

**AALCO/43/BALI/2004/SD/S 2**  
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**ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION**



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**THE LAW OF THE SEA**

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## **LIST OF ABBREVIATIONS**

AALCO	Asian-African Legal Consultative Organization
CLCS	Commission on the Limits of Continental Shelf
EEZ	Exclusive Economic Zone
GMA	Global Marine Assessment
IHO	International Hydrographic Organization
IMO	International Maritime Organization
ISA	International Seabed Authority
ITLOS	International Tribunal for the Law of the Sea
JPOI	Johannesburg Plan of Implementation
MOP	Meeting of States Parties
UN	United Nations
UNCED	United Nations Conference on Environment and Development (or the Rio or Earth Summit)
UNCLOS	United Nations Convention on the Law of the Sea, 1982
UNGA	United Nations General Assembly
WSSD	World Summit on Sustainable Development (or the Johannesburg Summit)

## **THE LAW OF THE SEA**

### **I. INTRODUCTION**

1. The item “Law of the Sea” was taken up for consideration by the Asian-African Legal Consultative Organization (AALCO) at the initiative of the Government of Indonesia in 1970 and has since been considered as one of the priority items at successive sessions of AALCO. The deliberations in AALCO’s annual and inter-sessional meetings for nearly a decade were focused on this single most important item. The AALCO can take reasonable pride in the fact that new concepts such as the exclusive economic zone and archipelago States originated and developed in the AALCO’s annual session and were later codified in the United Nations Convention on the Law of the Sea of 10 December 1982 (hereinafter the UNCLOS or the Convention).

2. After the adoption of the Convention in 1982, the AALCO’s Work Programme was oriented towards assisting Member States in matters concerning their becoming Parties to the UNCLOS and other related matters. With the entry into force of the UNCLOS in 1994, the process of establishment of institutions envisaged in the UNCLOS began. The AALCO Secretariat prepared studies monitoring these developments and the Secretariat documents for AALCO’s annual sessions reported on the progress of work in the International Sea Bed Authority (ISA), the International Tribunal for Law of the Sea (ITLOS), the Commission on the Limits of the Continental Shelf (CLCS), the Meeting of States Parties to the UNCLOS and other related developments.

3. Owing to the rationalization of the agenda at the 42<sup>nd</sup> Session of the Organization (Seoul, 2003), the item pertaining to Law of the Sea was considered as a non-deliberated item. Resolution 42/2 adopted at the Session recognized the universal character of the United Nations Convention on Law of the Sea, and its legal framework governing the activities of the oceans. It welcomed the extension of a further period of three years to the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (hereinafter the “Consultative Process”), established by the General Assembly to facilitate the annual review of the developments in ocean affairs. The resolution welcomed the active role being played by the ITLOS in the peaceful settlement of disputes with regard to ocean related matters. It reaffirmed that in accordance with Part XI of the UNCLOS, the Area was the common heritage of mankind and should be used for the benefit of the mankind as a whole. The resolution urged upon the Member States for full and effective participation in the work of the ISA and other related bodies established by UNCLOS 1982 and the Consultative Process so as to ensure and safeguard their legitimate interests.

4. The Secretariat Report prepared for the Session provides an overview of the fourth meeting of the Consultative Process; the consideration of the Oceans and the Law of the Sea issues at the 58<sup>th</sup> Session of the General Assembly; activities under the UNCLOS and its Implementing Agreements, particularly the status of the UNCLOS and

its implementing Agreements; thirteenth Meeting of States Parties to the UNCLOS' 82; second round of informal consultations of States Parties to Fish Stocks Agreement; progress in the works of the International Seabed Authority, Commission on the Limits of Continental Shelf and the settlement of disputes by the International Tribunal for the Law of the Sea. Finally, it offers some general comments on the agenda item.

## **II. Fourth Meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (UN Headquarters, New York, 2-6 June 2003)**

5. The United Nations General Assembly at its 57<sup>th</sup> Session, in the resolution adopted on the “Oceans and the law of the sea”<sup>1</sup> inter alia renewed the mandate of the Consultative Process for a further period of three years to facilitate the annual review of development in ocean affairs.<sup>2</sup> Thus the year 2003 marks the commencement of a new three-year period for the Consultative Process. The Assembly recognized that the Informal Consultative Process strengthens the annual debate of the General Assembly on oceans and the law of the sea and it desired that the Secretary-General’s annual comprehensive report on developments and issues relating to oceans and law of the sea should be presented as a basis for discussion to the fourth meeting of the Consultative Process. It also recommended that in its deliberations on the report of the Secretary-General, the Consultative Process should organize its discussions around the following areas: (a) Protecting vulnerable marine ecosystems; (b) Safety of navigation; for example, capacity-building for the production of nautical charts; as well as issues discussed at previous meetings.

6. The fourth meeting of the Consultative Process took place at the UN headquarters in New York from 2 to 6 June 2003. The discussions were based on the annual report of the Secretary-General on oceans and law of the sea as well as written submissions by States and International Organizations. The overall legal framework for the discussions was provided by the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS) and its two implementing agreements, namely the Agreement relating to the Implementation of Part XI of the Convention and the Agreement for the Implementation of the Provisions of the Convention relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, while chapter 17 of Agenda 21 provided the programme of action for the sustainable development of oceans and seas, which was re-emphasized in decision 7/1 adopted by the Commission on Sustainable Development at its seventh session, in 1999, and by the Johannesburg Plan of Implementation (JPOI) of the World Summit on Sustainable Development (WSSD) in 2002.<sup>3</sup>

7. Oceans and the law of the sea: Report of the Secretary-General:<sup>4</sup> This Report contains information on the status of UNCLOS 1982 and its implementing agreements. It elaborates on developments regarding the protection of marine environment and the safety of navigation, particularly in relation to the aftermath of the “Prestige” incident in 2002. This incident caused damage to marine ecosystems and coastal areas of Spain, France and Portugal. It also addresses the establishment of a mechanism for inter-agency

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<sup>1</sup> UNGA Res. A/RES/57/141 dated 12 December 2002.

<sup>2</sup> It may be recalled that the Consultative Process was established by the General Assembly in its resolution 54/33 of 24 November 1999.

<sup>3</sup> UNGA, *Report on the work of the United Nations Open-ended Informal Consultative Process on Oceans and the law of the Sea*, UN Doc. A/58/95 dated 26 June 2003. The Report has been prepared by the Co-Chairpersons of the Consultative Process Felipe H. Paolillo and Philip D. Burgess.

<sup>4</sup> *Oceans and the law of the sea: Report of the Secretary-General*, UN Doc. A/58/65 dated 3 March 2003.

coordination and identifies two main challenges for the future — to ensure that States comply fully with obligations under the law of the sea, and that inter agency cooperation is facilitated and enhanced.

8. The Report states that it has become increasingly evident that the adoption of the Convention was but the first step towards resolving ocean-related issues. Since then, additional problems have arisen, such as over-exploitation of fisheries and destructive fishing practices, degradation of the marine environment and the increase in ship-related accident and crimes. To remedy this situation, it urges upon all States to take steps, including to ratify or accede to the Convention and its implementing agreements, as well as to the many other agreements giving substance and details to the basic principles of the Convention, to implement these agreements in their national laws and administrative structures and actively to apply and enforce those laws and regulations.

