

**(iv) AALCC's Data Collection Unit to be Re-Activated**

A resolution on re-activation of the AALCC's Data Collection Unit was adopted at the Accra Session, (1999). The resolution stressed the need for and significance of exchange of information between the Committee, the United Nations, its agencies and other international bodies. It also referred to the effective role of research and study in the fulfillment of the objectives of the Committee. It is important to note that the resolution does not confine itself to the work of Data Collection only in respect of international economic and trade law matters but covers the entire gamut of the substantive activities of the Secretariat, including research and dissemination of information.

In order to promote wider dissemination of the AALCC's Work through the Unit, the Secretariat has to incur operational expenses towards the functioning of the Unit. For pursuance of the Accra mandate the Secretariat has to set up a web site and the acquisition of this facility would be possible from the unspent amount available to the Secretariat from the earlier grants provided by the Government of the Republic of Korea for the Establishment of the Unit and the Government of the Republic of Korea for the establishment of the Unit and the Government of Japan for the purchase of computers and other necessary accessories.

The e-mail linkage, and the establishment of a web-site would generally facilitate communication with international organizations, and specifically with Member States. This mode of communication would be of immense help for re-activating of the Data Collection Unit. The Secretariat would urge all Member States to avail of this facility and promptly furnish information and materials in English, the official language of the Committee.

The Data Collection Unit functions under the overall supervision of the Deputy Secretary General, Mr.M. Reza Dabiri.

The text of the Resolution adopted at Accra is as follows:

(Adopted on 23<sup>rd</sup> April, 1999)

**The Asian-African Legal Consultative Committee at its Thirty-eight Session**

*Stressing* the need and significance of exchange of information between the Committee, the United Nations, its related Agencies and other international bodies.

*Having in mind* the effective role of research and study in Committee's objectives:

*Appreciating* the financial assistance given by the Government of Republic of Korea for the establishment of the Data Collection Unit and by the Government of Japan for the purchase of computers and the internet facilities:

1. *Requests* the Secretary General to continue to update and improve technical efficiency of the Unit including establishment of a web-site and homepage in the year 1999-2000 to facilitate the communication between the Secretariat, Member States and other international organizations;
2. *Urges* Member Governments to furnish information and other relevant material in order to enrich Data Collection Unit; and
3. *Requests* the Secretary General to report on the establishment of a web-site and homepage to the Thirty-ninth Session.

## II. THE LAW OF THE SEA

### (i) Introduction

The item Law of the Sea was taken up by the Committee at the initiative of the Government of Indonesia in 1970 and has thereafter remained a priority item at successive Sessions of the AALCC. Initially conceived as a programme of rendering assistance to Asian-African governments to prepare themselves for the Third United Nations Conference on the Law of the Sea (hereinafter called UNCLOS-III) through preparation of background papers and provision of opportunities for in-depth discussions, the AALCC gradually emerged as a useful forum for a continuing dialogue on some of the major issues on this subject. The subject matter is one in which all the Member States of the AALCC are deeply interested and has been the subject of discussion at inter-sessional and Working Group Meetings.

Following the adoption of the United Nations Convention on the Law of the Sea, 1982 (hereinafter referred to as the Law of the Sea Convention, 1982 or simply the Convention) the AALCC at its 23rd Session (Tokyo, 1983) approved the future work programme on this subject, which included a comprehensive set of issues among which were: (i) the encouragement of taking steps towards ratification of the Convention (ii) undertaking of studies from time to time on specific matters or issues of practical importance to member governments for the purposes of the implementation of the Convention (iii) assistance to Governments in regard to the work of the Preparatory commission; and (iv) the examination of the question of promoting regional or subregional co-operation taking into account the interests of landlocked and geographically disadvantaged States.

The item was considered at the 37th Session of the AALCC (New Delhi, 1998). The brief of documents prepared by

the Secretariat for that session, *inter alia*, furnished an overview of developments since the entry into force of the Law of the Sea Convention including the Meeting of the States Parties to the Convention; the work of the International Seabed Authority (hereinafter referred to as ISBA); and the establishment of the International Tribunal for the Law of the Sea. It had also contained an overview of the 1996 Global Programme of Action for the Protection of the Marine Environment from Land Based Activities.

At the 37th Session the AALCC, *inter alia*, urged its Member States, who had not already done so,<sup>1</sup> to consider ratifying the Convention on the Law of the Sea. The AALCC also urged the full and effective participation of the Member States in the International Seabed Authority (ISBA) so as to ensure and safeguard the Legitimate interests of the developing countries and for the progressive development of the principle of the Common Heritage of Mankind.

