Contemporary Issues in International Law: An Asian-African Perspective –By Dr. Rahmat Mohammed, Secretary-General, AALCO

Excellencies on and off the dais,

Distinguished Delegates,

Participants & Ladies and Gentlemen,

A. Introduction

It is my pleasure and privilege to address you on this occasion, which is the first programme that AALCO is organizing this year. AALCO has, for over five decades now, been the collective voice of the Asian and African States at those platforms for international law making. From what was an entirely Euro-centric enterprise, international law has moved on to encompass the views and concerns of the Asian-African States and respond to the challenges that we faced in the years that followed our de-colonization. I will not dwelve any deeper into the role that AALCO has played over the years and can play in the future - I leave that task to my able colleagues who would be addressing you on that, later in the course of this day.

On this occasion, when we are not too far removed from the summits of this New Year that we have ascended, I will speak about new challenges. The advancements that we have achieved in technology, trade and communication have thrown up novel sets of challenges.

We are forced to respond to them, quicker than ever before, even as we are still in the process of understanding their effects fully. For a moment it might seem to us at present that these developments far too removed from us to be concerned about them. However, these transformations are now affecting us at a pace that we may not have witnessed ever before in human history. We have much lesser time than what we had in the past to adjust, prepare ourselves and respond to these changes.

Ladies and Gentlemen, there are there are four topics about which I will address you today. They are: (1) The Challenges thrown up by Internet and the need for International Legal responses; (2) Issues of significance for us in the realm of International Humanitarian Law and International Criminal Law; (3) Intellectual property rights and its impact on the developing countries; and (4) The Protection of Bio- Diversity beyond National Borders.

A.1 the need for Asian-African Perspectives in the process of "Identification & Evidence of Customary International Law"

However, before I go on to speak on these topics, I wish to use this platform to remind you all about an important work programme on our agenda, which is perhaps the topic and challenge of paramount importance to all the Asian and African States.

The topic "Identification & Evidence of Customary International Law" is perhaps the most important topic that the International Law Commission has taken up over the past few decades. Considering that our experience informs us that International Law making is still immensely a Eurocentric enterprise, this is an opportunity for us, the Asian and African States to air our views and respond to that challenge. At its last session, the ILC has delineated the scope of the topic and a fair degree of consensus has been achieved on what

would be the outcome product of this exercise. The commission has decided to aim at arriving at a set of conclusions that would provide a practical guide for identifying the formative elements of a rule of CIL (i.e. the elements that give rise to a rule of CIL) and the requisite criteria for proving the existence of such elements.

I need not elaborate on the importance of this topic for all the Member States of AALCO : Customary laws bind all countries and hence it is important that we avail of opportunity for all of us to present our views on this issue before the ILC. With the increasing proliferation of international tribunals and the growth in the number of international legal disputes that are agitated before the domestic courts and arbitral tribunals, it is essential that the identification of norms that are considered customary must escape the bounds of the practice of a few western nations. The millennia old cultures and states in the Asian African & Arab regions undoubtedly has its share of local customs and practices that deserves its due attention and recognition. We have several international organizations within our region: the African Union, the Arab league, SAARC and the ASEAN to name a few, and it is important that we project the practices that we have developed before these forums before the ILC so that it gets its due share of importance. May I request the Member States and Scholars from the Asian and African region to assist AALCO and its efforts on this topic? AALCO is the forum that all of us can make use of to exchange our views and deliberate on this topic.

We at AALCO are in the process of establishing a working group on this topic and I request all AALCO Member States to respond to the queries of the Secretariat and transmit the views of the governments and courts of the Member States on this issue. Since it is also

important that we are able to gather and present the views of legal experts from our Member States, I request all of you to assist the Organization on this count too. Another sub-set of this topic that we need to pay close attention to is Customary International Humanitarian Law. The Special rapporteur for the topic, Sir Michel Wood has already made certain observations work of the ICRC on customary International Humanitarian Law and that the same, he had indicated, would be a part of his report to the ILC. We need to examine how far his conclusions and observations accommodate our practices and concerns.

The ILC has already arrived at a schedule of work, which is short and hence we are now called on to streamline our efforts so that our voices are heard in that process.

This is indeed a second opportunity for all of us to revisit the euro-centric foundations of international law and hence it is important that we make use of this opportunity to the fullest extent possible.

