of no-harm, precautionary principles, prior consent before conducting scientific exploration, etc., are contained in the provisions of UNCLOS – Part XII on protection and preservation of marine environment.

34. Combating Piracy was a serious issue and there was a need to have a framework for domestic legislation. A review of the trends in dispute settlement in relation to law of the sea matters shows the traditional wisdom in settling law of the Sea disputes with the then prevalent principles. Few important decisions were also referred in order to understand and reflect upon the State practices in invoking traditional wisdom from the Asian and African countries.

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

35. The United Nations Convention on the Law of the Sea as at 10 January 2014 had 166 Parties, of which 40 States are AALCO Member States.<sup>4</sup>

36. The Agreement Relating to the Implementation of Part XI of the UNCLOS was adopted on 28 July 1994 and has entered into force on 28 July 1996. As regards the status of this Agreement, as at 10 January 2014, there were 145 parties to it, of which 32 States are AALCO Member States.<sup>5</sup>

37. The Agreement for the Implementation of the Provisions of the UNCLOS Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, was adopted on 4 August 1995 and has been signed by 59 States and as at 10 January 2014 was ratified by 81 States, of which 14 are AALCO Member States. The Agreement came into force from 11 December 2001 after receiving the requisite 30 ratifications or accessions.<sup>6</sup>

## **III. THIRTY-SECOND, THIRTY-THIRD AND THIRTY-FOURTH SESSIONS OF THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF**

38. The Commission on the Limits of the Continental Shelf (CLCS) held its thirty-second, thirty-third and thirty-fourth Sessions at United Nations Headquarters from 15 July to 30 August 2013, 7 October to 22 November 2013 and 27 January to 14 March 2014, respectively. Apart from the work carried out in plenary meetings, the Commission also proceeded with a technical examination of submissions made by coastal States in accordance with Article 76 of the UNCLOS, 1982. Brief summaries of the proceedings in those sessions have been reflected below.

### **A. Thirty-second Session of the CLCS**

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<sup>4</sup> UNCLOS, 1982 has near universal adherence from the AALCO member states. The AALCO Member States Parties to the UNCLOS are: Bahrain, Bangladesh, Botswana, Brunei Darussalam, Cameroon, China, Cyprus, Egypt, Gambia, Ghana, India, Indonesia, Iraq, Japan, Jordan, Kenya, Kuwait, Lebanon, Malaysia, Mauritius, Mongolia, Myanmar, Nepal, Nigeria, Oman, Pakistan, Qatar, Republic of Korea, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, South Africa, Sri Lanka, Sudan, Uganda, United Republic of Tanzania, Thailand, and Yemen. Out of forty-seven Member States only seven states, namely, Democratic Peoples' Republic of Korea, Islamic Republic of Iran, Libyan Arab Jamahiriya, State of Palestine, Syrian Arab Republic, Turkey and United Arab Emirates are not Parties to the UNCLOS. For details see: "Table recapitulating the status of the Convention and of the related Agreements, as at 10 January 2014", available on the website: [http://www.un.org/Depts/los/reference\\_files/status2013.pdf](http://www.un.org/Depts/los/reference_files/status2013.pdf).

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

<sup>6</sup> The AALCO Member States Parties to the Straddling Stocks Agreement are: Bangladesh, Cyprus, India, Indonesia, Islamic Republic of Iran, Japan, Kenya, Mauritius, Nigeria, Oman, Republic of Korea, Senegal, South Africa and Sri Lanka. AALCO Member States signatories to this Agreement include: Bangladesh, Egypt, Indonesia, Pakistan, and Uganda. Ibid.

39. The Commission on the Limits of the Continental Shelf held its thirty-second session at United Nations Headquarters from 15 July to 30 August 2013. The session included two weeks of plenary meetings (12 to 16 August and 26 to 30 August 2013). Five weeks were devoted to the technical examination of submissions at the geographic information systems laboratories and other technical facilities of the Division. The main points emerging from the Chairman's Report are as follows:

40. Eight submissions were presented by the following States: the Russian Federation regarding its partial revised submission in respect of the Okhotsk Sea; Pakistan; France and South Africa regarding their joint submission in the area of the Crozet Archipelago and the Prince Edward Islands; France in respect of La Réunion Island and Saint-Paul and Amsterdam Islands; Tuvalu, France and New Zealand (Tokelau) with regard to their submission in respect of the area of the Robbie Ridge; China in respect of its submission concerning part of the East China Sea; Kiribati; and the Republic of Korea.

41. During the session, the Commission decided to reconstitute the Subcommission established to consider the submission of the Russian Federation which had been made on 20 December 2001. The Commission also decided to establish Subcommissions to consider the submissions made by Pakistan and by Norway in respect of Bouvetøya and Dronning Maud Land. This brings the number of active Subcommissions to nine.

42. The six Subcommissions established in respect of submissions made by Uruguay, the Cook Islands in respect of the Manihiki Plateau, Argentina, Ghana, Iceland in respect of the Ægir Basin area and in the western and southern parts of Reykjanes Ridge, and Denmark in respect of the area north of the Faroe Islands continued with their consideration of these submissions during the thirty-second session and met with the respective delegations.

43. The Commission welcomed the establishment of the Open-ended Working Group on the Conditions of Service of the Members of the Commission by the twenty-third Meeting of States Parties, following its request to the Meeting of States Parties. In this connection, the Commission conducted an internal survey on the working conditions of the members of the Commission. The results of this survey will be brought to the attention of the Coordinators of the Working Group.

## **B. The thirty-third session of the CLCS**

44. The thirty-third Commission was held from 7 October to 22 November 2013, without plenary meetings. The session was devoted entirely to the technical examination of submissions at the geographic information system (GIS) laboratories of the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs of the Secretariat. In particular, the session considered the submissions made by the Russian Federation, in respect of the Sea of Okhotsk; Uruguay; the Cook Islands, in respect of the Manihiki Plateau; Argentina; Ghana; Iceland, in respect of the Ægir Basin area and the western and southern parts of Reykjanes Ridge; Denmark, in respect of the area north of the Faroe Islands; Pakistan; and Norway, in respect of Bouvetøya and Dronning Maud Land<sup>7</sup>. (CLCS/81).

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<sup>7</sup> [un.org/doc/UNDOC/GEN/N13/621/29/PDF/N1362129.pdf?OpenElement](http://un.org/doc/UNDOC/GEN/N13/621/29/PDF/N1362129.pdf?OpenElement) last assessed on 7 July 2014

### C. Thirty-fourth Session of the CLCS

45. The thirty-fourth session of the Commission was held from 27 January to 14 March 2014. Besides the two weeks of plenary meetings (10 to 14 February and 10 to 14 March), the Commission, working through its sub commissions, devoted five weeks to the technical examination of submissions at the Geographic Information Systems laboratories and other technical facilities of the Division<sup>8</sup>.

46. The Commission considered and adopted, by consensus, two sets of recommendations with regard to the partial revised submission made by the Russian Federation in respect of the Sea of Okhotsk and the partial submission by Denmark in respect of the area north of the Faroe Islands.

47. Also, during the session, two subcommissions completed their work and transmitted to the Commission two sets of recommendations concerning the submission of Ghana as well as the submission made by Iceland in respect of the Ægir Basin area and in the western and southern parts of Reykjanes Ridge.