The AALCC at its 37th session reiterated its call to the Member States to give consideration to the need for adopting a common policy and strategy for the interim period before the commercial exploitation of the deep seabed minerals becomes feasible. To this end, the AALCC urged Member States to adopt an "evolutionary approach" especially to the "initial function" of the Authority so as to make the International Seabed Authority useful to the International Community and the developing countries during this initial period.

It directed the Secretariat to continue to co-operate with such international organizations as are competent in the field of ocean and marine affairs and to consider assisting Member States in their representation at the ISBA. The AALCC at that Session *inter alia* decided to inscribe on the agenda of its 38th

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<sup>1</sup> 11 Member States of the AALCC viz. Bangladesh; Islamic Republic of Iran; Democratic People's Republic of Korea; Libya; Nepal; State of Palestine; State of Qatar; Syria; Thailand; Turkey; and the United Arab Emirates have not ratified or acceded to the Convention,

Session an item entitled "Implementation of the Law of the Sea Convention, 1982".

The brief of documents prepared for the Accra Session accordingly furnishes an overview of the developments, relating to the implementation of the Law of the Sea Convention, since the 37th Session of the Committee (New Delhi, 1998).

### **Thirty - eighth Session : Discussion**

Introducing the item the *Deputy Secretary General* Mr. Mohammad Reza Dabiri stated that the item Law of the Sea had initially been taken up at the initiative of the Government of Indonesia and had thereafter remained a priority item at successive regular sessions of the committee. The subject had in the past also been the subject of discussion at inter-sessional and working group meetings. The item was last considered at the 37th Session of the Committee whereat the Committee had considered a brief of documents prepared by the Secretariat which furnished an overview of developments since the entry into force of the Law of the Sea Convention. At its 37th Session the Committee had urged its Member States, who had not already done so, to consider ratifying the Convention on the Law of the Sea. The Committee had also urged full and effective participation of the Member States in the International Seabed Authority so as to ensure and safeguard the legitimate interests of the developing countries and for the progressive development of the principle of the Common Heritage of Mankind. The AALCC at its 37th Session had called upon Member States to give consideration to the need for adopting a common policy and strategy for the interim period before the commercial exploitation of the deep seabed minerals becomes feasible.

He further stated that the brief of documents prepared by the Secretariat sought to furnish an overview of developments in the matters relating to the Law of the Sea, in particular in respect of (i) the consideration, by the General Assembly, of the item relating to the Oceans and the Law of the

Sea including the 1995 Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks; (ii) Meeting of the States Parties to the UN Convention on the Law of the Sea; (iii) the work of the International Seabed Authority, including the work of its organs like the Council, the Legal and Technical Commission and the Finance Committee; (iv) the Commission on the Limits of the continental Shelf; and (v) the International Tribunal for the Law of the Sea. This brief of documents also listed the progress in respect of the Registered Pioneer Investors.

The Deputy Secretary General stated that the 53rd Session of the General Assembly had expressed its satisfaction at the increase in number of States Parties to the Convention and the Agreement relating to the implementation of Part XI of Law of the Sea Convention and in order to achieve the goal of universal participation had renewed its call to all States, that had not already done so, to become parties to the Convention and the Agreement Relating to the Implementation of Part XI of the Convention. The General Assembly at its 53rd session also reaffirmed its decision to undertake an annual consideration and review of the overall developments pertaining to the implementation of the Convention and other developments relating to the Law of the Sea.

Recalling that the General Assembly at its 52nd Session had expressed its satisfaction at the progress being made by the Legal and Technical Commission towards the formulation of a draft Mining Code, the Deputy Secretary General stated that the study prepared by the Secretariat provided an overview of the draft Mining Code. The Committee at its Session may, he suggested, consider mandating the Secretariat to make a concerted study of the Mining Code and to this end approve of the representation of the AALCC Secretariat at the meeting of the International Seabed Authority. He recalled in this regard, that the Secretariat had in the past been represented at the Sessions of the Preparatory Commission on the International Seabed Authority and the International Tribunal for the Law of the Sea and, that during the earlier phase of the work of the PREPCOM, co-operation between the

AALCC and the PREPCOM had, indeed, been seen as a forerunner to the co-operation between the Seabed Authority and the AALCC.