B. Internet & the Challenges to Public International Law

Ladies and Gentlemen,

I will now move on to the main part of my presentation. Firstly, I wish to speak about the Internet and the challenges that it poses for us. Perhaps I should start addressing this issue with some brief reflections on what is the internet.

The Internet is essentially a product of the United States Department of Defense Advanced Research Projects Agency (ARPANET). It is doubtful whether the developers of the ARPANET had the modern evolution of internet in their minds when they created a fairly

simple system for connecting all the computers within their establishments. But it took very little time for the reach of the internet to assume a global character.

Internet, as we see it today is a network of networks of computers that spans the globe. The basic make-up of the internet, in crude terms, is to describe it as local computer networks that are connected to regional networks, regional networks that make national ones and national ones that forms the international systems. Truly, this is a "Web" where every computer is connected to each other, essentially creating an "information superhighway", which we collectively called the "internet".

Communication over the internet is made possible by a language called "internet protocol". In this language, information is transmitted over the internet in small bits, called as packets. So each parcel of information is broken up and sent through multiple channels, through multiple networks before it reach its final destination. In this process of travel, it goes across country borders, perhaps the outer space (i.e. if we use a satellite) and under the oceans (through sub-marine cables) before we view it.

The internet thus transcends borders and make them irrelevant, connecting us together in a manner perhaps never before in the history of mankind. I need not elaborate on the uses of internet here, as we all are regular users! However, as with any other advancement that we have made in technology, internet has also been put to misuse by many. Criminal and terrorist activities are now made possible by the internet and law enforcement agents in all parts of the world are finding it harder to pace up with the methods employed by these criminals. Not all of these problems are of international character. However, there are indeed some aspects of the internet that needs the urgent attention of the international

community and international lawyers. I wish to touch upon a few of those issues today and leave a more elaborate discussion to another occasion. The issues that I wish to talk about are (i) violation of intellectual property laws over the internet; (ii) cybercrimes and international responses to the same; (iii) data protection over the internet (iv) issues of jurisdiction raised by the internet.

While the internet has revolutionized our potential for informational exchange, it has also raised some questions of intellectual property rights that we had not expected when those laws were framed. For instance, let me recall here that most aspects of the protection of intellectual property depend on the place where the right holder is located. Though the TRIPS agreement does provide certain minimum global standards, enforcement of these rights still involves questions of territoriality. But how do we assess territoriality over the internet which as I said has made boundaries irrelevant? For instance, assuming that a webpage that is hosted from here in India publishes something, breaching the copyright of a person who lives in London, what remedies does he have? Is London the place for him to sue or would it be India?

Courts across the developed countries have attempted to devise certain principles to deal with these issues – a test of *minimum contacts* for instance that was developed by the American Courts. Coming back to the example that I was talking about, we will assume that the court in London Indeed has jurisdiction. Then comes the second question, how do we ensure that the copyright breacher is before the court to respond to the suit? How do we ensure that injunctions or decrees that may be granted by the London Court granted are executed here in India?

The copyright holder of the example that I just mentioned was but a lucky man! At least he was able to identify the copyright breacher. On the internet there are however, enterprises that have managed to keep themselves hidden: torrent websites, or what is also called peer-to-peer networks often do not require any specifically located server to function or they function from locations with poor law enforcement. These websites are used as platforms to "share" cinema, music, books – all of them the latest ones – in violation of copyright laws! The impact of such activity on commerce is huge. This is one example of a cybercrime, the next issue that I turn to.

Every day, we now hear more and more news about cybercrimes. The very nature of internet, that it makes borders irrelevant, has become an advantage for criminals. Thus, criminals from one country can "hack" into computer accounts and steal money, credit card information and other personal details. Cybercrimes go beyond just theft. Materials that are obscene, pornography in particular child pornography and various other types of materials that the society wishes to prohibit are spreading through the internet. Recent reports indicate that terrorist organizations are also using internet to communicate with each other. One of the problems that we face here is that very often; the internet makes it possible for a person to remain anonymous. Though the technology exists to track down the computer from which a particular message was sent, there are no legal compulsions all over the world that these facilities must be used by all countries. Thus often, the perpetrators of crime and terrorism are able to hide-themselves behind a veil.

