

**X. VERBATIM RECORD OF THE HALF-DAY SPECIAL MEETING ON
“RESPONSES TO PIRACY: INTERNATIONAL LEGAL CHALLENGES”
HELD ON WEDNESDAY, 20 JUNE 2012 AT 2. 30 PM**

His Excellency U. Thiha Han, Vice-President of the Fifty-First Annual Session of AALCO in the Chair.

Vice-President: May I now invite the Deputy Secretary-General Dr. Xu Jie to introduce this agenda item.

Deputy Secretary-General: Mr. Vice President, H.E. Judge Albert J. Hoffmann, Vice-President of the International Tribunal for the Law of the Sea (ITLOS), Ms. Mariam Sissoko, Representative from UNODC; H. E. Ambassador Yasuji Ishigaki, from Japan; Commodore Austin Owhkhor-Chuku, from Nigeria; Mr. Mathew Egbadon, from Nigeria; Excellencies, Distinguished Delegates and Ladies and Gentlemen,

It is my pleasure to welcome you all to this Half-Day Special Meeting on “Responses to Piracy: International Legal Challenges” organized by AALCO in collaboration with the Government of the Federal Republic of Nigeria and the Division of Oceans and Law of the Sea, UN Office of Legal Affairs, and in conjunction with the Fifty-First Annual Session of AALCO.

The Report of the Secretariat on the subject, which is contained in *AALCO /51/ABUJA /2012/SD/S 2*, highlights the growing challenge of piracy in the international waters and how despite the repeated efforts taken and measures implemented by the international community to curb it, piracy continues to be a major challenge in the present day scenario. Besides portraying the legal regime and its gaps, it also gives an overview of the responses of the international community towards this problem.

Excellencies, I would like to avail this opportunity to say a few things about the contribution of AALCO towards the creation of the international law of the sea which stands codified principally in the form of United Nations Convention on the Law of the Sea 1982. This I find necessary since we have just celebrated the 30th Anniversary of the UNCLOS 1982 recently. AALCO under the dynamic leadership of its Secretaries-General had played a critical part in this endeavor. This included ;

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

It is indeed a matter of pride for the peoples of the region that the concept of the Exclusive Economic Zone was born in the cradle of AALCO and finally found its rightful place in the UNCLOS 1982. It also needs to be underlined here that once the Fifty-First Annual Session adopts a Resolution commemorating the 30th Anniversary of the

UNCLOS, the same would officially be sent to the UN General Assembly which is planning to adopt a Resolution on the 30th Anniversary of UNCLOS. This Resolution, which would make an explicit reference to the contribution of AALCO to the UNCLOS in it, would provide an opportunity for the General Assembly to officially recognize AALCO's contributions to the creation of UNCLOS.

Excellencies,

In recent years, the problem of piracy has posed an increasing threat to the international community. Maritime piracy has re-emerged in recent years as a serious threat to both crews and property on the high seas. There are pirates active in a number of areas throughout the world. Most importantly, the situation arising from Gulf of Aden and the Indian Ocean clearly dominates global statistics and media coverage. Despite serious national and regional efforts to counter maritime piracy in Southeast Asia, the threat continues to pose a clear and present danger to the maritime security of this region. The spate of recent pirate hijackings and murders off the East African coast and other places should leave little doubt among policy makers and security officials within the international community that piracy must be tackled head-on.

The international law of maritime piracy is reflected in the 1982 United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS, which is recognised as the constitution for the world's oceans, and reflects customary international law binding on all nations, it defines piracy as having four components: (1) an act of violence, detention or theft; (2) on the high seas ; (3) committed for private ends; and, (4) by one private vessel against another vessel . This definition is accepted as customary international law, i.e., it applies to all the States irrespective of treaty membership.

The UNCLOS law, however, has gaps. UNCLOS confirms the duty of all States to cooperate to *suppress* piracy, but makes the actual *prosecution* of pirates discretionary. UNCLOS includes no express provisions on transferring suspects to other jurisdictions, nor any requirement that States have adequate national laws for prosecuting pirates; much is left to the discretion of States. Apart from UNCLOS, though there are some regional instruments that exist on this issue, they have not been very successful in combating the problem of piracy.

Essentially, there are three main areas that need to be strengthened substantively in our fight against piracy. First, States should, among other measures, consider enacting adequate national legislation to criminalize all acts of piracy and armed robbery at sea as well as providing for effective and modern procedural laws that are indispensable for the suppression of piracy. Second, at the international level, States should try to reinforce the international legal framework by removing any flaws that are found in it. They should also work towards strengthening international cooperation so that the numerous complexities involved in different national systems could be overcome. Thirdly, the root causes of piracy need to be addressed adequately. This is because political instability and lack of economic development obtaining in various societies do contribute towards the creation of this problem to a significant extent.

Excellencies, the objective of this Half-Day Special Meeting is two-fold; *firstly* to stimulate innovative thinking on the subject with a view to improving international law as a way to address the menace of piracy. *Secondly*, and since the legal difficulty in countering piracy arises in implementing the international obligation to act against piracy, this Meeting is also devoted to identifying various means and ways of enabling Member States of AALCO (both individually and acting regionally) to take counter-measures against piracy.

It is my firm belief that the Distinguished Delegates will rise to the occasion and use this opportunity to discuss threadbare all the problems/issues involved in combating piracy. With these initial remarks, I wish you all an excellent and productive deliberation. Thank you.

Vice-President: I thank Dr Xu Xie, the Deputy Secretary General for his excellent introductory remarks. Now I would like to give the microphone to Judge Albert Hoffman, Vice-President of the International Tribunal for the Law of the Sea, to give some remarks on piracy.

Judge Albert Hoffmann, Vice-President of the ITLOS: Mr. Vice President, Excellencies, Ladies and Gentlemen, I wish to thank the Federal Government of Nigeria and particularly the Federal Ministry of Justice for hosting this meeting and for extending to us all the courtesies and facilities. I also thank the Secretary General of AALCO H.E. Professor Dr. Rahmat Mohamad and his staff for the kind invitation to participate in Session and for the excellent arrangements.

It is a distinct honour and privilege for me to be with you at this 51st Annual Session of Asian-African Legal Consultative Organization (AALCO) here in this great city of Abuja in the Federal Republic of Nigeria. AALCO is a consultative body of Asian and African States with a proud history and is well known for influential role it played and continues to play in policy formulation and decision-making in the international legal framework. I have noticed from the agenda and discussions thus far that this Session is no exception and I wish you all the best in your deliberations and a successful outcome for this Session. On a personal note: I am very pleased to continue my long standing association with AALCO over some 17 years, albeit nowadays in different capacity. Not only did I represent my country South Africa at the AALCO Annual Session in Doha, Qatar in 1995 (it must have been the 34th Session), immediately after the adoption of our national Constitution and following the first democratic elections held in our country, but I was also instrumental in South Africa becoming a Member of AALCO the following year. I have closely followed the work of AALCO at the United Nations in New York when I was based there in the nineties; I also attended the 46th Session that was held in Cape Town in 2007 (in my capacity as judge of ITLOS).

Mr. Vice President, I am aware that the item 'Law of the Sea' has always been one of the main features on the Agenda of AALCO and a matter of great importance to Member States. AALCO has made significant contributions to the development of the Law of the

Sea over the years and in the negotiations that led to the adoption of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) – and thereafter in the setting up of institutional arrangements envisaged in the Convention as well as promoting the Convention amongst its Member States towards achieving universal acceptance and participation. It is therefore fitting that we pay tribute to AALCO and its Member States this year on the occasion of the 30th Anniversary of the adoption of Convention.

I wish to congratulate AALCO by taking up a matter of grave concern to the international community and a serious threat to maritime safety and security namely, piracy at sea and to convene a special meeting to consider responses to this phenomenon and the legal challenges involved.

It is common knowledge that maritime piracy is a centuries – old practice with its heydays in the seventeenth and eighteenth centuries, where after incidents seemed to have dwindled to negligible levels but have seen resurgence in recent years. According to the figures published by the International Maritime Organization (IMO) and the International Maritime Bureau (IMB) the number of acts of piracy and armed robbery at sea has reached alarming levels that not only seriously affecting international trade and maritime navigation but also resulting in loss of life and threatening the lives and livelihood of seafarers. From these statistics it is noted that many attacks occur in areas under national jurisdiction viz. near coasts (territorial waters) in straits and even in ports, outer harbor works and at the quayside (what is known as internal water). When such attacks are carried out in these areas they are subject to the jurisdiction of the coastal State and no other State would be able to exercise jurisdiction even if the latter's ship or national are involved. State' jurisdiction over ships, whether in terms of policing or enforcement or in terms of prosecution does not as a rule apply to the territorial waters of another State except as provided for in article 27 of UNCLOS. These acts or attacks are not regarded as "piracy" under International Law. They are classified as "armed robbery at sea", a crime over which only the coastal State has jurisdiction and the right to prosecute. Such acts also do not fit the definition of piracy and can therefore not be considered a crime under International law over which any State may exercise jurisdiction (known as universal jurisdiction).

Universal jurisdiction applies only in the case of crimes under customary international law, in respect of which all States have the right to prosecute. Such crimes are limited to piracy, slave trading, war crimes, crimes against humanity, genocide and torture. There are many international crimes that have been created by multilateral treaties, which confer wide jurisdictional powers upon States parties.

Piracy is therefore recognized as an international law crime and subject to universal jurisdiction. It is defined as an act of robbery, or other act of violence or depredation, committed at sea, other than in war, launched from one vessel against another and committed for private gain. Any State may exercise jurisdiction over the pirate ship and those involved in the act which is an exception to the long-standing principle of freedom of the seas and that no State shall interfere with any foreign-flagged ship on the high seas.

This is described as follows in The ‘Lotus’ Case (France v. Turkey) 1927 PCIJ:

Piracy by the law of the nations, in its jurisdictional aspects, is *sui generis*. Though statutes may provide for its punishment, it is an offence against the law of nations; and as the scene of the pirate’s operation is the high seas, which is not the right or the duty of any nation to police, he is denied the protection of the flag he may carry, and is treated as an outlaw, as the enemy of mankind – *hosti humani generis* – whom any nation may in the interest of all capture and punish.

Although already established as crime under customary international law, the first comprehensive definition of piracy was codified in the 1958 Geneva Convention on the High Seas (articles 14 to 21) and later adopted without amendment in the UNCLOS (articles 100 to 107) which may now be regarded as representing the current law of piracy both as conventional and general international law.

Unfortunately, the existing rules for the suppression of piracy have proven to be inadequate to respond to modern-day attacks on shipping and threats to maritime navigation and security. One of the major deficiencies is that the definition of piracy is too narrow in its scope and is often criticized for its lack of clarity. According to article 101 of UNCLOS, only illegal acts of violence and detention, or acts of depredation, committed “for private ends” by the crew or the passengers of a private ship on the high seas against another ship or against persons or property on board such a ship are considered acts of piracy. This “for private ends” requirement restricts the scope of application of the rules considerably. Any act of violence directed against a ship or its crew inspired by political motives such as aiming to destabilize a government or instill fear or terror in the population with a view towards achieving a political end, is excluded from the definition of piracy.

Another restriction is that the act of piracy must be committed by the crew or passengers of a private ship against another ship (the so-called “two ships” requirement). The seizure of a ship by its crew or passengers is excluded from the definition of piracy. This means if a ship is taken over by its crew or passengers that results in violence or killing of those on board or the depredation of cargo and property, a foreign State would lack jurisdiction to intervene since attacks do not constitute acts of piracy according to the definition and the matter would have to be dealt with under the jurisdiction of the flag State.

A further limitation is that only acts committed on the High Seas may qualify as piracy. Limiting piracy to the High Seas enables a State to exercise jurisdiction over pirates without interfering in the sovereignty of any other States. Although article 101 of UNCLOS refers to the High Seas only, it also includes the Exclusive Economic Zone (EEZ) through the application of article 58 of the Convention. The EEZ also encompasses the Contiguous Zone by reason of the spatial extent of the zone as defined in article 55.

As I have already indicated, no State has jurisdiction to intervene and seize a pirate ship and arrest the persons responsible in another State’s internal or territorial waters, as only

the coastal State has jurisdiction over such acts in its own waters. It has been argued that by entrenching the sovereign rights of States over their territorial waters has enabled the growth of piracy. This has become particularly prevalent where the territorial waters are poorly monitored and patrolled or where a coastal State, for whatever reason, is unable to exercise effective control in its national waters and thus become a fertile ground for pirates from where they can launch attacks with relative impunity. Unfortunately UNCLOS does not provide for “reverse hot pursuit” which would allow a foreign State ship to continue pursuing a pirate ship from the High Seas into the territorial waters of another State without the latter’s authorization.

According to article 107 of the Convention, a seizure of a pirate ship may only be carried out by a warship or military aircraft or other ships or aircraft clearly marked and identifiable as being in government service and duly authorized to intervene. Some commentators seek to justify the action taken by a warship against a pirate ship attacking another ship in waters of a coastal State on the basis of the obligation to render assistance to persons in distress or under the principle of humanitarian intervention under general international law. This is controversial and where the intervention takes place without the coastal State’s permission or authorization the jurisdiction to prosecute the offenders could be put in jeopardy.

Mr. Vice President, this narrow definition of piracy and its requirements as outlined above and the failure to broaden the existing rules concerning piracy to other forms of violence at sea such as terrorist attacks or the transport of weapons or material that could be used in such attacks, have led to the creation of new rules by international agreements to specifically deal with these situations.

The inadequacies of the piracy regime had been clearly demonstrated in instances of hijacking at sea where no other ship was involved and the motive of the attack was for political purposes thus not meeting the “two ship” and “for private ends” requirements in the definition of piracy. This was highlight in the Achille Lauro incident in 1985 (when Palestinians, who boarded an Italian cruise ship posing as passengers, seized the ship, took the passengers and crew hostage and demanded the release of Palestinian prisoners in Israeli jails and killed an American passenger in a wheelchair by throwing him overboard).