Pointing out that the General Assembly had proclaimed the year 1998 as the Year of the Oceans and that the General Assembly at its 53rd session had welcomed the issuance of the Report, of the Independent World Commission on the Oceans, entitled "The Ocean: Our Future" in the context of the International Year of the Oceans, he said that Report was likely to be considered at the Seventh Session of the Commission on Sustainable Development in 1999 whereat the Commission would in accordance with decision of the Nineteenth Special Session of the General Assembly address the sectoral theme "Oceans and Seas".

Mr. Dabiri stated that the new treaty system of ocean institutions was now in place and had begun its work. The General Assembly of the United Nations had expressed its concern on the financial situation of both the International Seabed Authority and the International Tribunal for the Law of the Sea. In its resolution 43/32 the General Assembly had, among other things, appealed to all members of the Authority and all States Parties to the Convention to defray their assessed contributions to the International Sea bed Authority and to the International Tribunal for the Law of the Sea in order to ensure that they are able to carry out their functions.

He pointed out further that 1999 marked the fifth anniversary of the entry into force of the United Nations Convention on the Law of the Sea. This is the year in which ocean affairs and the Law of the Sea are on the agenda for critical analysis and decisions about "institutional and managerial arrangements for the future". Emphasizing the coincidence between the programme of the Commission for Sustainable Development, and the five-year experience with the Law of the Sea Convention he stressed that the year 1999 must be used to put into place a number of pieces of the design for ocean governance in the next century.

The establishment of an institution of "ocean governance" by a Committee with universal membership which must respond to the General Assembly directly, and not to the ECOSOC which is a more specialized body with less than universal membership.

The *Delegate of Japan* while extending her appreciation to the Secretariat for the background reports, asked for the floor to lay out some important developments that had occurred during the course of the past one year. She was of the opinion that several states had renewed their commitments by ratifying the Convention and the Development Agreement. She added that 130 State Parties to UNCLOS 82 in itself, was a strong manifestation of the universality of the Convention. The second instance was the importance accorded to the International Tribunal on the Law of the Sea, wherein the *M/V Saiga Case* had reached the Merits stage. This according to the delegate was an act of faith placed in the UNCLOS regime for dispute resolution. She expressed the hope that her own country person Judge Yamamoto would gain legal expertise in this field. Lastly she commended the work of the International Sea Bed Authority (ISBA) for its work during the last year. The efforts included the approval of the plans of work for exploration submitted by Registered Pioneer Investors and the Mining Code. Reiterating Japan's commitment for establishment of a stable order of the Law of the Sea, the delegate concluded her presentation by expressing the hope that Member States of the AALCC, who have not yet become Parties, would do so.

The *Delegate of the Arab Republic of Egypt* recalling the pioneering work of the AALCC, during the Third UNCLOS in general and EEZ in particular, felt that a certain laxity had befallen the Asian African states. But the Implementation Agreement relating to Part XI of the Convention, had once again reactivated the work related to the subject. He was of the view that the institution of the Council, the Technical and the Financial Committee was a welcome move. The Mining Code submitted to the Council, he felt would be soon finalized. He also expressed happiness that the *Saiga Case* had moved on to

the Merit Stage. He expressed an opinion that the topic on the "Law of the Sea" could be taken by the Committee biennially rather than annually. This suggestion he felt, could be discussed at the stage of adopting of resolutions on the topic.

The *Delegate of India* stated that her country with a coast line exceeding 4000 miles and 1300 islands had always attached special importance to the study of ocean affairs. Recalling her country's contribution and active participation in the third UN Conference on the Law of the Sea, she said that her country had invested heavily and had major interests in the exploration and exploration of petroleum and hydrocarbon carbon resources, present in the territorial waters and the EEZ. Speaking on maritime safety and marine pollution, she was of the view that though state jurisdiction was primarily in vogue, regional co-operation in the field could prove better for ensuring compliance. Buttressing this position, she recalled that her country and 14 other States had signed a Memorandum of Understanding on Port State Control for the Indian Ocean region, which provided that the maritime authority of each state must inspect at least 10 per cent of the foreign merchant ships entering their ports every year.

The *Delegate of the People's Republic of China* pointed out that the designation of the year 1998 as the International Year of the Ocean, was very important for human society. He said his country has shown great concern over and placed great importance on maintaining peace, tranquillity, stability of the ocean and the effective sustainable utilization of marine resources, development of marine scientific research and protection of marine environment. He felt that these concerns had been sufficiently addressed by UNCLOS, the Agreement Relating to Implementation of Part XI of UNCLOS and other relevant rules, regulations and procedures. As regards the plan for the exploration of the seabed by pioneer investors, he felt that the Council should look into, very carefully, the Draft Mining Code. The delegate further stated that the Council must bear in mind the principle of common heritage of mankind while finalizing this Code. While agreeing to the guarantee of the legitimate rights of investors, he felt, it was

necessary to safeguard the just rights and interests of the developing countries. The principle of common heritage, in his view, would go a long way in preserving and protecting the marine environment.