48. The following recently received submissions were presented by the respective delegations before the plenary of the Commission: submission of Nicaragua in respect of the south-western part of the Caribbean Sea; and submission of the Federated States of Micronesia in respect of the Eauripik Rise.

49. In order to advance in its work, the Commission established four new subcommissions to consider the submission by South Africa in respect of the mainland of the territory of the Republic of South Africa; the joint submission by the Federated States of Micronesia, Papua New Guinea and the Solomon Islands concerning the Ontong Java plateau; the joint submission by France and South Africa in the area of the Crozet Archipelago and the Prince Edward Islands; and the submission by Mauritius in the region of Rodrigues Island.

50. Five other previously established subcommissions continued their work during the thirty-fourth session and met with the respective delegations. These were the subcommissions established for consideration of the submissions made by Uruguay, Cook Islands concerning the Manihiki Plateau, Argentina, Pakistan and Norway in respect of Bouvetøya and Dronning Maud Land.

51. Details of the thirty-fourth session have been reflected in the statement by the Chairperson of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission, which was issued as document CLCS/83<sup>9</sup>.

52. The thirty-fifth session will be held from 21 July to 5 September 2014. The plenary parts of the session will be held from 4 to 8 August and 2 to 5 September 2014. The thirty-sixth session will be held from 13 October to 28 November 2014, with no plenary meetings.

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<sup>8</sup> <http://www.un.org/News/Press/docs/2014/sea1999.doc.htm> last assessed on 7 July 2014

<sup>9</sup> CLCS/83

#### **IV. NINETEENTH SESSION OF THE INTERNATIONAL SEABED AUTHORITY (15 TO 26 JULY 2013, KINGSTON, JAMAICA)**

53. The nineteenth session of the International Seabed Authority took place from 15 to 26 July 2013 in Kingston, Jamaica<sup>10</sup>. The main parts of the work related to the following:

54. *Amendments to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area:* The highlight of the meeting was the adoption of a draft decision concerning overhead charges for administration and supervision of exploration contracts. It approved amendments to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area, and appointed KPMG as independent auditor for 2013 and 2014. Regarding other financial and budgetary matters, the Assembly urged its members to pay their assessed contributions to the budget on time and in full, pay all outstanding contributions, and to make voluntary contributions to the Endowment Fund and Voluntary Trust Fund of the Authority.

55. *Report of the Secretary-General:* This report covers the work of the Authority, relations with the host government as well as matters relating to the administration, budget, and finances of the Authority, and matters concerning the international seabed Area. This is available in Authority's document (ISBA/19/A/2).

56. *Programmes to mark the 20<sup>th</sup> Anniversary of entry into force of UNCLOS:* The Minister of Foreign Affairs and Foreign Trade of Jamaica (the host country), Mr. Nicholson said the 2014 session, which will mark the twentieth anniversary of the entry into force of the Convention and the establishment of the Authority, will provide an opportunity for the host country and the secretariat to continue the process of sensitization and awareness of the work of the Authority. Guyana joined other delegations in endorsing the Authority's plan to establish an ocean mining museum to be housed on the ground floor of the head quarters premises as soon as it is approved by the Finance Committee. Tonga said although there would be cost implications in establishing a museum, it would provide visibility on the history and future work of the Authority. The Cook Islands' delegation announced its donation of a nodule cube exhibit to the proposed museum. The representative said the Cook Islands had, by its attendance at the nineteenth session as an Observer, commenced its national plan to fully engage with the ISA and its activities.

57. *New Members:* Following ratification/ accession to the Convention, the Authority welcomed the following new Members: Swaziland,,Ecuador and Timor-Leste. .

58. Ecuador, speaking to the Assembly for the first time as a member of the Authority, declared that its accession to the Convention was the culmination of a process which had begun with the pioneering vision set forth in the 1952 Santiago Declaration - (The first international instrument to proclaim a 200-mile limit). The accession represented a valuable opportunity for sustainable social, economic and cultural development for present and future generations of Ecuadorians. The representative informed the Assembly that work was currently being undertaken to define the outer limits of his country's continental shelf.

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<sup>10</sup> <http://www.isa.org.jm/files/documents/EN/Press/Press13/SB-19-17.pdf> , information mentioned herein is drawn from International Seabed Authority Press release, SB/19/17 dated 25 July 2013 last assessed on 7 July 2014. For full account of the work of the ISA, see the Report of the Secretary-General ISBA/19/A/2 dated 22 May 2013.

59. Referring to section XV of the Secretary-General's report relating to capacity development and training, Nigeria noted that the African group was the regional group with the largest number of developing countries. It expressed the hope that the 20 training opportunities that would become available in 2013 to 2015 period would be more equitably awarded in Africa's favour, without compromising qualifications requirements. Tonga said there was a need for increased capacity -building in areas of environmental science and geology; to this end, the country had established two scholarships for Tongan nationals.

60. Indonesia stressed the importance of capacity building for developing countries, particularly in marine scientific research, saying this would allow States to acquire the means to reap the benefits from the oceans while also preserving its resources for future generations.

61. The Commonwealth Secretariat, which became an Observer to the International Seabed Authority in 2010, attended the meetings for the first time. Ms. Rosemarie Cadogan, Legal Adviser in the Secretariat's Economic and Legal Section (ELS), said that her organization had been very active in the delivery of legal and technical assistance to member States concerning seabed resources, including in the preparation, lodgement and defence of submissions to the Commission on the Limits of Continental Shelf (CLCS). The ELS had worked with the Cook Islands to establish the first comprehensive seabed mining legislation in the Pacific. It was hoped, the representative added, that the regulatory model would serve as a template that could be tailored to the specific needs of individual countries.

#### **V. (A) TWENTY-THIRD MEETING OF THE STATES PARTIES TO THE UN CONVENTION ON THE LAW OF THE SEA (10 TO 12 JUNE 2013, UN HEADQUARTERS, NEW YORK)**

62. The twenty-third Meeting of States Parties to the United Nations Convention on the Law of the Sea<sup>11</sup> was held at United Nations Headquarters from 10 to 12 June 2013<sup>12</sup>.

63. The President of the Tribunal, Judge Shunji Yanai, introduced the annual report for 2012 (SPLOS/256) and provided an overview of the judicial activities of the Tribunal and the work carried out during the two sessions devoted to legal and judicial matters held in 2012, namely the thirty-third and thirty-fourth sessions.

64. The President noted the continued increase in the judicial activities of the Tribunal in 2012. The Tribunal had handled four cases involving a wide range of substantive and procedural issues. The Secretary-General of the ISA also made a statement.

65. *Workload of CLCS*: The Chair of the Commission, Lawrence Folajimi Awosika, made a statement providing information on the activities carried out by the Commission since the twenty-second Meeting of States Parties<sup>13</sup>.

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<sup>11</sup> United Nations, Treaty Series , vol. 1833, No. 31363.

<sup>12</sup> Report of Twenty-third meeting of States Parties, New York 10-12 June 2013, SPLOS/263, dated 8 July 2013.