Another issue that I wish to highlight is that of "data protection". Private corporations are collecting and storing huge amounts of data of each individual internet user. Information

such as the websites we visit, the purchases that we make online and what we search for are recorded, stored and put to commercial use. The lion's share of internet infrastructure and the major corporations that run it are located in the industrial west and principally in the United States of America. The government and people of our countries have very limited information or control over how such data is used as our laws do not apply to their territory. Data protection is not merely the concern of individuals – business establishments also have important stake in ensuring that the data that pertains to them are not compromised. It is notable that at least some jurisdictions such as the EU have come out with Data Protection Laws that protect the privacy of the individual users and business establishments. Brazil is currently mooting a law to ensure that data of Brazilian citizens are stored only in servers physically located in Brazil so that its Government can ensure the regulation of the use of that data.

What is evident from all of these issues is that at the core of all issues touching the internet is the issue of jurisdiction. International Law has built legal criteria for establishing jurisdiction based on the location of the incident, the place where effects of the act in question are felt or the nationalities of the persons involved. With respect to the internet, all these three factors can interact to produce results that are incomprehensible! The Yahoo! Case is a notable example of the situation that I am talking about. Two French Citizens filed a suit in French Court alleging that the website Yahoo! Had violated a French law prohibiting the display of Nazi paraphernalia by permitting users of its Internet auction service to display and sell such artefacts. Yahoo!, in response contended that since their servers were located in the United States, the French court had no jurisdiction over the website. The French Court rejected this contention holding that damage had occurred in

France and ordered the website to ensure that the French laws are not violated. Yahoo! then initiated a suit in California against the two French citizens seeking a declaratory judgment that the French orders were constitutionally unenforceable in the United States as contrary to the First Amendment. The District Court" declared the French orders unenforceable![1]

These kinds of situations can occur more often than we expect. Though we could force websites with assets in our countries to comply with the judgments of our courts, what would happen to the others?

What I wish to emphasize on is the need to articulate a legal obligation to co-operate and mutually assist each other with respect to jurisdictional issues over the internet. The European Union appears to have taken some steps with respect to this in the context of cyber crime by adopting the Convention on Cyber Crime of 23 Nov. 2001, which has internalized the principle of "*aut dedere aut judicare*" – the duty of each party to extradite or to prosecute cyber offenders.[2] Are we the Asian and African Countries lagging behind in our efforts to address these issues? Perhaps it is time for us to spend more attention on this topic.

The challenges raised with respect to law enforcement are going to get tougher. Questions such as ensuring human rights compliance with our investigation and prosecution procedures are bound to arise soon. The Human Rights Committee has already taken the opinion that the same rights that people have offline should also be protected online. Even

[1] Note that on appeal, the District Court orders were reversed by the appellate court. However, the reversal was on the ground that the Constitutional Guarantees under the American Constitution that Yahoo! Had relied on was inapplicable to the case.
[2] The United States has also become a party to this convention.

as we agree on the need to protect free speech, how far can we accept anonymity over the internet, in the light of the law enforcement challenges that we face? These are some of the issues over which we the African and Asian States would have to soon turn our attention on to.

C. Challenges with respect to the law of armed conflicts and International Criminal law

Ladies and Gentlemen, the next topic that I wish to speak to you all about is with respect to those shortcomings or issues in the arena of the law that covers "the use of force" and "International Humanitarian Laws". I have to come back to the subject "internet" once again.

C.1 Internet and the use of force

We now live in a world dependant on computers and information technology. Civilian infrastructure, especially financial infrastructure such as banks, stock exchanges and other institutions that deal with money are practically run on the internet. Facilities for managing air, rail and even the road traffic are switching to the digital world every day. These are apart from the military uses of computer infrastructure by almost all the countries. Our day to lives depend on the smooth and uninterrupted functioning of the digital infrastructure that we have built up. Precisely for this reason, attacks on infrastructure now happen on the digital world too.

Let me recall the April 2007 attacks that were directed at Estonia. It was only in matters of hours that the attackers could disable the online portals of all the leading banks in Estonia.

The principal newspapers were all affected, bringing all circulation to a standstill. Government communications had practically blacked out. In a matter of days the cyber attacks brought down most critical websites, causing widespread social unrest and rioting, which left 150 people injured and one person dead! It does not take much imagination to envisage the disaster that such attacks can cause if they are directed at electricity grids or critical nuclear facilities.