9. It traces the root of many such problems to the unwillingness or lack of capacity or certain States; especially flag States, to fulfill their international obligations. It emphasizes that it was essential to reinforce the control of flag states over their vessels. Further, cooperation and coordination among States, organizations and other actors was important as the international community continues to grow more interdependent and as developments in ocean affairs continue to expand both in numbers and complexity. The Report stresses that the mechanism—envisaged for the enhancement and facilitation of cooperation and coordination—should discharge two main functions: to review on-going ocean related work in each agency and to prepare coordinated responses to emerging challenges or urgent issues.

10. The delegations at the fourth meeting welcomed the decision by the General Assembly to extend the Consultative Process for another three years. They highlighted the benefits of the innovative format of the Process, which encouraged participation by inter-governmental agencies and non-governmental organizations. The format provided for comprehensive, focused and constructive examination of legal, political, economic, social, environmental and other relevant aspects of ocean affairs.<sup>5</sup>

11. After long deliberations, the meeting suggested the following issues to the General Assembly for consideration under its agenda item entitled “Oceans and the law of the sea”:<sup>6</sup>

(a) **Safety of navigation:** The text recognizes the existence of a substantial body of international instruments and programmes of work addressing safety of navigation, and proposes that General Assembly reiterates its call to emphasize the need to improve the implementation of international agreements and the coordination with organizations with related mandates. It further proposes that the General Assembly urge States to establish

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<sup>5</sup> Report of Consultative Process, note 3, p. 10.

<sup>6</sup> An overview of the issues, made here is drawn from the Summary of the Fourth Meeting of the Open-ended Informal Consultative Process on Oceans and the Law of the Sea, *Earth Negotiations Bulletin*, vol. 25, no. 6 dated 9 June 2003, available at URL: <http://www.iisd.ca/linkages/oceans/icp4/>

or strengthen national institutional and legal frameworks to establish an effective maritime infrastructure and administration.

(b) **Capacity-building for the production of nautical charts:** This section proposes means to enhance the development of hydrographic surveys and the production of nautical charts and recognizes them as critical to navigational safety, life at sea, environmental protection, including vulnerable marine ecosystems, and the global sea borne trade. It highlights the advantages of Electronic Navigational Charts (ENCs) in navigational safety, fisheries activities, maritime boundary delimitation, and environmental protection. The text proposes that the General Assembly: welcome the work of the International Hydrographic Organization (IHO) and its 14 regional commissions, encourage States to become the IHO members, support the IHO trust fund and examine the possibility of partnership with private sector; invite the IHO and International Maritime Organization (IMO) to continue their coordinated efforts and adopt joint measures with respect to enhancing transitioning to ENCs, and to increase coverage of hydrographic information; and encourage intensified efforts to build capacity for developing countries to improve hydrographic services and nautical charts.

(c) **Measures to enhance safety of navigation:** This section contains proposals relating to the phasing-out of single hull tankers, guidelines on places of refuge for ships in distress, transport of radioactive material, and piracy and armed robbery. The text inter alia proposes that the General Assembly urge States and regional integrated economic organizations to work within the IMO framework and in accordance with international rules and regulations regarding measures relating to the phasing out of single-hull tankers. It reiterates its call for cooperation in the prevention and combating of piracy and armed robbery at sea, urging States to consider promoting and implementing regional agreements and urge States to implement maritime security legislation consistent with the UNCLOS and other relevant agreements for the world sea borne trade.

(d) **Flag State Implementation and Enforcement:** This section contains proposals to improve the implementation and enforcement by flag States of their responsibilities and duties under international law. It recognizes the key role of a multilateral approach in this context and inter alia calls for: mobilization of resources to assist those States that are genuinely attempting to discharge their obligations but are unable to do so due to capacity constraints; development of new standards for seafarers and fishermen; and prevention of the operation of substandard vessels and illegal, unreported and unregulated (IUU) fishing.

(e) **Protection of vulnerable marine ecosystems:** The section recognizes that the key to protection of vulnerable marine ecosystems<sup>7</sup> is to manage effectively the threats to, and

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<sup>7</sup> Marine ecosystems are generally defined as the sum total of marine organisms living in particular sea areas and the interaction between those organisms and the physical environment in which they interact. Vulnerable marine ecosystems could be defined as those particularly susceptible to disruption or damage by adverse impacts of human activities, such as marine pollution, over utilization of living marine resources or use of destructive fishing practices. While some ecosystems may be fairly resilient and recover quickly from external shocks, others may collapse under either slight or repeated stress. Vulnerable marine



impacts on, those ecosystems and, while there was already a substantial body of international agreements and programmes of work addressing marine environmental protection, it was proposed that the General Assembly again reiterate the fundamental need to improve the implementation of international agreements and the coordination and cooperation of organizations with related mandates and work programmes. The section makes proposal in relation to: integrated marine and coastal management; ecosystem approach; seamounts and areas beyond national jurisdiction; coral reefs; marine protected areas; and ballast water and sediments.

**(f) Cooperation and coordination on ocean issues:** The text proposes to the General Assembly that it express its concern that a new coordinating mechanism for issues relating to oceans and seas called for in resolution 57/141 has not been established and strongly reiterate its request to establish such a mechanism. Further, in order to provide a scientific basis for decision-making on oceans related issues, it proposes to the General Assembly that it was advisable to establish a regular process under the United Nations for the global reporting and assessment of the state of the marine environment, including socio-economic aspects, as stipulated in resolution 57/141. In this regard, it *inter alia* proposed to the General Assembly to welcome the development of a Global Marine Assessment (GMA) as an important step towards strengthening cooperation and coordination between the various organizations and specialized agencies dealing with ocean issues and as a crucial tool to improve policy-making in Government.

12. In addition, it also submitted the following list, being the topics identified for future consideration at the three previous meetings of the Consultative Process, as a list of topics meriting attention from the General Assembly:

- i. Marine protected areas;
- ii. Review of the national, regional and global implementation of Part XII of the United Nations Convention on the Law of the Sea;
- iii. Potential and new uses of the oceans;
- iv. Development and transfer of marine technology;
- v. Oceans stewardship/ecosystem-based integrated management of the marine environment;
- vi. Food security and mariculture;
- vii. Cooperation and coordination between regional fisheries organizations and regional seas conventions and action plans of the United Nations Environment Programme;
- viii. Impact of the activities in the international seabed area as source of contamination of the marine environment;
- ix. Effect of fishery subsidies on the conservation of marine living resources;
- x. Marine debris;
- xi. Convergence of the legal and programmatic dimensions of international cooperation;
- xii. Navigation in ecologically sensitive areas;
- xiii. Protection of coastal areas from introduction of non-native species;

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ecosystems include, but are not limited to mangroves, sea grasses, coral reefs, seamounts, Polar Regions, and hydrothermal vents.

- xiv. Possibility of reviewing progress on issues discussed at meetings of Consultative Process;
  - xv. The science underlying the identification and management of marine protected areas;
  - xvi. Implementation of existing international instruments;
  - xvii. Competing uses of the continental shelf, including mariculture, the laying of cables and pipelines, and exploitation of non-living marines resources;
  - xviii. Protecting the biological diversity of the seabed;
  - xix. Capacity building for the protection of marine geographic data.
13. Further topics suggested for identification were:
- i. Enhancement of the prevention and prosecution of crimes at sea;
  - ii. Review of the effectiveness of the exclusive economic zone in ensuring the conservation and management of living resources;
  - iii. Harmonization of treaty obligations relevant to ocean issues;
  - iv. Flag State responsibility and performance;
  - v. The Global Marine Assessment (GMA);
  - vi. Examination of progress in the implementation of the oceans chapter of WSSD;
  - vii. Settlement of disputes; to encourage the use of the International Tribunal for the Law of the Sea and the International Court of Justice;
  - viii. Human rights of seafarers;
  - ix. Transport of illegal weapons by sea;
  - x. Access to and protection of the genetic resources of the oceans; and
  - xi. Liability and compensation for damage to the marine environment; and responsibility of States.