66. In the ensuing discussion, delegations emphasized the critical role of the Commission in the establishment and advancement of the legal order for the oceans, as provided in the Convention. In this connection, the view was expressed that the work of the Commission involved a delicate balance between the interests of the submitting coastal State and those of the international community as a whole. The Commission was also contributing to the attainment of a just and equitable economic order. A suggestion was made that the statements by the Chair on the progress in the work of the Commission could provide more substantive information, in the light of the interests of the international community in the Area.

67. The Meeting considered the annual reports of the Secretary-General on oceans and the law of the sea (A/67/79/Add.1 and Add.2 and A/68/71). Delegations welcomed the new States Parties to the Convention, which brought the Convention closer to the goal of universality.

68. A wide range of other issues of significance, including the importance of marine renewable energy as a tool for economic and social development, the impact of fishing on sustainable development and food security, as well as on the tourism industry, and the need for the implementation of Part X of the Convention, relating to the right of access of landlocked States to and from the sea and freedom of transit questions in relation to ocean observations, in particular as regards their marine scientific research aspects, were also recalled.

**(B) TWENTY- FOURTH MEETING OF THE STATES PARTIES TO THE UN CONVENTION ON THE LAW OF THE SEA (10 TO 12 JUNE 2014, UN HEADQUARTERS, NEW YORK)**

69. The twenty-fourth meeting of States Parties re-elected the following five Judges of the International Tribunal for the Law of the Sea: Judge Yanai (Japan), Judge Hoffmann (South Africa), Judge Pawlak (Poland), Judge Kateka (Tanzania) and Judge Paik (Republic of Korea). In addition, the Meeting also elected Mr Alonso Gómez-Robledo Verduzco (Mexico) and Mr Tomas Heidar (Iceland). The term of these judges are for a period of nine years commencing from 1 October 2014. It may be recalled that elections for one third of the judges of the Tribunal, namely seven judges, are held every three years at the Meeting of State Parties.

70. The Meeting also elected one member of the Commission on the Limits of the Continental Shelf (Mr. Rasik Ravindra from India) in order to fill up the vacancy created by the resignation of the member from India (Mr. S.Rajan) whose term was to expire on 15 June 2017. Mr. Ravindra will serve in the Commission for the remainder of the term of Mr. Rajan.

71. During the meeting, statements were also made by the Secretary-General of the International Seabed Authority, President of the International Tribunal on the Law of the Sea and the Chairman of the Commission on the Limits of the Continental Shelf on the work of their respective institutions. While the salient features stated in the Meeting are summarized below,

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<sup>13</sup> See SPLOS/259. For more information on the work of the Commission during its thirtieth and thirty-first sessions, see CLCS/76 and CLCS/78

the full report of the President of the Meeting of States Parties will be available on the website of the United Nations Division for Ocean Affairs and the Law of the Sea.

72. At the twenty-fourth meeting of States Parties, the Secretary-General of the International Seabed Authority provided an update on the work of the Authority and informed the meeting of some of the issues that will be taken up during the twentieth session of the Authority. (In Kingston from 14 to 25 July 2014). During the annual session, a special session to commemorate the twentieth anniversary of the establishment of the Authority will also take place. The Finance Committee and the Legal and Technical Commission are scheduled to meet a week prior to the session.

73. At the session, elections will take place for members of the Council for the period 2015 to 2018. In preparation for the election, the Secretariat of the Authority has prepared a list of states eligible for election in each group of the Council, and available on the Authority's website. The Authority will consider and approve the budget for the financial period 2015 to 2016 as well as the scale of assessments for contributions to the budget.

74. On the substantive part, the Authority will consider the applications of seven pending applications for exploration contracts in the Area.

75. The Meeting of States Parties was informed that as of 19 May 2014, 16 exploration contracts were in force, covering approximately 900,000 square kilometres of the seafloor in the Atlantic Ocean, in the Indian Ocean and in the Pacific Ocean. Twelve contracts cover exploration for polymetallic nodules, two cover exploration for polymetallic sulphides and two cover exploration for cobalt-rich ferromanganese crusts. The first contract for exploration for cobalt-rich crusts was signed in Tokyo, Japan, on 27 January 2014 with Japan, Oil, Gas and Metals National Corporation (JOGMEC). A contract for exploration for cobalt-rich crusts was also signed with COMRA in Beijing, People's Republic of China, on 29 April 2014.

76. Seven applications for approval of plans of work for exploration are presently under consideration by the Legal and Technical Commission and the Council. Applications by the Ministry of Natural Resources and Environment of the Russian Federation, UK Seabed Resources Ltd., the Government of India and Ocean Minerals Singapore, which had been deferred from the nineteenth session in 2013, were taken up by the Legal and Technical Commission at its meeting in February 2014 and will be considered by the Council at the twentieth session. Three new applications were submitted in December 2013 by the Federal Institute for Geosciences and Natural Resources of the Federal Republic of Germany (BGR) (submitted on 17 December 2013); Cook Islands Investment Corporation (CIIC), sponsored by the Cook Islands, (submitted on 27 December 2013), and the Companhia de Pesquisa de Recursos Minerais S.A. (CRPM), sponsored by Brazil, (submitted on 31 December 2013). These are presently under consideration by the Legal and Technical Commission and are expected to be submitted to the Council during the twentieth session.

77. To ensure that the Authority has sufficient resources to administer and supervise these contracts, at the 19<sup>th</sup> session, the Assembly adopted a decision requiring all contractors to pay an overhead charge in the amount of US\$47,000.00 to help to facilitate payment for this work and to ensure that this cost would not be borne by member states. For new applicants, a provision will be inserted in their contracts requesting this annual payment that is reviewable every two years. For contracts that were in force before the adoption of the decision, consultations with those contractors to include two clauses in their contracts referring to the decision and the

payment of the overhead charge will be held. A on the status of these consultations will be presented by the Secretary General of the Authority at the twentieth session.

79. The Secretary-General also informed that the Authority has obtained a digital atlas of the megafauna associated with polymetallic nodule deposits in the Clarion Clipperton Zone in the Pacific Ocean and that later this year, a workshop will be convened in Korea to standardize the taxonomy of macrofauna. Built into the workshop is the training request/recommendation from the megafauna workshop. It is expected that the third class of fauna, the meiofauna, will be addressed in 2015, with a view to obtaining recommendations from the Legal and Technical Commission on guidelines on the taxonomic description of all known fauna by contractors, prospectors and researchers. These guidelines will be placed on the Authority's website so that they are available to the international community. Similar taxonomic standardization workshops will be convened for polymetallic sulphides as well as for cobalt-rich ferromanganese deposits.

80. With regard to the resources to be found in the exploration areas of contractors, in particular the requirement that upon the expiration of their exploration contracts to provide the Secretary-General with estimates of the quantity of the proven, probable and possible polymetallic nodule reserves and the anticipated mining conditions, another need for standardization has been revealed. While for land-based mining mineral classification systems exist, the same cannot be said for deep seabed mineral resources. With the impending expiration of seven contracts within the next three years, it is essential that such a system is established, and that the amount of time required by contractors to complete this work is ascertained. In this regard, the Authority will convene a workshop with polymetallic nodule contractors to establish a common system and determine how long it will take for the work to be completed. The Authority will invite specialists from the Committee on Mineral Reserves International Reporting Standards (CRIRSCO) and the United Nations Framework Classification system (UNFC) to guide the workshop.

