

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



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 year 2004 marked the tenth anniversary of the entry into force of the United Nations Convention on the Law of the Sea (hereinafter UNCLOS or the Convention) 1982.¹ The UNCLOS, has been widely recognized as the “Constitution of the Sea”, and has provided global solidarity that has led to more coherent management of ocean affairs. However, new challenges such as the serious threat to the vital marine ecosystems have emerged that call for renewed vigilance to ensure a vibrant and equitable future for all oceans.

2. The item “Law of the Sea” was taken up for consideration by the Asian-African Legal Consultative Organization (AALCO) at the initiative of the Government of Indonesia in 1970. Since then it has been considered as one of the priority items at successive Annual Sessions of the Organization AALCO and 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 UNCLOS.

3. 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.

4. At the Forty-Third session of the Organization, at Bali, Republic of Indonesia (21-25 June 2004), the item pertaining to Law of the Sea was considered as a deliberated item. Resolution 43/ S 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 took note of the deliberations at the United Nations Open-ended Informal Consultative Process (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

¹ In accordance with Article 308 (1) of the Convention, it entered into force on 16 November 1994. Article 308 (1) states: “This Convention shall enter into force 12 months after the date of deposit of the sixtieth instrument of ratification or accession”. It may be recalled that the Convention was adopted by the Third United Nations Conference on the Law of the Sea and opened for signature together with the Final Act of the Conference, at Montego Bay, Jamaica, on 10 December 1982. The Conference was convened pursuant to resolution 3067 (XXVIII) adopted by the United Nations General Assembly on 16 November 1973. The Conference held eleven sessions, from 1973 to 1982.

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.

5. The Secretariat Report prepared for the Forty-Fourth Session provides an overview of the fifth meeting of the Consultative Process; the consideration of the Oceans and the Law of the Sea issues at the 59th Session of the General Assembly; status of the UNCLOS and its implementing Agreements; thirteenth and fourteenth Sessions of the Commission on Continental Shelf; Tenth Session of the International Seabed Authority; fourteenth Meeting of States Parties to the UNCLOS' 82; third round of informal consultations of States Parties to Fish Stocks Agreement; and the settlement of disputes under UNCLOS by the International Tribunal of the Law of the Sea in the Year 2004. It also places for consideration the deliberations at the Forty-Third Session of the Organization and finally, it offers some general comments on the agenda item.

II. FIFTH MEETING OF THE UNITED NATIONS INFORMAL CONSULTATIVE PROCESS ON OCEANS AND THE LAW OF THE SEA (ICP-5, 7-11 JUNE 2004, NEW YORK)

6. The United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, was established by the General Assembly in its resolution 54/33 of 24 November 1999 and renewed for three years in resolution 57/141 of 12 December 2002, in order to facilitate the annual review of development in ocean affairs. The fifth meeting of this Consultative Process (or ICP-5) took place at the UN Headquarters in New York from 7 to 11 June 2004.² The meeting was co-chaired by H. E. Mr. Felipe Paolillo (Uruguay) and Mr. Philip D. Burgess (Australia), both of whom had been reappointed by the President of the fifty-ninth session of the General Assembly.

8. The Consultative Process, as decided vide paragraph 68 of resolution 58/240 focused its discussions on “New sustainable uses of the oceans, including the conservation and management of the biological diversity of the seabed in areas beyond national jurisdiction”.

9. *Oceans and the law of the sea: Report of the Secretary-General.*³ The annual comprehensive report of the Secretary-General on Oceans and the Law of the Sea formed the basis of deliberations at ICP-5. The report inter alia reviews State practice with regard to maritime space, elaborates on developments in institutions created by the United Nations Convention on the Law of the Sea (UNCLOS), as well as recent developments regarding the protection of the marine environment and the safety and security of navigation. It also addresses the creation of a mechanism for international coordination and cooperation on national oceans policy. Such a policy would provide guiding principles and detailed programmes to enable and encourage all government departments dealing with oceans issues to consult each other and to coordinate their work. Consequently, there would be more effective management of oceans at the national level but also a more uniform and consistent national position at the regional and global levels, all of which would foster cooperation among States, as well as international organizations.

10. The report identifies two main challenges for the future: to ensure that States parties fully implement the Convention’s provisions; and that inter-agency cooperation is facilitated and enhanced. The Secretary-General recommends, among other things, that parties review their national legislation and ensure that it is in conformity with the Convention; States should consider establishing national marine policies integrating all aspects of ocean affairs; and States should endeavour to establish the limits of their maritime zones and to settle any maritime boundaries with their neighbours.

² The detailed report of the meeting is contained in “Report on the work of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea at its fifth meeting”, UN Doc. A/59/122 dated 1 July 2004. Also see “Summary of the Fifth Meeting of the Open-ended Informal Consultative Process on Oceans and the Law of the Sea: 7-11 June 2004”, *Earth Negotiations Bulletin*, vol. 25, no. 12 available online at <http://www.iisd.ca/oceans/icp5/>.

³ UN Doc. A/59/62 dated 4 March 2004.

As regards the focus of deliberations at ICP-5, “New sustainable uses of the oceans, including the conservation and management of the biological diversity of the seabed in areas beyond national jurisdiction”, the new uses highlighted by the Secretary-General’s report include offshore energy sources, such as wind, wave and tidal power, as well as ocean thermal energy conversion, and the potential exploitation of new minerals and gas hydrates”.

11. The representative of the Secretariat of the Convention on Biological Diversity (CBD) informed the meeting of the decisions of relevance to the Consultative Process taken by the Seventh Conference of Parties to the CBD (COP-7, 9-27 February 2004, Kuala Lumpur, Malaysia). The decisions sought to respond to commitments in the Johannesburg Plan of Implementation (JPOI) and to the relevant elements of General Assembly resolution 58/240. COP-7 had extended by an additional six years the Convention’s programme of work on marine and coastal biodiversity. Some decisions contained significant elements concerning the establishment of marine protected areas beyond national jurisdiction. Areas such as seamounts, hydrothermal vents, cold-water corals and other vulnerable ecosystems were given special attention.

12. A panelist outlined discoveries, applications and conservation in relation to hydrothermal vents, and drew attention to the development of a code of conduct on the sustainable scientific uses of hydrothermal vents. Amb. Satya Nandan, Secretary-General, ISA, presented on “Benthic Biodiversity and the Work of ISA”. Presentation also took place on high seas bottom fisheries; scientific observation in the deep sea; gas hydrates and marine genetic resources.

13. The Meeting also discussed issues taken up at the previous meetings. An International Workshop on Global Marine Assessment (GMA), as mandated by the General Assembly at its Fifty-eighth session took place in conjunction with ICP-5.

14. After extensive deliberations, the meeting agreed upon the following recommendations to be suggested to the General Assembly for consideration under its agenda item entitled “Oceans and the law of the sea”.

i. UN Oceans: It was proposed that the General Assembly:

(a) Welcome the establishment of a new inter-agency coordination mechanism, the Oceans and Coastal Areas Network (UN-Oceans), on issues relating to oceans and coastal issues called for in resolution 57/141 of 12 December 2002, and note its terms of reference;

(b) Urge the close and continuous involvement in UN-Oceans of all relevant United Nations programmes, funds and specialized agencies and other organizations of the United Nations system and welcome the participation of international financial institutions, relevant intergovernmental and other organizations, as well as the International Seabed Authority, and secretariats of multilateral environmental agreements.

ii. Marine Biodiversity: There have been a number of calls, including by the General Assembly in its resolutions 57/141 and 58/240, for, *inter alia*, urgent consideration of ways to integrate and improve, on a scientific basis and in accordance with international law, the management of risks to the marine biodiversity of seamounts, deep sea coldwater coral reefs and certain other underwater features beyond national jurisdiction. Hydrothermal vents should also be considered.

Noting the call in the Plan of Implementation of the World Summit on Sustainable Development to maintain the productivity and biodiversity of important and vulnerable marine and coastal areas both within and beyond national jurisdiction, it was proposed that the General Assembly:

- (a) Welcome decision VII/5 adopted at the COP-7 of the CBD; and
- (b) Also welcome decision VII/28 adopted at the COP-7 of the CBD suggesting that the Ad Hoc Open-Ended Working Group on Protected Areas explore options for cooperation to promote the establishment of marine protected areas beyond national jurisdiction, consistent with international law, including the UNCLOS, and on the basis of the best available scientific information, and encourage the participation of oceans experts in the Working Group.

iii. Fisheries Management: It was proposed that the General Assembly:

- (a) Urge States, either by themselves or through regional fisheries management organizations, where these are competent to do so, to consider on a case-by-case basis and where justified on a scientific basis, including the application of precaution, the interim prohibition of destructive practices by vessels under their jurisdiction that have an adverse impact on vulnerable marine ecosystems, including seamounts, hydrothermal vents and cold-water corals located beyond national jurisdiction;
- (b) Encourage regional fisheries management organizations with a mandate to regulate bottom fisheries to urgently address the impact of deep sea bottom trawling on vulnerable marine ecosystems in accordance with international law;
- (c) Urge members of regional fisheries management organizations without the competence to regulate bottom fisheries to expand the mandate, where appropriate, of their organizations to cover such activities in accordance with international law;
- (d) Agree to review within two years progress on action taken in response to these requests with a view to further recommendations, where necessary;
- (e) Reiterate its call to States to ratify or accede to and effectively implement the relevant United Nations agreements and, where appropriate, associated regional fisheries agreements or arrangements, noting in particular the 1995 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 and the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, and to comply with the 1995 Code of Conduct for Responsible Fisheries of the Food and Agriculture Organization of the United Nations; and
- (f) Emphasize again its serious concern that illegal, unreported and unregulated fishing remains one of the greatest threats to marine ecosystems and continues to have serious and major implications for the conservation and management of ocean resources, and

renew its call to States to fully comply with all existing obligations and to combat such fishing through relevant regional and subregional fisheries management organizations and arrangements, and to urgently take all necessary steps to implement the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing adopted by the Committee on Fisheries of the Food and Agriculture Organization of the United Nations (FAO).

