SUMMARY RECORD OF THE THIRD GENERAL MEETING HELD ON TUESDAY, 1ST JULY 2008 AT 4: 50 PM

His Excellency Mr. Narinder Singh, the President of the Forty-Seventh Session in the Chair.

A. The Law of the Sea

1. **Dr. Xu Jie, Deputy Secretary-General of AALCO** introduced the Secretariat Report on the agenda item "The Law of the Sea" contained in the Secretariat Document AALCO/47th/ HEADQUARTERS (NEW DELHI) SESSION/2008/S 2. He recalled that the Government of the Republic of Indonesia in 1970 had introduced the item and ever since then it had been regularly considered at successive Annual Sessions of AALCO. The Organization had contributed very usefully during the long-drawn negotiation process of the United Nations Convention on the Law of the Sea (UNCLOS) and after its adoption in 1982 worked towards encouraging its Member States to become State Parties to the UNCLOS, widely recognized as the "Constitution of the Sea".

2. He informed that the present Secretariat Report provided an overview of the Nineteenth and Twentieth Sessions of the Commission on the Limits of Continental Shelf, held from 5th March to 13th April 2007 and from 27th August to 14th September 2007; Seventeenth and Special Meeting of the States Parties to the UN Convention on the Law of the Sea, held from 14th to 22nd June 2007 and on 30th January 2008; Eighth Meeting of the United Nations Open-ended Informal Consultative Process on Oceans (UNICPOLOS) and the Law of the Sea, held from 25th to 29th June 2007, respectively at the UN Headquarters in New York.

3. The Commission proceeded with its work of considering the claims filed by Coastal States concerning the outer limits of their continental shelves in areas where these limits extended beyond 200 nautical miles. The Meeting of States Parties considered statements on the progress of work in the institutions established by the Convention on the Law of the Sea, as well as took up administrative and budgetary questions. The question concerning future arrangements regarding the allocation of seats on the Commission on the Limits of Continental Shelf and the equitable distribution of members of the International Tribunal for the Law of the Sea, dominated the meeting. The proposal introduced by ASEAN (Association of South-East Asian Nations) was based upon the substantial growth in the number of, in particular, African and Asian parties to the UNCLOS.

4. Dr. Xu mentioned that the Special Meeting of States Parties elected Mr. Zhiguo Gao of the People's Republic of China as a Judge of the ITLOS and on behalf of the AALCO, he took the opportunity to convey congratulations to His Excellency Mr. Zhiguo Gao on his election to that august office. He further mentioned that the recently held eighteenth Meeting of States Parties, held from 13th to 20th June 2008 *inter alia* elected seven members of the International Tribunal for the Law of the Sea for a term of nine years commencing on 1 October 2008. Among those seven members, five were re-elected, with two of them being from AALCO Member States, namely His Excellencies P. C. Rao from India and Joseph Akl from Lebanon. The meeting was fortunate to have amongst it Judge Rao, and on behalf of the AALCO, he congratulated him on his election. He also took the opportunity to congratulate on behalf of AALCO, His Excellency Mr. Nii Allotey Odunton of Ghana, a member State of AALCO, on being elected as Secretary-General of the International Seabed Authority.

5. Dr. Xu informed that in addition, the AALCO Report presented an overview of

the work of the thirteenth session of the International Seabed Authority that took place at the seat of the Authority in Kingston, Jamaica, from 9th to 20th July 2007; dispute settlement by the ITLOS, since the Forty-Sixth Session of AALCO; and consideration of the law of the sea issues by the Sixty-second Session of the United Nations General Assembly.

6. Finally, he said that on the basis of developments in the afore-mentioned meetings, amongst others, the Secretariat has identified the following three issues for focused deliberations: *First,* question of equitable geographical distribution of seats in the Commission on the Limits of Continental Shelf and the International Tribunal for the Law of the Sea; *Second,* relevant legal regime for "marine genetic resources" in areas beyond national jurisdiction; and *Third,* right of transit passage through Straits used for international navigation. He said that the Secretariat would be grateful, if Member States, amongst other things could reflect their opinion on these points during the course of deliberations on this topic.