81. One of the key tasks for the Authority is the development of regulations for exploitation of seabed minerals including the financial terms of exploitation. In line with the request given to it by the Council in 2013, the Legal and Technical Commission started work on the exploitation code at its meetings in February 2014. The Commission considered the outcomes of a study of the different policy and financial objectives relating to a fiscal regime, comparable mining regimes and fiscal rates of payments and calculation methodologies and current best practices. Immediately following its meeting the Secretariat launched a stakeholder survey aimed at soliciting relevant information for the development of a regulatory framework for the exploitation of deep sea minerals from members of the Authority as well as stakeholders from all sectors of society. More than 50 responses were received, which will be made available on the Authority's website.

82. The President of the International Tribunal for the Law of the Sea reported on the work of the Tribunal. A summary of the work of the Tribunal is contained in the part relating to the Dispute Settlement under UNCLOS.

83. For a summary of the work of the Commission on the Limits of the Continental Shelf see part III of the present brief.

## **VI. FOURTEENTH MEETING OF THE UNITED NATIONS OPEN-ENDED INFORMAL CONSULTATIVE PROCESS ON OCEANS AND LAW OF THE SEA (17 TO 20 JUNE 2013, UN HEADQUARTERS, NEW YORK)**

84. The fourteenth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (Consultative Process or ICP-14) took place from 17-20 June 2013, at UN Headquarters in New York. The meeting was co-chaired by Amb. Don Mackay (New Zealand) and Amb. Milan Jaya Nyamrajsingh Meetarbhan (Mauritius). The topic for consideration was : “the impacts of ocean acidification on the marine environment”. Discussions focused around: ocean acidification; inter-agency cooperation and coordination; the process for the selection of topics and panelists so as to facilitate the work of the UN General Assembly; issues that could benefit from attention in future work of the General Assembly on oceans and the law of the sea; and the outcome of the meeting. In addition, three panel discussions were held on: the process of ocean acidification; impacts of ocean acidification and ongoing activities at the global, regional and national levels to address those impacts; and opportunities and challenges for addressing the impacts of ocean acidification on the marine environment, including through enhanced cooperation on scientific and technical aspects<sup>14</sup>.

85. The importance of further monitoring and coordinated research, in accordance with paragraph 166 of the outcome document of the UN Conference on Sustainable Development (UNCSD, or Rio+20), was also widely discussed. A number of relevant initiatives were brought to light, including: the Ocean Acidification International Coordination Centre (OA-ICC) at the IAEA, which was launched during Rio+20; the recently established Global Ocean Acidification Observing Network (GOA-ON); the upcoming IPCC fifth assessment report; and a systematic review document on the impacts of ocean acidification on biodiversity and ecosystem functions by the Convention on Biological Diversity.

86. While most of the attention was focused on local and short-term adaptation measures, some delegates were, nonetheless, disappointed in the lack of willingness to go further and critically discuss the impacts of some of the suggested measures, in particular those related to geo-engineering. Furthermore, while several delegates explicitly commended—and further encouraged—the scientific community’s coordination and cooperation efforts on the issue of ocean acidification, delegates’ comments on inter-agency cooperation and coordination turned rather sour. In particular, in the context of the negotiations on the new terms of reference for UN-Oceans, several delegations highlighted that UN-Oceans should remain focused on inter-agency coordination and prevent the duplication of existing efforts, while refraining from operating beyond the individual mandates of the entities involved in its inter-agency network. Furthermore, several delegates expressed the concern that the Secretary-General’s Oceans Compact—which has been established to strengthen system-wide coherence to deliver on the UN’s oceans-related mandates—is operating beyond Member States’ interests and consent, and is entering too much into the policy-making space of Member States.

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<sup>14</sup> Information mentioned in this part is drawn from “Summary of the Fourteenth Meeting of the UN Open-ended Informal Consultative Process on Oceans and Law of the Sea: 17-20 June 2012”, Earth negotiations Bulletin, Volume 25 No. 89 , Sunday 23 June 2013, available online at <http://www.iisd.ca/vol25/enb2589e.html> last assessed on 8 July 2014

87. With the ICP having been renewed for two years by the General Assembly in the fall of 2012, ICP-14 was able to be a session free of explicit considerations of the future of the Consultative Process. In this environment, the growing enthusiasm for the reformed process for topic selection—which allows for greater and earlier country engagement—and the quality of the panel presentations and ensuing discussions at ICP-14 were a welcome indication that ICP continues to serve a useful role for the ocean community.

88. Delegates expressed hope that the knowledge and awareness generated during the meeting would serve as a useful foundation for the negotiations of the Oceans and law of the sea resolution at the 68<sup>th</sup> session of the UN General Assembly. Whether the expressed hope translates into action on ocean acidification may hinge on how well the upcoming General Assembly negotiations can navigate the competing issues on the oceans agenda. Despite this uncertainty, it remains clear that many delegates, benefiting from the safe space created by ICP-14, left the meeting with a heightened awareness of ocean acidification as a global issue of urgent concern.

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

89. The Annual Comprehensive Report of the UN Secretary-General on Oceans and Law of the Sea was prepared pursuant to paragraph 272 of General Assembly resolution 67/78, with a view to facilitating discussions on the topic of focus at the fourteenth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, on the theme entitled “**The impacts of ocean acidification on the marine environment**”.<sup>15</sup> The deliberations on the report of the Secretary-General on Oceans and Law of the Sea were discussed in the fourteenth meeting of the Open-ended Informal Consultative Process on Oceans and Law of the Sea from 17-20 June 2013 at the UN Headquarters in New York, that meeting discussed in detail the impacts of ocean acidification on the marine environment<sup>16</sup>.

90. Section II of the Secretary-General’s report provides information on ocean acidification and its impacts on the marine environment, including related socioeconomic impacts. Section III sets out information on the elements of the legal and policy framework that could be considered as relevant to addressing ocean acidification. Sections IV and V, respectively, attempt to identify developments at the global and regional levels, as well as challenges and opportunities in addressing the impacts of ocean acidification.

91. Some of the conclusions that the report offers are that considerable knowledge gaps remain regarding the biological and biogeochemical consequences of ocean acidification for marine biodiversity and ecosystems, and the impacts of these changes on marine ecosystem services, including food security, coastal protection, tourism, carbon sequestration and climate

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<sup>15</sup> Oceans and law of the Sea: Report of the Secretary-General, UN Doc. A/68/71 dated 8 April 2013. It constitutes the first part of the report of the Secretary-General on developments and issues relating to ocean affairs and the law of the sea for consideration by the Assembly at its sixty-eighth session. The report is also being submitted to the States Parties to the United Nations Convention on the Law of the Sea, pursuant to article 319 of the Convention.

<sup>16</sup> The discussion in the fourteenth session have been reflected above in Part VI of the present report.

regulation. However, what is known is that ocean acidification operates in synergy with other pressures on marine ecosystems to compromise the health and continued functioning of those ecosystems.

92. While ocean acidification is often perceived as a symptom of climate change, it is a significant, separate, problem which requires specific attention and measures. Although increased emission of CO<sub>2</sub> into the atmosphere contributes to both phenomena, the processes and impacts of ocean acidification and climate change are distinct. For example, greenhouse gases other than CO<sub>2</sub> do not affect ocean acidification. Moreover, the absorption of CO<sub>2</sub> into the oceans may, at least in the short-term, help to mitigate the effects of climate change, even though it exacerbates ocean acidification.