With regard to his country's efforts towards developing guidelines for marine environment preservation and mining of poly-metallic nodules, he recalled that recently a workshop was held in China which brought out an assessment of possible environmental impacts arising from exploitation of deep seabed poly-metallic nodules. Furthermore, he appreciated the work of ITLOS, which has started its deliberations on the merit stage of the *M/V Saiga Case*. He called upon Asian and African States to work towards establishing a healthy, stable and just legal order of the oceans.

## (ii) Decision on the "Law of the Sea"

(Adopted on 23.04.1999)

*The Asian African Legal Consultative Committee at its Thirty-eighth Session*

*Having considered the Secretariat Brief of Documents on "The Law of the Sea", as set out in Document AALCC/XXVIII/ACCRA/99/S.5, and having heard the statement of the Deputy Secretary General;*

1. *Notes with satisfaction that the United Nations Convention on the Law of the Sea entered into force on 16 November 1994;*
2. *Notes also the work of the International Seabed Authority on the formulation of the Regulations on Prospecting and Exploration of Polymetallic Nodules in the Area;*
3. *Notes with Satisfaction the reference of a dispute to the International Tribunal for the Law of the Sea;*
4. *Urges the Member States, which have not already done so, to consider ratifying the Convention on the Law of the Sea;*
5. *Reminds Member States to give timely consideration to the need for adopting a common policy and strategy for the interim period before the commercial exploitation of the deep seabed minerals becomes feasible, and for this purpose urges Member States to take an evolutionary approach especially to the "initial function" of the International Seabed Authority so as to make the ISBA useful to the international community in general and developing countries in particular.*
6. *Urges Member States to consider the full and effective participation (of Member States) in the ISBA so as to ensure and safeguard the legitimate interests of the developing*

countries, and for the development of the principle of the Common Heritage of Mankind;

7. *Urges Member States* to consider making written declarations choosing from among the means concerning the settlement of disputes listed in Article 287 of the United Nations Convention on the Law of the Sea;

8. *Urges Member States* to co-operate in regional initiatives for the during of practical benefits of the new ocean regime;

9. *Directs the Secretariat* to consider technical assisting Member States in their representation at the ISBA and monitor the progress of work of the International Seabed Authority on the formulation of the regulations on Prospecting and Exploration of Poly-metallic Nodules in the Area and to report thereon;

10. *Also directs the Secretariat* to continue to cooperate with International organizations relating to the fields of ocean and marine affairs;

11. *Decides* to inscribe on the agenda of its thirty-ninth Session an entitled "Implementation of the Law of the Sea Convention, 1982".

### (iii) Secretariat Study: Law of the Sea

The item "Law of the Sea" has been on the agenda of the United Nations General Assembly since its 37th session (1982) when the General Assembly, *inter alia* approved the assumption, by the Secretary General, of the responsibilities entrusted to him under the UN Convention on the Law of the Sea, 1982<sup>2</sup> and the related resolution adopted by UNCLOS III and has thereafter been considered at successive sessions.

The General Assembly had by its Resolution 52/26 of 26 November 1997 inscribed the item "Oceans and the Law of the

<sup>2</sup> The Convention entered into force on November 16, 1994 and as of September 1998 126 States had ratified, acceded or succeeded to the Convention. These States are: Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Bahrain, Barbados, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Cameroon, Cape Verde, Chile, China, Comoros, Cook Islands, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic Republic of the Congo, Djibouti, Dominica, Egypt, Equatorial Guinea, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Iceland, India, Indonesia, Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kenya, Kuwait, Korea Republic of, Kuwait, Lao People's Democratic Republic, Lebanon, Macedonia (former Yugoslav Republic of), Malaysia, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mongolia, Mozambique, Myanmar, Namibia, Nauru, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Philippines, Portugal, Romania, Russian Federation, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Sweden, Togo, Tonga, Trinidad and Tobago, Tunisia, Uganda, United Kingdom of Great Britain and Northern Island, United Republic of Tanzania, Uruguay, Viet Nam, Yemen, Yugoslavia, Zambia and Zimbabwe. See *Oceans and the Law of the Sea: Report of the Secretary General* UN Doc. A/53/456 of 5 October 1998.