While it is debatable whether these kinds of attacks can be brought within the ambit of the expression "armed attack", the impact that they create imitate those effects that are brought by an armed attack. We are lucky in that no country has so far experienced or threatened an attack of that magnitude. However, the possibility of such attacks has well been demonstrated. The question that I wish to raise is whether have an international legal framework that can regulate such attacks? I will elaborate a little further on the legal issues that arise within this context.

As we are all well aware, the use of force in international law is well forbidden by Article 2 (4) of the UN Charter. This prohibition is, as the ICJ has noted in the *Nicaragua Case* a firm rule of customary international law. The only universally recognized exceptions to this rule are self-defence and collective action within the UN Charter framework. A similar rule of interest in this context is the principle of "non-intervention" which is also a principle of Customary International Law .An internet attack or a threat of one is without doubt a question that touches national security. But the question whether these prohibitions apply over the digital world requires our consideration. One can say with a certain degree of

conclusiveness that armed attacks on the physical infrastructure can be brought within the ambit of this prohibition, but what about attacks that involve no physical presence at all?

While the dominating interpretations of UN Charter have focused almost exclusively on the prohibition of use of force as a prohibition on the use of arms, international law has been responding, albeit, slowly to the fact that more varied dimensions of force exist. As developing countries that are increasingly moving towards the digital world to boost our development process, it is essential that we come out with clear legal positions and standards on these issues.

Another question that must evoke our interest is the principles of IHL that apply to such attacks. We need to examine whether and how the principles of distinction, proportionality and military necessity interact with the cyber world and do they produce the same degree of safeguards that they do over the physical world. The challenge before us is responding to these challenges in a manner that addresses our concerns. The Western Nations, or more specifically to speak, the NATO has already sponsored a study on the principles of IHL that apply over the internet world. "The Tallin Mannual on the International Law Applicable to Cyber Warfare" is the product of that study. While this is only a study and not an authoritative legal pronouncement on the topic, we need to be aware of the inexistence of any such studies from our side, projecting our perspective and safeguarding our concerns.

C.2 challenges in the arena of International Criminal Law

Ladies and Gentlemen,

The second set or issues that I would like to talk about under this heading are the challenges that we face with respect to the implementation of the laws of armed conflicts. I wish to speak of the International Criminal Court in this context.

The Rome Statute of the International criminal Court was adopted with the solemn pledge that we, the international community, shall out the culture of impunity to rest, across the globe. However, there are some of us who feel that the Rome Statute is applied only selectively. A few weeks back the African Union expressed a concern that only African Leaders are being prosecuted at the Rome Statute. More than the truth or otherwise of this statement, what is important to us is to ensure that such a feeling does not linger around – those of us from the common law world must be well acquainted with the saying that "justice must not only be done but also seem to have been done". Any such charge that the system that we have devised is selectively applied will in the long run strike at the very roots of this international criminal justice delivery mechanism which we have created with great efforts.

In this context, let me also invite your attention to an associated issue that is whether punitive justice must prevail over the interests of peace. The *raison d'etre* of the Rome Statute was our expectation that it would contribute to peace and stability. However, as we have witnessed, recently, insisting on the application of the Rome Statute, without consideration for whether it actually promotes peace negates our ultimate objective. The millennia old African and Asian Civilizations have placed emphasis on reconciliation between groups in conflict and the rebuilding of societies that was destroyed as a result of conflict. The use of "Truth and Reconciliation Commissions" must be emphasized in this

context. Several Member States of AALCO and countries world, which had once faced conflict, have resorted to truth and reconciliation commissions to rebuild their societies. We lack any international legal framework for the building and functioning of such commissions and instead the international legal community has often unduly focused on the use of punitive machinery. We, the Member States of AALCO must study and evaluate the use of such conciliatory mechanisms in the context of conflict management and rebuilding of post-conflict societies. By this, I do not propose to say that such mechanisms shall be a substitute for penal processes. What I wish to emphasize on is the need for such mechanisms to be used, in parallel to penal processes and perhaps, on occasion as a substitute for the same, in the interests of lasting peace.