14. The 58<sup>th</sup> Session of the General Assembly vide its resolution 58/240 has requested the Secretary-General to convene the fifth meeting of the Consultative Process in New York from 7 to 11 June 2004. The resolution has recommended the Consultative Process to organize its discussions around the following areas: New sustainable uses of the oceans, including the conservation and management of the biological diversity of the seabed in areas beyond national jurisdictions; as well as issues discussed at previous meetings.<sup>8</sup> It may be noted that the General Assembly also accepted many of the suggestions advanced to it by the Consultative Process and incorporated it in this Resolution.

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<sup>8</sup> UNGA Res. A/RES/58/240. The final resolution is not yet issued, details mentioned herein are based upon draft resolution contained in A/59/L.19; paragraphs 67 & 68 of the resolution.

### **III. CONSIDERATION OF THE OCEANS AND THE LAW OF THE SEA ISSUES AT THE 58<sup>TH</sup> SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY**

15. The General Assembly of the United Nations considered the agenda item on “Oceans and the law of the sea” in the plenary session on 24 November 2003.<sup>9</sup>

#### **A. Documents Considered by the General Assembly**

16. The Assembly had before it in addition to Report of the Secretary-General, the Report of the Co-chairpersons of the Consultative Process, inter alia the following documents for consideration:

**(a) Addendum to Oceans and the law of the sea: Report of the Secretary-General:**<sup>10</sup>

The addendum to the main annual report<sup>11</sup> provides with an overview of the developments relating to the implementation of the UNCLOS and its implementing agreements, and gives account of developments in the Commission on the Limits of the Continental Shelf, in the International Seabed Authority and on maritime claims. It also reviews developments relating to safety of navigation; crimes at sea; the conservation and management of living marine resources, including the outcome of the second informal consultations of States parties to the 1995 United Nations Fish Stocks Agreement; marine biodiversity and the protection and preservation of marine environment.

**(b) Report of the Secretary-general on a regular process for the global reporting and assessment of the marine environment: proposals on modalities:**<sup>12</sup>

This report provides an overview of the main developments concerning the establishment of a regular process for the assessment of marine environment. It provides States with a review of the available information and work done on the global marine assessment (GMA) and seeks to facilitate discussions on the establishment of a regular process for the assessment of the state of the marine environment among all stakeholders. Among its other conclusions, the report advocates building the assessment process upon existing assessments by two possible means of integrating existing assessments: first, by providing material form existing assessments directly to the assessment’s global scientific panel in a comparable format, to be analyzed and integrated by the panel into a single global assessment; or second, to establish special regional assessment systems to develop integrated regional assessments, according to agreed methodology, for synthesis by the global scientific panel. The report also concludes that the assessment process should operate under the authority of the Assembly, with substantive discussions by all interested parties on the process and its results taking place either at the Informal Consultative Process or at

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<sup>9</sup> Details mentioned herein are drawn from “Ensuring Safety of Navigation, Protecting marine Ecosystems focus of General Assembly debate on Oceans, law of Sea”, *UN Press Release*, GA/10210 dated 24 November 2003, available on URL: <http://www.un.org/News/Press/docs/2003/ga10210.doc.htm>

<sup>10</sup> UN Doc. A/58/65/Add. 1 dated 29 August 2003.

<sup>11</sup> Referred above at pp. 2-3 of this Secretariat Report.

<sup>12</sup> UN Doc. A/58/423.

meetings held in conjunction with it. Further decisions would have to be made as to the location and composition of the secretariat.

**(c) Status of the Implementation of the provisions of the 1992 Convention relating to the Conservation and Management of Fish Stocks or “Fish Stocks Agreement”:** **Report of the Secretary-General:**<sup>13</sup> The Report provides an overview of the main trends in operationalizing the world body’s main fish stocks agreement since its entry into force in 2001. The Report stresses that the binding nature of the Agreements, like the wider objectives of the Convention must be fully accepted and implemented. It concludes that despite progress, coastal states are not making full use of their sovereign rights to realize the opportunities provided by the Agreement and to contribute to its full implementation. For developing States, it stresses that capacity was an issue.

## **B. Deliberations in the General Assembly**

17. The delegates<sup>14</sup> in their deliberations emphasized upon the importance of protecting and preserving the world’s oceans and seas—which constituted the cornerstone of the planet’s life support system. They focused upon the dual themes of ensuring the safety of navigation and protecting vulnerable marine ecosystems. Many delegates raised issues such as the need to build the capacity of developing countries to fulfill their obligations under UNCLOS, 1982 and to further elaborate the duties and obligations of flag States. They also emphasized the need to ensure the sustainability of marine environments and biological diversity, including through protection from land-based and shipping-related pollution; illegal unreported and unregulated fishing; and over fishing, among other harmful practices. Other areas of concern included climate change, the need to protect shipping from illegal usages including for terrorism and the transport of weapons of mass destruction and other weapons, and the need to bring an immediate halt to the trans-shipment of nuclear wastes and other hazardous materials. The Assembly also welcomed the successful integration of two formerly separate fisheries resolution.

18. In the ensuing paragraphs an attempt is made to highlight the views of the AALCO Member States<sup>15</sup> in the deliberations on the oceans and the law of the sea.

19. An AALCO Member State stressed that achieving the universality of the Convention in and of itself would not guarantee its effectiveness and applicability as the

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<sup>13</sup> UN Doc. A/58/215.

<sup>14</sup> Representatives of United States of America, Iceland (on behalf of Arctic Council), Republic of Korea, Jamaica (on behalf of the Caribbean Community CARICOM), Peru (on behalf of the Rio Group), Morocco (on behalf of the “Group of 77” developing countries and China), Italy (on behalf of the European Union), Norway, Kenya, Tunisia, Guyana, Mexico, Namibia, Japan, Mauritius (on behalf of the Alliance of Small Island States), Ukraine, China, Australia, India, Brazil, Sierra Leone, South Africa, Indonesia, Belize, Argentina, Russian Federation, Vietnam, Uruguay, Canada, Nigeria and Fiji made their statements. Representatives of the International Union for Conservation of Nature and Natural Resources (IUCN), the International Seabed Authority (ISA) and the International Tribunal for the Law of the Sea (ITLOS) also addressed the Assembly. The representative of Turkey spoke in explanation of vote.

<sup>15</sup> Delegates from the following AALCO Member States participated in the deliberations: Kenya, Republic of Korea, Mauritius, Japan, China, India, Sierra Leone, Indonesia, and Nigeria.

global legal framework for the oceans and the sea. A Member State from Africa emphasized that the developing states, particularly the least developed countries and small island developing states, as well as coastal African States, did not appear to have derived substantial benefits from the concepts of the exclusive economic zones and the common heritage of mankind. It was also mentioned by a Member State that the monitoring and surveillance of the countries respective exclusive economic zones, posed a tremendous challenge, especially to small island developing state. Another Member State proposed that to fill the vacuum left by the abolition of the Sub-Committee on Oceans and Coastal Areas, the creation by the Assembly of an effective, transparent and regular inter-agency cooperation within the United Nations. He also desired that the Assembly request the Secretary-General to convene an intergovernmental meeting soon to discuss and develop an implementation plan related to the mechanism of global reporting and assessment of the state of the marine environment.