93. The future magnitude of ocean acidification and its impacts on the marine environment and related socioeconomic impacts are considered to be very closely linked to the amount of CO<sub>2</sub> released and accumulated in the atmosphere as a result of human activities. Significant and rapid mitigation measures are therefore urgently needed. Similarly, given the economic and social importance of the oceans to human societies, governments at the local, national, and international levels are encouraged to assess and implement adaptive approaches to acidification.

94. The Secretary-General in his report has observed that activities to increase knowledge of the ocean acidification process and its impacts, as well as to address them, have increased over the past few years. However, thus far, few measures have been taken to effectively mitigate or adapt to the impacts of ocean acidification on the marine environment. In addition, these activities and initiatives appear to be fragmented. In particular, greater efforts are needed to coordinate research on ocean acidification in order to avoid gaps and duplications.

95. The capacity to mitigate ocean acidification and adapt to its impacts, including through the adoption of management measures to ensure or strengthen the resilience of ecosystems is a critical element of addressing ocean acidification. In that regard, greater emphasis should be put on capacity-building to promote the sharing of knowledge and expertise as well as the development of infrastructure and domestic policies related to ocean acidification. Capacity-building activities directed towards developing countries whose communities are most affected by the impacts of ocean acidification, owing to their dependency on organisms vulnerable to acidification, is critical.

96. The Secretary-General has observed, given that ocean acidification is a global issue that requires a global approach and an integrated response, there is an urgent need for intergovernmental bodies to consider the challenges and opportunities for effectively addressing the ocean acidification impacts on the marine environment, including through international cooperation and coordination. For present and future generations, the cost of taking the urgent and necessary steps to mitigate and adapt to ocean acidification is likely to be lower than the cost of inaction.

## VIII. CONSIDERATION OF THE OCEANS AND THE LAW OF THE SEA ISSUES BY THE UN GENERAL ASSEMBLY AT ITS SIXTY-EIGHTH SESSION (DECEMBER 2013)

97. The plenary meetings of the UN General Assembly at its Sixty-eighth Session, on 9 December 2013 considered the agenda item on “Oceans and Law of the Sea” and adopted two resolutions namely: Oceans and Law of the Sea<sup>17</sup>; and Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks and related instruments<sup>18</sup>.

98. The omnibus resolution on “Oceans and Law of the Sea” contains sections on: implementation of the UN Convention on the Law of the Sea (UNCLOS) and related agreements and instruments; capacity-building; meeting of States parties; peaceful settlement of disputes; the Area (the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction); effective functioning of the Authority and the Tribunal; the continental shelf and the work of the Commission; maritime safety and security and flag State implementation; marine environment and marine resources; marine biodiversity; marine science; the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects; regional cooperation; the Open-ended Informal Consultative Process on Oceans and the Law of the Sea; coordination and cooperation; activities of the UN Division for Ocean Affairs and the Law of the Sea (DOALOS); and the 69th session of the UNGA. It also contains an annex with the terms of reference for UN-Oceans.

99. In the resolution, the UNGA focuses on marine debris and climate change, recalling that in the Rio+20 outcome, titled “The Future We Want,” States noted with concern that the health of oceans and marine biodiversity are negatively affected by marine pollution, including marine debris; noting the work of the Intergovernmental Panel on Climate Change (IPCC), including its recent findings on the acidification of oceans; and expressing concern about the potential environmental impacts of ocean fertilization. The UNGA also addresses other threats to the marine environment, including invasive alien species and pollution.

100. On the linkages between freshwater and blue water, the resolution welcomes the follow-up of relevant initiatives such as the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities. It encourages States, in order to address the issue of marine debris, to tackle, *inter alia*, land-based sources and consider community-based coastal and waterway clean-up and monitoring activities.

101. Many delegates heartily supported the 1982 United Nations Convention on the Law of the Sea as defining the rights and responsibilities of nations in their use of the world's oceans<sup>19</sup>. A representative of the Philippines said the combined 80 pages of the two drafts represented the

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<sup>17</sup> UNGA Res A/RES/68/70 dated 9 December 2013, adopted, by a recorded vote of 115 in favor to one against (Turkey), with two abstentions (Colombia, Venezuela).

<sup>18</sup> UNGA Res A/RES/68/71 dated 9 December 2013.

<sup>19</sup> [un.org/News/Press/docs/2013/ga11466.doc.htm](http://un.org/News/Press/docs/2013/ga11466.doc.htm) last assessed on 8 July 2014

most comprehensive view of the pressing matters at hand and he reiterated a call to all States to ratify the Convention and to settle any differences to allow the world to fulfil its obligations.

102. Nevertheless, some speakers expressed reservations about parts of the drafts, including the representative of Turkey, who said his delegation had opposed the resolution on Oceans and the Law of the Sea because the Convention had failed to provide sufficient safeguards for special geographical situations. Nor did it consider conflicting interests stemming from special circumstances, and it prohibited States from registering reservations to any of its articles.

103. Adopting a resolution on sustainable fisheries without a vote, the Assembly urged States, individually and through relevant regional fisheries management organizations and arrangements, to establish mandatory vessel monitoring, control and surveillance systems. The 32-page text containing 180 operative paragraphs recognized, for the first time, the need to tackle the causes of ocean acidification and to implement strategies to minimize its impact.

104. Speaking on behalf of the Pacific Islands Forum, the representative of the Marshall Islands, said oceans, seas and fisheries must be given priority on the sustainable development post-2015 agenda because leaving the majority of the Earth's surface unprotected was a moral and political failure.

105. Similarly, Jamaica's speaker, on behalf of the Caribbean Community (CARICOM), said that with rising global temperatures and dwindling fish stocks putting oceans more at risk than at any other time in history, it was a global responsibility to ensure the sustainable development of the planet's major bodies of water.

106. The representative of the Maldives, noting his economy's dependence on coastal and maritime ecosystems, urged the international community to implement global instruments requiring fish to be harvested sustainably in line with an ecosystem-based approach. Asking whether the international community could afford regression in such critical areas as overfishing, climate change and sustainable development, he said "we have only borrowed the world from our children".

## **IX. DISPUTE SETTLEMENT UNDER THE UNCLOS**

107. At the Twenty -fourth meeting of States Parties to the United Nations Convention on the Law of the Sea, the President of the Tribunal informed that during the years 2013-2014, it has acted in four cases raising a number of complex issues, including: provisional measures for the release of a detained vessel and persons on board; the lawfulness of the arrest and confiscation of a vessel; the status of bunkering in support of foreign vessels fishing in the exclusive economic zone; reparation for damage; and IUU fishing. From the procedural perspective, two of these cases concerned the merits of a dispute; one was an urgent proceeding, and one an advisory opinion. It disposed of two cases in 2013 and one more in April 2014. The request for an advisory opinion remains on the docket and the hearing will take place in September this year.