In response to this incident the Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988 (SUA Convention) was adopted. The Convention does not characterize internal seizures as piracy but extends the crime of hijacking and related offences to ships on the High Seas in a similar manner as the hijacking of aircraft and confers jurisdiction over such offences on; the flag-State of eh seized ship; the State of which the offender is a national; the State whose nationals are victims; and the State at which the seizure is directed (i.e. to compel it or do or to refrain from doing something). Since piracy can also be regarded as one of the offences covered by SUA Convention, States Parties are required to establish jurisdiction if they choose not to extradite the offenders to any of the other States parties who have established jurisdiction over the offences. The SUA Convention may, therefore, provide a basis of

jurisdiction where pirates are handed over to a nearby coastal State for investigation and prosecution.

In direct response to the September 11, 2001 terrorist attacks when aircraft, used as weapons, flew into the WTC in New York City and the Pentagon in Washington DC, the 2005 Protocol to the SUA Convention was adopted to expand the scope of the Convention and to define more broadly the offences covered therein so as to include ships being used to launch terrorist attacks or to transport weapons or nuclear material that can be used in acts of terrorism.

Although the SUA Convention and the 2005 Protocol filled gaps left by the narrow UNCLOS definition of piracy and covers attacks that do not meet the requirements of that definition, it should be pointed out that the SUA Convention and its Protocol are only binding between those States that are party to these legal instruments and their provisions therefore have no general application. The SUA Convention and Protocol also provide limited sanction against parties who fail to fulfill their obligations and who decline to act against alleged offenders by neither extraditing not prosecuting them.

Another important aspect of the current piracy regime is its dualistic nature. By its definition piracy is an international crime and it has long been recognized as such under public international law – but the law of piracy does not exist at the international level. It is left to States to decide on the law and to criminalize the act of piracy in their domestic legal systems. Article 105 of UNCLOS allows every States to seize a pirate ship on the High Seas, arrest the persons and seize the property on board and then leaves it to the courts of the State which carried out the seizure to decide upon the penalties to be imposed and to determine the action to be taken with regard to ships, persons and property.

UNCLOS does not require that States enact domestic anti-piracy laws, not does it provide model laws that States can use should they wish to enact legislation for combating piracy. This means that relatively few States have anti-piracy laws in place and where such laws exist there appears to be a lack of harmonization between these laws. The fact that UNCLOS gives such wide discretion to States to enact domestic legislation also means that there is la lack of uniformity in the laws and their application. Some States have adopted broader definitions of piracy in their domestic legislation by extending it to include its territorial waters (e.g. Kenya, Japan) whilst other only recognize piracy in their territorial waters (e.g. Philippines). Some domestic courts recognize piracy only as an act committed for piracy ends (e.g. British) whereas other courts have recognized as piracy, acts committed for other ends as well (e.g. Belgium). Some domestic jurisdictions fail to characterize to codify piracy as a crime. (E.g. Spain).

There are also a number of political and procedural issues that inhibit States from prosecuting pirates such as the possibility that a pirate may seek and receive political asylum if prosecuted. It is also impractical to conduct trials on board a capturing ship consistently with international fair trial standards and highly inconvenient to transferring them to the territory of the capturing flag State to be prosecuted, sentenced and imprisoned there and to return them to their home States after conviction may encounter

objections based on human rights. The problem of capacity and the high cost involved in the investigation, prosecution and imprisonment of convicted pirates have also discouraged States to get involved. As a result, some pirates have simply been released. Others have been handed over to nearby State in the region where the incident occurred for investigation and prosecution under the domestic law of that State in terms of bilateral arrangements. Even in the latter case procedural impediments in domestic laws might constrain national courts from handling the prosecution of expatriated pirates.

International and Regional Cooperation

An important element in ensuring an effective regime in combating international crimes such as piracy, armed robbery and terrorism at sea (or for that matter any other transnational organized crimes such as drug trafficking and human trafficking at sea), is the need for international cooperation. It is essential for States, organizations and enforcement agencies to work together and to coordinate their efforts towards achieving their goal. Cooperation between States, organizations and enforcement agencies are crucial to resolving piracy problems, particularly cooperation in the areas of information-sharing, enforcement, crime investigation, prosecution and punishment.

In terms of article 100 of UNCLOS all States are under an obligation to cooperate to the fullest possible extent in the repression of piracy on the High Seas. Some commentators refer to this provision to point to another restriction in the anti-piracy regime namely that there is no obligation on States to cooperate in the fight against piracy anywhere else than on the High Seas. It is also argued that the use of the expression “to the fullest possible extent” appears to indicate to the potential impossibility of cooperation in the repression of piracy, in particular in respect of States who does not have the means or capability or who no longer have suitable government structures for exercising government authority and control over their territory and / or territorial waters. It is further noted that UNCLOS does not impose any sanctions on a State who fails to cooperate and neglects to discharge its responsibilities under this provision.

Notwithstanding all the impediments and shortcomings in the piracy regime, serious efforts are being made through a number of channels and cooperation arrangements to combat piracy. The United Nations and the International Maritime Organization (IMO) are among the organizations active in this endeavor.

The Contact Group on Piracy off the Coast of Somalia involving 24 UN Member States and 5 international organizations (i.e. UN, IMO, AU, EU AND NATO) established by UNSC Resolution 1851 has a coordinating function for strategies and activities to eradicate piracy in that region.

The UN Office on Drugs and Crime (UNODC) also plays a significant role through its joint EC/UNODC Counter-Piracy Project based in Nairobi, Kenya.

An INTERPOL working group on maritime piracy was also established to reinforce police cooperation in the region.

The IMO is also actively involved through facilitating the implementation of relevant international instruments by providing advice to the shipping industry on measures to prevent and repress acts of piracy and armed robbery and by making recommendations and assisting governments in combating piracy. It has also adopted practical texts for conducting enquiries into the crimes of piracy and armed robbery at sea.

The International Chamber of Commerce through its International Maritime Bureau monitors the incidence of piracy and similar attacks throughout the world.

Concerned States and organizations in effected regions have negotiated cooperation agreements and have instituted studies and training programmes.

The Regional Cooperation Agreement on Combating Piracy and Armed Robbery (ReCAAP) launched in 2006 is the first multilateral government-to government anti-piracy mechanism in Asia. It is a cooperation agreement that focuses mainly on information-sharing (through an Information Exchange Centre), capacity building and cooperation arrangements.

The Djibouti Code of Conduct adopted under the auspices of the IMO in 2009 is an important initiative between Arab and African States towards combating piracy and armed robbery in the Gulf of Aden, the Red Sea and Western Indian Ocean.

The Code is based on ReCAAP and established regional information-sharing centers in Tanzania, Kenya and Yemen. It commits States to cooperate and to criminalize piracy and armed robbery at the domestic level. States also commit to apprehend and prosecute offenders and also agree to ensure that there is adequate guidance for exercising jurisdiction, procedures for investigation and prosecution of offenders. Although the Code still treats piracy as a High Seas crimes, it allows for the foreign-flagged ship to pursue the offenders in to the territorial waters of a coastal State subject to the latter's authorization.

Member States of Maritime Organization of West and Central Africa have adopted a resolution and a Memorandum of Understanding of the Establishment of a Sub-regional Integrated coastguard Network in West and Central Africa in Dakar in 2008. This network enables coastguards in the participating States to pursue ships suspected of piracy and armed robbery in each other's territorial waters. Other regions of world such as Caribbean have taken measures and adopted regional agreements to ensure improved cooperation between States with a view to combating threats to maritime security. Such as piracy and drug trafficking.

Bilateral agreements also exist to facilitate prosecution of pirates in the regions where they operate. Such agreements have been concluded between countries involved in international task forces patrolling the Indian Ocean such as the United Kingdom, the United States and European Union and East African States such as Kenya, Seychelles and recently Mauritius in terms of which captured suspects and seized property are transferred to latter's territories for investigation, prosecution and sentencing. These

countries had to adopt anti-piracy legislation to deal with such cases and due to the increasing number of prosecutions they now seem reluctant to accept any more cases.

United Nations Security Council Resolutions

The UN Security Council also remains seized of the phenomenon of piracy and its potential threat to international peace and security. The Security Council has passed a number of resolutions to tackle this problem and to ensure an effective response by the international community to this scourge against maritime safety and security. In its Resolution 1816 (2008) proposed by France and the United States, the Council decided that States cooperating with Somalia's Transitional Federal Government (TFG) in the fight against piracy and armed robbery off the coast of Somalia were authorized to enter the territorial waters of Somalia for the purpose of repressing such acts. This extension to foreign States of criminal jurisdiction in sovereign areas is quite except. The wider significance of this resolution is doubtful in view of the express declaration that it was approved by the TFG, that it is not applicable to waters other than those of Somalia and that it shall not be considered as establishing customary international law. Resolution 1851 (2008) extended the authority of cooperating State, at the request of the TFG, to undertake all necessary measures that are appropriate in Somalia, thus authorizing a right of entry into Somalia land territory. Resolution 1950 (2010) extended this authorization for another year and required that States entering Somalia's territorial waters act consistently with applicable international law. In subsequent resolutions the Security Council inter alia urged protection for humanitarian aid destined for displaced peoples in Somalia and noted with approval the launching of the EU maritime protection operation 'Atlanta' to assist with the protection of WFP vessels and other vulnerable vessels sailing off the Somalia coast.

The Security Council in its Resolution 1918 (2010) requested the UN Secretary-General to prepare a report on possible options to further the aim of prosecuting and imprisoning persons responsible for piracy and armed robbery at sea off the coast of Somalia, including in particular, options for creating special domestic chambers possibly with international components, a regional tribunal or an international tribunal and corresponding imprisonment arrangements.

The report proposed the following options:

- Enhancement of UN assistance to States in the region to prosecute and imprison persons responsible for piracy and armed robbery. (The UN Office on Drugs and Crime already provide assistance to Kenya and Seychelles for this purpose).
- Establishment of a Somali Court sitting in the territory of a third State in the region (with or without UN assistance).
- Establishment of a Special Chamber within the national jurisdiction of a State or States in the region (with or without UN participation).
- Establishment of a Regional Tribunal on the basis of a multilateral agreement among regional States (with UN participation).

- Establishment of an International Tribunal on the basis of an agreement between a State in the region and the United Nations with both UN and national components.
- Establishment of an International Tribunal by a Security Council resolution under Chapter VII (similar to the International Criminal Tribunals for Yugoslavia and Rwanda).

The problem is except for the last option all the other options only relates to the piracy problem off the coast of Somalia and do not take into account that piracy also occurs in other regions such as West Africa, South and Southeast Asia and the Caribbean.

The idea of creating new regional or international courts or tribunals to deal with piracy and related crimes committed at sea raises a number of issues, such as the time it takes to establish such judicial structures and for it to become operational. Funding also seems to be problematic due to some States' resistance to the proliferation of international courts and tribunals and their reluctance to contribute to the escalating costs of such institutions. There is also no guarantee that all States would be able and willing to cooperate with the court or tribunal and that those cases would be dealt with more efficiently and expeditiously.

In the meantime it is absolutely critical that the situation be brought under control and that measures are taken to make the current system more effective.

Short-term measures include:

- (i) Regional cooperation – the enhancement of cooperation amongst States and organizations in the region is fundamental to achieving and maintaining maritime safety and security. The main areas of cooperation include information-sharing, policing and enforcement, investigation, prosecution and sentencing. Support and assistance should be given to States who lack the capacity and resources to fulfill their obligations and implement these measures. I have already mentioned the assistance given by the United Nations Office on Drugs and Crime, through its Counter Piracy Program to States in the region.
- (ii) The enactment of domestic legislation and criminalizing acts of piracy, armed robbery and related crimes at sea. An effective criminal justice system to deal with such crimes is essential and it is incumbent on all States to take the necessary measures. The Security Council in Resolution 1918(2010) affirmed that the failure to prosecute persons responsible for acts of piracy and acts of armed robbery off the Somalia coast undermines international anti-piracy efforts and called on all States to criminalize piracy, to prosecute suspected pirates and to imprison convicted pirates in accordance with international human rights law. Although this resolution sought to ensure a level of legal and procedural uniformity at the domestic level it does not specify the scope and content of such domestic laws. In order to ensure the harmonization of anti-piracy legislation and the unified procedural standards are applied by

each State it would be helpful if a draft model law could be prepared for adoption in domestic jurisdictions. It is noted in this regard that the Comité Maritime International has published a draft model law on acts of piracy and violence at sea which may be useful for this purpose.

- (iii) The problem of piracy and armed robbery off the coast of Somalia will not be solved unless real and meaningful steps are taken towards achieving State-building and reconstruction in the country. It is a reality that where there is a total break-down in law and order (and in this case, for so many years) and where communities live in abject poverty due to long lasting droughts and unemployment it provides a breeding ground for illegal activities and where piracy become a means of survival and a way to sustain communities. States and international organizations in close cooperation with the Transitional Federal Government of Somalia and regional authorities should enhance efforts to restore government authority in that State and to impose the rule of law. I believe AALCO has an important role to play in this regard.

Mr. Vice President, Excellencies, Ladies and Gentlemen, this concludes my intervention and I thank for your kind attention.

Vice-President: Thank you Judge Hoffman for that detailed account of piracy. Now I'd like to invite Ms. Mariam Sissoko, Representative of the UNODC, to give some remarks.

Ms. Mariam Sissoko, Country Representative of the United Nations Office on Drugs and Crimes (UNODC) : Distinguished Delegates, Ladies and Gentlemen, it gives me great pleasure to address you today on the issue of "Law of the Sea: Responses to Piracy: International Legal Challenges" during this very important Fifty-First annual session of the Asia-African Legal Consultative Organization.

My name is Mariam Sissoko and I am the Country Representative of the United Nations Office on Drugs and Crime (UNODC) in Nigeria. UNODC has the mission to contribute to the achievement of security and justice, by making the world safer from drugs, crime and terrorism.