20. Use of maritime transport as a chosen means for trafficking of weapons of mass destruction, narcotics, and even human beings, was identified as a serious challenge. Further, a delegate stressed that issues relating to the transport of hazardous materials, especially nuclear waste, had the potential of causing serious harm to the ecosystem and marine resources.

21. Another area of serious concern was the widespread use of ships by flags of convenience. It was stressed that the lack of effective control by flag States over ships flying their flags posed a threat to safety of navigation and environment. At times many developing countries experiences untold damages to their territorial seas and waters by heavy tankers carrying high-grade oil, those countries did not have the monitoring capacity and capability to identify those heavy tankers and take appropriate action. In this regard, it was emphasized that flag States should have an effective maritime administration with a firm legislative framework, complying with the accepted international regulations, procedures and practices.

22. Serious concern was expressed at the increased frequency of piracy and armed robbery at sea. A delegate mentioned that in comparison to the previous year, in the first six months of this year there was a 37 percent increase in the number of reported incidents of piracy and armed robbery against ships worldwide. It was stressed that regional cooperation to combat piracy was vital.

23. A delegate emphasized that a matter of grave concern was that, in less than 50 years, industrial fishing fleets had managed to wipe out nine tenths of the world's biggest and most economically important species of fish. Efforts to improve conservation of fisheries had been confronted by the increase of illegal, unregulated and unreported fishing activities on the high sea. The displacement of fishing fleets from areas under the national jurisdiction of developed member States to fisheries located in developing nations gave rise to a significant problem that encouraged the expansion of illegal, unregulated and unreported fishing with negative implications for global fisheries. In this regard, another Member State said that there was a lack of comprehensive national fisheries management plans and legislation for implementation of the Convention and the

Fish Stocks Agreement, as well as the lack of capacity to exercise flag State control. Furthermore, the implementation of the Fish Stocks Agreement continued to be impeded by financial constraints and a lack of capacity. Another Member State stressed upon the fact that the key to enforcement of Fish Stocks Agreement was at the regional level, i.e. by taking the membership in regional fisheries management mechanisms and participation in the formulation of management measures. This would also help eliminate differences among countries within a regional mechanism. It was also emphasized that developing countries difficulties and special needs in implementing the Agreement needed to be fully considered and it was incumbent on developed countries to provide developing countries with the necessary assistance and facilities, so as to enhance their capacity to implement the Agreement and manage their fisheries.

24. An AALCO Member State stressed that the developing countries were at a disadvantage in terms of acquisition of technology and expertise, particularly in areas such as exploration and exploitation of seabed minerals. They lacked the relevant expertise and tools for conservation and protection of living resources and coastal management, marine scientific research, pollution, toxic and chemical wastes dumping. It was suggested that there was a need to focus on capacity-building for developing States, particularly small island and other geographically disadvantaged nations in specific areas. As regards small island developing States lack of capacity due to limited resources and technical know-how had been continually identified as a major impediment for in their efforts to implement important conventions. Therefore, it was felt that the focus should be upon the capacity-building of developing States, so as to ensure that all States, especially developing ones, were enable to implement the Convention and benefit from the sustainable development of the oceans and seas, as well as participate fully in the global and regional forums and processes that dealt with issues on oceans and the laws of the sea. Another AALCO Member State stressed for acquiring knowledge and skills with regard to their preparation and submission on the outer limits of the continental shelf, as it was vital to the effective implementation of the Convention.

### **C. Resolutions Adopted by the General Assembly**

25. The 58<sup>th</sup> Session of the General Assembly adopted two resolutions on the agenda item Oceans and the law of the Sea. The titles of these resolutions are:

- i. Oceans and the law of the sea;<sup>16</sup>
- ii. Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments.<sup>17</sup>

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<sup>16</sup> UNGA Res. A/RES/58/240 adopted on 23 December 2003. The summary of the resolution herein is based upon the draft resolution approved by the General Assembly A/58/L.19, as till the time of the preparation of this Secretariat Report the final resolution was not issued by the United Nations.

<sup>17</sup> UNGA Res. A/RES/58/14 adopted on 24 November 2003

26. The text and the structure of the resolution on Oceans and the law of the sea reflects the coordinated approach to the interlinked issues relating management of oceans and the law of the sea.<sup>18</sup> One of the important initiatives taken by the Assembly vide this resolution is to request the Secretary-General, in close collaboration with Member States and other relevant organizations, to take steps to establish a regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects. Among these steps, a group of experts of no more than 24 participants comprising representatives of States, intergovernmental organizations and non-governmental organizations and including both scientists and policy-makers, would be convened to produce a draft document with details on the scope, general framework and outline of the regular process, peer review, secretariat, capacity-building and funding. Further, an international workshop with representatives from all interested parties, in conjunction with the fifth meeting of the Consultative Process would be convened. Later, an Intergovernmental meeting to formally establish the regular process would be convened in Reykjavik, Iceland in 2004.

27. The integrated<sup>19</sup> and comprehensive<sup>20</sup> resolution on sustainable fisheries, inter alia calls on all States that had not done so to become Parties to the Convention, taking into account the relationship between the Convention and the Fish Stocks Agreement. It reaffirms the importance attached to the long-term conservation, management and sustainable use of the marine living resources of the world's oceans and seas. The resolution urges all States to apply the precautionary approach widely to the conservation, management and exploitation of fish stocks, including straddling fish stocks, and calls upon States Parties to the Agreement to fully implement the provisions of article 6 of the Agreement as a matter of priority. The General Assembly further

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<sup>18</sup> The resolution is divided into following eighteen parts: Preamble; Implementation of the Convention and related agreements and instruments; Meeting of States Parties; Settlement of disputes; The Area; Effective functioning of the Authority and the Tribunal; The continental shelf and the work of the Commission; Capacity-building; Safety of navigation and flag State implementation; Capacity-building for the production of nautical charts; Marine environment, marine resources and the protection of vulnerable marine ecosystems; Regional cooperation; Regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects; Open-ended informal consultative process on oceans and the law of the sea; Inter-agency coordination and cooperation; Activities of the Division for Ocean Affairs and the Law of the Sea; Trust funds and fellowships; and Fifty-ninth session of the General Assembly.

<sup>19</sup> Unlike the 57<sup>th</sup> Session the General Assembly successfully integrated the two fisheries resolutions into one at its 58<sup>th</sup> Session. The titles of the resolution adopted at the 57<sup>th</sup> Session were: (i) Large-scale pelagic drift-net fishing, unauthorized fishing in zones of national jurisdiction and on the high seas/illegal, unreported and unregulated fishing, fisheries, fisheries by-catch and discards, and other developments, UN Doc. A/57/142 dated 12 December 2002; and the Agreement for the implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, UN Doc. A/RES/143 dated 12 December 2002.

<sup>20</sup> The resolution is divided into following thirteen parts: Preamble; Achieving sustainable fisheries; Implementation of the 1995 Agreement for the Implementation of the Provisions of the UNCLOS'82 relating to the Fish Stocks Agreement; Related fisheries instruments; Illegal, unreported and unregulated fishing; Fishing overcapacity; Large-scale pelagic drift-net fishing; Fisheries by-catch and discards; Subregional and regional cooperation; Responsible fisheries in the marine ecosystem; Capacity-building; Cooperation within the United Nations system; and Fifty-ninth Session of the General Assembly.

decided to establish an Assistance Fund under Part VII of the Fish Stocks Agreement to assist developing States Parties in the implementation of the Agreement. The resolution calls upon flag and port States to take all measures consistent with international law necessary to prevent the operation of sub-standard vessels and illegal, unreported and unregulated fishing activities. The Assembly also decided to include the item on sustainable fisheries in its provisional agenda for the Fifty-ninth session.