iv. Mining and Exploration activities in the Area: It was proposed that the General Assembly:

(a) Welcome progress on and encourage the work of the ISA relating to the regulations for prospecting and exploration for polymetallic sulphides and cobalt-rich crusts in the Area and procedures to ensure the effective protection of the marine environment, the protection and conservation of the natural resources of the Area and the prevention of damage to its flora and fauna from harmful effects that may arise from activities in the Area; and

(b) Encourage States, individually or in collaboration with each other or with relevant international organizations and bodies, to improve their understanding and knowledge of the deep sea in areas beyond national jurisdiction by increasing their marine scientific research activities in accordance with the Convention.

v. Capacity-building: It was proposed that the General Assembly:

Reiterate the necessity for capacity-building, as expressed in resolutions 57/141, 58/240 and 58/14.

vi. New Sustainable uses of Oceans: It was proposed that the General Assembly:

Note the potential for gas hydrates as one source for energy development, as well as the associated risks, and encourage States and, where appropriate, the International Seabed Authority and the international scientific community to continue to cooperate in deepening the understanding of the issues and in investigating the feasibility, methodology and safety of its extraction from the seabed, its distribution and its use.

vii. Flag State Implementation: It was proposed that the General Assembly:

(a) Welcome the report of the Consultative Group on Flag State Implementation (A/59/63) and request that the document be widely disseminated;

(b) Also welcome progress made by the International Maritime Organization (IMO) on the development of a voluntary IMO member State audit scheme in such a manner so as not to exclude the possibility in the future of its becoming mandatory;

(c) Further welcome the consideration by IMO of the invitation extended to it in resolutions 58/240 and 58/14 to study, examine and clarify the role of the “genuine link” in relation to the duty of flag States to exercise effective control over ships flying their flag, including fishing vessels;

(d) Request the Secretary-General, in cooperation and consultation with relevant agencies, organizations, offices and programmes of the United Nations system, as well as other relevant organizations, taking into account developments since the preparation of the report contained in document A/59/63, to further elaborate relevant matters referred to in resolution A/58/14, paragraph 22, and part VIII of resolution A/58/240, including

the “genuine link” and the consequences of non-compliance with the duties and obligations of flag States prescribed in the relevant international instruments; and

(e) Encourage relevant international organizations to further develop ideas to devise means of increasing the financial costs to owners and operators of noncompliance with these duties and obligations.

viii. *Combating Armed Robbery and Piracy:* It was proposed that the General Assembly: Welcome the progress of regional cooperation in some geographical areas and of global cooperation with IMO, aimed at combating piracy and armed robbery at sea, by adopting appropriate measures, including those relating to assistance with capacity-building, and call upon States to give urgent attention to promoting, concluding, adopting and implementing cooperation agreements at the regional level in high risk areas.

ix. *Future Issues:* ICP-5 identified following issues that could benefit from attention in future work of the General Assembly on oceans and law of the sea:

(a) Duties of the flag State in relation to social matters, safety of human life at sea and other related issues: problems and possible actions for solution;

(b) Genetic resources;

(c) The role of sustainable use of marine resources in food security;

(d) Undersea noise pollution: impacts on marine life.

15. These topics are in addition to the list of topics identified at the four previous meetings of the Consultative Process.

16. The 59th Session of the General Assembly vide its resolution 59/24 requested the Secretary-General to convene the sixth meeting of the Consultative Process in New York from 6 to 10 June 2005. Furthermore, it recommended that ICP-6 should organize its discussion around the following areas: (a) Fisheries and its contribution to sustainable development; (b) Marine debris.⁴

⁴ Paragraphs 90-92 of the resolution.

III. CONSIDERATION OF THE OCEANS AND THE LAW OF THE SEA ISSUES AT THE 59TH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY

17. The General Assembly of the United Nations considered the agenda item on “Oceans and the law of the sea” in its Plenary meetings on 16th and 17th November 2004.⁵

A. Documents Considered by the General Assembly

18. In addition, to the Annual Report of the Secretary-General and the Report on the work of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea at its fifth meeting⁶ the Assembly considered the following documents:

19. **(a) Addendum to Oceans and the law of the sea: Report of the Secretary-General:**⁷ The addendum to the main report provides an overview of developments relating to the implementation of the Convention, and the work of the United Nations, its specialized agencies and other institutions in the field of ocean affairs and the law of the sea since the finalization of the main report of February 2004. The two-part report covers developments relating to State practice regarding maritime space, safety of navigation, crimes at sea and international coordination and cooperation, including the establishment of “UN-Oceans”- the new inter-agency mechanism for ocean affairs. It also responds to the Assembly’s request for information on threats and risks to marine biodiversity beyond the limits of national jurisdiction and existing conservation and management measures.

20. The report states that the tenth anniversary of the Convention, marked on 16 November 2004, highlights its importance, as well as that of its implementing Agreements as the legal framework within which activities in the oceans and seas are carried out. It also confirms the strategic importance of the Convention as the basis for national, regional and global action and cooperation in the maritime sector. The report stresses that the goals of the Convention would be further strengthened if those States that had not become parties consider doing so. In light of recent developments, the Report emphasizes that it was of paramount importance that States took all necessary action to strengthen maritime security, including through implementation of the International Ship and Port Facility Security Code (ISPS), to ensure that ships are not being used for terrorist or criminal purposes.

⁵ Details of the Meetings are drawn from the following *UN Press Releases*: “Marking Tenth Anniversary of Law of Sea Convention, Speakers Remind General Assembly of Need to Ensure Sustainable Future for World’s Marine Ecosystem”, GA/10298, 54th and 55th Plenary Meetings dated 16 November 2004; and “General Assembly, Concerned About World’s Marine Ecosystems, Adopt Texts on Law of Sea, Sustainable Fisheries”, GA/10299, 56th Plenary Meeting, dated 17 November 2004.

⁶ Both these documents have been referred to in the preceding section.

⁷ UN Doc. A/59/62 Add. 1 dated 18 August 2004.

21. **(b) Report of the Consultative Group on Flag State Implementation:**⁸ The Assembly considered the report of the Consultative Group on Flag State Implementation, an inter-agency task force formed by the Secretary-General in response to calls for an investigation into the causes of failure of some vessels to conform to international requirements regarding ship safety, labour conditions, fisheries conservation and protection of the maritime environment.

22. The Group, comprising the International Maritime Organization (IMO), the Food and Agriculture Organization (FAO), the United Nations Environment Programme (UNEP), the Organisation for Economic Cooperation and Development (OECD) and the United Nations, met in May 2003 to discuss the issues. Each member of the Group agreed to contribute to the report, outlining studies undertaken and measures adopted to address flag State obligations under the UNCLOS, the United Nations Fish Stocks Agreements and a broad range of international instruments. The challenge is to ensure that States establish an effective and structured maritime administration to comply with the duties of flag States prescribed in Article 94 of the UNCLOS.

23. The report stresses the need to strengthen international action to ensure that all States, through effective exercise of their prescriptive and enforcement jurisdiction, ensure that ships flying their flags comply with international rules aimed at securing maritime safety and the prevention of marine pollution, as well as the welfare of seafarers on board.

24. **(c) Oceans and the law of the sea: A regular process for the global reporting and assessment of the state of the marine environment, including socio-economic aspects: Global Marine Assessment International Workshop: Report of the Secretary-General**⁹ The Report provides a factual account of the discussions that took place during the Global Marine Assessment (GMA) International Workshop that met in New York from 8 to 11 June 2004. The brief report contains the draft conclusions adopted by the GMA Workshop, recommending, among other things, that the Assembly invite the Secretary-General to establish an inter-agency task force to initiate and coordinate the next stage of work to establish the formal Global Marine Assessment and inform Member States accordingly.

The draft conclusions state that the task force should undertake three tasks necessary for the start-up phase: assemble information about scientific assessments – including assessments covering social and economic issues – relevant to the GMA, which have already been carried out by the Organization, relevant to undertaking a regular assessment; make a critical appraisal of those assessments, for example, by comparing methodologies, data sources and coverage, in order to identify best practices; and determine how well those assessments have been communicated to policy makers at the national, regional and global levels.

⁸ UN Doc. A/59/63.

⁹ UN Doc. A/59/126 dated 6 July 2004.

25. (d) **Sustainable fisheries, including through 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 Stock and Highly Migratory Fish Stocks, and related instruments: Report of the Secretary-General:**¹⁰ The Report contains information on steps and initiatives taken or recommended to be taken by the international community to improve the conservation and management of fishery resources and other marine living resources with a view to achieving sustainable fisheries and protecting marine ecosystems and biodiversity. It is based on information provided by States, relevant specialized agencies, in particular the Food and Agriculture Organization (FAO) and other appropriate organs of the United Nations system on the arrangements for the conservation and management of fish stocks at the global, regional and national levels.