C.2 Privatization of wars and the resulting challenges

Another matter of immense concern for the whole of the international community is the increasing privatization of wars. What used to be an activity strictly under the control of the sovereign and manned exclusively by the persons of the sovereign is now being privatized – I refer here to the proliferation of private military companies. Questions raised by the use of private entities are several and most important of them is how far they are legitimate? Several States, it is reported are in the process of downsizing their armed forces and the growing technical complexity of war is also prompting the reliance on private actors. Let me recall here that it is not just states that rely on such private actors - international organizations, non-governmental organizations and transnational business corporations have contracted their services as well. Perhaps, multinational military operations and non-state actors would also now start relying on them in the very near

future. Such private military companies perform diverse roles in a theatre of warfare such as the protection of military personnel and infrastructure, the training and advising of armed forces, the maintenance of weapons systems, the guarding and interrogation of detainees. These activities have brought the Private Military Companies into closer contact with those persons who are protected by IHL and have also increased the exposure of their personnel to the dangers arising from the military operations.

Several International Initiatives are now underway to develop a framework of regulation for such entities. Most important of this is perhaps the “Open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies”, under the aegis of the United Nations Human Rights Council. At the conclusion of two sessions, in May 2011 and August 2012 respectively, the open-ended intergovernmental working group submitted a report with recommendations to the Human Rights Council at its 22nd session. At its 22nd session, on 22 March 2013, the Human Rights Council adopted resolution 22/33 by which it decided to "extend the mandate of the open-ended intergovernmental working group for a further period of two years in order for it to undertake and fulfil the mandate as outlined in paragraph 77 of its report". This is thus an ongoing work programme and the work of this committee will continue in 2014. Perhaps, we, the Asian and African States, must pay close attention to these developments and ensure that our views and concerns are also reflected in the outcome document.

D. The regime of intellectual property rights and concerns for developing countries

Ladies and Gentlemen, the next topic of concern for the developing countries in the Asian and African regions are the challenges raised by the current international framework for Intellectual Property Rights. To explain these challenges I wish to share with you two incidents or cases that have attracted the attention of the international community.

A few months back some of the internationally famous publishing houses initiated proceedings against a photocopy shop located on the campus of Delhi University (which is one of the top universities in India) asking the court to restrain it from selling "course packs". Let me explain what a course pack is: As we are all aware, textbooks and academic publications in general are expensive and buying them are out of the reach of the average student from developing countries such as ours. Libraries also have limitations in the number of copies of such books that they can procure and shelf. Most often, for a single course, the relevant pages from a book are no more than a few pages. For these reasons, the faculty compiles materials from different books and creates a "course pack", which is then photocopied and purchased by the students. This arrangement ensures that these materials remain accessible to the students at affordable rates and that students are exposed to a wide range of materials.

The academic publishers, which included top ones such as the Oxford University Press, moved the court to restrain the universities and photocopy shops from selling them, placing the academic work and learning of thousands of students in jeopardy. Describing the course packs as infringing and pirated copies the petitioners have claimed damages to

the tune of six million! What must disturb us here is that studies have indicated that these books are sold by publishers at costs that are similar to, or at times greater than in the western countries! Article 8 of the TRIPS is clear in that it allows the Member States to "adopt measures necessary to protect public health and nutrition, and to **promote the public interest in sectors of vital importance to their socio-economic and technological development**, provided that such measures are consistent with the provisions of [that] Agreement." As International Lawyers, we must ask ourselves how far we have explored the ambit of that provision and advanced interpretations that aid and allow those practices and legal provisions within our domestic legal systems that advance our social interests. Can we speak with confidence that the prevailing understanding of this provision aids the educational exceptions that are required in copyright law? More importantly, have we educated ourselves about the need to advance such interpretations?

Another Intellectual property rights issue that I wish speak about is the impact these have on access to medicines in developing countries. As we are well aware, prior to the TRIPS framework, there were no all encompassing universal standards for IPRs and hence countries were free to pursue standards that suited their particular social circumstances. This meant that by allowing a liberal framework for patent protection, countries were able to ensure that generic varieties of life saving medicines were available in the market. While, an international framework for Intellectual Property protection is both desirable and necessary to advance and protect the interests of innovation and for facilitating trade, we cannot shy away from ensuring that essential goods such as lifesaving medicines remain affordable. It was this that prompted the developing countries to advance and fight for the

adoption of the Doha Declaration on Public Health, which allowed a considerable leeway to ensure access and availability of medicines.