#### **IV. ACTIVITIES UNDER THE UNCLOS AND ITS IMPLEMENTING AGREEMENTS**

##### **A. Status of the UNCLOS and its Implementing Agreements**

28. The United Nations Convention on the Law of the Sea as at 16 January 2004 had 145 Parties, of which 38 States are AALCO Member States.<sup>21</sup>

29. The Agreement relating to the implementation of Part XI of the UNCLOS was adopted on 28 July 1994 and has entered into force on 28 July 1996. As regards the status of this Agreement, 117 Member States have ratified or acceded to it, of which 29 States are AALCO Member States.<sup>22</sup>

30. The Agreement for the implementation of the provisions of the UNCLOS relating to the conservation and management of straddling fish stocks and highly migratory fish stocks, 1995 was adopted on 4 August 1995 and has been signed by 59 States<sup>23</sup> and ratified by 51 States, of which six are AALCO Member States. The Agreement came into force from 11 December 2001 after receiving the requisite 30 ratifications or accessions

31. Resolution 58/240 adopted by the General Assembly on Oceans and Law of the Sea emphasizes the universal and unified character of the Convention and its fundamental importance for the maintenance and strengthening of international peace and security, as well as for the sustainable development of the oceans and the sea. It calls upon all States that have not done so, in order to achieve the goal of universal participation, to become parties to the UNCLOS and the Agreement relating to the Implementation of Part XI of the UNCLOS, 1982. The resolution also calls upon States to become Parties to the Fish Stocks Agreement. It once again called upon States to harmonize, as a matter of priority, their national legislation with the provisions of the UNCLOS, to ensure the consistent application of those provisions and to ensure also that any declarations or statements that they have made or make when signing, ratifying or acceding to the UNCLOS are in

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<sup>21</sup> The UNCLOS 1982 entered into force on 16 November 1994 and as of 16 January 2004, it has been signed by 157 States and ratified or acceded to by 145 States. The AALCO Member States Parties to the UNCLOS are: Bahrain, Bangladesh, Botswana, Brunei Darussalam, China, Cyprus, Egypt, Gambia, Ghana, India, Indonesia, Iraq, Japan, Jordan, Kenya, Kuwait, Lebanon, Malaysia, Mauritius, Mongolia, Myanmar, Nepal, Nigeria, Oman, Pakistan, Philippines, Qatar, Republic of Korea, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, Sri Lanka, Sudan, Uganda, United Republic of Tanzania and Yemen. Details drawn from Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements as at 16 January 2004 available on the URL: [http://www.un.org/Depts/los/reference\\_files/chronological\\_lists\\_of\\_ratifications.htm](http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm).

<sup>22</sup> As at 16 January 2004 the AALCO Members who have ratified the Agreement include: Bangladesh, Brunei Darussalam, China, Cyprus, India, Indonesia, Japan, Jordan, Kenya, Kuwait, Lebanon, Malaysia, Mauritius, Mongolia, Myanmar, Nepal, Nigeria, Oman, Pakistan, Philippines, Qatar, Republic of Korea, Saudi Arabia, Senegal, Sierra Leone, Singapore, Sri Lanka, Uganda and the United Republic of Tanzania. *Ibid.*

<sup>23</sup> The AALCO Member States Parties to the Straddling Stocks Agreement are: Cyprus, Islamic Republic of Iran, India, Mauritius, Senegal, and Sri Lanka. AALCO Member States signatories to this Agreement include: Bangladesh, Egypt, Indonesia, Japan, Pakistan, Philippines, Republic of Korea, Senegal, Sri Lanka and Uganda. *Ibid.*

conformity therewith and, otherwise, to withdraw any of their declarations or statements that are not in conformity. It also emphasized the essential need to also improve the implementation of international agreements in accordance with Article 311 of the UNCLOS and where appropriate, to foster the conditions for the application of instruments of a voluntary nature.

## **B. Thirteenth Meeting of States Parties**

32. The thirteenth Meeting of States Parties to the UNCLOS was convened at United Nations Headquarters from 9 to 13 June 2003, in accordance with Article 319, paragraph 2 (e) of the UNCLOS and the decisions taken by the General Assembly at its fifty-seventh session.<sup>24</sup> 112 Parties to the UNCLOS attended the Meeting. Ambassador Stanislaw Pawlak (Poland) was elected as the President of the Meeting which inter alia deliberated upon matters relating to the International Tribunal for the Law of the Sea; activities of the International Seabed Authority; work on the Commission on the Limits of the Continental Shelf and matters related to Article 319 of the UNCLOS.

33. Key developments concerning the International Seabed Authority and the Commission on the Limits of the Continental Shelf and various Budgetary and administrative matters dominated the proceedings of the 13<sup>th</sup> Meeting of States Parties. The President called upon the Parties to ensure the full and timely payment of dues to the Tribunal, so that it could function effectively. The Secretary-General of the Seabed Authority also underlined the need to pay contributions to that body in full and on time, and stressed the importance of increased attendance at Authority meetings.

34. Another important issue deliberated during the Meeting was whether the Meeting of States Parties should be confined to administrative and budgetary issues. Delegates differed on the scope of Article 319 of the UNCLOS, under which the Meetings of States Parties are convened. While several delegations advocated expanding the Meeting's role, others opposed it; some suggested a middle road between the two approaches. By way of compromise, the Meeting decided to retain the item on the agenda of the fourteenth Meeting.

35. The meeting also decided that the election to fill the vacancy left by the demise of Judge Lennox Fitzroy Ballah (Trinidad and Tobago). Mr. Anthony Amos Lucky (Trinidad and Tobago), the only candidate was elected at the Special Meeting of States Parties on 2 September 2003. The term of office of Mr. Lucky will end on 30 September 2011.

36. The next Meeting of the Parties would take place from 14 to 18 June 2004 and would be preceded by one week of meetings of the Informal Consultative Process.

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<sup>24</sup> For details see United Nations Convention on the Law of the Sea: Meeting of States Parties, *Report of the thirteenth Meeting of States Parties*, SPLOS/13 dated 25 June 2003; *UN Press Releases* "Concluding Current Session, Meeting of States Parties to Law of Sea Convention Approves Credentials Committee Report", SEA/1776 dated 13 June 2003; and "Priorities for Seabed Authority are Development of Regulations for Minerals, Environmental Protection, States Parties Told", SEA/1773 dated 10 June 2003.

### **C. Second round of Informal Consultations of States Parties to Fish Stocks Agreement**

37. The second round of informal consultations of States Parties to the Fish Stocks Agreement was held in New York from 23 to 25 July 2003, for considering the national, regional, subregional and global implementation of the Agreement, and making any appropriate recommendation to the General Assembly, as well as for developing the terms of reference for the Part VII fund to assist developing States parties in the implementation of the Agreement, on the basis of the recommendations agreed upon by States Parties at their first informal consultations in 2002.

38. The States Parties considered the report of the Secretary-General on the status and implementation of Fish Stocks Agreements and decided to recommend to the General Assembly at its fifty-eighth session the establishment of an Assistance Fund under the Agreement to assist the developing States parties in the implementation of the Agreement, to be administered by FAO. The States Parties also agreed to request the General Assembly to convene the third round of informal consultations of the States Parties in 2004. These consultations would take place on 8-9 July 2004.