26. The report expresses the Assembly's abiding concern at the continued deterioration of marine fish stocks worldwide. The FAO estimates that 47 per cent of the major fish stocks are now fully exploited, 18 per cent are overexploited and 10 per cent are significantly depleted. The failure to maintain fishing within sustainable limits has an impact on the role of fisheries in economic development, poverty alleviation and human health. The FAO estimates that fish make up 16 per cent of the world population's protein intake and provides employment for 35 million full and part-time fishermen, with more than two thirds of both total catch and employment coming from marine capture fisheries.

27. The factors contributing to overfishing are interrelated, and include the failure of States to fully implement and enforce the range of international fisheries instruments and related instruments; illegal, unregulated and unreported fishing; overcapacity international fishing fleets; and gaps in data and scientific knowledge to inform fisherman of management decisions.

B. Deliberations in the General Assembly

28. In the deliberations at the 59th Session, delegates¹¹ generally praised the global solidarity, evident from the tenth anniversary of the ground-breaking United Nations Convention on the Law of the Sea. They observed that UNCLOS and its Implementing Agreements had led to a more coherent management of ocean affairs. Many delegates

¹⁰ UN Doc. A/59/298 dated 26 August 2004.

¹¹ Statements were delivered by the delegates of Brazil, Netherlands (on behalf of the European Union and European Community), Norway, Barbados (on behalf of the Caribbean Community – CARICOM), Canada, Kenya, Mexico, Egypt, Indonesia, Tunisia, India, Iceland, United States of America, China, Uganda, Japan, Samoa (on behalf of the Pacific Islands Forum), Chile, Fiji, Federated States of Micronesia, Republic of Korea, Bangladesh, Ukraine, Bolivia, Nigeria, New Zealand, Viet Nam, Australia, Palau, Poland, Uruguay, Russian Federation, Argentina, Cuba, Guyana, Observer for the International Union for the Conservation of Nature and Natural Resources, Secretary-General of the International Seabed Authority and the President of the International Tribunal of the Law of the Sea. As regards, the resolution on Oceans and the law of the sea explanation of votes were offered by the representative of Turkey, Venezuela, Chile and Peru. While for the resolution on Sustainable Fisheries representatives of Italy and Iran offered their explanation of vote.

warned that some of the vital marine ecosystems were under threat and only renewed vigilance would ensure a vibrant, sustainable and equitable future for all oceans. The discussions focused around navigational rights, territorial sea limits, economic jurisdiction, and the legal status of seabed resources beyond the limits of national jurisdiction, to the passage of ships through narrow straits, piracy, conservation and management of living marine resources, and protection of the marine environment.

29. In the ensuing paragraphs an attempt is made to highlight the views of AALCO Member States in the deliberations on the agenda item.¹²

30. The representative of an AALCO Member State was of the view that the legal regime arising from the UNCLOS, which was one of the most important international legal instruments and its entry into force was crucial in supporting that legal regime. He emphasized that the international community had accorded special importance to the Convention, which now had 145 parties. He called on others to accede to that important Convention. Another representative from a coastal Member State said one of the most significant developments resulting from the Convention was the evolution of the exclusive economic zone concept, which attributed sovereign rights to coastal States over the living and non-living resources within the EEZ in a jurisdictional framework. Another delegate noted with deep satisfaction that all subsidiary institutions under the Convention, namely the International Seabed Authority (ISA), the International Tribunal for the Law of the Sea (ITLOS), Commission on the Limits of Continental Shelf (CLCS), had made considerable progress in the past year. He stated that the international community had continued to focus over the past years on issues relating to navigation, conservation and management of living marine resources and conservation and management of biological diversity of the seabed in areas beyond national jurisdiction.

31. Another delegate regretted the deterioration in oceans and called for commitment to protect the marine environment. A delegate was of the view that balance must be struck between the need for economic exploitation and the need for conservation. He suggested for the establishment of a working group to examine the existing regimes in that area and to look into modalities for conservation and sustainable use of biodiversity, as well as for the protection of vulnerable marine ecosystems. Another coastal states said that it considered the preservation of the marine environment to be extremely important and was, therefore, committed to the prevention of marine pollution at international and regional levels. He urged countries that had not done so to ratify the UNCLOS, the Convention on the Prevention of Marine Pollution by Dumping of Wastes and the Convention for the Prevention of Pollution from Ships. Another delegate referred to the establishment of a phase-out scheme for 80 single hull tankers -- 45 of which were used to carry heavy-grade fuel, to ensure the protection of the ocean environment. In this regard, he urged other flag and port States to take appropriate measures to prevent the operation of sub-standard vessels.

¹² Delegates from the following AALCO Member States participated in the deliberations: Kenya, Egypt, Indonesia, India, China, Uganda, Japan, Republic of Korea, Bangladesh, Nigeria, Turkey and Iran.

32. A delegation said that the establishment of a Global Marine Assessment (GMA) mechanism would go a long way toward providing coherent, viable options and measures to deal with the challenges of managing the marine environment and the socio-economic consequences of its deterioration. He called for the establishment of a task force for the next stage of establishing the GMA in line with the Johannesburg Plan of Action. As regards the GMA another delegation was of the view that GMA mechanism should operate within the United Nations framework and should make use of existing global and regional assessment mechanisms to avoid overlap. Activities should be consistent with the Law of the Sea Convention and should respect the sovereign rights and jurisdiction of coastal States. The assessment areas should not be determined solely on the ecosystem approach but should take into consideration the geographical areas now covered, without prejudice as to the number of assessment areas there should be. Operation of the GMA mechanism should proceed gradually, with the focus now on assessing existing mechanisms on marine environment and strengthening the capacity building of developing countries.

33. Many delegations expressed their concern over the need to protect fisheries from exploitation. A delegate drew attention to the problem of exploitation and stated that it had been compounded by the lack of political will of some States to abide by established rules regarding the number of fisheries allowed. He called for responsible fishing, noting that the Convention accorded special importance to that matter, as well as a commitment to protect the maritime environment. Another delegation drew attention towards the prevalence of illegal, unregulated and unreported fishing and said that it was also causing severe problems, affecting world fisheries, particularly in developing countries. Such practices, he said would cause far-reaching adverse consequences for those fisheries' long-term sustainable management. He was also gravely concerned that overfishing continued in contravention of applicable regional conservation regimes, and that States were not meeting their obligations to address complaints by their flag vessels and nationals.

34. Another problematic area to which delegations focused their attention was armed robbery and piracy. A delegate said that the world continued to be plagued by piracy and armed robbery at sea. Of the more than 400 incidents occurring worldwide each year, almost half were concentrated in Asia. He also mentioned about the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia adopted on 11 November 2004 in Tokyo, Japan. Another delegation expressed its serious concern with the increase in the reported incidents of piracy and armed robbery against ships; the figure had risen to 3,041 in the period from 1984 to the end of March 2003. The involvement of militia groups in kidnapping the crews in politically vulnerable areas called for close attention. He also said that piracy attacks had taken place in certain geographical hot spots, not in the open sea, but in territorial waters, while the ships were at anchor or berthed. He observed that regional cooperation in the high-risk areas had been identified as an important measure to combat crimes at sea.

35. A delegation stated that new technology helped exploit marine resources, which was not anticipated at the time of the adoption of the Convention. The international community was now witnessing new kinds of exploration of living resources beyond

national jurisdiction that, to some extent, brought economic advantages. Although little information was currently available on that matter, it alerted the international community to the possible impact of such activities on biological diversity. The challenge for the international community, therefore, was to properly manage those resources to ensure that the benefits could be shared between all States, particularly the developing ones. Capacity-building constituted an essential element for developing States to take a more active part in the management and conservation of marine resources. His country attached importance to the need for States to enhance cooperation through information sharing for capacity-building purposes.

C. Resolutions Adopted by the General Assembly

36. The 59th Session of the General Assembly adopted two resolutions on the agenda item Oceans and the law of the sea. The title of these resolutions is:

- i. Oceans and the law of the sea;¹³
- ii. Sustainable fisheries, including through 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, and related instruments.¹⁴

37. The resolution adopted by the General Assembly emphasizes the coordinated approach to the interlinked issues relating to management of oceans and the law of the sea.¹⁵ The Assembly reaffirmed the need to improve cooperation and coordination at all levels, in accordance with UNCLOS, in order to address all aspects of oceans and seas in an integrated manner and to promote the integrated management and sustainable development of the oceans and seas.

38. It encouraged relevant international organizations to further develop ideas to devise means of discouraging owners and operators from non-compliance with the requirements imposed by flag States in carrying out their duties and obligations under relevant international instruments. The resolution welcomed the progress in regional cooperation

¹³ UNGA Res. A/RES/59/24 dated 17 November 2004. The final text of the resolution adopted by the General Assembly was not posted on the website until 6 January 2004, hence the summary drawn in this Secretariat Report is based upon the draft resolution A/59/L.22 dated 10 November 2004.