108. The President informed that in the *M/V "Louisa" Case* between Saint Vincent and the Grenadines and the Kingdom of Spain. The Tribunal concluded in its judgment that no dispute

concerning the interpretation or application of the Convention existed between the Parties at the time the Application was filed and that, therefore, it had no jurisdiction *ratione materiae* to entertain the case.

#### **A. The “Arctic Sunrise” Case (Kingdom of the Netherlands v. Russian Federation)**

109. The Tribunal was required to deal with an urgent procedure, which concerned a request submitted by the Netherlands to the Tribunal on 21 October 2013 for the prescription of provisional measures under article 290, paragraph 5, of the Convention, pending the constitution of an arbitral tribunal. On 4 October 2013, the Netherlands had instituted arbitral proceedings, under Annex VII to the Convention, against the Russian Federation in a dispute concerning the boarding and detention of the vessel *Arctic Sunrise* in the exclusive economic zone of the Russian Federation and the detention by Russian authorities of the persons on board the vessel. In a note verbale dated 22 October 2013, the Russian Federation informed the Tribunal that it did not accept the arbitration procedure under Annex VII of the Convention initiated by the Netherlands in regard to this case and that it did not intend to participate in the proceedings before the Tribunal. In that note verbale, the Russian Federation invoked the declaration it had made upon ratifying the Convention on 26 February 1997, stating that it “does not accept procedures provided for in Section 2 of Part XV of the Convention, entailing binding decisions with respect to disputes...concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction”.

110. According to the Netherlands, the Dutch-flagged *Arctic Sunrise* was boarded on 19 September 2013 in the exclusive economic zone of the Russian Federation by Russian authorities who detained the vessel and the 30 persons on board. The hearing in the case was held on 6 November 2013 without participation of the Russian federation. At the hearing, the Netherlands requested the tribunal to prescribe provisional measures that would immediately enable the *Arctic Sunrise* and crew members to leave the maritime zones under the jurisdiction of the Russian federation.

111. The Tribunal adopted its Order on the Request for provisional measures on 22 November 2013. In relation to the declaration made by the Russian federation with respect to law-enforcement activities under article 298, paragraph 1, subparagraph (b), of the Convention, the Tribunal stated in its Order that this declaration “*prima facie* applies only to disputes excluded from the jurisdiction of a court or tribunal under article 297, paragraphs 2 and 3, of the Convention” (paragraph 45 of the Order).

112. Concerning the non-appearance of the Russian Federation, the Tribunal considered that the absence of a party or failure of a party to defend its case did not constitute a bar to the proceedings and did not preclude the Tribunal from prescribing provisional measures, provided that the parties had been given an opportunity to present their observations on the subject. The Tribunal noted that the Russian federation had been given ample opportunity to present its observations but had declined to do so. The tribunal then considered that it had to identify and access the respective rights of the Parties involved on the best available evidence.

113. The Tribunal then observed that a “difference of opinion exists as to the applicability of the provisions of the Convention in regard to the rights and obligations of a flag State and a Coastal State, notably, its articles 56, 58, 60, 87 and 110” (paragraph 68 of the Order). According to the Tribunal, these provisions appeared to afford a basis on which the jurisdiction of the arbitral tribunal might be founded. Therefore, the Tribunal concluded that the Annex VII arbitral tribunal would *prima facie* have jurisdiction over the dispute.

114. While examining the required conditions for the prescription of provisional measures, the Tribunal held that article 290, paragraph 5, of the Convention had to be read in conjunction with article 290, paragraph 1. It also considered that, under the circumstances of the case, pursuant to article 290, paragraph 5, of the Convention, the urgency of the situation required the prescription by the Tribunal of provisional measures.

115. In its Order, the Tribunal prescribed that “the Russian Federation shall immediately release the vessel *Arctic Sunrise* and all persons who have been detained, upon the posting of a bond or other financial security by the Netherlands which shall be in the amount of 3,600,000 euros, to be posted with the Russian Federation in the form of bank guarantee”. It also prescribed that upon the posting of this bond or other financial security “the Russian Federation shall ensure that the vessel *Arctic Sunrise* and all persons who have been detained are allowed to leave the territory and maritime areas under the jurisdiction of the Russian Federation”. (paragraph 105 of the Order). In addition, the Tribunal decided that the Parties should each submit an initial report not later than 2 December 2013 to the Tribunal. The Netherlands communicated its report to the tribunal on that date.

#### **B. The M/V “Virginia G” Case (Panama/Guinea-Bissau)**

116. Next on the Tribunal’s agenda was the *M/V “Virginia G”* case between Panama and Guinea-Bissau, which had been submitted to the Tribunal on 4 July 2011 through the notification of a special agreement concluded between the Parties. This case related to a dispute concerning *M/V “Virginia G”*, an oil tanker flying the flag of Panama, arrested on 21 August 2009 by the authorities of Guinea-Bissau for carrying out without authorization refuelling operations for foreign vessels fishing in Guinea-Bissau’s exclusive economic zone. The vessel and the gas oil on board were confiscated on 27 August 2009. The vessel was subsequently released by decision of the authorities of Guinea-Bissau in 2010. The hearing in the case took place from 2-6 September 2013. After deliberations, the Tribunal delivered its Judgement on 14 April 2014.

117. In its Judgement, the Tribunal found that it had jurisdiction over the dispute and rejected the objections raised by Guinea-Bissau to the admissibility of Panama’s claims. These objections were based on the alleged lack of a genuine link between the *M/V Virginia G and Panama*, the nationality of claims and the alleged failure to exhaust local remedies. As a result of having rejected objections, the tribunal entered into the merits of the case. The fundamental question it had to address was whether Guinea-Bissau had violated a number of provisions of the Convention when it arrested, and later confiscated, the *M/V Virginia G*.

118. The Tribunal emphasized at the outset that its task was to deal with a dispute relating to bunkering activities in support of foreign vessels fishing in the exclusive economic zone of a

coastal state. In this connection, the tribunal held that “the regulation by a coastal state of bunkering of foreign vessels fishing in its exclusive economic zone is among those measures which the coastal State may take in its exclusive economic zone to conserve and manage its living resources under article 56 of the Convention, read together with article 62, paragraph 4, of the Convention, and noted that “this view is confirmed by State practice which has developed after the adoption of the Convention” (paragraph 217 of the Judgement). In addition, the tribunal held that article 58 of the Convention does not prevent coastal States from regulating, under article 56, bunkering of foreign vessels fishing in their exclusive economic zone.

119. In considering the relevant national legislation of Guinea-Bissau, the Tribunal found that it conformed to articles 56 and 62, paragraph 4, of the Convention. At this point, it reviewed the application of this legislation in the case of the *M/V Virginia G*, noting that the fisheries laws and regulations of Guinea-Bissau provided for the possibility of confiscating bunkering vessels. The tribunal observed that, according to article 73, paragraph 1, of the Convention, the coastal State may take such measures “as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention”. It also stated that providing for the confiscation of a vessel offering bunkering services to foreign vessels fishing in the exclusive economic zone of Guinea Bissau is not per se in violation of article 73, paragraph 1, of the Convention, and that whether or not confiscation is justified in a given case depends on the facts and circumstances.