39. The General Assembly in its resolution 58/14 of 24 November 2003 decided to establish the Assistance Fund. FAO has been made the implementing office for the Fund. The Assembly also emphasized upon the importance of outreach to potential donor organizations to contribute to the programme of assistance, including the Assistance Fund.<sup>25</sup>

### **D. International Seabed Authority (ISA)**

40. The International Seabed Authority (hereinafter ISA) was established under UNCLOS'1982, as modified by the 1994 Agreement relating to the Implementation of Part XI (seabed provisions) of the UNCLOS. Its task, as set out in the UNCLOS, is to organize and control all resource-related activities in the seabed area beyond the jurisdiction of any State, an area underlying most of the world's oceans. The UNCLOS defines this deep-seabed area and its resources as "the common heritage of mankind". In existence since 1994, the ISA is an autonomous agency having a relationship agreement with the United Nations.

41. The ninth Annual Session of the International Seabed Authority was held from Assembly from 28 July to 8 August 2003 in Kingston, Jamaica. Its subsidiary bodies, namely the Assembly, the Council, the Legal and Technical Commission and the Finance Committee also met during the Session. The substantive work of the Authority is currently focused on the consideration of the annual reports of Contractors, the development of a legal regime for prospecting and exploration of polymetallic sulphides and cobalt rich crusts, the role of the Authority in the conservation of biodiversity in the

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<sup>25</sup> The United States of America has made an initial contribution of US \$ 200,000 to the Assistance Fund.

Area, activities relating to marine scientific research, the central data repository of the Authority, and its future work programme.<sup>26</sup>

42. Josef Franzen of Slovakia was elected as President of the Assembly while Domenico da Empoli of Italy was elected as President of the Council. Manimuthu Gandhi (India) and Bernd Kreimer (Germany) were elected to the Finance Committee and Yoshiaki Igarashi (Japan) was elected to the Legal and Technical Commission (LTC) to replace their compatriots.<sup>27</sup>

43. The LTC met a week earlier than the Session and carried out detailed work on key-features of a scheme to regulate exploration for hydrothermal polymetallic sulphides and cobalt-rich ferromanganese crusts in the deep ocean. It considered such aspects as the kinds of arrangements contractors might enter into with the Authority when exploring for these minerals, the size, and configuration of exploration areas, and measures to protect the marine environment in those areas. Since the Commission agreed that, the work had not advanced far enough to present texts to the Council of the Authority, whose task will be to prepare and adopt an eventual set of regulations. Instead, it decided to continue the work at the next session. The LTC also decided to look more closely at biodiversity issues affecting its role in overseeing mineral-related deep-sea exploration by organizing a seminar on the subject and commissioning a study of its legal aspects. It also supported a proposal to develop a geologic model of the prime zone for polymetallic nodules in the Central Pacific Ocean.

44. The most contentious issue on the agenda of the Finance Committee concerned the question of how the Authority might help members of its two expert bodies from developing countries attend meetings. On the recommendation of the Committee, the Council and Assembly agreed to help individual members from developing countries to attend meetings by reimbursing them for some travel and related costs.

45. The Assembly noted that it was the role of the Authority to protect the marine environment from the potential harmful effects of deep seabed mining and that, in that respect, the evaluation of the ecology of deep ocean was a very important aspect of the Authority's work. In this regard, it called upon the Authority to work closely with other relevant international organizations as well as scientific institutions involved in such tasks. It also welcomed the proposal by the Secretary-General of the Authority to submit to the tenth session a comprehensive three-year plan that would include proposals for streamlining and restructuring the secretariat to reflect the technical emphasis in the work of the Authority.

46. The Assembly also considered a proposal by the secretariat of the Authority to carry out a study on the implications of article 82, paragraph 4, of UNCLOS. Article 82 provides for a system of revenue sharing with respect to the exploitation by a coastal State of non-living resources of the continental shelf beyond 200 nautical miles from the

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<sup>26</sup> Addendum to the Report of the Secretary-General, note 10, pp. 9-10.

<sup>27</sup> For details see *UN Press Release*, "Seabed Authority Studies Rules on Polymetallic Sulphides, Crusts at Ninth Session in Kingston", SEA/1788 dated 8 August 2003.

baselines from which the breadth of the territorial sea is measured. It was generally agreed by the Assembly that the study should be strictly limited to the responsibilities of the Authority set out in the relevant provisions of article 82.

47. The Assembly of the Authority, composed of all 143 members, took no decision on the dates for its 2004 Session at Kingston leaving it to the Secretary-General to work out the timings. The next session besides continuing work on crusts and hydrothermal sulphides would adopt budget for 2005-06 and hold elections for half of the 36-member Council and for the post of Secretary-General.

48. An area of great concern, over the past years, had been the level of attendance at meetings of the Authority held in Kingston has continued to decline to a point where it is difficult to secure a quorum for the taking of necessary decisions. Under the UNCLOS, the required quorum is one-half of the members of the Authority-in other words, 72. Only 58 of the Authority's 143 members attended the Ninth Session.<sup>28</sup>

## **E. Commission on the Limits of the Continental Shelf (CLCS)**

49. Article 76 of the UNCLOS envisages the establishment of the Commission on the Limits of the Continental Shelf (hereinafter CLCS).<sup>29</sup> The CLCS established in 1997 consists of 21 members who serve in their personal capacity and are experts in the field of geology, physics, geophysics, or hydrography, bearing in mind the need to give consideration to equitable geographical representation. It ordinarily meets twice a year, in the spring and fall, at the UN Headquarters.

50. The functions of the CLCS are to consider the data and other material submitted by coastal States concerning the outer limits of their continental shelves in areas where those limits extend beyond 200 nautical miles; to make recommendations to coastal States in accordance with the UNCLOS; and to provide technical advice in this respect, if requested by the coastal States.

51. The twelfth session of the CLCS took place at the UN headquarters from 28 April to 2 May 2003.<sup>30</sup> This was the first session of the Commission to be held after its extensive examination of the submission of the Russian Federation of data and other material on which the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. Based upon the examination of the Russian submission, the Commission decided to proceed with the consolidation into one document of the provisions of an operational nature, but that the Rules of Procedure themselves should remain as a single document.

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<sup>28</sup> Following AALCO Member States participated in the Session: China, Egypt, Ghana, India, Indonesia, Japan, Kenya, Malaysia, Qatar, Republic of Korea, Saudi Arabia, Senegal and Sudan.

<sup>29</sup> For details see the website of the Commission at: [http://www.un.org/Depts/los/clcs\\_new/clcs\\_home.htm](http://www.un.org/Depts/los/clcs_new/clcs_home.htm).

<sup>30</sup> For details see following *UN Press Releases*: "Commission on Limits of Continental Shelf at Headquarters, 28 April-2 May; To review Procedures in Light of First Examination", SEA/1767 dated 25 April 2003 and "Commission on Continental Shelf Concludes Twelfth Session", SEA/1768 dated 9 May 2003. In addition, see Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission, CLCS/36 dated 2 May 2003.

52. One of the key issue discussed during the deliberations pertained to the confidentiality in the consideration of a submission made by the Commission to coastal states. It was decided that the Commission would establish in its document dealing with the Modus operandi for the examination of a submission, a provision that the Commission's recommendations should include an executive summary, containing a general description of the extended continental shelf, as well as a set of coordinates to identify the line describing the outer limits recommended by the Commission and illustrative charts, if appropriate. Such a summary would not contain information that might be of a confidential nature or which might affect the proprietary rights of the coastal state over the data and information provided in the submission. The Secretary-General would then be in a position to publicize the summary at his discretion, without causing any prejudice to the requirements of confidentiality as established in annex II to the Rules of Procedure of the Commission. This could be done at the time when due publicity is to be given, in accordance with article 76, paragraph 9, of the UNCLOS, to charts and relevant information including geodetic data, permanently describing the outer limits of its continental shelf deposited by the coastal State with the Secretary-General. It could also be done at the request of any State.