¹⁴ UNGA A/RES/59/25 dated 17 November 2004. The final text of the resolution adopted by the General Assembly was not posted on the website until 6 January 2004, hence the summary drawn in this Secretariat Report is based upon the draft resolution A/59/L.23 dated 10 November 2004.

¹⁵ The seventeen page resolution is divided into the following eighteen parts: Preamble; Implementation of the Convention and related instruments; Capacity-building; Trust funds and fellowships; 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; Maritime safety and security and flag State implementation; Marine environment, marine resource, marine biodiversity and the protection of vulnerable marine ecosystems; Marine science; Regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects; Regional cooperation; Open-ended informal consultative process on oceans and the law of the sea; Inter-agency cooperation and coordination; Activities of the Division for Ocean Affairs and the Law of the Sea; and Sixtieth Session of the General Assembly.

in the prevention and suppression of piracy and armed robbery at sea in some geographical areas, and urged States to give urgent attention to promoting, adopting and implementing cooperation agreements, in particular at the regional level in high-risk areas.

39. In addition, the Assembly decided to establish an Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. It also emphasized the need to mainstream sustainable coral reef management and integrated watershed management into national development strategies, as well as into the activities of relevant United Nations agencies and programmes, international financial institutions and the donor community.

40. In the resolution¹⁶ adopted on sustainable fisheries, the Assembly, among other things, expressed its concern that illegal, unreported and unregulated fishing threatens seriously to deplete populations of certain fish species and to significantly damage marine ecosystems, to the detriment of sustainable fisheries, as well as the food security and the economies of many States, particularly the developing States. The Assembly also recognized that the problem of overfishing continued to be exacerbated by inadequate flag State control over fishing vessels, including those fishing for straddling fish stocks and highly migratory fish stocks, and insufficient monitoring, control and surveillance measures. It encouraged States to increase scientific research in accordance with international law on the marine ecosystem.

¹⁶ The sixteen page resolution on sustainable fisheries is divided into following parts: Preamble; Achieving sustainable fisheries; Implementation of 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; 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 Sixtieth session of the General Assembly.

IV. Activities under the United Nations Convention on the Law of the Sea and its Implementing Agreements

A. Status of the UNCLOS and its Implementing Agreements

41. The United Nations Convention on the Law of the Sea as at 16 November 2004 had 146 Parties, of which 38 States are AALCO Member States.¹⁷ This represents considerable progress towards universality since the entry into force of the Convention on 16 November 1994, one year after the deposit of the sixtieth instrument of ratification, when there were 69 States parties.

42. The Agreement relating to the implementation of Part XI of the UNCLOS was adopted on 28 July 1994 and has entered into force on 28 July 1996. As regards the status of this Agreement, as at 16 November 2004, 118 Member States have ratified or acceded to it, of which 29 States are AALCO Member States.¹⁸

43. 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 States¹⁹ and ratified by 52 States, of which 8 are AALCO Member States. The Agreement came into force from 11 December 2001 after receiving the requisite 30 ratifications or accessions.

44. Resolution 59/24 on Oceans and Law of the Sea adopted by the General Assembly emphasized 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 oceans and seas. It noted with satisfaction tenth anniversary of the entry into force of the Convention on 16 November 2004. It recognized the pre-eminent contribution provided by the Convention to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights and to the promotion of the economic and social advancement of all peoples of the world, in accordance with the

¹⁷ The UNCLOS 1982 entered into force on 16 November 1994 and as of 16 November 2004, it has been signed by 157 States and ratified or acceded to by 146 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. For details see Table recapitulating the Status of the UNCLOS and related Agreement, as at 16 July 2004, available on the website: <http://www.un.org/Depts/los/index.htm#oceans>.

¹⁸ As at 16 November 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.

¹⁹ The AALCO Member States Parties to the Straddling Stocks Agreement are: Cyprus, India, Islamic Republic of Iran, Kenya, Mauritius, Senegal, South Africa 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.

purposes and principles of the UN as set forth in the Charter. The Assembly called 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. It reaffirmed the unified character of the Convention and 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 conformity therewith and, otherwise, to withdraw any of their declarations or statements that are not in conformity. It called upon States Parties to the Convention to deposit with the Secretary-General charts or lists of geographical coordinates, as provided for in the Convention. It also requested the Secretary-General to improve the existing Geographic Information System. It also urged all States to cooperate, directly or through competent international bodies, in taking measures to protect and preserve objects of an archaeological and historical nature found at sea, in conformity with article 303 of the Convention.

B. Thirteenth and Fourteenth Session of the Commission on the Limits of Continental Shelf (CLCS, 26-30 April 2004; 30 August – 3 September 2004, New York)

45. Article 76 of the UNCLOS sets out the definition and various methods for a coastal State to establish the outer limits of its continental shelf, including beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. The same article also envisages the establishment of the Commission on the Limits of the Continental Shelf (hereinafter CLCS or the Commission).²⁰ 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.

46. 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.

47. The thirteenth session of the Commission was held at United Nations Headquarters from 26 to 30 April 2004.²¹

²⁰ Annex II to the Convention provides for the Commission, its composition, functions etc.

²¹ Details mentioned herein are drawn from “Statement by the Chairman of the Commission on the Limits of Continental Shelf on the progress of work in the Commission”, UN Doc. CLCS/39 dated 30 April 2004; “Letter dated 18 May 2004 from the Chairman of the Commission on the Limits of Continental Shelf addressed to the President of the fourteenth Meeting of States Parties”, UN Doc. SPLOS/III dated 18 May 2004; and following *UN Press Releases*: “Commission on Limits of Continental Shelf to hold thirteenth Session at Headquarters from 26 April to 30 May”, SEA/1792 dated 26 April 2004; “Commission on Limits of Continental Shelf concludes thirteenth session”, SEA/1793 dated 24 May 2004.

48. The meeting dealt with a number of items, including amendments to its rules of procedure and its modus operandi, the upcoming submissions, progress in the preparation of a training module, and a response to a letter from the Russian Federation concerning recommendation made by the Commission following the submission by the Russian Federation of information on the proposed outer limits of its continental shelf.

49. The CLCS finalized the review of its procedures by adopting a revised set of Rules of Procedure.²² Annex III to the Rules of Procedure contains the “Modus operandi for the consideration of a submission made to the Commission on the Limits of the Continental Shelf” consolidating the Modus Operandi of the Commission and the Internal Procedure of the Commission. The process of revision was carried out on the basis of the practical experience gained by the Commission from receiving and examining its first submission, that of the Russian Federation. It also adopted certain amendments to the Rules of Procedure, with the most important one being in relation to the deadline for submission, taking into account a decision previously taken by the Meeting of States Parties to the Convention, establishing 13 May 2009 as the deadline for submissions by States that had ratified or acceded to the Convention prior to 13 May 1999. In extending the deadline for those States that had ratified or acceded to before 13 May 1999, the Meeting of States Parties took into account a number of factors including the delay in establishing the Commission itself and the view that States had been in a position to make submission only after the adoption of the Scientific and Technical Guidelines by the Commission.

50. Seven States had informed the Secretariat that their submissions to the Commission were expected to be completed within the next three years. Australia indicated that it intended to make submissions by 16 November 2004; Brazil during 2004; Ireland 2005; Norway not before 2006; Namibia in 2007; Pakistan in 2007/2008 and Sri Lanka in 2007. Several other States had also informed the Secretariat that the process of preparing their submission was under way but that they were not yet able to predict a date for its completion.

51. A training manual designed to assist coastal States; particularly developing States in the preparation of data and other material concerning the outer limits of continental is in the advanced stage of preparation by the Division of Ocean Affairs and the Law of the Sea of the UN Secretariat. Two members of the Commission are coordinating the task. The training manual is expected to be finalized soon and is expected to be of special value in assisting developing States in building their capacity to fulfil their obligations with respect to the preparation of their submissions to the Commission.

52. The Commission in its meeting finalized the response to the letter containing questions and comments from Russian Federation regarding the Commission’s recommendation on its submission. It directed the Secretariat to transmit the response through the Permanent Mission of the Russian Federation.

²² CLCS/40.

53. The fourteenth session of the Commission took place from 30 August to 3 September 2004. The main focus of the meeting was the consideration by the Commission of the claim by Brazil regarding its continental shelf.²³ Other States that have informed of their desire to make submissions to the Commission, prior to 2009, namely, Nigeria (before August 2005), Tonga (between January 2005 and December 2006), the United Kingdom of Great Britain and Northern Ireland (before 2007), Myanmar (in 2009) and Guyana (before 2009), a total of 10 States by the end of 2009.

54. Two sessions of the Commission are scheduled for 2005, the first from 4 to 22 April and the second from 29 August to 16 September.

**C. Tenth Session of the International Seabed Authority
(24 May – 4 June, 2004, Kingston, Jamaica)**

55. 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". All parties to the Law of the Sea Convention are *ipso facto* Members of the Authority and the current membership is 146. It was established on 16 November 1994 following the entry into force of the UNCLOS. The three principal organs of the Authority are: the Assembly, in which all members are represented, and a 36-member Council elected by the Assembly and the Secretariat. A 24-member Legal and Technical Commission and a 15-member Finance Committee are the organs of Council.