The mandates of UNODC are embodied in several Conventions, in particular the Three International Drug Control Conventions (1961, 1971 and 1988); the UN Convention against Corruption; the UN Convention against Transnational Organized Crime; and the UN Global Counter-Terrorism Strategy. Several Security Council Resolutions also set the framework for our interventions in the fight against drugs and organized crime. Acts of piracy continue to be a serious issue of concern in East Africa, resulting in the mounting of an international concerted effort to curb this phenomenon. Piracy has also emerged as a threat to the countries of the Gulf of Guinea, with the recent multiplication of piracy acts off the coasts of countries like Nigeria and Benin. In both East Africa and West and Central Africa, UNODC has been active in assisting countries in their fight against piracy.

In East Africa, piracy off the Horn of Africa and in the Indian Ocean has been steadily increasing over the past few years. The lack of rule of law in Somalia has provoked a surge of hijackings and piracy in the region. Over time, pirates off the coast of Somalia have become much more organized and aggressive. The use of “Mother ships” continues, allowing them to operate hundreds of kilometres off the coast to hijack larger vessels.

Pirate groups may often be linked to other forms of organized crime since they maintain relatively good intelligence collection networks and have been reported to be engaged in the corruption of local officials. Funds from ransoms are widely distributed within local communities, and piracy is becoming a major source of income in some areas. A parallel illicit economy has been created, leading to a growing dependency of coastal communities on funds obtained from piracy. There is also evidence that the rise of maritime piracy feeds the conflicts in Somalia and contributes to further destabilizing the country by strengthening the resources available to certain groups.

Reports by the International Maritime Organization (IMO) indicate that during 2011, there were 286 attacks against ships in the waters off the coast of Somalia, of which 31 were successful. The presence of naval forces close to the coast of Somalia to contain and disrupt the activities of pirate groups has proven effective for the Gulf of Aden, but has led to a geographical expansion of pirate operations into the Red Sea, the Somali Basin and further off the coast of Somalia into the Indian Ocean. Pirates now operate in the high seas at distances of up to 1,750 nautical miles from the coast of Somalia.

The UN Security Council Resolution 1816 of 2008 provided a key international response to piracy off the Somali coast and allowed foreign ships to take action within the territorial waters of Somalia to repress piracy and armed robbery against ships in the same way that international law does in respect of the high seas. UN Security Council Resolution 1851 also adopted in 2008 further authorized “all necessary measures that are appropriate in Somalia”, for the purpose of suppressing piracy and armed robbery at sea upon the request of the Transitional Federal Government (TFG), in accordance “with applicable international humanitarian and human rights law”.

Pursuant to Resolution 1851, the Contact Group on Piracy off the Coast of Somalia was established to facilitate the discussion and coordination of actions among States and organizations to suppress piracy off the coast of Somalia. The membership of the Contact Group has continued to expand and there are now representatives of more than 60 countries and international organizations that participate in the plenary sessions and the various Working Groups.

UNODC is an active participant in the Contact Group, and successive Security Council Resolutions on the issue acknowledged the role of UNODC in providing technical assistance to States for the fight against piracy, specifically for the development of the necessary legal frameworks and judicial and law enforcement capacities to enable the prosecution and incarceration of suspected and convicted pirates, as well as allowing for transfers of convicted pirates to serve sentences in Somalia, and to improve prison capacity and conduct prison training in Somalia.

Through its Counter-Piracy Programme launched in 2009, UNODC provides substantial support to countries of the region in their efforts to bring suspected pirates captured off the coast of Somalia to justice. UNODC has worked with a number of countries, principally Kenya and Seychelles, to provide support to their full criminal justice system including police, courts, prosecutors and prisons ensuring that the trials of suspected pirates are effective, efficient and fair. The same support is being expanded to Mauritius and Tanzania.

UNODC is providing assistance to States in the region in the review and updating of their counter-piracy legislation; supporting prosecutors through training and office improvements; developing court facilities; facilitating the attendance of witnesses at trial; substantially improving prison conditions and reducing overcrowding; and improving police practices and evidence handling.

The UNODC Counter-Piracy Programme further implements an Advocacy Programme looking into preventive measures in countering piracy, by reaching out to Somali youth, dissuading them from a career in piracy, and liaising with key stakeholders including community leaders, politicians and religious leaders. UNODC has also engaged in initiatives against illicit financial flows linked to piracy aiming to establish efficient mechanisms and procedures to identify, freeze and seize illicit financial flows from piracy and efficiently prosecute the responsible financiers and sponsors.

UNODC has also started the implementation of the Piracy Prisoner Transfer Programme endorsed by the Security Council in its Resolution 2015 adopted in 2011, through which support is provided for the transfer of convicted pirates back to Somalia to serve their sentences in their own country. UNODC is working, particularly with the authorities in Somaliland and Puntland, to ensure that suitable long-term imprisonment facilities are available. The Programme proposes initiatives to ensure the improvement of the prison conditions including construction, mentoring and monitoring of new prisons.

Turning now to piracy in West and Central Africa, it is worth mentioning that a joint UN Assessment Mission was conducted in November 2011, following Security Council Resolution 2018 of 2011 in which the Council expressed deep concern about the threat posed by piracy and armed robbery to international navigation, to security and stability and to the economic development of States in the Gulf of Guinea region. The mission took place following the multiplication of acts of piracy, especially off the coast of Benin Republic.

Piracy in the Gulf of Guinea is not a new phenomenon. Since the late 1990s, the region has been facing acts of piracy targeting high-value assets, particularly oil shipments. The Gulf of Guinea is a geographical area that stretches from Guinea in the north-western part of the African continent to Angola in the south-central part of the continent. Collectively, the Gulf of Guinea countries produce more than 5 million barrels of oil per day. The region is also rich in minerals, including bauxite in Guinea, gold in Ghana and unexploited resources such as iron ore in Liberia and other countries. Since 2010,

incidents of piracy and armed robbery in the area have risen significantly, making the region the second most acute piracy problem on the African continent.

Pirates in the Central African part of the Gulf of Guinea mainly target both oil drilling platforms and ships, with the intention of seizing money, radio equipment and goods from the crew and the passengers. On some occasions, hostages are taken for ransom. On the other hand, attacks in the West African sub-region generally occur during ship-to-ship transfer operations, with a view to stealing oil cargo and other high-value assets.

In its 2010 annual report, the International Maritime Organization (IMO) listed the West African coast among the top six piracy hotspots in the world. According to IMO, 58 attacks were reported in the region during the first 10 months of 2011, as opposed to 45 in 2010. Twenty-one of the reported attacks in 2011 occurred off the coast of Benin Republic, 14 off the coast of Nigeria, 7 off the coast of Togo, 4 off the coasts of the Democratic Republic of Congo, the Republic of Congo and Guinea, 2 off the coast of Ghana and 1 off the coasts of Angola and Côte d'Ivoire.

The mission, which I had the pleasure of co-leading together with a colleague from the UN Department of Political Affairs, specifically assessed the case of Benin Republic as one of the most vulnerable countries affected by piracy in the Gulf of Guinea. As mentioned earlier, 21 pirate attacks in the waters off Benin Republic were reported in 2011, as compared with none in 2010 and 1 in 2009. The majority of attacks occur at night and target oil and chemical vessels that are stationary while conducting ship-to-ship transfer operations, usually at a distance of over 40 nautical miles offshore. The attacks are therefore not seen as isolated or opportunistic, but rather as systematic and organized.

The assessment mission was informed that the pirates generally utilize faster boats and more advanced equipment during these attacks than those operated by the Benin navy. Acts of piracy off the coasts of Benin are likely to involve corruption as well, as the fact that the stolen oil subsequently resurfaces on the informal market in the main ports along the Gulf of Guinea is indicative of some level of collusion with officials at the ports. In this regard, several Benin officials acknowledged that corruption at the Port of Cotonou is likely, and that the attacks could not occur without the complicity of Benin nationals operating on land.

The crackdown by the Government of Nigeria on piracy and oil bunkering off its shores might have led criminal organizations operating in Nigerian waters to shift their operations to the waters of Benin. According to IMO, the number of pirate attacks off the coast of Nigeria decreased from 48 in 2007 to 25 in 2010 and 14 in 2011. While acting to deter piracy off its coasts, Nigeria also provided support to Benin Republic through the conduct of joint patrols along Benin's coast. The programme, known as Operation Prosperity, is being conducted under Nigeria's tactical command and Benin's operational command, and appears to have been successful in deterring acts of piracy off the coasts of Benin Republic.

In both Central and West Africa, regional interlocutors underscored the need for implementing African solutions to African problems. While some expressed their openness to the idea of having foreign warships patrolling in the Gulf of Guinea, similar to international naval operations off the coast of Somalia, many others cautioned that a robust international naval response in the Gulf of Guinea would be a highly controversial issue, especially given broad regional concern over perceptions of external interference.

There were repeated calls from various interlocutors for the United Nations to play a facilitation and coordination role with respect to the issue of piracy. It was widely agreed that as a neutral intergovernmental body responsible for the maintenance of international peace and security, the United Nations was the ideal forum to mobilize the leaders, countries and organizations of West and Central Africa towards a joint maritime security framework for the Gulf of Guinea and, eventually, to mobilize and coordinate international assistance to support those regional efforts. It was also proposed that the United Nations assist in ensuring that there would be no duplication of efforts or gaps in addressing the threat of piracy in the Gulf of Guinea. In particular, matching identified needs with adequate resources was seen as vital.

The assessment mission recommended several courses of action to face the threat of piracy in the Gulf of Guinea, including stronger regional cooperation, as no country in the region appears to have the capacity to tackle maritime insecurity alone, with many pirate attacks occurring beyond national territorial waters and reaching into the exclusive economic zones. It is worth mentioning in that context that a regional summit of Gulf of Guinea Heads of State, called for by the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS) and the Gulf of Guinea Commission should be convened in 2012, with a view to developing a comprehensive regional strategy to combat piracy in the Gulf of Guinea. This initiative would be closely coordinated with the African Union.

UNODC stands ready to assist the countries of the Gulf of Guinea both at national and regional level. At national level, UNODC is supporting the implementation of the recommendations of the assessment mission, as well as UN Security Council resolutions 2018 (2011) and 2039 (2012). Given the prevalence of attacks off the coast of Benin, UNODC is supporting the development of a National Integrated Programme to comprehensively counter illicit trafficking and transnational organized crime, including piracy. UNODC also stands ready to assist other countries which will request so, to develop maritime security strategies and enhance national legal frameworks.

I thank you for your attention.

Vice-President: I would like to thank Ms. Mariam Sissoko for her very instructive presentation. Now I would like to invite His Excellency Ambassador Yasuji Ishigaki of Japan to give his presentation.

H.E. Amb. Y. Ishigaki, the Leader of the Delegation of Japan: Mr. President, Distinguished colleagues, Ladies and gentlemen, it is great pleasure and honour for me to deliver this presentation on the issue of piracy. Piracy has been dealt with in international law as a serious crime for the international community since its very early days. But in contemporary times the provisions on piracy tended to be considered by some as legacy from the past centuries.

However, today piracy has reemerged as one of major issues facing the world. The international community has already been trying its utmost to address the issue of piracy for some years now, but it remains to be a real and grave threat to the safe navigation of ships.

Japan's economy depends to a great extent on import of energy resources and raw materials and export of manufactured goods, all of which hinges on security of sea lanes. For this reason, for many years, Japan has been tackling with piracy question in Malacca Strait in cooperation with the countries of Southeast Asia and upon the surge of piracy along the coast off Somalia, Japan has been actively participating in the international efforts to combat piracy.

My presentation today is composed of the following four blocks:

- First, I will give a very brief overview of the current situations of piracy, to get an idea of what we are dealing with.
- Second, I will outline the international legal regime regarding piracy as well as some major international and regional frameworks aimed at coordinating the work of the international community in addressing the piracy issue.
- Third, I will discuss the challenges, both legal and practical, and identify the major issues that need to be addressed in order to ensure effective anti-piracy responses of the international community.
- Finally, I will present briefly Japan's anti-piracy efforts and experiences.

1. Overview

- (1) According to the International Maritime Bureau (IMB) of the International Chamber of Commerce (ICC), in 2011, there were 439 incidents of piracy and armed robbery at sea worldwide, down 1% from 2010. Geographically, of these, 237 incidents occurred in the Gulf of Aden and surrounding areas off the coast of Somalia, which is about 54% of the incidents worldwide. In comparison, there were 80 incidents in South East Asia, including the Straits of Malacca and Singapore, which is about 18% of those occurred worldwide.
- (2) As for the statistics in 2012, also according to the IMB, there have been 157 attacks and 18 hijacks worldwide as of 13 June 2012. 62 attacks and 12 hijacks occurred in the waters off the coast of Somalia, involving 219 hostages.
- (3) Since we are gathered here in Africa, and given the overwhelming number of incidents occurring in waters off the coast of Somalia, I will try to focus my presentation on piracy in this region.

2. International anti-piracy law and the efforts by the international community

Let me now turn to the law governing anti-piracy measures and the efforts by the international community.

(1) United Nations Convention on the Law of the Sea (UNCLOS)

(i) Definition of Piracy

Article 101 of the UNCLOS stipulates the definition of piracy as shown. The three important conditions are that the illegal acts of violence are:

- (a) committed for private ends;
- (b) committed by the crew or the passengers of a private ship or a private aircraft; and
- (c) directed on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft.

(ii) Universal jurisdiction

Article 105 of the UNCLOS provides for universal jurisdiction. It stipulates that every State may seize a pirate ship or aircraft and arrest the persons and seize the property on board. It further stipulates that the courts of the State which seized pirates may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property.

(iii) Ships and aircraft which are entitled to seize on account of piracy

However, it is not that any ship may seize and arrest pirates on the high seas. UNCLOS Article 107 stipulates that “a seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.” It is only the warships, military aircrafts, and/or government ships and aircraft that are authorized to carry out the seizure and arrest.