However, some countries are now adopting measures that take away the gains of that declaration. For instance, measures that purport to be customs or border regulations adopted by the European Union are now used to expand the Intellectual Property Rights framework beyond those contours recognized by the WTO. Regulation 1383/2003 of the European Union is one such an example. The regulation allows the customs authorities to initiate action against goods suspected of infringing IP rights as they enter the EC territory, irrespective of whether it is for circulation within the EU or for re-export. The entire IP spectrum including patents, supplementary protection certificates, plant variety rights, designations of origins and geographical indications were brought under the ambit of the Regulation, in addition to the traditionally protected sectors of trademarks and copyright. The damaging effects of these Regulations on the right to access to medicines came to light in the 2008–09 period, when we witnessed a series of in-transit generic drug seizures by the EU. What is of importance here is that all those instances of seizures were of generic drugs that were patented neither in the country of origin nor in the country of destination! In the majority of these cases the drugs were seized on the ground of infringement of the European patents of the IP owners. These seizures demonstrated how , under the guise of anti-counterfeiting action, Regulation 1383 maximized IP protection to bring within its ambit even goods in transit, and thus in effect giving an extraterritorial operation to the domestic IP laws of the EU. Though Article 1 of TRIPS gives the power to implement a more extensive protection than was required by TRIPS, it came with a condition that such extensive protection should not contravene other provisions of the agreement and thus

create hindrance to free trade. However, the EU has been able to sustain the application of these regulations, irrespective of their impacts on the public health concerns of the developing states and more importantly, extend the effects of the application of their territorial laws.

Both these instances that were just cited are at its core human rights issues too. As s developing countries, important human rights instruments and declarations are laws that we can rely on to advance the well-being of our societies. The relationship between human rights laws and trade laws and the manner in which they interact is a subject that requires a deeper consideration from the perspective of Developing Countries such as ours.

E. The Protection of Marine Bio-Diversity

The last issue that I will speak about is Marine Bio-Diversity beyond national borders. Despite the growing concerns regarding world biodiversity loss, until recently, little has been done to assess the biodiversity of and losses of biodiversity within the world's oceans. There were two basic reasons for this - First, that the oceans were difficult for humans to explore and second that the humanity tended to view the oceans as too vast for humans to affect much. Nevertheless, any nation or group of nations that cares about preserving biodiversity should view the preservation of marine biodiversity as a high priority, especially given that ocean health and human health are inextricably linked.

Human self-interest should provide sufficient reason for protecting marine biodiversity. Some estimates point out that marine algae and other marine plants are responsible for 50 to 75 percent of the oxygen in the atmosphere and the ocean provides ecosystem services worth $8.4 trillion a year. Importantly, the oceans' stores of genetic diversity have

enormous potential for the development of pharmaceuticals and other commercial products. The protection of marine bio-diversity is hence a matter that has both environmental and commercial dimensions.

The major threats to Marine Bio-Diversity are losses caused on account of overfishing, and pollution, both due to our commercial operations and from land-based sources.

The current international legal framework that deals with protection of the marine eco-system is somewhat a highly fragmented one. There are a number of Treaties that deal with the protection of specific species, such as the Bluefin Tuna or there are Treaties that deal with fisheries regulation in General. Some others aim to prevent maritime pollution; to name a few: the International Convention for the Prevention of Pollution of the Sea by Oil, Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, (better known as the London Convention), which has been modified by its 1996 Protocol & the International Convention for the Prevention of Pollution from Ships, better known as the MARPOL Convention.

Scientists are increasingly recommending the use of marine protected areas (MPAs), marine reserves, and national systems of MPAs and marine reserves as the best means of preserving and restoring marine biodiversity. There are some provisions of existing Treaty Frameworks that makes provisions for the adoption of these measures. Convention Concerning the Protection of the World Cultural and Natural Heritage, better known as the World Heritage Convention, which was adopted in November 197 links nature conservation and preservation of cultural sites and encourages parties to accord emergency and long-term protection to sites of “outstanding universal value.” While the

World Heritage Convention does not specifically target marine sites, nations that are parties to it have designated a number of marine sites as World Heritage Sites, including the Great Barrier Reef in Australia and the Galapagos Islands in Ecuador. Several provisions of UNCLOS III strengthen coastal nations' abilities to establish MPAs and marine reserves: Firstly, the Convention establishes the jurisdiction of coastal nations over various areas of the sea. The Jurisdiction that can be claimed upto 200 Nautical Miles include jurisdiction for "the protection and preservation of the marine environment and hence this can also perhaps be used to establish such zones. However, the UNCLOS does not establish in any general terms any specific bio-diversity related goals and more importantly all of these permit measures within "national jurisdictions".