56. The Tenth Session of the International Seabed Authority took place from 24 May to 4 June at its Headquarter in Kingston, Jamaica.²⁴ The year also marked the tenth anniversary of the Authority and the commemoration ceremony was brought forward to coincide with its tenth annual session. The meeting inter alia considered the Report of the Secretary-General, elected half its Executive Council, Secretary-General to guide it for the next four years, approved the Organization's budget for the biennium 2005-2006 and undertook further work on a regulatory regime for seabed sulphides and cobalt-rich crusts.

57. Ambassador Dennis France (Trinidad and Tobago) was elected as the President of the Assembly while Mr. Baïdy Diène (Senegal) was elected as the President of the Council.

58. The Commemoration ceremony to mark the tenth anniversary took place in a two-day Special Session held on 25-26 May 2004. The UN Secretary-General in his message

²³ CLCS, "Statement by the Chairman of the CLCS on the progress of work in the Commission", CLCS/42 dated 14 September 2004.

²⁴ Details stated herein are drawn from the Tenth Session Press Releases available on the website of the Authority at URL: <http://www.isa.org.jm/en/documents/PRESS/PRESS-2004/2004PressReleases.htm>.

on the occasion praised the Authority for its diligent work over the past decade, and for showing that multilateral approaches to global challenges could be effective, equitable and enduring. The Most Honorable P. J. Patterson, Prime Minister of Jamaica which is host to the ISA, said his government had done all it could to ensure that the Authority settled into its new home easily and comfortably. Headquarters Agreement and the Supplementary Agreement reflected a strong signal of his government long-term commitment and dedication. Mr. Satya Nandan, the Secretary-General of the Authority said there was an urgent need to enhance efforts in the research and exploration of the oceans. He had drawn the attention of the UNGA at its last Session to the need for a declaration in support of ocean research and exploration. Without adequate scientific research, management of the oceans would not be based on sound scientific knowledge. On this occasion, two panel discussions were held on the achievements and future prospects and directions of the Authority.

59. The Council examined the Report of the Legal and Technical Commission. It decided to continue its detailed examination of the draft regulations on prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts in the international seabed Area²⁵ at the eleventh session of the Authority in 2005.

60. It proposed to the Assembly the names of the incumbent Mr. Satya N. Nandan and Amb. Charles Manyang D' Awol, Ambassador of Sudan to Norway, as candidates for election as Secretary-General of the Authority. It also endorsed a US \$ 10, 816, 700 budget for the operations of the Authority for the biennium 2005-2006 and recommended its adoption by the Assembly.

61. The Assembly of the ISA considered the Report of the Authority's Secretary-General on the Organization's activities for the past year and work programme for 2005-2007. The Secretary-General's report²⁶ noted that the organizational phase of the work of the intergovernmental body was complete and the Authority had entered into a new, more substantive phase. In the next three years- 2005-2007- the Secretariat's work programme would continue to be focused on, among others, the Authority's supervisory functions with respect to existing exploration contracts, the preparation of an appropriate regulatory regime for future development of the mineral resources of the international seabed Area and the promotion and management of marine scientific research.

62. The report says that the main difficulty of the Authority's Assembly was securing broad participation in its work. Since 1998, there had been great difficulty in gathering the required quorum²⁷ of member States for meetings of the Assembly at Kingston. The low attendance also affected the membership in the Finance Committee and the Legal and Technical Commission.

²⁵ These draft regulations are product of hard bargaining by members of the Legal and Technical Commission since 2001. It sets out the legal rules that contractors and the Authority must follow in prospecting or exploring for those metals in the international seabed Area.

²⁶ Document ISBA/10/A/3.

²⁷ For instance, of the Authority's 145 members, at that time, only 79 were in attendance at the tenth session.

63. In the discussion on the Secretary-General's report many States expressed concern at the difficulty in securing the required quorum of member States of the Assembly. They called for finding a lasting solution to the problem of unattainable quorum at Assembly sessions.

64. Amongst the decisions taken by the Assembly, the most prominent was that it elected Ambassador Satya Nandan as Secretary-General of the Authority for a third consecutive four-year term. In a vote of 48 to 29, Amb. Nandan won over Amb. Charles Manyang D'Awol.

65. The Assembly, on the recommendation of the Council, approved the Budget of the Authority. It also agreed to give due consideration to the draft resolution introduced by Japan, proposing modalities, terms and conditions for using the Voluntary Trust Fund, originally established to facilitate the participation of developing countries in the Legal and Technical Commission and the Finance Committee.

66. The Assembly elected 20 members to the Council for a 4-year term from 2005 through 2008. The election, based on lists drawn up by the various groups represented on the Council, was uncontested. The Council membership is drawn from five groups of States members of the Authority. Four of these have special interest in aspects of seabed mining and the fifth is a group chosen to ensure equitable geographical balance in the Council as a whole.²⁸

D. Fourteenth Meeting of States Parties to the United Nations Convention on the Law of the Sea (14-18 June 2004, UN Headquarters, New York)

67. The fourteenth Meeting of States Parties (MOP) was held in New York from 14 to 18 June 2004.²⁹ Ambassador Allieu Kanu of Sierra Leone was elected as the President of the Meeting. The meeting considered a number of financial and administrative issues relating to ITLOS. The President of ITLOS, the Secretary-General of ISA and the Chairman of the CLCS delivered statements on the recent developments in their

²⁸ Group A (4 States from among the largest consumers or net importers of minerals to be derived from seabed mining): **Japan** and **China** would join the Russian Federation and Italy. According to an understanding reached at the last Council election in 2000, Italy would relinquish its seat to the USA if that country joins the Authority. Group B (4 States from those with the largest investment in seabed mining): **India** and the United Kingdom would join France and Germany. Group C (4 states that are major land-based net exporters of minerals also found on the deep seabed): Canada, **South Africa** and Portugal would join **Indonesia**. Canada replaces Australia under an understanding reached between the two countries in 10995. Group D (6 developing States representing special interests, including those with large populations, the land-locked or geographically disadvantaged, islands, major mineral importers or potential producers, and the least developed): Brazil, **Malaysia** and **Sudan** join Jamaica, **Egypt** and Fiji. Group E (18 States for geographical balance as well as a balance between developed and developing States): Argentina, the Czech Republic, **Gabon**, Guyana, **Kenya**, Namibia, the Netherlands, Poland, **Senegal**, Spain and Trinidad and Tobago would join Cameroon, Chile, Cote d' Ivoire, Honduras, **Myanmar**, **Nigeria**, **Republic of Korea** and **Saudi Arabia**. The names of AALCO Member States are indicated in bold.

²⁹ Details of the Meeting mentioned herein are drawn from Oceans and law of the sea: Advanced and unedited reporting material to be issued as addendum to the Report of the Secretary-General, UN Doc. A/59/62 Add. 1. Also see *UN Press Releases* SEA 1809 to 1814.

respective Organizations. Discussions pertaining to Article 319 of the Convention dominated the proceedings.

68. ***Administrative and Financial Matters:*** The Meeting considered the first biennial budget of the Tribunal prepared in euros. It approved the Tribunal's budget for 2005-2006, which came to a total of 15, 506, 500 euros, including some 2, 093, 200 euros for case-related costs.

69. ***Matters related to article 319 of UNCLOS:*** During the discussion of this item, a number of delegations reiterated the views they had expressed at earlier meetings in favour of or against the inclusion of substantive matters on the agenda of future MOP. Those delegations in favour of the inclusion of the item on agenda and of a broader role for the MOP Parties argued that the MOP represented the logical forum for discussions of all issues pertaining to the implementation of UNCLOS. They felt that this was consistent with the Convention and would increase the effectiveness and usefulness of MOP. On the other hand, some delegations were of the opinion that there were other fora dealing with matters related to oceans and the law of the sea, given the breadth of concerns relating to governance of the world's oceans. Particular reference was made to the General Assembly debate, the ICP and to other United Nations agencies involved in the implementation of UNCLOS, such as IMO, FAO and ISA. Article 319, therefore, should be interpreted as giving the Meeting of States Parties only an administrative and budgetary role. Periodic reviews of the Convention were not envisaged in that article.

70. Some delegations occupying a middle ground position agreed that the Meeting of States Parties constituted the logical forum for discussions of matters pertaining to the implementation of UNCLOS, but clarified that such discussions should not be tantamount to a periodic review of the Convention or to the amendment procedures set out in its articles 312, 313 and 314.

71. The reporting function of the Secretary-General to the Meeting of States Parties was also discussed. It was suggested that the Secretary-General should resume his reporting function in accordance with article 319 paragraph 2(a). Some delegations believed that article 319 reports should be separate from the annual report of the Secretary-General to the General Assembly. Others believed that the annual report of the Secretary-General fulfills the requirement of article 319 paragraph 2(a) and that the provision of that article refers to all States Parties and not to the Meeting of States Parties.

72. In order to reach consensus on this agenda item, the President of the Meeting put forward the following compromise proposal, which was approved by the Meeting: "The annual report of the Secretary-General on oceans and the law of the sea presented before the General Assembly should make reference to the fact that it is also presented to States Parties pursuant to article 319 of the Convention." The compromise proposal, in addition, contained a new item entitled "Report of the Secretary-General under article 319 for the information of States Parties on issues of a general nature relevant to States Parties that have arisen with respect to the United Nations Convention on the Law of the Sea" to be included in the agenda of the Fifteenth Meeting.

73 The fifteenth Meeting of States Parties would be held from 13 to 17 June 2005, preceded by one week of meeting of the Informal Consultative Process. Among other things, the next Meeting would elect seven judges of the Tribunal due to term expiration.