That, in a nutshell, is the international law governing anti-piracy measures. I will now give a brief outline of the various international and regional anti-piracy efforts to coordinate the actions of States. These frameworks serve to supplement the international anti-piracy regime.

(2) Anti-piracy efforts of the international community

(i) UN Security Council Resolutions

UN Security Council has adopted a number of resolutions concerning piracy issues, some notable ones for the purpose of this presentation are: S/RES/1816, S/RES/1846, S/RES/1851, S/RES/1897 and S/RES/2020, all of which are acts under Chapter VII of the UN Charter. Resolution 1897 combined Resolution 1851 and 1846, authorising States, regional and international organizations to “take all necessary measures that are appropriate in Somalia” under certain conditions.

(ii) Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP)

In November 2011 the then Prime Minister Koizumi of Japan proposed to establish a legal framework to promote regional anti-piracy cooperation in Asia, and Japan led the negotiations to conclude the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia, a.k.a. ReCAAP, and the agreement was concluded November 2004. It is the first regional government-to-government agreement to promote and enhance cooperation against piracy and armed robbery in Asia. To date, 17 States have become Contracting Parties to the ReCAAP. The main feature of the Agreement is the establishment of ReCAAP Information Sharing Center (ReCAAP ISC) to facilitate exchange of information among the ReCAAP Focal Points. ReCAAP ISC was officially launched in Singapore on 29 November 2006.

(iii) IMO Djibouti Meeting

In January 2009, a high-level sub-regional meeting to conclude agreements on maritime security, piracy and armed robbery against ships for western Indian Ocean, Gulf of Aden and Red Sea States was convened by the International Maritime Organization (IMO) in Djibouti, and an important agreement was concluded by States in the region. Signatories to the agreement, known as the Djibouti Code of Conduct, declare their intention to cooperate to the fullest possible extent in the repression of piracy and armed robbery against ships.

(iv) Contact Group on Piracy off the Coast of Somalia (CGPCS)

Pursuant to UN Security Council Resolution 1851 mentioned earlier, the Contact Group on Piracy off the Coast of Somalia (CGPCS) was established on January 14, 2009 to facilitate the discussion and coordination of actions among states and organizations to suppress piracy off the coast of Somalia. This international forum has brought together more than 60 countries and international organizations all working towards the prevention of piracy off the Somali coast. The CGPCS consist of five Working Groups, established to address the focus areas. The Working Groups are tasked with: military and operational coordination; capacity building; judicial issues; shipping self-awareness; public information related to piracy; and financial flows related to piracy.

(v) G8 Process

The G8 Foreign Ministers' Meeting held recently in April 2012 in Washington, the Ministers agreed to a Chair's statement reiterating "their firm condemnation of maritime piracy and armed robbery at sea off the coast of Somalia and called for the TFG to enact counterpiracy legislation". The Ministers also recognized that the issues of piracy and armed robbery at sea "can only be effectively addressed through broad, coordinated, and comprehensive national and international efforts, along with the strengthening of coastal states' as well as regional organizations' capabilities".

(vi) Counter-piracy activities: patrolling the Internationally Recommended Transit Corridor (IRTC) in the Gulf Aden.

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

(3) SUA Convention

I would also like to touch briefly upon the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, or SUA Convention, adopted in March 1988. While it is not an anti-piracy framework, it is a legal instrument aimed to prevent unlawful acts against passengers and crews on board ships. The Convention criminalizes certain unlawful acts against ships, and it obliges State Parties to establish jurisdiction over the offences set forth in the Convention. The Convention further obliges State Parties either to extradite or prosecute alleged offenders.

In 2005, a Protocol amending the SUA Convention was adopted, which added terrorism and transportation of weapons of mass destruction using ships as offences under the Convention. It also added provisions for co-operation and procedures to be followed if a State Party desires to board a ship flying the flag of another State Party, when the requesting Party has reasonable grounds to suspect that the ship or a person on board the ship is, has been, or is about to be involved in, the commission of an offence under the Convention.

3. Legal and practical challenges

I would now like to discuss the legal and practical challenges of combating piracy.

(1) Legal issues

First, please take a look at Article 100 of the UNCLOS. It only stipulates a general duty to cooperate in the repression of acts of piracy, but it does not set forth specific methods of cooperation that should be carried out by each country. It is thus the various international and regional frameworks I just described that are filling the gaps.

Second, let us go back to the provisions of Article 105. Under the Article, “every State may seize a pirate ship or aircraft ... and arrest the persons and seize the property on board.” It sets forth a universal jurisdiction authorizing every State to apprehend pirates, but of course the discretion whether or not to actually exercise jurisdiction rests with individual States.

Also under Article 105, “[t]he courts of the State which carried out the seizure may decide upon the penalties to be imposed”, in other words once a State apprehends pirates, that State is given the right to prosecute. Prosecution is not an obligation under the Article, and also, it is not necessarily clear from the text of the Article what States other than the State which carried out the seizure can or should prosecute the arrested pirates.

In view of the above, in order to ensure effective seizure, arrest, extradition, prosecution and punishment of pirates, major challenges under the current legal framework are whether we could establish international and regional effective framework for cooperation, coordinating jurisdictions among several interested States, and develop the judicial and other infrastructure including domestic legislation in each State.

(2) Practical challenges: how to ensure prosecution of pirates

There is no doubt that there exists a strong consensus in the international community that piracy is a serious threat and must be condemned, and that the issue requires coordinated effort of the international community as a whole, as represented in the series of UN Security Council Resolutions and other instruments. In fact, there already exist various international and regional frameworks, and many States are engaged in counter piracy activities as discussed earlier.

However, above all, difficult challenge is how to address the issue of impunity. In fact, many of the pirates arrested off the coast of Somalia have been released due to lack of evidence. Furthermore, even in cases where there is sufficient evidence, States which carries out the seizure and arrest are often reluctant to take the pirates to its own country for prosecution.

Given the growing concern in the international community, a report was prepared in January 2011 by Jack Lang, a Special Advisor to the UN Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia. The purpose of the report was “to identify any additional steps that can be taken ... to prosecute and imprison persons who engage in piracy, and explore the willingness of States in the region to serve as potential hosts for any of the options for potential new judicial mechanisms.” In the report, the Special Advisor made 25 proposals, and as regards the issue of prosecution, he proposed to establish, within eight months, “a court system comprising a specialized court in Puntland, a specialized court in Somaliland and a specialized extraterritorial Somali court that could be located in Arusha”, and gave the first and the third options priorities.

Following the report by Jack Lang, the Security Council unanimously adopted Resolution 1976 in April 2011, which decided “to urgently consider the establishment of specialized Somali courts to try suspected pirates both in Somalia and in the region”, and requested the Secretary-General “to report within two months on the modalities of such prosecution mechanisms”. Such report was produced by the Secretary-General in June.

The SG endeavored to seek possible formula of solutions but his efforts produced no specific solutions as yet.

4. Japan's contributions

Finally, let me now turn to the efforts and experiences of Japan.

(1) Anti-piracy law

Japan enacted Law on Punishment of and Measures against Acts of Piracy in July 2009, which is one of the first comprehensive piracy legislation in the world after the entry into force of the UNCLOS. It uniquely defines acts of piracy and prescribes penalties. It can be contrasted with other types of anti-piracy legislations in other countries, such as those substantially ensure penalties for acts of piracy through application of different provisions under criminal laws, or those that have provisions regarding the punishment of acts of piracy but do not establish unique definitions for the crimes of piracy.

Another feature of Japan's anti-piracy law is that it establishes a truly universal jurisdiction: under this law, acts of piracy are punishable even if it is not committed by or against Japanese nationals, and even if the suspects are arrested by non-Japanese warships etc. and transferred to the Japanese authorities.

(2) Deployment of destroyers and surveillance aircrafts

Under the anti-piracy law, Japan has two destroyers of the Maritime Self-Defense Force (MSDF) deployed in the waters off the coast of Somalia. So far, they have escorted 320 times, 2,560 ships (as of 6 June 2012).

Japan also has two P-3C maritime patrol aircrafts in the region since 11 June 2009, providing information to naval warships of other countries deployed in the region. In June 2011, Japan's Self-Defense Forces opened its first full-fledged overseas base in Djibouti.

(3) The incident involving M/V Guanabara

In March 2011, Japan related oil tanker M/V Guanabara was attacked by Somali pirates off the coast of Oman. The ship and the crew were freed by the U.S. Navy, and the four pirates were transferred to Japanese authorities and brought to Japan. They were indicted in May 2011, and they are in the pre-trial arrangement proceeding. This was the first case of piracy to be prosecuted under the anti-piracy law of Japan. The trial has been quite difficult especially due to difficulties in finding Somali/Japanese interpreters.

(4) Assisting development of maritime security capabilities of the States in the region

Japan has contributed 14.6 million US dollars to the IMO, which is to be utilized for establishment of a training center in Djibouti. Japan has also assisted maintenance and operation of piracy information centers in Yemen, Kenya and Tanzania. Further, Japan has contributed 3.5 million US dollars to the trust fund to support prosecution pirates. Japan has also invited coast-guard officials from Yemen, Oman, Kenya, Djibouti and Tanzania for training in Japan.

5. Concluding remarks

In order to address the root causes of piracy in the region, we must work to stabilize the political, economic and social situations in Somalia. In this regard, Japan has been extending assistance to Somalia, in areas such as improvement of security situations, humanitarian assistance and development of infrastructure. It is essential that the

international community provides coordinated and unified assistance to Somalia in order to truly address the issues of piracy.

Japan is planning to take-up the issue of piracy as one of the agenda items for TICAD V to be held next year in June. Japan is ready to continue working closely with the international community to fight against piracy.

Thank you.

Vice-President: I thank His Excellency Ambassador Ishigaki. Now I call Commodore Austin Owkhor-Chuku of the Navy of the Federal Republic of Nigeria to deliver his paper.

Commodore Austin Owkhor-Chuku of the Federal Republic of Nigeria: Mr. Vice-President, it is indeed a cherished privilege to discuss with you this day the thorny issue of “Piracy within the West African Coast of the Gulf of Guinea”. This paper is coming as a matter of fact at a time when the twin menace of piracy and sea robbery are taking serious tolls on international maritime commerce and age-long business of carriage of goods by sea. The grave danger posed by piracy has been globally visible and it is no less the same particularly in the continents of Africa and Asia. There has been obvious distortion, reduction and hampering of maritime trades as a result.

As you all know trade and most international commerce are conducted by littoral nations through the medium of the sea lanes and oceans of the world linking us all as global commons. Hence, it is usually asserted that the sea is man’s common heritage and succinctly captured by HUGO GROTIUS in his 17th century work titled “The Wealth of Nations”, where he developed the concept of “MARE LIBERUM” which simply means freedom of use of the sea. It highlighted the right of all nations to use the seas equally, according to their ability without let or hindrance.

Albeit history is replete with instances of denial by powerful maritime nations the right to use the sea and resources thereof by less powerful states. Thus in 1493, the world oceans were divided between Spain and Portugal vide the PAPAL BILL OF DEMARCATION. In a like manner the Great Britain as it then was, in the 17th and 18th centuries respectively used its AMADA to deprive weaker states the right to optimally use the sea for their economic benefits. In today’s China the authorities of this great maritime nation have used copious military forces to prevent its neighbours (Philippines and Vietnam) access to the resources at the oil-rich South China Sea.

Finally, beyond states’ controls and domination of the seas, criminal activities by pirates and sea robbers have in no small measure limited the opportunity to freely use the sea by stakeholders. Notably, piracy, sea robbery and other contemporary impediments across the globe and particularly in the Gulf of Aden, east Coast of Africa, the wider Indian Ocean and of course the Gulf of Guinea, are posing serious security challenges on international maritime commerce. This situation calls for unified action by stakeholders for our respective economies to thrive.

Africa and Asia have been engaged overtime in different commercial and legal relationships. Most of which are facilitated by an interrelated maritime culture and tradition. It is thus an imperative that problems of piracy currently ravaging our maritime commerce is addressed through an integrated synergy to boost further and better business relationship. Therefore, the 51st Session of the Asian – African Legal Consultative Organisation in the end would serve as the driver for such integration and synergy for our mutual benefits.

1. Aim

The aim of this paper is to examine acts of piracy within the Gulf of Guinea.

2. Scope

This paper would therefore cover the following:

- a. Location and strategic importance of the Gulf of Guinea.
- b. Piracy within the Gulf of Guinea.
- c. Other atrocities committed in the Gulf.
- d. The way forward.

Location and Strategic Importance of the Gulf of Guinea

Definitively, a gulf is the body of water within an indentation or curve of the coastline. In size, it is between the bay and the sea. Whereas a bay is the body of water enclosed by land and an arm of the sea towards land. Some prominent Gulfs of the world include the famous Gulf of Mexico – which suffered a deep water oil spill in 2010, Gulf of California, Gulf of Fonseca, Gulf of Finland, the Persian Gulf, Gulf of Aden and Gulf of Guinea.

The Gulf of Guinea is the maritime environment stretching from the coast of Liberia to Luanda in Angola and lying between Latitude 40 22' 34" N, Longitude 70 43'01" W and Latitude 00 38' 00" S, Longitude 80 42' E within the South Atlantic. It covers an area of about 250,000nm². It is the maritime zone of the Gulf of Guinea Commission. Rivers Niger and Volta both empty into the Gulf. Its coastlines include the Bight of Benin and Bight of Bonny. The region is encompassed within the West African sub-region.

Having established the geography of the Gulf of Guinea, it is pertinent to note here that strategically, the Gulf is globally and regionally important in many ways particularly as a major trade and shipping route linking the North and South Atlantic in one hand and to some extent, the continents of South America and Africa (East to West Coasts respectively). Furthermore, the Gulf provides an ample sea area for military exercises, researches and rich ecosystems. The region is now regarded as one of the world's top oil and gas exploration hotspots. According to Gene Van Dyke, an oil and gas exploration mogul and Chairman Vanco Energy, Houston US, notes;

“West Africa’s potential is really phenomenal. West Africa is now, and will be in future, fantastically important to the global oil economy”.