120. Accordingly, the tribunal examined whether the confiscation of the vessel and the gas oil on board was justified. After finding that neither the boarding and inspection nor the arrest of the *M/V Virginia G* violated article 73, paragraph 1, of the Convention, the tribunal reiterated that, pursuant to article 73, paragraph 1, of the Convention, the enforcement measures taken have to be “necessary” to ensure compliance with the laws and regulations adopted by the coastal State in conformity with the Convention. Having determined that *M/V Virginia G* did not have the written authorization required by the legislation of Guinea-Bissau for bunkering, the Tribunal observed that the failure to obtain a written authorization was rather the consequence of a misinterpretation of the correspondence between the representatives of the fishing vessels and the relevant authorities of Guinea-Bissau than an intentional violation of its laws and regulations. The Tribunal found, in the light of the circumstances of the case, that the confiscation of the vessel and the gas oil on board was not necessary either to sanction the violation committed or to deter the vessels or their operators from repeating this violation. It therefore found that the confiscation by Guinea-Bissau of the *M/V Virginia G* and the gas oil on board was in violation of article 73, paragraph 1, of the Convention.

121. In its Judgement, the Tribunal also found that Guinea-Bissau had violated the requirements of article 73, paragraph 4, of the Convention by failing to notify Panama as the flag State of the detention and arrest of *M/V Virginia G* and subsequent actions taken against the vessel and its cargo. According to the Tribunal, this deprived Panama of its right as a flag State to intervene at the initial stages of actions taken against *M/V Virginia G* and during subsequent proceedings.

122. The tribunal found that Panama’s other allegations were not well founded and that Guinea-Bissau had not violated any other provisions of the Convention. In particular, Guinea-

Bissau had not violated article 73, paragraph 2, of the Convention, because its applicable law concerning the prompt release of arrested fishing vessels and their crews upon the posting of a reasonable bond or other financial security was consistent with the provisions of article 73, paragraph 2, of the Convention. According to the tribunal, Guinea Bissau had not violated article 73, paragraph 3, of the Convention either, given that no penalty of imprisonment had been imposed on members of the crew of the M/V Virginia G. The Tribunal also decided that neither article 110 of the Convention nor article 224 of the Convention was applicable to the enforcement activities undertaken by the coastal State pursuant to article 73, paragraph 1, of the Convention. It further determined that Guinea-Bissau had not violated article 225 of the Convention and that the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation was not applicable in this case. Concerning the allegation that Guinea-Bissau had used excessive force in boarding and arresting the vessel, the Tribunal concluded that Guinea-Bissau had not used excessive force leading to physical injuries or endangering human life during the boarding and sailing of the M/V Virginia G to the port of Bissau.

123. Finally, the Tribunal concluded that the counter-claim presented by Guinea-Bissau in its Counter-Memorial, based on the alleged violation by Panama of article 91 of the Convention, was unfounded.

124. In light of its findings that Guinea-Bissau had violated article 73, paragraph 1, and article 73, paragraph 4, of the Convention, the tribunal decided to award Panama compensation (i) in the amount of US\$ 388,506.00 with interest for the confiscation of the gas oil, as indicated in paragraph 446 (a) of the Judgement and (ii) in the amount of Euro 146,080.00 with interest for the cost of repairs to the M/V Virginia G, as indicated in paragraph 446 (b) of the Judgement. It decided to award Panama compensation for either the loss of profit or its claims, as indicated in paragraphs 439 and 440 of the Judgement.

### **C. Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC)**

125. On 28 March 2013, the Tribunal received a new case, the Sub-Regional Fisheries Commission (SRFC), an organization whose membership is made up of seven West African States, requested the Tribunal to render an Advisory Opinion under article 138 of the Rules of the Tribunal. The request for advisory opinion sets out four questions concerning illegal, unreported and unregulated fishing activities and rights and obligations of coastal States in the management of fish stocks.

1. What are the obligations of the flag State in cases where illegal, unreported and unregulated (IUU) fishing activities are conducted within the Exclusive Economic Zone of third party States?
2. To what extent shall the flag State be held liable for IUU fishing activities conducted by vessels sailing under its flag?
3. Where a fishing license is issued to a vessel within the framework of an international agreement with the flag State or with an international agency, shall the State or international

agency be held liable for the violation of the fisheries legislation of the coastal State by the vessel in question?

4. What are the rights and obligations of the coastal State in ensuring the sustainable management of shared stocks and stocks of common interest, especially the small pelagic species and tuna?

126. By Order dated 24 May 2013, the Tribunal invited States Parties to the Convention, the SRFC, and the intergovernmental organizations identified by the tribunal as likely to be able to furnish information on the questions asked, to submit written statements relating to the case by 29 November 2013. This time limit was further extended to 19 December 2013.

127. During the first round, written statements were submitted by 22 State Parties, the SFRC and six organizations. In addition, one written statement was submitted by a State Party to the 1995 Straddling Fish Stocks Agreement. Subsequently, by Order dated 20 December 2013, States parties and Intergovernmental organizations presented written statements were invited to submit written statements on the first-round statements by 14 March 2014. Written statements<sup>20</sup> were submitted by five States Parties and the SRFC during the second round. Pursuant to Order dated 14 April 2014, the hearing of the case would open on 2 September 2014.

## **XI. COMMENTS AND OBSERVATIONS OF THE AALCO SECRETARIAT**

### **A. United Nations Convention on the Law of the Sea**

128. On 9<sup>th</sup> June 2014 the observance of “World Oceans Day” coincided with the “20th Anniversary year of the entry into force of the United Nations Convention on the Law of the Sea”. Known as the “Constitution for the Oceans”, this instrument provides a comprehensive legal regime for all ocean activities and is critical to the sustainable use of the world’s seas and oceans. In fact the Convention defines the basic legal framework for the order of the international maritime law in modern times. The Secretary-General of the United Nations on that occasion stressed that “We have to ensure that oceans continue to meet our needs without compromising those of future generations”<sup>21</sup>. He also added that the oceans regulate the planet’s climate and are a significant source of nutrition. Their surface provides essential passage for global trade, while their depths hold current and future solutions to humanity’s energy needs. Thus, World Oceans Day was an opportunity to celebrate the importance of the oceans for life on earth and to stand up for their protection.

129. It is a well known fact that Oceans generate most of the oxygen we breathe, absorb a large share of carbon dioxide emissions, and are important economically for countries that rely on tourism, fishing and other marine resources for income, and serve as the backbone of international trade. Unfortunately, human pressures, including overexploitation, illegal, unreported and unregulated fishing, destructive fishing, as well as unsustainable aquaculture practices, marine pollution, habitat destruction, alien species, climate change and ocean

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<sup>20</sup> All the statements have been made available on the website of ITLOS.

<sup>21</sup> <http://www.un.org/en/events/oceansday/2014/message.shtml> last assessed on 9 July 2014

acidification are taking a significant toll on the world's oceans and seas. In view of the importance of fisheries the theme of the UN Secretary-General's report to be presented at the forthcoming 69<sup>th</sup> Session of the United Nations General Assembly in September 2014, is "The role of seafood in global food security".