E. Third Informal Consultations of the States Parties to 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 (8-9 July 2004, New York)

74. The third Informal Consultations of the States Parties to the Fish Stocks Agreement was held in New York from 8-9 July 2004. The major area of the focus of the meeting were: new developments in the implementation of the Agreement by the States Parties, including strengthening of flag States duties; implementation at the regional level, including the establishment of new regional fisheries organizations and arrangements; implementation by regional fisheries management organizations and arrangements; update on initiatives by States at the global level, for example through the FAO of the UN; review of the implementation of the provisions of Part VII of the Agreement, including contribution by States, international financial institutions and donor organizations to the Assistance Fund established by the General Assembly pursuant to resolution 58/14; and preparatory work for the review conference, pursuant to article 36 of the Agreement.

75. Resolution 59/25 on Sustainable Fisheries adopted by the General Assembly requested the Secretary-General, pursuant to article 36 of the Agreement, in the first part of 2006, a one-week review conference, with a view to assessing the effectiveness of the Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks, and to convene a fourth round of informal consultations of States parties to the Agreement, “to consider, principally, but not limited to, issues related to the preparation of the review conference”.

F. Dispute Settlement under UNCLOS

76. States Parties to UNCLOS involved in a dispute when they have not reached a settlement by peaceful means in accordance with the UN Charter are obliged to resort to the compulsory dispute settlement procedures entailing binding decisions, subject to limitations and exceptions provided. UNCLOS provides for four alternative fora for the settlement of disputes: ITLOS, ICJ, an arbitral tribunal constituted in accordance with Annex VII to UNCLOS or a special arbitral tribunal constituted in accordance with annex VIII to UNCLOS. States Parties may choose one or more of those fora by written declaration made under article 287 of UNCLOS and deposited with the Secretary-General of the United Nations.

77. The International Tribunal for the Law of the Sea (ITLOS) was established by the Convention to adjudicate disputes arising out of the interpretation and application of the Convention.³⁰ It has exclusive jurisdiction in disputes concerning deep seabed mineral

³⁰ For details see www.itlos.org.

resources and provides advisory opinions when requested to do so. The jurisdiction of the Tribunal is mandatory in cases relating to the prompt release of vessels and crews or with regard to requests for the prescription of provisional measures, pending the constitution of an arbitral tribunal. It is composed of 21 judges elected for nine-year terms.

78. During the period under review there were developments in the following two cases:

i. Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South -Eastern Pacific Ocean (Chile /European Community): Proceedings were instituted on 19 December 2000 by Chile and the European Community which requested the Tribunal to constitute a special chamber of five judges to deal with the case. In 2001, the parties requested the President of the Special Chamber formed to deal with the case to suspend the proceedings as they had reached a provisional arrangement. At the end of 2003, the parties requested the President that the proceedings before the Special Chamber continue to be suspended for a further period of two years and maintained their right to revive the proceedings at any time. By Order dated 16 December 2003, the President of the Special Chamber further extended the time- limit for making preliminary objections until 1 January 2006. The case remains on the docket of the Tribunal.

ii. The “Juno Trader” Case (Saint Vincent and the Grenadines v. Guinea Bissau Prompt Release): The ITLOS delivered its judgment on 18 December 2004 in The “*Juno Trader Case*”, ordering the prompt release of the reefer vessel Juno Trader upon the posting of a bond of EUR. 300, 000.³¹ The case was submitted to the Tribunal under article 292 of the UNCLOS on 18 November 2004 on behalf of the flag state of the vessel, Saint Vincent and the Grenadines, against Guinea Bissau. The dispute concerns the detention of the vessel Juno Trader and its crew by the authorities of Guinea-Bissau for the alleged infringement of national fisheries legislation in its exclusive economic zone.

³¹ ITLOS/Press/85 dated 18 December 2004.

V. Consideration of the Oceans and the Law of the Sea issues at the Forty-Third Session of AALCO (21-25 June 2004, Bali, Republic of Indonesia)

79. A delegation expressed its concern over the increasing acts and incidents of armed robbery committed against ships and in particular, those perpetrated in the Straits of Malacca. He stressed that the crimes at sea affect the safety and security of maritime navigation and that there was a need for individual countries to police their own waters to prevent and prosecute crimes at sea. He stated that the obligation of States laid down under Article 192 of the UNCLOS to protect and preserve the marine environment remained a key challenge.

80. Another delegation stated that UNCLOS had always been of importance to the international community as it had established true universality in the effort to achieve a “just and equitable international economic order” governing ocean space. As a landmark for progressive development of international law, the UNCLOS 1982 had established a comprehensive framework concerning the use of oceans and covers all marine areas, including the airspace above and the seabed and subsoil below. Various rules have been introduced in order to ensure the optimum use of portion of maritime areas by the coastal states under different maritime zones, such as that of territorial sea, contiguous zone, exclusive economic zone and continental shelf. Management for the exploration and exploitation of the seabed and subsoil beyond any national jurisdiction has been vested in an International Seabed Authority (ISA) as it was considered as “common heritage of mankind”. The delegate stated that 16 November 2004 would mark the tenth anniversary of the entry into force of the UNCLOS. The State Parties to the UNCLOS 1982 have now reached 145 states and this was clearly an indication that universal acceptance of the Convention as both codification of laws as well as progressive development of international law regulating all aspects of the use of resources of the sea. It was worth mentioning that more than half of states that ratified the Convention (78 countries) were countries from the Asian and African region. The Asian-African countries’ stance toward the adoption of several legal regimes for the utilization of the maritime area was crystal clear that the legal structure of the UNCLOS should accommodate the specific need of developing countries and other states that have particular characteristic, such as archipelagic states, land-locked and geographically disadvantage countries.

81. A delegation said that a decade of coming into force of the Convention provided a good momentum for the international community especially the people of Asia and Africa to retrospect on: (a) the developments since November 1994; (b) the review of whether the legal regimes has so far benefited developing countries; and (c) the new challenges in the governance of ocean affairs varying from technological advances that facilitate deeper exploration into the ocean to the issue of maritime security, particularly smuggling related to terrorism or other transnational crimes.

82. Another delegation also touched upon Article 312 of the Convention that provided that any state party to the Convention may, through written communication addressed to the Secretary-General of the United Nations, request the convening of a conference with a view to consider amendments to the Convention and suggested that the Member States may reflect on this issue of amendment as provided for by Articles 312,

313 and 314 of the Convention. Whether the last ten years of developments merit amendments to the Convention and whether new challenges and developments could be addressed through other means such as creating complementary legal instruments are matters that could be deliberated by AALCO.

83. Another delegation reaffirmed the importance of the UNCLOS and the ISA in the development of law relating to the use of the sea and stated that it was pleased to note that the UNCLOS was closer to attaining universality. He hoped that UNCLOS, presently with 145 States Parties would have as many States Parties as possible to promote the peaceful and sustainable use of the ocean. Cooperative development of oceans governance was instrumental in dealing with various issues rising from using the oceans, such as the preservation of living resources and the prevention of marine pollution. The international community should work together to harmonize the efforts and projects of each state and region to effectively respond to the oceans problems.

84. Another delegation drew attention to the significant rise in problems concerning illegal use of marine transport, serious effects of pollution on the marine environment, piracy problems, armed robbery at sea and illegal fishing activities was increasingly evident. The importance of protecting and preserving the world oceans and seas was apparent and the urgent protection of the marine environment was essential. The delegation said that it was crucial to build the capacity of developing countries to fulfill their obligations under the UNCLOS. However, the delegation mentioned that developing States encountered multiple problems such as financial constraints, lack of capacity, lack of technical expertise and equipment. In this regard, it welcomed the decision of the Fifty-eighth session of the UN General Assembly to establish Trust Fund for facilitating the preparation of submission to the CLCS for delimitation of continental shelf.

VI. AALCO SECRETARIAT COMMENTS AND OBSERVATIONS

85. A decade after the entry into force of the UNCLOS, the international community can take pride in the fact that the three institutions established under the Convention, namely the ISA, ITLOS and CLCS were functioning well: the ITLOS had adjudicated disputes, the ISA was considering submissions for exploitation of mineral resources in the international seabed area and the CLCS was considering submission on establishing the outer limits of continental shelf beyond 200 nautical miles.

86. In the implementation of the Convention over the last ten years, it has increasingly become evident that the adoption of the Convention was but the first step toward identifying and resolving ocean-related issues. New problems, such as over-exploitation of fisheries and destructive fishing practices, degradation in the marine environment and increase in ship-related accident and crimes have arisen. This is the time to reflect upon the achievements of the Convention, as well as also to explore the areas in which the Convention could be strengthened through amendments. In this regard, reference may be made to Article 312 of the Convention which stipulates that a State Party, after the expiry of a period of 10 years from the date of entry into force of the Convention, by written communication addressed to the Secretary-General of the United Nations, propose specific amendments to this Convention, other than those relating to activities in the Area, and request the convening of a conference to consider such proposed amendments.

87. The protection and preservation of the fragile marine environment remains a key challenge. Added to this is the challenge of using the vast resources of oceans for the benefit of humankind. The deliberations therefore on “New sustainable uses of the oceans, including the conservation and management of the biological diversity of the seabed in areas beyond national jurisdiction” by the Consultative Process is timely. The mandate for the establishment of the Working Group to study issues of marine biological diversity beyond areas of national jurisdiction is a welcome step taken by the General Assembly at its 59th Session.