Former US Vice President Dick Cheney, once noted in a National Energy Policy Report that;

“West Africa is the fastest growing supply source of oil and gas for the American market”.

Buttressing the points made by these great men about the strategic importance of the Gulf of Guinea, the region finds relevance in a Global Deep water Oil Reserves 2003 assessment chart as follows:

- a. West Africa (Gulf of Guinea) – 14.5 Billion Barrels.
- b. Gulf of Mexico – 12.393 Billion Barrels.
- c. Northwest Europe – 3.126 Billion Barrels.
- d. Mediterranean Sea – 1.868 Billion Barrels.
- e. Brazil – 8.396 Billion Barrels.
- f. Asia Pacific – 2.139 Billion Barrels.

Source: Douglas – Westwood/Infield Systems’ World.

Projected Oil Production of some Member States of GGC 2005 – 2030 in Millions of Barrel

Sl.No. (a)	Country (b)	2005 (c)	2010 (d)	2015 (e)	2030 (f)
1.	Angola	1,098,000	2,026,000	3,729,000	4,422,000
2.	Cameroon	84,000	72,000	66,000	61,000
3.	Congo	285,000	300,000	314,000	327,000
4.	DRC	30,000	33,000	30,000	25,000
5.	Equatorial Guinea	313,000	466,000	653,000	724,000
6.	Gabon	303,000	291,000	279,000	269,000
7.	Nigeria	9,893,000	11,988,00	13,892,000	16,148,000

Source: EIA, US Department of Energy.

You would note that this position has not changed. The US would depend on the region for a quarter of its oil imports by 2015. Regarding food and other mineral resources the region stands out. It is however sadly noted that the full potentials of this great region cannot be fully achieved in the face of pervasive criminality by pirates.

To partly solve the problems of the region the Gulf of Guinea Commission was established on 3 July 2011. Its membership is limited to sovereign states bordering the Gulf of Guinea. These are:

- a. Nigeria.
- b. Cameroon.
- c. Equatorial Guinea.
- d. Gabon.
- e. Republic of Congo.

- f. Democratic Republic of Congo (DRC).
- g. Sao Tome and Principe.
- h. Angola.

The Commission would:

- a. Create mutual confidence and trust among members.
- b. Create an atmosphere of mutually beneficial economic activities pursued peacefully by their citizens.
- c. Harmonize the exploration of national resources (fishing, oil and gas) in overlapping areas of Exclusive Economic Zones.
- d. Provide framework for monitoring and controlling environmental degradation.
- e. Articulate and coordinate common positions on issues of interest to enhance peace and stability in the region.

In sum, the veritable strategic credentials of the region include:

- a. Emergence as a cauldron of global energy politics.
- b. Supplier of energy to the highly industrialised and emerging economies of the world.
- c. Reservoir of high grade hydrocarbon deposit with estimated strategic reserves of over 16 billion barrels.
- d. Ensuring shorter delivery distance to US East Coast refineries. With better safety delivery credentials.
- e. Bestriding the strategic East-West trade routes linking the rich East raw materials and industrialized centres of the West.
- f. Reservoir of Human and material resources. These are potentials necessary for emergence as regional power and important ally to international partners.

Piracy within the Gulf of Guinea

The new International Webster's Encyclopedic Dictionary of English Languages defines piracy simply as robbery on the high sea. Acts of robbery on the high seas have reached a crescendo particularly at the Gulf of Aden, east African Coast, the wider India Ocean and the Gulf of Guinea. These areas have been designated as high risk areas by the International Maritime Organisation (IMO). Piracy in these areas has become phenomenal and monumental occasioning hijacking, hostage-taking, killing of crew members, etc. Shipping activities along these routes have been so badly distorted that the IMO is recommending onboard embarkation of Privately Contracted Armed Security Personnel (PCASP for short) to provide security and safety of vessels plying these high risk areas. These recommendations have been forwarded to coastal flag states including Nigeria and also to ship-owners and ship operators for consideration. For us in Nigeria, this policy is currently undergoing necessary scrutiny by stakeholders to unravel possible infringements and implications to national security and sovereignty.

Added to this, is the problem of high cost of insurance and exorbitant cost of sundry goods which would accrue as a result of embarking PCASP and transshipment. It is no doubt therefore that the overall effect is that the economies of these littoral states under the siege of pirates have been performing abysmally overtime. The Gross Domestic Products of these countries have remained backward.

Piracy in the Gulf of Guinea affects a number of countries in West Africa and is fast becoming an issue of international concern. Piracy in the Gulf evolved over the first decade of the century. For sometime shipping and oil services had been at risk particularly at the Niger Delta area of Nigeria. In general pirates had become more aggressive and very sophisticated. Thus in 2010, forty five incidents and in 2011, sixty four incidents were reported to the UN (IMO). However, many events go unreported. Primarily vessels are captured for their valuable cargo rather than for hostage-taking. Hence, seized oil tankers are redirected to chartered tankers that receive the stolen oil.

Piracy interferes with legitimate trading interests of the Gulf of Guinea countries. For instance, trade in Benin's major port, the Port of Cotonou has been reported in 2012 to have dropped by 70%. In all, loss of revenue due to piracy in the Gulf of Guinea arising from stolen goods, provision of extra security and higher insurance charges has been estimated to about 2 Billion US Dollars.

The international community has expressed concern over the rising spate of piracy attacks in the Gulf of Guinea. It is reported that attacks and violence against ships and crew are becoming "dangerously high" within this region. Thus, in November 2011, the UN Secretary General Ban Ki-Moon assembled a team to examine the situation. As a result, recommendation was made to convene a regional summit to form a united front by affected African countries to tackle piracy. It has been recognised that the area needs a comprehensive maritime security framework across national boundaries to fight piracy. Nevertheless, logistics and technical assistance would be needed from the international community to achieve piracy-free maritime domain in the Gulf of Guinea. Some of the attacks so far recorded are:

- a. 2003 – 39 incidents.
- b. First half of 2004 – 13 incidents.
- c. 2007– 56 incidents.
- d. 2008– 40 incidents.
- e. First half of 2011 – 18 incidents within the waters of Nigeria and Benin and 64 incident overall.

On the whole, incidents of piracy and sea robbery within the Gulf of Guinea is continually on the rise and therefore evokes concern from all quarters. Remarkably, the Nigerian President DrGoodluckEbele Jonathan and his Beninois counterpart, Thomas BoniYani launched joint naval operations in the Gulf of Guinea among other diplomatic efforts. In any case Nigeria has the lion's share in respect of funding and human resources contribution.

Other Atrocities Committed in the Gulf

Besides piracy other atrocities committed against the region include:

- a. Illegal oil bunkering.
- b. Hostage-taking.
- c. Drug trafficking.
- d. Human trafficking.
- e. Terrorism and militancy.
- f. Poaching.
- g. Smuggling in contrabands.
- h. Gun running.
- i. Environmental degradation.

The most unfortunate is that some unscrupulous Western and Asian business patrons encourage and/or sponsors piracy and militancy within the region and in particular the Niger Delta area to boost their takes in the “Monkey Business” in oil and going on in the general area. Therefore, tackling piracy and other atrocities committed within the region would require the concerted effort and assistance of the UN, US and EU, acting sincerely, faithfully and committedly.

The Way Forward

Piracy has become a serious threat to peace, security and development in the Gulf of Guinea area. To fully tackle the menace of piracy and other atrocities in the Gulf, the followings are recommended as way forward:

- a. A comprehensive and united action by the states within the region against pirates, terrorists, militants and their sponsors or patrons should be undertaken. To do this effectively, necessary political will along strong policy option is a quintessential. This would ensure adequate patrols, surveillance, and integrated anti-piracy strategy.
- b. Establishment of a Maritime Development Bank. This would ensure availability of capital to undertake innovative research programmes, technology and logistics acquisition.
- c. Development of Maritime awareness curriculum in schools.
- d. Employment generation strategy by the respective regional governments. This would take off the streets, creeks and other pirate sanctuaries unemployed youths who are ready tools for engagement and employment in militancy and piracy.
- e. Good governance, zero corruption tolerance and broad synergy/integration by regional governments.
- f. International assistance through the provision of technical and logistical aid including training and training manuals as well as the provision of air and water platforms.

- g.** UN coordination of a joint ECCAS, ECOWAS GOG Commission efforts on anti-piracy as well as mobilization of international support.
- h.** Adequate sanction by the international community against identified foreign patrons and sponsors of pirates and militants in the region.
- i.** Industrial and technological development in the region.
- j.** Embrace the concept of “Total Spectrum Maritime Strategy (TSMS) through cooperative maritime security consisting of Gulf of Guinea Guard Force, AU/ECOWAS Standby Force, African Partnership Station and other Global Maritime Partnership Initiative. The Nigerian Navy is already working on the various phases of this concept. The region could avail itself of this integrative effort for reasons of economy of scale, economy of effort, concentration of force, force multiplier and allied advantages.

Conclusion

Ladies and gentlemen, thus far, this paper had taken a bird’s eye view of the subject “Piracy within the Gulf of Guinea”. It noted that the high seas and oceans of the world are man’s common heritage and global commons respectively. Upon this HUGO GROTIUS couched the concept of “MARE LIBERUM” – freedom of use of the sea in his work “Wealth of the Nations”.

You would agree with me that the paper promptly highlighted that the freedom of use of the sea by all has been greatly affected by several impediments, all of which are man made. It also identified the strategic importance of the Gulf not just to the region but its global relevance is fully acknowledged. A systematic review of the incidents of piracy and other ongoing atrocities in the Gulf are captured by the paper including the “Monkey Business” in the Niger Delta. Sadly, it noted that some unscrupulous businessmen from both West and Asia are sponsors of such criminality for their parochial benefits and interests.

Furthermore, the paper suggested the way forward and it is advised that all hands must be on deck to check criminality in the region.

Vice-President: I thank Commodore Austin for his paper.

I would to remind all the speakers that AALCO is governed by the spirit of Bandung, which means that if AALCO Member States have issues with each other they should not use this forum.

I would now like to ask Mr. Mathew Egbadon, to deliver his paper.

Mr. Mathew Egbadon, Secretary/Legal Advisor at the Nigerian Maritime Administration & Safety Agency (NIMASA): Your Excellencies, Distinguished ladies and gentlemen; good evening. My name is Matthew Egbadon. The topic I was chosen for is piracy on the West African Coast and we have tried to highlight the subjects or issues that were covered, from the introduction and scope of the paper; the international law piracy and armed robbery; the definition of piracy and armed robbery; the maritime zones relevant to piracy because this is critical; characteristics of each maritime zone; piracy in West Africa, the strategic importance of the Gulf of Guinea which was referred to by the last speaker; The UN assessment mission of piracy conferred by the UNODC; The Nigeria-Republic of Benin joint patrol which will involve the Nigerian Navy; Measures that have been adopted by Nigeria to combat this menace till date; and, the way forward for the sub-region in the fight against piracy.

Some of the issues have been covered by the previous speakers. The topicality of the issue was underscored last year by the International Maritime Organization. That was to bring to the fore, the need for the world to appreciate the enormity of the issues that are surrounding the issue of piracy, and the need for us to have concerted efforts towards finding a solution to it.

Maritime Piracy is today, a major threat to shipping and related activities globally. This issue assumed renewed global focus during the period 2008 to 2009, not because it never existed before but because the period witnessed a surge in Piracy that has not been seen in generations, with the rumblings in the Horn of Africa. It became a serious issue and generated a lot of extra interest, particularly in the Gulf of Aden and the waters off the coast of Somalia. It became a greater threat to vital sea lanes of communication, disrupted commerce, encouraged political aggression and insurgency, and in the process, constricted socio-economic development globally. These worrisome consequences led to the current global effort and that is one reason why we are discussing it this afternoon, with a view to finding a solution to the menace. This paper therefore will take a cursory look, as I have said, at what is piracy.

To briefly explain let me recall the immortal words of Justice Basset Moore in the Lotus Case between France and Turkey that went to the Hague on the issue of jurisdiction of coastal states in an incident that occurred on the high seas. What is of relevance to us is the issue of piracy, which was addressed by Justice Moore, and I quote him:

“Piracy by law of nations, in its jurisdictional aspects, is sui generis. Though statutes may provide for its punishment, it is an offence against the law of nations; and as the scene of the pirate's operations is the high seas, which it is not the right or duty of any nation to police, he is denied the protection of the flag which he may carry, and is treated as an outlaw, as the enemy of all mankind – *hostis humani generis* - whom any nation may in the interest of all capture and punish.”

That is what is encapsulated in Section 105 of the UNCLOS.

Section 101 clearly states what piracy is, and as has been stated this afternoon, the definition is grossly inadequate with the present day reality. Anything that happens outside the high seas and to a very large extent the EEZ will not fall under the term currently defined as piracy under international law. Looking at the definition as it is; it must be committed for private ends, so even if it is committed for political ends it does not amount to piracy; two vessels, at least, must be involved; it must be done by the crew of the vessel or the passengers of the vessel; all these make it a very restrictive definition and it has become necessary to take a second look at that definition.

Now in an attempt to find a solution to the gap between the definition of piracy as it happens on the high seas, and what happens in territorial waters, the IMO came up with the definition called “Armed Robbery”, and it stated there:

“Armed robbery against ships means any unlawful act of detention or any act of depredation, or threat thereof, other than an act of “piracy”, committed for private gains, directed against a ship or against persons or property on board such ship, within a State’s internal waters, archipelagic waters, and territorial seas.”