Though by themselves these conventions had met several of their objectives or enable the protection of marine bio-diversity, there is no overarching international framework that aims at the protection of marine bio-diversity in general and it is this gap that the international community would have to fill by appropriate legal means.

The other matter of concern is regarding the exploitation of these resources for commercial purposes, especially for pharmaceutical purposes. But what is, or rather, what should be the legal regime that covers this? There are some considerations that we will have to bear in mind here : only few States and private entities have the financial means and access to the sophisticated technology required to reach the deep seabed and the prospects for commercial applications of biorospecting activities seem promising for them. Let us recall here that Under Art. 136 UNCLOS, the "Area", that is the sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction, and its resources, are "the

common heritage of mankind". However, if this framework is applied to the bio and genetic resources as well, it can result in only a few nations being able to prospect, explore and exploit the bio-resources, with little or nothing being said on the benefit sharing mechanisms. This creates a situation where the duty to conserve is equally spread out, however, the benefits of the resource concentrates in the hands of a few.

The General Assembly of the United Nations have already established an "Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction" and this has been functioning since 2004 and discussions on this topic has been going on.

The threats to marine biodiversity are many and perhaps only an international law regime that addresses all of those threats —pollution, overfishing and its associated problems, loss of habitat, and invasive species — both individually and collectively can effectively halt, and hopefully reverse, the increasing trend of marine species extinctions and loss of marine biodiversity at all levels. It is also important that the international community is able to devise mechanisms that ensure the fair and equitable sharing of marine genetic and bio resources.

F. Concluding Remarks and Observations

Ladies and Gentlemen,

In this brief presentation I have attempted to shed light on some of those important legal issues and challenges that the international community and the developing nations in particular would have to face in the coming years. While the international community is

still in the process of drawing a clearer picture about the contours of many of these challenges, we are left with less time to respond to them in our fast changing world.

There are many more issues that I would have liked to speak about, however the limited time that we have prompts me to refrain from making a longer speech. However, before I wind up, let me make one more observation about a fundamental change that international law has undergone. Even a few years back, international law dealt with only the rights and duties of states and international organizations. The topics of concern were sovereignty, non-interference and the prohibition of the use of force. Over the last couple of decades, there has been a shift in that focus. Since the year 1948, when we adopted the Universal Declaration of Human Rights, individuals have increasingly been assuming the center-stage in international law. The protection of the individual and his freedoms has now become a central concern for all of us international lawyers. From International Tribunals that punish war crimes and crimes against humanity, to the individual petitio9n mechanisms evolved by the some of the human rights treaties, international law has now provided spaces for the individual to assert his rights too. This shift in perspective and attention is something that is here to stay. AALCO has also made its due share of contributions to this shift when we articulated the concerns of migrant laborers and refugees by coming out with solid principles that applied to them. What is important to note here was that those contributions were truly an articulation of the concerns of the populace of our developing world. In our changing world where as I had pointed out, borders are shrinking, there is a need for developing countries to once again turn its attention to these individual-centric issues, identify fresh challenges and come out with adequate responses.

What I wish to emphasize on is that AALCO is an appropriate forum and perhaps the only forum for us, lawyers from the Asian and African Region to study, discuss and frame responses. With the experience of more than five decades of functioning, AALCO has the potential and the ability to bring together the personal to study these issues at depth. My colleagues will later today make presentations about the work that AALCO has done in the past to so that we can remind ourselves of our on potential.

I encourage the delegates of Member States to ponder over these new challenges that I have just spoken about and come back to us at our forth coming annual sessions with proposals for taking up studies on these topics.

Let this new year be an occasion for us to pledge our enhanced action and renew cooperation.

With these words I conclude my speech.

Thank you for listening.