88. The formation of the long-awaited mechanism for an effective, transparent and regular inter-agency coordination mechanism on oceans and coastal system within the United Nations system pursuant to General Assembly resolution 57/141, by establishing UN-Oceans which is composed of the relevant programmes, bodies and specialized agencies of the UN system, secretariats of financial institutions, such as the World Bank, secretariat of the relevant United Nations global environmental conventions, such as the CBD and the UNFCCC, as well as ISA, as is a welcome step.

89. The consolidation of all existing procedural rules into one single basic instrument-Rules of Procedure of the Commission on the Limits of the Continental Shelf-would make them easier to understand and would facilitate their application and interpretation by coastal States wishing to make a submission. The extension of deadline by the Commission is another welcome step. The AALCO Member States scheduled to make

their submissions before the Commission include Nigeria before August 2005, Sri Lanka in 2007, Pakistan in 2007/8 and Myanmar before the 2009 deadline.

90. The progress of the work in the ISA on the development of regulations for prospecting and exploration for polymetallic sulphides and cobalt crusts is a noteworthy development. The Council of the Authority is studying the draft regulations, prepared by its Legal and Technical Commission. These new regulations would be later supplemented by the Authority with environmental guidelines.

91. The delicate compromise arrived at regarding the interpretation of Article 319 in the fourteenth Meeting of Parties of the UNCLOS ensures that the decision-making at the MOP is not hampered.

92. Piracy and armed robbery at sea poses a significant challenge to the safety of navigation. In this direction, the adoption of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia on 11 November 2004 in Tokyo, Japan is a noteworthy development. The Agreement is open for signature by sixteen countries, out of which thirteen are AALCO Member States.³² It would enter into force 90 days after the date on which the depositary, i.e. the Government of Singapore, receives the tenth instrument of notification, indicating the completion of domestic requirement. The Agreement seeks to establish an Information Sharing Centre, to promote close cooperation among the Contracting Parties in preventing and suppressing piracy and armed robbery against ships. The Centre would be located in Singapore.

³² The Agreement is open for signature by the following countries: **the People's Republic of Bangladesh, Brunei Darussalam, the Kingdom of Cambodia, the People's Republic of China, the Republic of India, the Republic of Indonesia, Japan, the Republic of Korea, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Democratic Socialist Republic of Sri Lanka, the Kingdom of Thailand,** and the Socialist Republic of Vietnam. Thirteen out of the above-mentioned sixteen States are AALCO Member States.

VII. A. 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 16 November 2004, available on the website: <http://www.un.org/Depts/los/index.htm#oceans>.
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-seven 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-nine 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: Bangladesh, Brunei Darussalam 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 eight 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.

VII. B. REGIONAL AGREEMENT ON COMBATING PIRACY AND ARMED ROBBERY AGAINST SHIPS IN ASIA: AN INTRODUCTORY NOTE

The steady rise³³ in the incidence of piracy and armed robbery against ships, worldwide has posed a serious threat to the safety of maritime transport. Most of the international trade, particularly the transport of oil and other energy supplies takes place via sea routes and recurrence of such incidents adversely affects the region's stability, economic development and prosperity. Furthermore, another worrisome factor being the fact that in these incidents the "ship itself becomes an object of attack and its crew the victim."³⁴

In recent times, the Asian region has also witnessed high incidence of acts of piracy and armed robbery against ships. UN Report states in the year 2003 the most affected region in Asia was the Far East, in particular, the South China Sea and the Malacca Strait.³⁵ There were reportedly 28 such incidents in the Malacca Straits.³⁶ Indonesia reported the highest number of attacks in 2003, followed by Bangladesh.³⁷ Piracy, it is noted occurs most frequently in Southeast Asia and Southwest Asia. The reason for such frequent occurrence of acts of piracy in Southeast Asia include topographical conditions (for example, ships are forced to navigate slowly in such places as the Strait of Malacca), the difficulty of enforcing controls in sea areas where several countries' territorial waters are adjoined, and the evasion of attack reporting.³⁸

Another crucial fact pertaining to such incidents is that most of the attacks worldwide were reported to have taken place in territorial waters while the ships were at anchor or berthed.³⁹

On 11 November 2004, in order to combat the threat of armed robbery and piracy against ships in Asia, representatives of 16 Asian nations, namely the People's Republic of Bangladesh, Brunei Darussalam, the Kingdom of Cambodia, the People's Republic of

³³ The Maritime Safety Committee of the International Maritime Organization (IMO) issues on a monthly basis *Reports on Acts of Piracy and Armed Robbery Against Ships*. The figure cited for incidents reported to the IMO until 30 September 2004 was 3, 674, while in 2003 the number of reported incidents were 3041. For details see IMO MSC.4/Circ. 60 dated 19 November 2004, available on URL: http://www.imo.org/Circulars/mainframe.asp?topic_id=334&offset=14.

³⁴ *Oceans and the law of the sea: Report of the Secretary-General*, (submitted for the consideration of the Fifty-eighth Session of the United Nations General Assembly) UN Doc. A/58/65/Add. 1, p. 16.

³⁵ *Oceans and the law of the sea: Report of the Secretary-General*, (submitted for the consideration of the Fifty-ninth Session of the United Nations General Assembly) UN Doc. A/59/62, p. 41.

³⁶ Concern against armed robbery and piracy against ships was expressed by the delegates of Malaysia and Myanmar at the Forty-Third Session of the AALCO. The Malaysian delegate said that his country viewed with concern the acts and incidents of armed robbery committed against ships and in particular, those perpetrated in the Straits of Malacca. He stressed that crimes at sea affected the safety and security of maritime navigation and to combat it there was a need for individual countries to police their own waters to prevent and prosecute crimes at sea. *Report of the Forty- Third Session* (21-25 June 2004, Bali, Republic of Indonesia), AALCO/43/BALI/2004/REP, p. 65.

³⁷ Note 3.

³⁸ Details stated are drawn from The Ministry of Foreign Affairs of Japan, *Present State of the Piracy Problem and Japan's Efforts*, December 2001, available on URL: <http://www.mofa.go.jp/policy/piracy/problem0112.html>.

³⁹ Note 2.

China, the Republic of India, the Republic of Indonesia, Japan, the Republic of Korea, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Democratic Socialist Republic of Sri Lanka, the Kingdom of Thailand, and the Socialist Republic of Viet Nam adopted the *Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia*⁴⁰ (hereinafter the Agreement) at Tokyo.⁴¹

The initiative to elaborate the Agreement was taken up by the Government of Japan in close cooperation with above-mentioned States. Based on a proposal offered by the then Japanese Prime Minister Keizo Obuchi, at the November 1999, Japan-ASEAN (Association of Southeast Asian Nations)⁴² Summit, Japan held the Regional Conference on Combating Piracy and Armed Robbery against Ships in Tokyo in April 2000 in which 17 countries of the region participated.⁴³ In November 2001, the Japanese Prime Minister Junichiro Koizumi proposed to develop a regional cooperation agreement to resolve the intensifying piracy problem at the (ASEAN) +3 (Japan, China and Republic of Korea) Summit Meeting. Thereafter, the negotiating process to draw up the Regional Cooperation Agreement with ASEAN countries, People's Republic of China, the Republic of Korea, India, Sri Lanka and Bangladesh began. Japan hosted meeting in Tokyo in July and September 2002.⁴⁴ The text of the Agreement was finalized by November 2003⁴⁵ and finally the Adoption Conference took place in Tokyo on 11 November 2004.

The Agreement composed of twenty-two articles is divided into-Preamble, Introduction (Articles 1-3); Information Sharing Center (Articles 4-8); Cooperation through Information Sharing Center (Articles 9-11); Cooperation (Articles 12-16) and Final Provisions (Articles 17-22).

The Preamble expresses concern about the increasing number of incidents of piracy and armed robbery against ships in Asia and notes that the problem is of complex nature. It

⁴⁰ For the text of the Agreement see *Quarterly Bulletin of the Asian-African Legal Consultative Organization*, vol 1 (2005).

⁴¹ Details stated herein are drawn from the Press Conference dated 12 November 2004 of the Spokesperson of the Ministry of Foreign Affairs of Japan, available on URL: <http://www.mofa.jp/announce/press/2004/11/1112.html>.

⁴² The Member States of ASEAN are: Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam.

⁴³ In this Conference, the following three documents were adopted. In a statement entitled "Asia-Anti-Piracy Challenges 2000", the Coast Guard authorities expressed their intention to reinforce mutual cooperation in combating piracy and armed robbery against Ships. A statement entitled "Tokyo Appeal" calls for the establishment of contact points of information exchange among relevant authorities as well as for drafting of a national action plan for combating piracy and armed robbery against ships, including the establishment of self-defense capability of private ships. Finally, the Model Action Plan states specific countermeasures based on the Tokyo Appeal. For details see The Ministry of Foreign Affairs of Japan, *Diplomatic Bluebook 2001*, available on URL: <http://www.mofa.go.jp/policy/other/bluebook/2001/chap2-4-d.html>.