As long as the definition of piracy in UNCLOS did not cover territorial seas, archipelagic waters and territorial waters, IMO had to find the solution and said that this is the definition. When there is piracy within territorial water or internal waters it will be called armed robbery. Then came the IMB definition. As far as the IMB is concerned: “Any act of boarding, or attempting to board, any ship, with the intent to commit theft or any other crime and with the intent or capability to use force in furtherance of that act” is regarded as piracy.

As far as the IMB is concerned, whether it happens in internal waters, whether it happens in territorial waters, or on the high seas, it is piracy. That is the definition of the IMB. And that appears to be enjoying universal acclaim, because a great number of scholars and institutions are adopting this approach to defining what maritime piracy is despite the fact that that legally under international law, those acts do not amount to piracy.

Now looking at the Maritime Zones as I have said, relevant to our discourse this evening are six maritime zones. Where so-called piracy can occur, starts from the contiguous zone, the EEZ, up to the high seas. Anything outside that area is not piracy. I’ve tried in the paper to explain what are maritime zones, international waters, territorial waters, archipelagic waters, EEZ and the high seas.

Piracy in West Africa, looking at the Gulf of Guinea; statistics have been read out all this afternoon, and in particular I want to refer to the report by the UN Office on Drugs and Crime. The statistics show a level of criminality that goes on in the name of piracy and armed robbery in this sub-region. I want to refer to IMB reports that say they will increase their activities on the West-African coast with Nigerian water accounting for incidents on Ten (10) vessels. The report went further to note that the Nigerian Pirates were going further into the sea to attack ships with the level of violence against crew also increasing.

Now what is the strategic importance and attraction of this region? The region is very rich in natural resources. The oil in the Gulf of Guinea is some of the best in the world, in terms of sulphur content which is very low, and so it is something that is highly sought after, globally. That is one of the attractions. Of course, shipping costs, between the Gulf of Guinea and Europe and America, is cheaper than other regions, so that is another way to attract and bring people to the area. There are other resources like cocoa, and of course the fisheries and fishing that we have in the Gulf of Guinea is some of the best globally. And a lot of people come to the area and fish without authorization. So this is what brings people to the region that has aggravated the issue of piracy and armed robbery that we have in the Gulf of Guinea.

Nigeria is strategically located along one of the most important and resource endowed coastal regions - the Gulf of Guinea. Nigeria has a coastline of 850 kilometers and it has a total Exclusive Economic Zone measuring 84,000 square kilometers. The hydrocarbon gas region is very high.

In addition, this region has a very high population. Up to about 350 million people reside in the West-African sub-region. Out of these about 160 million are Nigerians. So, it's a very good market for goods coming from Europe, America and other areas. That's why it is another source of attraction and that is why we have duty to ensure that we protect the region.

On the issue of the UN assessment mission on piracy in the Gulf of Guinea, so much has already been said, but I want to say that that was initiated by President Boni Yayi of the Republic of Benin, who appealed to the international community to help fight piracy in his country and in the Gulf of Guinea. This request was contained in a letter to the Secretary-General of the United Nations.

On October 2011, during an open debate in the Security Council on the matter of "Peace and Security in Africa: Piracy in the Gulf of Guinea" convened by Nigeria in its capacity as President of the Security Council, the Secretary General confirmed his intention to dispatch an assessment mission to the region and appealed to ECOWAS and ECCAS (Economic Community of Central African States) to work together to develop a comprehensive and integrated regional anti-piracy strategy for the Gulf of Guinea.

So, the mission came out with these reports, and as we have been told this afternoon, they came up with a lot of findings. More than 5 million barrels of oil was produced per day in the region. This is in addition to the fact that the region supplies more than three quarters of the World supply of Cocoa, aside the abundant riches in minerals. These "riches" and other political considerations have unfortunately accounted for the surge in these incidents of piracy which no country in the region can singularly confront. The report in this regard took cognizance of the efforts of the Nigerian government to assist neighboring Benin Republic, which I will come to later.

The report makes some recommendations. First, the need to convene a regional summit of Gulf of Guinea Heads of State as supported by the Security Council in its resolution

2018 of (2011), as early as possible in 2012, with a view to developing a comprehensive regional strategy to combat piracy in the Gulf of Guinea. That is one strategy. The imperative of cooperation among ECCAS, ECOWAS and the Gulf of Guinea Commission take into account provisions of the IMO/MOWCA MOU. This is in addition to intensifying the joint patrol at sea in the Gulf of Guinea.

It was also recommended for the need to develop land based patrolling, surveillance and information gathering systems among the countries in the sub-region. ECOWAS and ECCAS states were also encouraged to take active measures to criminalize acts of piracy and to support the development of a proper judicial institution, because most of the states in the region do not have a proper legal framework to punish acts of piracy. And the law enforcement agencies of ECOWAS and ECCAS Member States were also advised to consider taking steps to be connected to existing regional and international networks for combating organized crime including criminal activities at sea. In particular, they should consider joining the secure global police communication system of INTERPOL referred to as I-24/7, which will allow them to share information, coordinate their activities and access INTERPOL databases.

The Republic of Benin as you've been told is one of the most vulnerable countries, affected by piracy in the Gulf of Guinea. Twenty-one piratical attacks were reported in 2011 as opposed to no single incident in 2010. Because of this trend, President Boni Yayi sought regional support in the quest to fight piracy. He came to Nigeria and met Mr. President Goodluck Jonathan, which resulted in the President directing NIMASA to move to the Republic of Benin's territorial water with the Nigerian Navy, for an initial period of six months, to conduct a joint patrol. That has brought a level of sanity to the issue of piracy. For the first six months, there was not a single incident of piracy reported in those waters.

ECOWAS, ECCAS, MOWCA, all these can be harnessed to have a common platform to fight, as this is a regional issue that cannot be fought by a single country. Of course, Nigeria has started by collaborating with the Republic of Benin to patrol the waters of the Republic of Benin and Nigeria, and we hope that this will be replicated across the region.

There is a need to strengthen regulations and to require people and countries to pool their resources together and that's why we are also getting the private sector involved. Why the private sectors are not involved is because the environment is not conducive for them to carry out their business.

The Sub-region has a number of institutional bodies addressing a wide range of issues. These include ECOWAS and MOWCA. In line with the IMO/MOWCA Memorandum of Understanding (MOU) concluded in Dakar in 2006, which aims at enhancing maritime safety, security and Law enforcement throughout the sub-region, there is a need to take further concrete steps towards building a joint maritime security approach through ECOWAS.

It is also imperative for the Economic Community of Central African States (ECCAS) and West African States to further integrate their operational response to this scourge taking a cue from the efforts of ECCAS States which has led to the establishment of the Regional Centre for Maritime Security in Central Africa located in Pointe-Noire Congo.

A joint maritime force arrangement exists within ECCAS States but there is no arrangement for effective patrolling and radar monitoring of the Maritime domain for the entire Gulf of Guinea. There is a need therefore for an integrated coastal radar system in the region to support the activities of the Joint Maritime Forces.

The dictates of IMO circular No.1333 of 2009 encouraging Regional Joint Patrols, should be implemented immediately. Nigerian has already taken the initiative with the on-going patrols with Benin Republic and it is hoped that this model will be replicated across the region.

Funding is a major requirement to any successful operation. The on-going collaboration between Nigeria and Cotonou is costing billions of Naira. There is the need therefore for a sustainable process for equipping and funding maritime security activities. It is proposed that states should provide budgetary allocations while also encouraging private sector stakeholders in the maritime sector to contribute to a funding pool. A case in point was a proposal which targeted a certain percentage of the profits from oil companies into a consolidated funding pool.

Another key component of any attempt to fight piracy is the exchange of information, and should logically derive from an integrated African strategy to address problems of insecurity in the Continent. The effective integration of inter-Agency and intergovernmental data sources will go a long way in addressing this menace coupled with the development of joint training programmes on maritime policing.

A robust legal framework is also an urgent necessity to address this menace as criminals will continuously source for safe havens or places where the offence is punished with a slap on the wrist. Appropriate Legal instruments should therefore criminalize these Acts with commensurate punishment provided in addition to ensuring relative uniformity in the objective and spirit of such laws across the region.

Let me conclude by saying that The challenge posed by Piracy and armed robbery at sea in the West African coast as in other parts of the globe is fundamental given the raging Economic and Political undertones. There is a compelling need to take urgent and pragmatic steps towards addressing this problem. It is our conviction that firstly there is the need for a strong government buy-in, supported by relevant private sector interests in the project to rid our waters of Piracy and armed robbery. The problems of poverty, food insecurity, political manipulations and rising insurgencies, as well as inequitable distribution of National resources must also be addressed in a bid to eliminate the root causes of the penchant for criminality in our waters. And as Ban Ki-moon said recently in one of his meetings, and I agree with him, "Piracy is not a water-borne disease." So it is man-made and we must fight it.

Thank you.

Vice-President: I thank Mr. Mathew Egbadon for his excellent presentation, and now the floor is open for discussion. The first on our speaker's list is the delegation from Indonesia. I invite the delegate from Indonesia to take the floor.

The Delegate of Indonesia: Mr. Vice-President, Distinguished delegates, as an archipelagic state, Indonesia is of the view that maritime security should be interpreted in accordance to the unique characteristic of archipelagic state such as its strategic geographical position. Such position gives Indonesia benefits in the management of natural resources and also the importance of having similar perception concerning threats and challenges as practical aspect to enhance cooperation between states.

In dealing with maritime security issues, Indonesia is of the view that maritime security should be seen in a comprehensive manner since there are various kinds of crimes at sea and we decline the selective approach only on the issue of piracy and armed robbery at sea. In the perspective of archipelagic states, the compelling issues for Indonesia is the eradication of smuggling of goods and illegal, unreported and unregulated fishing, transnational crimes i.e. people smuggling and trafficking in persons, small armed smuggling as well as illicit trafficking of drugs and psychotropic substance.

In dealing with maritime piracy issues especially which occur on off the coast of Somalia and Eastern part of Indian Ocean, UN and other international organizations has already deliberated the effort to combat piracy incident in the waters off the coast of Somalia and Gulf of Aden. At the same time, IMO has also adopted some practical resolutions and guidance for international shipping community to encounter the act of piracy in waters off the coast of Somalia and Gulf of Aden.

In this matter, Indonesia is of the view that the definition of piracy should be differentiated with armed robbery against ship. The definition of Piracy should be referred to back to what have been defined in UNCLOS 1982 in article 101 in which mentioned that the elements of piracy is any illegal acts of violence or detention, or any act of depredation, committed for private ends, by crew or passenger of private ship or aircraft. Such acts are directed on the high seas or outside the jurisdiction of any State.

Meanwhile, the definition of Armed Robbery has been clearly defined in Code of IMO Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ship (Res A.922(22)). Therefore, the Government of the Republic of Indonesia has consistently rejected any declaration which is of the view that piracy acts also consist of all kind of crimes toward ship, regardless their position, even in the port, territorial sea or exclusive economic zone as well as straits used for international navigation.

Furthermore, in our common efforts to counter maritime piracy, it is necessary not to generalize the approach and measures taken for such addressing the issue. In this regard, Indonesia would also like to recall Paragraph 9 of the UN Security Council Resolution

1816 (2008) stating that the anti piracy efforts applies only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations under the Convention, with respect to any other situation, and underscores in particular that it shall not be considered as establishing customary international law.

Indonesia considers that the approach taken by the Secretariat of AALCO by unifying both definitions is against international law and could create confusion amongst the lawyers attending this conference. Indonesia would like to request the Organization to ensure that there is a distinction between the piracy and armed robbery against ship since there are different legal implications for such actions.

In this regards, the Indonesian government is also supporting the effort to combat piracy that occurs off the coast of Somalia and Gulf of Aden. We wish such concerted efforts could also be followed by legal efforts to deliberate the legal theories to answer the question of the Law to respond to piracy.

I thank you.

Vice-President: I thank the delegate from Indonesia. Next, I would like to invite the representative from Kenya to take the floor.

The Delegate of Kenya: Mr. Vice-President, Distinguished Delegates and Ladies and Gentlemen, allow me at the onset, on behalf of my Delegation, to extend congratulatory wishes to the commissioners who were recently elected to the Commission on the Limits of Continental Shelf (CLCS). As you are aware, the CLCS is charged with the implementation of the United Nations Convention on the Law of the Sea. We are also grateful to all those countries present here, which supported the election of Mr. Simon Njuguna, a Kenyan geologist, to the CLCS.

Mr. Vice-President, the issue of piracy and armed robbery against ships at sea off the coast of Somalia remains of grave concern to my country. These activities have greatly affected trade and commerce in the entire East African region. Acts of piracy have continued to adversely affect fishing, tourism and shipping industries in East Africa. This has significantly contributed to the increase of cost of goods and services in the East African region. Indeed, Kenya's revenues from fishing have fallen drastically owing to the insecurity in the waters at her EEZ on account of the fact that few commercial fishing vessels are willing to take up licenses and engage in commercial fishing around the affected area.

The resurgence in piracy at sea, particularly hijackings off the coast of Somalia, has prompted a range of efforts to tackle it. These throw up a series of legal issues including the use of force and transferring of suspects for trial or imprisonment. Kenya welcomes the efforts made by the international community to combat piracy, which efforts have had some deterrent effect on piracy and armed robbery in our region. In this regard, my Delegation would like to commend the steps taken by the International Maritime

Organisation in seeking to combat piracy off the coast of Somalia and in the Gulf of Aden. This was evidenced when in May 2011 IMO's Maritime Safety Committee (MSC) approved the Interim Guidelines on the employment of privately contracted armed security personnel on board ships transiting the high-risk piracy area off the coast of Somalia and in the Gulf of Aden and the wider Indian Ocean. The Interim Guidelines are aimed at addressing the complex issue of the employment of private, armed security on board ships as a temporary measure in combating piracy.

Ship-owners are increasingly turning to private security companies to provide armed guards for their vessels. Private armed security guards cannot board vessels and detain suspected pirates, but they seem to be having a deterrent effect as no ship with private armed security guards on board has been hijacked. However, since this is still an interim measure, there are legal issues that require to be addressed under public international law on the use of private armed security guards.