53. Several developing States, especially least developed States and small island developing States, have applied for assistance from the Trust Fund, established by the General Assembly in its resolution 55/7 of 30 October 2000, for the purpose of facilitating the preparation of submissions to the Commission. It has also received request for reimbursement for training, as well as for defraying the cost of participation by two developing States in the meetings of the Commission. The Commission has called for additional political and financing support for the Trust Fund, as well as for programmes, especially for developing countries, within the United Nations system and through other appropriate international or regional organizations.

54. Since no submission was received by the Commission till 25 May 2003, it decided not to hold the session scheduled to take place from 25 to 29 August 2003. The thirteenth session is now scheduled from 26 to 30 April 2004, and the fourteenth session from 30 August to 3 September 2004. If a submission is received before either session in time to be considered at the following session, then in accordance with the Commission's rules of procedure, that session would be followed by two weeks of meetings of a subcommission.

## **F. Dispute Settlement under the UNCLOS**

55. Paragraph 9 of resolution 58/240, while noting with satisfaction the continued contribution of the International Tribunal for the Law of the Sea (hereinafter ITLOS) to the peaceful settlement of disputes as provided under Part XV of UNCLOS, encouraged States Parties to the UNCLOS to consider making written declaration choosing from the means set out in Article 287 for the settlement of disputes concerning the interpretation or application of the UNCLOS and the Agreement and invited States to note the provisions

of Annexes V, VI, VII and VIII of the UNCLOS concerning, respectively, conciliation, the Tribunal, arbitration and special arbitration.

56. The Tribunal established by the Convention adjudicates disputes arising out of the interpretation and application of the UNCLOS, 1982. The Tribunal is composed of 21 independent members elected from among persons enjoying the highest reputation for fairness and integrity and of recognized competence in the field of law. Its seat is in Hamburg, Germany

57. The ITLOS on 8 October 2003 passed its order in the *Case Concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore)*. On 5 September 2003, Malaysia had submitted a request for the prescription of provisional measures under article 290, paragraph 5 of the Convention. The dispute concerns land reclamation activities carried out by Singapore which allegedly impinge upon Malaysia's right in and around the Straits of Johor, which separate the island of Singapore from Malaysia. Malaysia requested the Tribunal to prescribe, pending the constitution of the arbitral tribunal, provisional measures appropriate to "preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment".

58. The Tribunal in its Order of 8 October 2003<sup>31</sup> prescribed pending the decision by the Annex VII Arbitral Tribunal inter alia that Singapore should not conduct its land reclamation in ways that might cause irreparable prejudice to the rights of Malaysia or serious harm to the marine environment. It also inter alia asked the Parties to cooperate and enter into consultations to: establish promptly a group of independent experts with the mandate (i) to conduct a study, on terms of reference to be agreed by Malaysia and Singapore, to determine, within a period not exceeding one year from the date of the Order, the effects of Singapore's land reclamation and to propose, as appropriate, measures to deal with any adverse effects of such land reclamation; (ii) to prepare, as soon as possible, an interim report on the subject of infilling works in Area D at Pulau Tekong; exchange, on a regular basis, information on, and assess risks or effects of, Singapore's land reclamation works.

59. The case, it may be noted underlines the central role and cardinal importance of cooperation between the Parties in the preservation and protection of marine environment.<sup>32</sup>

60. A case still pending on the docket of the Tribunal is the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community)*. The case was submitted to a chamber of the Tribunal. The time limit for making preliminary objections with respect to the case was extended at the request of the parties to enable them to reach a settlement during the extended period, until 1 January 2006.<sup>33</sup>

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<sup>31</sup> ITLOS/Press 84 dated 8 October 2003.

<sup>32</sup> Statement delivered by ITLOS President Dolliver Nelson at the 58<sup>th</sup> Session of the General Assembly, ITLOS/Pres/85 dated 25 November 2003.

<sup>33</sup> ITLOS/Press 87 dated 7 January 2004.

61. It may be noted that in the twelve cases so far decided by the ITLOS, it has demonstrated its ability to deliver decisions within short period of time. In these cases the Tribunal has dealt predominantly with cases in which it has compulsory jurisdiction: the prompt release of vessels and crews and the prescription of provisional measures. The President of the Court has in his statement to the Fifty-eighth session of the General Assembly drawn attention to the fact that the Tribunal had competence under the Convention, and was ready to resolve a much wider range of disputes concerning the interpretation or application of the Convention.<sup>34</sup>

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<sup>34</sup> Note 30.



## **V. AALCO SECRETARIAT COMMENTS AND OBSERVATIONS**

62. The issue of capacity-building is an overarching issue, particularly for the developing States, especially least developed States, as well as coastal African States. States, bilateral, multilateral donor agencies and international financial institutions should provide these States with economic, legal, navigational, scientific and technical skills necessary for the full implementation of the Convention, as well as the sustainable development of the oceans and seas. Furthermore, there is a need for training the necessary skilled personnel, providing the necessary equipment, facilities and vessels, and transferring environmentally sound technologies. In this regard, the establishment of an Assistance Fund under Part VII of the Fish Stocks Agreement to assist developing States Parties in the implementation of this Agreement by the General Assembly is a welcome step. It is hoped that developing States would be able to derive the maximum advantage from this Fund and be able to develop the necessary capacity-building.

63. Illegal, unreported and unregulated fishing activity is another key area of serious concern. Strengthening of regional mechanisms and regional cooperation is vital for long-term conservation, management and exploitation of Fish Stocks. Further, comprehensive national fisheries management plans and legislation for implementation of the Convention was required in the States, particularly the developing countries.

64. There was a need to establish an effective, transparent and regular coordinating mechanism for addressing issues related to oceans and seas within the United Nations system, as well as with the regional organizations also. There was also a necessity to provide a permanency to the consideration of these issues within the UN system and in this regard the suggestion made by an AALCO Member State to convert the Consultative Process to an Ocean Assembly may be seriously considered.

65. The protection and preservation of the marine environment remains a key challenge. In this regard the acceptance by the General Assembly of the recommendation of the Johannesburg Plan of Implementation, to establish a Regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects is a welcome step. It is hoped that this Regular Process would crystallize the issues pertaining to the fragile marine environment.

66. Crimes at sea affect the safety and security of maritime navigation. There is a need to enhance the prevention and prosecution of crimes at sea. The General Assembly has urged States in this regard to cooperate with the International Maritime Organization to combat piracy and armed robbery at sea, by adopting measures, including those relating to assistance with capacity-building through training of seafarers, port staff and enforcement personnel in the prevention, reporting and investigation of incidents, bringing the alleged perpetrators to justice, in accordance with international law, and by adopting national legislation, as well as providing enforcement vessels and equipment and guarding against fraudulent ship registration. Since some of the worst affected sea routes by armed robbery and piracy fall within the Asian-African countries, it is hoped

that the AALCO Member States would, based upon their requirements, consider taking some of these steps.

67. The Commission on Limits of the Continental Shelf is due to be convened in April 2004. In this regard, it is hoped that the AALCO Member States with coastline would prepare themselves for making submissions before the Commission in time and would also utilize the technical expertise of the Commission's members as well as the least developed and small island Member States would seek assistance from the Trust Fund established by the Assembly for that purpose.