⁴⁴ Details stated herein are drawn from the *Diplomatic Bluebook 2003* of the Ministry of Foreign Affairs, Government of Japan, pp. 176-77, available on URL: <http://www.mofa.go.jp/policy/other/bluebook/2003/index.html>

⁴⁵ Note 3.

reaffirms the duty of States to cooperate in the prevention and suppression of piracy under the United Nations Convention on the Law of the Sea, 1982 (hereinafter the UNCLOS) and recognizes the importance of safety of ships, including their crew, exercising the right of navigation provided in UNCLOS.

It recalls the “Tokyo Appeal” of March 2000, “Asia-Anti-Piracy Challenges 2000” of April 2000 and “Tokyo Model Action Plan” of April 2000. It also takes note of the relevant resolutions adopted by the UN General Assembly⁴⁶ and the recommendations adopted by the International Maritime Organization (IMO).⁴⁷ The Preamble recognizes the importance of international cooperation, as well as the urgent need for greater regional cooperation and coordination of all States affected within Asia, to prevent and suppress piracy and armed robbery against ships effectively. In this direction information sharing and capacity building is seen to contribute significantly to prevent and suppress the problem.

Article 1 contains the definition clause and it defines “piracy” and “armed robbery against ships”. While the definition of piracy, with minor alterations is similar to that contained in Article 101 of the UNCLOS, “armed robbery against ships” for the purposes of the Agreement means any of the following acts: (a) any illegal act of violence or detention, or any act of depredation, committed for private ends and directed against a ship, or against persons or property on board such ship, in a place within a Contracting Party’s jurisdiction over such offences; (b) any act of voluntary participation in the operation of a ship with knowledge of facts making it a ship for armed robbery against ships; and (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Article 2 lays down the general provisions. It asks the Contracting Parties, to implement this Agreement, in accordance with their respective national laws and regulations and subject to their available resources or capabilities to the fullest extent possible. The Agreement specifies that it does not affect the rights and obligations of any Contracting Party under international agreements, including UNCLOS and the relevant rules of international law. It also does not affect the immunities of warships and other government ships for non-commercial purposes, nor does the Agreement or any activity carried out

⁴⁶ The UN General Assembly at its Fifty-eighth and Fifty ninth Sessions, *vide* resolutions A/RES/58/240 and A/RES/29/24 urged all States in cooperation with the IMO, 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.

⁴⁷ As regards Piracy and armed robbery against ships, the IMO has issued the following circulars: *Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships*, Revised MSC/Circ.622 and *Guidance to ship owners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships*, Revised MSC Circ. 623. The IMO Assembly in November 2001 has adopted the *Code of Practice for Investigation of the Crimes of Piracy and Armed Robbery Against Ships*, resolution A.922 (22) and *Measures to prevent the registration of phantom ships*, Resolution A.923 (22). All these documents are available on the IMO website: <http://www.imo.org>.

under the Agreement prejudices the position of any Contracting Party with regard to any dispute concerning territorial sovereignty or any issues related to the law of the sea. The Agreement does not entitle a Contracting Party to undertake in the territory of another Contracting Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Contracting Party by its national laws.

The “General Obligations” laid down in Article 3 call upon the Contracting Party to make every effort to take effective measures, in accordance with its national laws and regulations and applicable rules of international law to (a) prevent and suppress piracy and armed robbery against ships; (b) to seize ships or aircraft used for committing piracy or armed robbery against ships, to seize ships taken by and under the control of pirates or persons who have committed armed robbery against ships, and to seize the property on board such ships; and (d) to rescue victim ships and victims or armed robbery against ships. The Contracting Parties may also take additional measures in respect of (a) to (d) in its land territory.

The hallmark of the Agreement is the establishment of a network of cooperation and information sharing among maritime safety and coastguard institutions of the Contracting Parties. The Agreement seeks to establish an *Information Sharing Center* to administer the Agreement in the Republic of Singapore. The Center would be composed of the Governing Council and the Secretariat. The Governing Council would consist of one representative from each Contracting Party and would meet at least once in a year and shall make policies concerning all the matters of the Center. It would also appoint the Executive Director, who as head of the Secretariat would be responsible for the administrative, operational, and financial matters of the Center.⁴⁸ The Center would be an international organization and shall enjoy such legal capacity, privileges and immunities in the Host State of the Center as are necessary for the fulfillment of its functions. In this regard the Center would enter into a Headquarters Agreement with the Host State.⁴⁹ The expenses of the Center are to be financed by (a) Host State financing and support; (b) Voluntary contribution from the Contracting Parties; (c) Voluntary contributions from international organizations and other entities, in accordance with relevant criteria adopted by the Governing Council; and (d) Any other voluntary contributions as may be agreed upon by the Governing Council.⁵⁰

Article 7 lays down the functions of the Center, with the thrust being on the management and maintenance of expeditious flow of information relating to incidents of piracy and armed robbery against ships among the Contracting Parties. The Center is required to collect, collate and analyze the information transmitted by the Contracting Parties, concerning piracy and armed robbery against ships. Such information would also contain information relating to individuals and transnational organized criminal groups committing such acts. The Center is also required to provide an appropriate alert,

⁴⁸ Article 4.

⁴⁹ Article 5.

⁵⁰ Article 6.

whenever possible to the Contracting Parties, if there is a reasonable ground to believe that a threat of incidents of piracy or armed robbery against ships is imminent.

Part III of the Agreement provides for Cooperation through the Information Sharing Center. For the purpose of information sharing under Article 9 each Contracting Party is required to designate a *focal point* responsible for communication with the Center. The Contracting Party would inter alia make every effort to require its ships, ships owners, or ship operators to promptly notify relevant authorities including focal points, and the Center of such incidents. The Contracting Party is required to promptly notify information, which it has received or obtained about an imminent threat of, or an incident of, piracy or armed robbery against ships through its focal point to the Center.

A Contracting Party through the Center or directly, may request any other Contracting Party to cooperate in detecting any of the following persons, ships or aircraft: (a) pirates; (b) persons who have committed armed robbery against ships; (c) ships or aircraft used for committing piracy or armed robbery against ships, and ships taken by and under the control of pirates or persons who have committed armed robbery against ships; or (d) victim ships and victims of piracy or armed robbery against ships. A Contracting Party can also request the other Contracting Party through the Center or directly, to take appropriate measures, including arrest or seizure, against any of the persons or ships, within the limits permitted by its national laws and regulations and applicable rules of international law. It may also request for the taking of effective measures to rescue the victim ships and the victims of piracy or armed robbery against ships. The requested Contracting Party is required to make every effort to take effective and practical measures to implement the request and can seek additional information from the requesting Contracting Party for the implementation of such request.⁵¹

As far as matters concerning cooperation involving extradition or mutual legal assistance in criminal matters is concerned the Contracting Parties are required to cooperate directly. However, the Contracting Parties subject to their national laws and regulations would endeavor to extradite pirates or persons who have committed armed robbery against ships, and who are present in its territory to the other Contracting Party which has jurisdiction over them at their request.⁵² The Contracting Parties have also agreed to render mutual legal assistance in criminal matters, including the submission of evidence related to piracy and armed robbery against ships, to each other.⁵³

The Contracting Parties have also agreed for Capacity Building, which may include technical assistance, such as educational and training programmes to share experiences and best practices.⁵⁴ They may also undertake joint exercises or explore other forms of cooperation.⁵⁵ The Agreement also asks the Contracting Parties to encourage ships, ships owners or ship operators, where appropriate, to take protective measures against piracy

⁵¹ Articles 10 & 11.

⁵² Article 12.

⁵³ Article 13.

⁵⁴ Article 14.

⁵⁵ Article 15.

and armed robbery against ships, taking into account the relevant international standards and practices, in particular the recommendations adopted by the IMO.⁵⁶

Part V of the Agreement contains Final Provisions. For the settlement of disputes arising out of the interpretation or application of this Agreement, it asks the concerned Contracting Parties to settle it amicably through negotiations in accordance with applicable rules of international law.⁵⁷ Thus, the Agreement accepts negotiation only as an amicable means of settlement of disputes.

The Agreement is open for signature for the above-mentioned sixteen States, which adopted the Agreement. It would enter into force 90 days after the date on which the tenth instrument of ratification, indicating the completion of domestic requirement is submitted to the depository, i.e., the Government of Singapore. For other States, it would enter into force 30 days after its deposit of an instrument of notification to the depository. The Agreement provides for avenue for other countries to accede to it by notifying the depository. The depository in turn is required to circulate the receipt of such notification to all the Contracting Parties. In case no written objections are received by the Depository from the Contracting Parties within a period of 90 days, then that State may deposit an instrument of accession with the depository and become a Party to the Agreement 60 days after such deposit of instrument of accession.⁵⁸

Any Contracting Party can propose an amendment to the Agreement after its entry into force. However, the amendment would enter into force 90 days after the acceptance by the Contracting Parties.⁵⁹ The Contracting Parties have the right to withdraw from the Agreement subject to the procedural requirements specified in Article 20.

One may hope that this Agreement would strengthen the anti-piracy activities in Asia, especially in the Malaccan and Singapore Straits and would become a leading model of regional cooperation in Asia. The concerned States would take necessary steps to complete their domestic requirements so that the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia becomes operational and the Information Sharing Center envisaged to be established under it takes shape.

⁵⁶ Article 16.

⁵⁷ Article 17.

⁵⁸ Article 18.

⁵⁹ Article 19.