Ladies and Gentlemen, prosecuting suspected pirates is seen as a major potential deterrent. Under international law any country can prosecute piracy on the high seas; but in practice few do so unless there are national interests at stake, and many suspected pirates are released without trial. Kenya, together with other States in the region, have taken steps to prosecute, or incarcerate in a third state after prosecution elsewhere, pirates and facilitators or financiers consistent with applicable international human rights law. However, we are faced with challenges of capacity, particularly prison facilities. We urge the all States and international organizations to further enhance international efforts in this regard.

I thank you.

Vice-President: I thank the delegate from Kenya and now I would like to invite the representative from Thailand to take floor.

The Delegate of Thailand: Mr. President, Excellencies, Distinguished Delegates, Ladies and Gentlemen, One cannot deny that acts of piracy cause immense obstructions to numerous sea-related activities. Commercial shipping and oil transportation, sectors of crucial importance for both developed and developing economies, are among those badly affected by the piracy. Historically, the maritime sector has been one of the main industries that lead the way for a country's growth. As the world population expands and, subsequently, the needs for more energy and resources increase, the sector significantly enables new explorations to be conducted and provide a network of trade routes across the global waters. For such developments to continue, the international community must ensure that our seas and oceans are safe.

Maritime security is therefore central to a healthy growth in the world economy. In a climate where pirate attacks are rife, protecting and safeguarding Sea Lanes of Communication (SLOCs) has become more important than ever for the international community. Because of the nature of piracy, greater co-operation among states is of utmost important and is the way forward to solve this problem.

Mr. Vice- President, as an active member of the international community, Thailand is determined to ensure the world's economic and social resources such as the seas and the oceans are well protected. With effective protection through international efforts, our livelihoods will be preserved and we can all prosper together. Therefore, Thailand fully supports these international efforts in this regard by ratifying UNCLOS on 14 May 2011.

As a state party to UNCLOS, Thailand intends to fulfil our obligations as a responsible member of the international community. Becoming a state party to UNCLOS is a very important milestone for us. The instrument, recognized as the "Constitution for the Seas", lays down all basic principles of international law of the sea and regulates various maritime activities. Hence, by adhering to this important instrument, Thailand will be able to effectively contribute to the international interests in maritime sphere as well as strengthen its role in regional and multilateral arena.

Moreover, we has actively participated in several regional and international fora on maritime security, namely ASEAN Maritime Forum (AMF), the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), International Maritime Organization (IMO), and the Contact Group on Piracy off the Coast of Somalia (CGPCS).

With regard to countering and suppressing the Somali pirates, the rise of piracy-related incidents from off the coast of Somalia and in the Gulf of Aden, which is a major route connecting Asia, the Middle East and Europe, is a global cause for concerns.

During 2008-2011, eight Thai vessels and ships had been hijacked by Somali pirates, with one fishing vessel still being held captive by pirates. Such incident causes damages to our social as well as economic developments, not only for Thailand but also for the communities of seafarers around the world. Somali piracy is therefore a direct threat to the world at large and to Thailand. This is why, in our view, it must be addressed through concerted efforts of the international community. As a result, the Royal Thai Government dispatched the Royal Thai Navy's Counter-Piracy Task Unit (RTN CPTU) to join the anti-Somali piracy operation under the umbrella of the Combined Maritime Forces (CMF) during September 2010 – January 2011 and July – November 2011. The results of both operations have been satisfactory. We recognise, however, that the international community cannot afford to be complacent and more needs to be done. This is why Thailand is considering participating in such anti-piracy patrol continuously. Given the success of the RTN CPTU operations, the Royal Thai Navy, by the approval of the cabinet, has appointed Rear Admiral Tanin Likitwong, the previous commander of RTN CPTU, the commander of Combined Task Force 151 – one of the three Task Forces under CMF – to continue with the project. Rear Admiral Likitwong, along with other 14 Thai navy officials have taken up their duties in commanding and administering the joint naval patrol in the Internationally Recommended Transit Corridor between Bahrain and Somalia during 29 March – 14 July 2012.

Mr. Vice-President, Thailand's policy regarding the issues surrounding piracy has always been to promote stability, security and prosperity across our regions through co-operation in all areas under various regional frameworks as well as expeditiously resolving issues of our concerns through peaceful means based on treaties and laws.

We believe that strategic partnerships with other member countries will play important roles in solving this long-suffered problem. Interactions with the global community will help with the preservation and restoration of peace and security as well as the promotion and protection of human rights. Thailand believes that transnational issues such as piracy call for transnational efforts to constructively forge a network of co-operation strong enough to deal with the complexity and sensitivity of the problem.

Thank you very much for your kind attention.

Vice-President: I thank the representative from Thailand and I would now like to invite representative of the delegation from Tanzania to take the floor.

The Delegate of Tanzania: Mr. Vice President, we would like to commend AALCO for putting this issue on the agenda and giving it the prominence it deserves at this time. This clearly shows AALCO continued commitment in addressing issues related to peace and security. We note with grave concern on the soaring incidents of piracy and armed robbery against ships at sea off the coast and high seas of Somalia and surroundings of coastal areas. We reiterate on our position outlined in the general statement made earlier that, these acts of piracy have adversely affected trade, tourism and shipping industries and impacting all countries surrounding economies of horn of Africa.

Mr. Vice President, Piracy has turned to be an international concern which requires international multifaceted solutions. This includes political, military and individual ship security actions. In this regard, it is necessary to consider and implement measures at international level to repress piracy including sharing of required resources and information. It is also important to ensure timely prosecution of detainees suspected of piracy and criminal activities in the high seas.

Mr. Vice President, whilst we commend various efforts by the international community to facilitate, apprehend, transfer and prosecute suspected pirates, we feel there is a need to provide essential support both international and national to countries currently challenged in responding to the effects of piracy. Therefore, on our part we insist on the urgency of establishing robust law enforcement mechanisms and functional judicial and prosecutorial systems to deal with piracy. Further, we continue to urge each member state to criminalize acts related to piracy.

Further to that, we appeal to the international community to explore other means of enforcing prosecutions of pirates by exercising jurisdiction within the purview of article 105 of the UNCLOS. We must summon the spirit of revisiting the Convention so as to make it better serve the mankind. My Government is committed towards working in

cooperation with her neighbors and the international community in general, to fight piracy for the interest of its people and of maritime security.

Thank you very much.

Vice-President: I thank the delegate from Tanzania. I would now like to invite the delegate from Malaysia to take the floor.

The Delegate of Malaysia: Mr. Vice-President, the Secretary General, Distinguished Members of the Panel, Ladies and Gentlemen, the incidents of piracy, especially in the Gulf of Aden and Indian Ocean have greatly affected the safety and security of navigation as well as the international shipping community as a whole.

Malaysia is committed to its role in support of the relevant Security Council Resolutions, and has amply demonstrated it thus far. Aside from its operational contributions in the Gulf of Aden, Malaysia is in the process of prosecuting the seven Somali pirates captured by the Malaysian Armed Forces on 20 January 2011 off the coast of Oman in Malaysia.

At the same time, Malaysia is also in the process of reinforcing its anti-piracy legislative framework with reference to the UNCLOS, the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention) and the 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (SUA Protocol) regimes.

In this regard, for guidance, Malaysia had looked at the draft guidelines for national legislation on maritime criminal acts submitted by the Comité Maritime International (CMI) to the Legal Committee of the International Maritime Organization (IMO) in 2007 as well as the documents submitted by the IMO Secretariat, the UN Division for Ocean Affairs and the Law of the Sea (UN-DOALOS) and the UN Office on Drugs and Crime (UNODC) at the ninety-eighth session of the Legal Committee of the IMO.

At the Fiftieth Annual Session Malaysia had urged AALCO to come forward to provide the necessary technical assistance to its Member States to deal with the need to enact specialized and comprehensive laws on piracy and other maritime security offences. Malaysia appreciates the willingness of AALCO Secretariat in playing a vital role, through the collaboration with other inter-governmental organizations, to develop a model legislation that could be used by its Member States as mentioned in paragraph 100 of the report entitled “The Law of the Sea – Responses to Piracy: International Legal Challenges” prepared by the AALCO Secretariat.

We are of the view that the AALCO Secretariat could use as guide, the draft guidelines submitted by the CMI, which were the result of deliberations by a Joint International Working Group of International Organizations consisting of representatives from the CMI, the Baltic and International Maritime Council (BIMCO), the International Chamber of Shipping (ICS), the International Criminal Police Organization (INTERPOL), the International Group of P&I Clubs, the International Maritime Bureau (IMB), IMO, the

International Transport Workers Federation (ITF) and the International Union of Maritime Insurance (IUMI), and the documents submitted at the ninety-eighth session of the Legal Committee of the IMO could also be used as a guide.

Malaysia hopes that the model legislation on piracy and other maritime security offences to be prepared by AALCO Secretariat could be completed and distributed for the consideration of all Member States in due time.

Thank you.

Vice-President: I thank the delegate from Malaysia. I would now like to invite the delegate from Sri Lanka to take the floor.

The Delegate from Sri Lanka: Mr. President, Excellencies, Distinguished Delegates, Ladies and Gentlemen; Piracy on the high seas has been recognized over centuries as a crime against all nations. The issue of law of the Sea and piracy was deliberated at the Fiftieth Annual Session as an important issue of urgency and recognized as a major security concern for Member States. According to sources at the UN, the total loss caused by Somali pirates is over US\$ 3 billion annually. The recent escalation of piracy attacks off the coast of Somalia and off the Horn of Africa has posed serious global security threats that demand heightened attention of the international community. A number of Sri Lankans were held in captivity by the sea pirates in the high seas over the last few years and a number of fatalities have also occurred. As a result, Sri Lanka takes a very serious view on the matter of sea piracy.

Sri Lanka considers sea piracy as a grave security that demands both collective and individual response of all the nations in the international community. Sri Lanka ratified the United Nations Convention on the Law of the Sea (UNCLOS) on July 19, 1994 after signing on December 10, 1982. Sri Lanka is also a party to the Regional Cooperative Agreement against Piracy and Armed Robbery in Asia (ReCAPP) which was brought to force in September 2006. The ReCAPP agreement is the first inter-governmental agreement in the Asian region to combat maritime piracy in the region. The ReCAPP Agreement provides for the establishment of an International Information Sharing Center [ISC] to share information among focal points via a secure network.. It also obliges Member States to strengthen international cooperation among Member States to prevent maritime piracy attacks. Sri Lanka urges the AALCO Member States to adopt similar inter-governmental coordinated mechanisms to implement coordinated international counter piracy programmes in view of the fact that maritime piracy is a transnational organized crime.

Sri Lanka considers individual national response to piracy by Member States to be of equal importance in the efforts of combating piracy. Although piracy is not a common feature within the territorial waters of Sri Lanka, Sri Lanka has taken steps to develop a national maritime policy to minimize such incidents with the strengthening of coast guard service and other maritime related security arrangements. Somali pirates have been widening their area of attacks and extended their raids further east into the Indian Ocean

as foreign navies increased security of the coast of Somalia. Sri Lanka is taking all possible steps of regional and international cooperation to ensure free movements of vessels within the territorial waters of Sri Lanka.

Sri Lanka also wishes to stress the importance of information sharing in the efforts of combating maritime piracy. In the present globalized world of transnational threats and organized cross border crimes, it is only through a cooperative approach of sharing information and mutual assistance that any of us can succeed in protecting maritime security. Information sharing in maritime could include intelligence information. For Sri Lanka and our partners in South East Asia, information sharing on maritime security is an essential part of our regional approach.

Sri Lanka also adopted legislation by way of Act No 09 of 2001 which criminalizes maritime piracy as a serious offence and provides for piracy to be a cognizable and non bailable offence. In terms of section 03 of the Piracy Act of Sri Lanka, piracy is defined as “Any person who dishonestly takes or appropriates any ship by means of theft, force, intimidation, deception, fraud or by any other means”. The Act addressed offences of Taking of property from a ship; Boarding a ship without lawful authority; Retention, possession, and transportation of pirated ship and property, Forfeiture; Use of weapons or intimidation while committing an offence. Sri Lanka calls on the Member States to take adequate national measures to combat piracy and to enact stringent national legislation to make maritime piracy a serious criminal offence.

Vice-President: I thank the delegate from Sri Lanka and now would like to invite the delegate from Saudi Arabia to take the floor.

The Delegate of Saudi Arabia: In the name of my country’s delegation I would like to thank the participants who have presented action papers on this issue. KSA supports international efforts to combat piracy and promotes further coordination among the regional states in combating piracy. The Arab States of the Red sea are considering measures to combat piracy in the Gulf of Aden and the Red sea. I have a query to the respected participants about the legal status of prosecution of pirates by invoking the national criminal laws in the states which are yet to promulgate a special law on piracy.

Thank you Mr. Vice President.

Vice-President: I thank the delegate from Saudi Arabia. I would now like to invite the representative from Ghana to take the floor.

The Delegate of Ghana: The Ghana delegation would like to commend the AALCO Secretariat for the preparation of a very detailed and comprehensive paper on the topic. Ghana agrees with the view held by the Secretariat that the United Nations Convention on the Law of the Sea (UNCLOS) while not ratified by all countries, including the United States represents the best evidence of international law relating to the maritime regime and is binding on all nations as customary international law. Therefore its provisions on

piracy contained in Articles 100-107 are recognized as the most authoritative codification of piracy law.