**VI. Status of the Participation of AALCO Member States in the United Nations Convention on the Law of the Sea, of the Agreement relating to the implementation of Part XI of the Convention and of the Agreement for the Implementation of the provisions of the Convention relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks**

S. No.	Member States	United Nations Convention on the Law of the Sea (in force as from 16 November 1994)		Agreement Relating to implementation of Part XI of the Convention (in force as from 28 July 1996)		Agreement for the implementation of the Provisions of the Convention Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (in force as from 11 December 2001)	
		Signature	Ratification, Formal Confirmation (c), Accession (a), Succession (d)	Signature	Ratification, formal confirmation (fc), Accession (a), definitive signature (ds), participation (p) Simplified procedure (sp)	Signature	Ratification, Accession (a)
1.	Arab Republic of Egypt	10 December 1982	26 August 1983	22 March 1995	—	5 December 1995	—
2.	Bahrain	10 December 1982	30 May 1985	—	—	—	—
3.	Bangladesh	10 December 1982	27 July 2001	—	27 July 2001 a	4 December 1995	—
4.	Botswana	5 December 1984	2 May 1990	—	—	—	—
5.	Brunei Darussalam	5 December 1984	5 November 1996		5 November 1996	—	—
6.	China	10 December 1982	7 June 1996	29 July 1994	7 June 1996 (P)	6 November 1996	—
7.	Cyprus	10 December 1982	12 December 1988	1 November 1994	27 July 1995	—	25 September 2002 (a)
8.	DPR Korea	10 December 1982	—	—	—	—	—
9.	Gambia	10 December 1982	22 May 1984	—	—	—	—
10.	Ghana	10 December 1982	7 June 1983	—	—	—	—
11.	India	10 December 1982	29 June 1995	29 July 1994	29 June 1995	—	19 August 2003 (a)
12.	Indonesia	10 December 1982	3 February 1986	29 July 1994	2 June 2000	4 December 1995	—
13.	Islamic Republic of Iran	10 December 1982	—	—	—	—	17 April 1998 (a)
14.	Iraq	10 December 1982	30 July 1985	—	—	—	—
15.	Japan	7 February 1983	20 June 1996	29 July 1994	20 June 1996	19 November 1996	—
16.	Jordan	—	27 November 1995 a	—	27 November 1995 (p)	—	—

17.	Kenya	10 December 1982	2 March 1989	—	29 July 1994 (ds)	—	—
18.	Kuwait	10 December 1982	2 May 1986	—	2 August 2002	—	—
19.	Lebanon	7 December 1984	5 January 1995	—	5 January 1995 (p)	—	—
20.	Libyan Arab Jamahiriya	3 December 1984	—	—	—	—	—
21.	Malaysia	10 December 1982	14 October 1996	2 August 1994	4 October 1996 (p)	—	—
22.	Mauritius	10 December 1982	4 November 1994	—	4 November 1994 (p)	—	25 March 1997 (a)
23.	Mongolia	10 December 1982	13 August 1996	17 August 1994	13 August 1996 (p)	—	—
24.	Myanmar	10 December 1982	21 May 1996	—	21 May 1996 (a)	—	—
25.	Nepal	10 December 1982	2 November 1998	—	2 November 1998 (p)	—	—
26.	Nigeria	10 December 1982	14 August 1986	25 October 1994	28 July 1995 (sp)	—	—
27.	Oman	1 July 1983	17 August 1989	—	26 February 1997 (a)	15 February 1996	—
28.	Pakistan	10 December 1982	26 February 1997	10 August 1994	26 February 1997 (p)	15 February 1996	—
29.	Palestine	—	—	—	—	—	—
30.	Philippines	10 December 1982	8 May 1984	15 November 1994	23 July 1997	30 August 1996	—
31.	Qatar	27 November 1984	9 December 2002	—	9 December 2002 (p)	—	—
32.	Republic of Korea	14 March 1983	29 January 1996	7 November 1994	29 January 1996	26 November 1994	—
33.	Saudi Arabia	7 December 1984	24 April 1996	—	24 April 1996 (p)	—	—
34.	Senegal	10 December 1982	25 October 1984	9 August 1994	25 July 1995	4 December 1995	30 January 1997
35.	Sierra Leone	10 December 1982	12 December 1994	—	12 December 1994 (p)	—	—
36.	Singapore	10 December 1982	17 November 1994	—	17 November 1994 (p)	—	—
37.	Somalia	10 December 1982	24 July 1989	—	—	—	—
38.	Sri Lanka	10 December 1982	19 July 1994	29 July 1994	28 July 1995 (sp)	9 October 1996	24 October 1996
39.	Sudan	10 December 1982	23 January 1985	29 July 1994	—	—	—
40.	Syrian Arab Republic	—	—	—	—	—	—
41.	Thailand	10 December 1982	—	—	—	—	—
42.	Turkey	—	—	—	—	—	—
43.	Uganda	10 December 1982	9 November 1990	9 August 1994	28 July 1995 (sp)	10 October 1996	—
44.	United Arab Emirates	10 December 1982	—	—	16 November 1994	—	—
45.	United Republic of Tanzania	10 December 1982	30 September 1985	7 October 1994	25 June 1998	—	—
46.	Yemen	10 December 1982	21 July 1987	—	—	—	—

**Note:**

1. The information stated in the above table has been compiled from “Table recapitulating the status of the Convention and of the related Agreements, as at 23 December 2003, available on the website: <http://www.un.org/Depts/los/index.htm#oceans>; and *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2002* (UN, New York, 2003), vol, II, pp. 230-75.
2. The Arab Republic of Egypt, Bangladesh, China, India, Islamic Republic of Iran, Iraq, Kuwait, Malaysia, Oman, Pakistan, Philippines, Qatar, Saudi Arabia, Sudan, United Republic of Tanzania and Yemen have made Declarations to the UNCLOS, 1982.
3. China has made a declaration regarding the Straddling Fish Stocks Agreement.

**Inferences:**

Following inferences as to the participation of AALCO Member States to the UNCLOS and its implementing Agreements may be made from the information mentioned in the Table:

**(i) UNCLOS**

UNCLOS 1982 has near universal adherence from the AALCO member states. Out of forty-six Member States only seven states, namely, Democratic Peoples’ Republic of Korea, Islamic Republic of Iran, Libyan Arab Jamahiriya, Syrian Arab Republic, Thailand, Turkey and United Arab Emirates are not Parties to the UNCLOS.

**(ii) Agreement relating to the implementation of Part XI of the Convention**

Twenty-seven AALCO Member States are Parties to this Agreement. Region-wise break-up of the AALCO Member States Parties to this Agreement is as under:

**Asia:** China, Cyprus, India, Indonesia, Japan, Jordan, Kuwait, Lebanon, Malaysia, Mongolia, Myanmar, Nepal, Oman, Pakistan, Philippines, Qatar, Republic of Korea, Saudi Arabia, Singapore, and Sri Lanka.

**Africa:** Kenya, Mauritius, Nigeria, Senegal, Sierra Leone, Uganda, and United Republic of Tanzania.

**(iii) Agreement for the implementation of the Provisions of the Convention relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks**

Only six AALCO Member States are Parties to this Agreement. Region-wise break-up of the Parties to this Agreement is as under:

**Asia:** Cyprus, India, Sri Lanka, and Islamic Republic of Iran.

**Africa:** Mauritius and Senegal.