130. On the 20<sup>th</sup> Anniversary of the entry into force of the UNCLOS, the number of States Parties, to UNCLOS, has reached 166. The almost universal acceptance of the Convention is demonstrative of international community's efforts to benefit from a strong, universally accepted and implemented legal regime applicable to the oceans. The regime is also essential for maintaining international peace and security, sustainable use of ocean resources, and the navigation and protection of marine environment. The integrity of the Convention should be safeguarded as it is the cornerstone of maritime order. As the UNCLOS is fast moving towards universal participation and it is hoped that all States of the Asian and African regions would soon accede to the Convention and also to the two implementing agreements.

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

## **B. Safety and Navigation of Shipping**

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

133. Reaching a lasting comprehensive settlement of the situation in Somalia was closely tied to the spread of piracy in that region, and more attention by the international community ought to be given to that issue. In this regard, the long-term efforts through cooperative mechanism in the Straits of Malacca and Singapore remained one of the best practices and applicable mechanisms on combating piracy and armed robbery at sea. The Security Council, the Assembly and the Contact Group on Piracy off the Coast of Somalia had all underscored the need for improving the capacity of States to counter that persistent scourge.

134. It needs to be pointed out, however that lack of sufficient laws alone cannot explain the reluctance of nations to help end piracy because many nations have neither tried to use the laws that exist nor adopted domestic legislation criminalizing the conduct that comprises an act of

piracy. For example, even with sufficient laws, the lack of domestic law enforcement capabilities in certain concerned states may make it virtually impossible for them to prosecute many acts of piracy. Some territorial states or states whose nationals are committing pirate attacks are either failed states or otherwise lack the institutional capacity to bring pirates to justice, making it unrealistic to expect that these states could alone manage the burden of prosecutions. International response and cooperation is thus urgently needed.

135. The difficulties inherent in prosecuting pirates point out the need for the development of model legislation and reliance on international courts that would help domestic legal systems reform their substantive law and prosecute in a manner consistent with international law. In this context, AALCO could indeed play a very vital role in developing any such legislation that could be used by its Member States to prosecute and punish alleged pirates. In this regard, AALCO would be ready to collaborate with other inter-governmental organizations such as IMO and UNCLOS who have expertise in anti-piracy efforts.

### **C. Capacity-Building**

136. The focus of discussion at the fourteenth meeting of the Informal Consultative Process on capacity-building in the areas of ocean affairs and the law of the sea, including ocean acidification, and its impact on the marine environment, inter-agency cooperation and coordination, the process for selection of topics and panellists so as to facilitate the work of the UN General Assembly is timely. Such capacity building activities were of particular importance to the developing States and developing capacities contributes for their effective participation in economic activities. Such capacity building was necessary for the sustainable development of the oceans and seas nationally, regionally and globally. Priority should be given to strengthening institutions and standards, and providing least developed countries with the necessary human and technical tools to fully benefit from the Convention. In this scenario AALCO may wish to initiate new programmes in capacity building. Member States willingness and support in terms of finance, technology, experience and expertise are the very key to this initiative.

### **D. Sustainable Development of Oceans**

137. There were considerable challenges that continued to threaten the sustainable development of the oceans and their resources, as human activities were taking a toll on the viability of vulnerable marine ecosystems and important fisheries were being threatened by over-exploitation, illegal, unreported and unregulated fishing, as well as destructive fishing practices. Over-fishing, destructive fishing practices and IUU fishing continues to be grave threats to the conservation, management and sustainable use of biodiversity on the high seas.

138. To combat IUU fishing it is essential to give priority to compliance and enforcement measures, including effective port State measures, listing of vessels, and developing and implementing integrated monitoring, control and surveillance packages. The Agreement on Port State Measures adopted by FAO to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA, or Agreement) provides a set of highly effective tools to be used by port States to combat IUU fishing. The application of the measures set out in the Agreement is

expected to contribute to harmonized port State measures, enhanced regional and international cooperation and block the flow of IUU-caught fish into national and international markets.

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

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

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

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

#### **E. Workload of the CLCS**

143. The increasing workload of the CLCS remains a matter that merited future consideration to expedite the submissions in a timely manner. Given the large number of submissions made by coastal States, it was important to facilitate its work for expeditious consideration of the submissions.

144. It is hoped that the Commission in fulfilling its responsibilities and consideration of submissions by coastal States would both meet international expectations and stand the tests of science, law and time. There was a need to adopt a balanced approach that ensured the speed and quality of its consideration of submissions, and the need to expedite consideration should not be allowed to compromise the serious, scientific and professional nature of the Commission's work.

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

146. In light of the fact that there are around 20<sup>22</sup> pending submissions from Asian and African States and preliminary information from about 30 Asian/African States regarding upcoming submissions to the CLCS, a possible Sub-committee Meeting of the Member States of AALCO may be held to take further initiatives in this regard.

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

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

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

149. A universally accepted legal framework had yet to be established and States must exercise caution in establishing protected areas. Towards achieving this objective, AALCO Member States could endeavour to formulate guidelines with the objective to conserve as well as maintain sustainable use of marine biodiversity in areas beyond national jurisdiction.

**SECRETARIAT'S DRAFT**

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<sup>22</sup> Following Member States of AALCO either individually or jointly have made submissions to the CLCS pursuant to article 76, para 8 of UNCLOS namely: Indonesia, Japan, Mauritius, Yemen, Ghana, Pakistan, South Africa, Malaysia, Kenya, Mauritius, Nigeria, Sri Lanka, India, Bangladesh, United Republic of Tanzania, People's Republic of China, and Republic of Korea. Ref Submissions to CLCS [http://www.un.org/depts/los/clcs\\_new/commission\\_submissions.html](http://www.un.org/depts/los/clcs_new/commission_submissions.html) assessed on 6/12/2013 at 12.39 PM

**THE LAW OF THE SEA**  
*(Deliberated)*

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

**Considering** the Secretariat Document No.AALCO/53/TEHRAN /2014/S 2;

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

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

**Noting with appreciation** the commemoration of the 20<sup>th</sup> Anniversary of entry into force of the United Nations Convention on the Law of the Sea;

**Also noting with appreciation** the convening and outcome of the successful “AALCO Legal Experts Meeting on the Law of the Sea” organized by the AALCO Secretariat, held at the AALCO Headquarters on 24<sup>th</sup> and 25<sup>th</sup> February 2014;

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

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

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

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

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

1. **Reaffirms** that in accordance with the UNCLOS, the “Area” and its resources are the common heritage of mankind.
2. **Encourages** AALCO Member States not yet parties to the UNCLOS and its implementing instruments, to consider the possibility to ratify or accede thereto, in compliance with their domestic policies.

3. **Urges** the full and effective participation of its Member States which are Parties to UNCLOS, in the work of the International Seabed Authority, and other related bodies established by the United Nations Convention on the Law of the Sea, as well as in the United Nations Informal Consultative Process and also through effective contribution to the work of the Commission on the Limits of Continental Shelf, so as to ensure and safeguard their legitimate interests.
4. **Encourages** its Member States to use the ITLOS and other international tribunals and forums to peacefully resolve their disputes within the sphere of the seas and oceans in accordance with the UNCLOS and other applicable principles and rules of international law.
5. **Requests** the Secretariat of AALCO to assist the capacity building of Member States within the field of law of the sea through varied ways such as joint training programmes with States and inter-governmental organizations, and calls upon its Member States to offer all possible support and assistance.
6. **Decides** to place this item on the provisional agenda of the Fifty-Fourth Annual Session.