However, as a 1982 Convention which came into effect in 1994, the definition of piracy in UNCLOS which appears to limit the geographical scope of the crime to the high seas is its major limitation in the face of modern day piracy which occurs in the Exclusive Economic Zone (EEZ) and Territorial Sea of affected States. Article 58(2) of UNCLOS contained in Chapter V on the EEZ states that Articles 88 -115 relating to the high seas (and for that matter Articles 100 -107 on suppression of piracy) apply in the EEZ. The effect of Article 58(2) *inter alia* is therefore that every State may seize a pirate ship or aircraft and arrest the persons on board and also have its courts try the offenders and decide upon the penalties to be imposed even when the offence is committed in the EEZ of a State. Often, when piracy is considered, Articles 100 -107 of UNCLOS are referred to and Article 58(2) is overlooked.

Whilst there are about 162 State Parties to UNCLOS out of an international world community States numbering 180, the provisions of UNCLOS do not automatically apply in the State Parties to the Convention that are dualist States. In these States, enabling legislation (domestic legislation) is required to give effect to the provisions of the Convention. Whilst the attention of both Monist and Dualist States must be drawn to Article 58(2) in applying the provisions of the UNCLOS on piracy, Dualist States may require assistance in drafting implementing legislation which clearly gives effect to Article 58(2) of UNCLOS. Ghana humbly suggests that it would be of great assistance if AALCO would explore the possibility of a legislative drafting workshop on anti-piracy legislation in order to assist Member States on the subject matter.

As regards the application of the provisions of piracy in UNCLOS to acts of “piracy” which occur in the Territorial Sea, the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention) which came into force in 1992 deals with violent acts against ships and persons on board and obliges States to suppress unlawful acts against the safety of maritime navigation which occur in the Territorial Sea. The 2005 SUA Protocol which entered into force in 2010 also expands the ambit of the SUA Convention to include politically motivated “piracy”. However, whereas the SUA Convention addresses some of the limitations of UNCLOS in dealing with piracy, the SUA Convention does not expressly cover the crime of piracy. Thus, the offences created by the Convention which involve threats of acts of violence against a ship and persons on board it may in some instances constitute both piracy and an offence under the SUA Convention whereas in other instances an act of piracy would not be a SUA Convention offence. Even where the offences created by the SUA Convention overlap with the crime of “piracy”, as a treaty, the SUA Convention is only binding on its State Parties.

In the light of the above, Ghana suggests that AALCO may wish to encourage State Parties of UNCLOS to become parties to the SUA Convention. Ghana is of the view that whilst States are willing to work to facilitate the peace process in countries such as Somalia in an attempt to solve the root cause of piracy, States should also be consistently

reminded of the importance of the peace and stability they enjoy in their own countries and urged to do their best to maintain such peace as the root cause of modern day piracy that has surged in Somalia seem to be driven by poverty and lack of effective government machinery.

Thank you very much for your attention.

Vice-President: I thank the distinguished delegate from Ghana.

I would like to clarify Saudi Arabia; I believe Saudi Arabia asked a question, and that question was on the international legal status of the death penalty as given for acts of piracy. In that case, I believe that Mr. Mathew Egbadon would like to reply to it.

Mathew Egbadon, Secretary/Legal Advisor NIMASA: Thank you Mr. Vice-President. As far as UNCLOS is concerned the matter is left for the jurisdiction of the relevant coastal states. It is the responsibility of the state to decide on the punishment for piracy. As I have said, in our case there are proposals, and for a country like Nigeria that practices dualism, it is left for our legislature to decide at the end of the day how they want these crimes to be punished.

So, to that extent, it is left to the individual states how they want to punish piracy.

Vice-President: Thank you Mr. Egbadon. I would now like to invite the delegate from China to take the floor.

The Delegate of People's Republic of China: Mr. President, Distinguished Delegates, at the beginning, the Chinese delegation would like to express its appreciation to this Annual Session for holding a half-day Special Meeting on Law of the Sea.

In field of the law of sea, the most important universally legal instrument is UN Convention on the Law of the Sea. During the negotiation process of the Convention, AALCO played a prominent role serving itself as an important forum for developing countries to coordinate positions and forge consensus. This year marks the 30th anniversary of the opening for signature of UNCLOS. Today we are holding this Special Meeting to carry forward the spirit of consultation and cooperation, give full play to the unique role of AALCO, and jointly facilitate the solution of the piracy issue. The Chinese delegation looks forward to a full and useful discussion at this session, and making our due contribution to resolving piracy, an issue of common concern shared by Asian and African countries.

Mr. Vice- President, the Secretariat has prepared an in-depth and thorough report on relevant international legal issues. The Chinese delegation appreciates the work done by the Secretariat.

The Secretariat Report points out that despite intensified international efforts to combat piracy, pirate attacks have become more common and violent. In China's view, it shows

that naval escort operations and judicial prosecution may curtail piracy off the coast of Somalia, the root causes are far from being resolved. The fundamental solution to the issue lies in the political stability, economic development and social tranquility in Somalia. China is committed to working with all parties to actively promote the peace process in Somalia and help Somalia to launch its reconstruction efforts.

The Secretariat Report also touches upon the practical difficulties in the prosecution and adjudication of pirates. In this respect, the Chinese delegation supports international efforts to strengthen judicial mechanism against piracy, and believes that such mechanism should be based on the respect for sovereignty and enhanced judicial capacity of the coastal States, and should take into full consideration of the practical circumstances of the coastal States as well as States carrying out escort operations. The Chinese delegation believes, as was pointed out by the UN Secretary-General in his report in January of this year, the emphasis of our work should be placed on judicial capacity-building in Somalia and other regional countries through international assistance. The international community should, therefore, provide all necessary assistance, including the effective use of relevant international trust funds, to assist such capacity-building efforts.

Mr. Vice-President, China may exercise jurisdiction on acts of piracy based on UNCLOS, or do so for acts of murder, malicious injury, robbery and abduction on the basis of territorial, nationality or protective jurisdiction. The provisions in China's Criminal Procedural Law concerning investigation, arrest, interrogation, prosecution, adjudication and extradition, provide legal procedure to prosecute and adjudicate pirates.

The Chinese Government has always worked to enhance international cooperation on piracy and ensure the safety of navigation. The Chinese navy has strengthened its coordination and cooperation with other navies when carrying out its escort operations. China has taken an active part in the relevant work including those of the Contact Group on the Piracy off the Coast of Somalia, the UN Security Council and the International Maritime Organization. China attaches great importance to reaching agreement with the coastal States in order to effectively prosecute and adjudicate pirates. So far, China has signed agreements on the transfer of pirates with Kenya, Seychelles and the Transitional Government of Somalia.

Mr. Vice-President, piracy poses a serious threat to peace and tranquility at sea, and is a common challenge facing the international community. To address this challenge, while countries continuing to consider all possible domestic measures, it needs to explore solutions within the framework of international law including UNCLOS, and taking into account UNSC relevant resolutions as well, and also requires the joint effort and wisdom of the international community. We would stand ready to further exchange views with Asian African countries on piracy. The AALCO may continue its study in depth on relevant legal issues, and explore useful and effective solution so as to contribute to the establishment and preservation of a harmonious order at sea.

Thank you, Mr. President.

Vice-President: I thank the delegate from China.

I would like to remind all delegates that they are requested to hand over their comments and any changes they want to the resolutions to the Secretariat early so that they can be duly reflected in the resolution to be adopted on Friday.

And now, I give the floor to the representative from India.

The Delegate of India: Mr. President, Excellencies, Distinguished Delegates, Ladies and Gentlemen,

The increasing acts of piracy and armed robbery against ships represent a serious threat to the life of sea-farers, the safety of navigation, the marine environment and the security of coastal states, as well as impacting negatively on the entire maritime industry, thereby leading to higher costs and even suspension of shipping services to high risk areas.

Mr. Vice President, we welcome the Code of Practice for the investigation of the crime of piracy and armed robbery against ships adopted by the 22nd Assembly of the IMO. We also support IMO's efforts at promoting regional cooperation to address this problem and we have actively participated in many meetings and seminars organized by the IMO for enhancing implementation of its guidelines on preventing such attacks. The main problem areas identified by IMO include resource constraints on law enforcement agencies, lack of communication and cooperation between the agencies involved and lack of regional cooperation apart from the problems posed by the prosecution. All these constraints need to be urgently and effectively addressed by giving higher national and international priority and efforts to eradicate these crimes.

Mr. Vice President, Piracy off the coast of Somalia has become an urgent maritime security matter attracting the attention of the international community. The Gulf of Aden which separates Somalia and Yemen, connects the Arabian Sea to the Red Sea, and through the Suez Canal to the Mediterranean Sea, has seen a major spurt of attacks by pirates. This has attracted the focus of the UN General Assembly and Security Council. In this regard, a contact group on piracy off the coast of Somalia was established with the four Working Groups of which one is devoted for legal issues. India is also a Party to this Working Group. This Working Group has been dealing with national prosecution of pirates, arrangements between States to prosecute the pirates, supporting prosecution, capacity building, trust fund besides the concept of 'ship riders'.

Mr. Vice President, India is among the countries which have been seriously affected by the problem of maritime piracy. Our Navy and Coast Guard, during the course of conducting anti-piracy operations off our western coast, have apprehended several suspected pirates. Given the increasing incidence of piracy within India's EEZ (Exclusive Economic Zone), the Government of India felt that a comprehensive domestic legislation on piracy should be in place. India is actively working for such a domestic anti-piracy legislation to provide the necessary legal framework within the country for prosecution of persons for piracy related crimes. The enactment of such legislation would provide for

certainty and clarity in the law as well as a sound legal basis for prosecuting and punishing the pirates for committing acts of piracy. In our view it would also promote the safety and security of India's maritime trade including the safety of our vessels and crew members.

Mr. President, India has furthermore been fully involved in the deliberations at the UN on the subject of an international legal mechanism to deal with pirates. We have also been discussing this issue with other interested countries in the contact group on piracy off the coast of Somalia, which is the main multilateral group deliberating in all aspects of maritime piracy emanating from Somalia.

Mr. President, India has been raising its voice against piracy in the regional and international forums keeping in mind that acts of piracy and armed robberies against ships would affect the entire maritime transport industry, leading to higher cost. In this regard, the Indian Navy also joined with other Navies in escorting the maritime transport vessels in the Gulf of Aden.

Thank you.

Vice-President: I thank the distinguished representative from India for her statement and now I give the floor to the representative from the Republic of Korea.

The Delegate of Republic of Korea: Mr. Secretary-General, Mr. Vice-President, Distinguished Panels and delegates, on behalf of my delegation, I appreciate the Secretary-General and the Secretariat for their work in preparing the 51st session's report on the issue of piracy. It is highly relevant and timely, and I noticed many AALCO Member States share their concerns on this matter.

On behalf of my delegation, I'd like to introduce efforts, being taken by Republic of Korea in fight against piracy, on multilateral and bilateral level.

One is through our participation in the Contact Group on Piracy off the Coast of Somalia, which was established under the UN Security Council Resolution 1851. Especially, we are closely following up on discussions in the Second Working Group which focuses on the legal aspects of the piracy matter with a view to build mutual legal assistance system to prosecute and punish pirates.

The Government of Republic of Korea is also closely cooperating bilaterally with its allies, and is willing to share its legal experience and information in implementing criminal jurisdiction over pirates with AALCO Member States. We think AALCO can provide a unique forum for addressing piracy issue. AALCO also can provide capacity-building programmes on legislation and implementation of law against piracy, in collaboration with AALCO Member States and UN organizations.

To conclude, recalling the vital role played by AALCO in developing the UN Law of the Sea, the Government of Korea expects AALCO's leadership and initiative in developing

appropriate accountability system against piracy. As we mentioned in our General Statement, we hope this issue remains high on AALCO agenda.

Thank you.

Vice-President: I thank the distinguished delegate from the Republic of Korea.

We have now come to the end of our list of speakers. If any other delegates wish to speak they may now do so.

The Delegate of Republic of Yemen: Mr. Vice President, Distinguished Delegates, the Republic of Yemen express high appreciation to the Secretariat of AALCO for their report on “The Law of the sea-Response to piracy: International Legal Challenges. Yemen is party to the UNCLOS. Yemen has a very long coastal line which begins from the boundaries with Saudi Arabia, in the Red Sea and ends at the boundaries with the Sultanate of Oman, in the Arab sea, in addition to the coasts of Sapotra Island and other Yemeni islands. These coasts stretch up to more than 25,000 kilometers.

The marine biodiversity, species and resources are in great danger due to the passing of big ships and oil vessels which discharge wastes, chemicals and hazardous materials in the territorial and international waters, which are adjacent to Yemeni territorial waters, without having any permission from the Yemeni Government. So, protecting and preserving the marine environment, biodiversity, species and resources is the biggest priority. But Yemen has not enough funds for such a purpose and the reasons will be mentioned in the statements on terrorism and environment and sustainable development. So other states are requested to assist Yemen by providing financial support to Yemen.

Yemen has made a submission to the commission on the limits of the Continental Shelf (CLCS) and is still waiting as CLCS is faced with workload issue caused by a large number of submissions.

The issue of piracy is very crucial and important for Yemen because it is connected to terrorism, poverty, organized crime and other criminal activities. The pirate attacks on ships have increased drastically in the international and territorial waters, particularly in this year and the last which we connect it with the Peaceful Resolution against the previous President Ali Abdullah Sale, his relatives and his officials. As a matter of fact, Yemen is unable to combat and prevent piracy even within its territorial waters as there are no specially trained marine forces which are qualified and armed with very modern weapons to face challenges.

The capacity building is very urgent and important issue for Yemen in this respect. Further Yemen is also willing to enact a law on piracy and other marine crimes and will need technical assistance to draft and pass such a law. The Regional and International Communities are requested to assist Yemen to combat and prevent piracy by providing all kinds of assistance.

Yemen firmly believes that there is a close connection between piracy and terrorism because terrorist organizations leave no stones unturned to secure their financial resources and piracy is the earliest and the easiest way to provide them with financial succor.

Thank you for your attention

Vice-President: I thank you for your presentation.

We have come to the end of our session for today. Tomorrow, as usual, we shall start at 9 o'clock, so please do be on time.

The Meeting was thereafter adjourned.