7. **Judge P. C. Rao, the Observer from the International Tribunal for the Law of the Sea** made a statement on the work of the Tribunal. He said that he was thankful to AALCO for inviting him to represent his court, the International Tribunal for the Law of the Sea (ITLOS) at the present Session of AALCO. He had taken part in the Abuja Session, held in July 2002, and at that time he was the then President of the Tribunal. Since 2002, his colleagues in the Tribunal have had opportunities to explain at AALCO's Annual Session the activities undertaken in ITLOS.

8. At the outset, he referred to the eighteenth Meeting of States Parties to the UNCLOS, held in New York, from 13 to 20 June 2008. As the term of office of seven judges was to end on 30 September 2008, election for these vacant seats were held by the Meeting of States Parties on 13 June 2008. Judges Rudiger Wolfrum from Germany, Vincent Morotta Rangel from Brazil, Chandrasekhara Rao from India, Joseph Akl from Lebanon and Jose Louis Jesus from Cape Verde had been re-elected. The other judges who had been elected to the Tribunal for the first time were: Vladimer Golitsyn from Russian Federation and Boulem Bouguetala of Algeria. All the sitting judges who sought re-election had been re-elected. This showed the confidence they enjoyed among States Parties for the good work they did in the Tribunal. Speaking, for himself, he wished to express his gratitude to the Asian and African States for extending full support for his re-election.

9. Judge Rao observed that ITLOS was a court in whose composition the principle of equitable geographic distribution was given due recognition. A majority of the Tribunal's judges came from developing countries. The first three Presidents of the Tribunal – Judges Mensah from Ghana, Chandrasekhara Rao from India and Dolliver Nelson from Grenada – were from the developing countries. It was significant that nobody accused the Tribunal of showing developing-country bias in its judgments. In an article written, in 2006, in Singapore Year Book of International Law, Ambassador Tommy Koh, former President of Third UN Conference on the Law of Sea, stated: "(T) here is no basis for the fear that ITLOS would be more easily swayed by pro-developing country or pro-environment arguments than, say, the ICJ. ITLOS has demonstrated competence and integrity which inspires confidence." It was well-known that the Tribunal's judgments had all been accepted and implemented by the parties without any reservations. This showed the total commitment of the Tribunal to impartial administration of justice within the framework of the Convention.

10. It was also widely noted that the Tribunal's Judgments and orders provided practical solutions to the underlying concerns in cases brought before the Tribunal. The provisional measures prescribed by it often helped the parties in resolving the main differences between them. Referring to the measures prescribed by the Tribunal in the Land Reclamation Case, between Singapore and Malaysia Tommy Koh commented: "This was a brilliant move by the court because it compelled the two parties to return to the cooperative mode and to resolve their differences on the basis of an objective study by independent experts."

11. Dr. Rao noted that there was no hiding the fact that ever since its inception in 1996, the Tribunal had dealt with only 15 cases. It was obvious that the Tribunal had not been put to full use. The Tribunal was a standing Court and consisted of 21 judges. It was to be hoped that States would not want the resources of the Tribunal to be under-utilized. The General Assembly of the United Nations had, time and again, noted with satisfaction the continued and significant contribution of the Tribunal in the settlement of disputes by peaceful means. For more than one decade, the Tribunal had demonstrated its competence and impartiality to deal with cases referred to it.

12. The General Assembly had urged the State Parties to the Convention to make declarations under article 297 of the Convention with regard to their choice of procedure for the settlement of disputes. So far, of 155 States Parties, only 39 States had exercised their right, and, of those 39, only 23 have chosen the Tribunal as their preferred means, or one of the means, for the settlement of their disputes. It was their hope that, the Asian and African States, would make article – 29, declarations choosing the Tribunal as their preferred means for the settlements of disputes and that they would approach the Tribunal for resolving their disputes.

13. He recalled that a voluntary trust fund had been established to assist State Parties in the settlement of disputes through the Tribunal. That fund was administered by the UN Division for Ocean Affairs and the Law of the Sea. It should be of special interest to developing countries.

14. With a view to making the Tribunal's jurisdiction and procedures better known in the Third World countries, the Tribunal had recently organized workshops in Dakar, Libreville, Kingston, Singapore, Bahrain and Buenos Aires. Those workshops were attended by government officials of the respective regions. The Tribunal hoped to organize more such workshops in the near future. With the support of the Nippon Foundation, the Tribunal had established a capacity-building and training programme on dispute settlement under the Convention. So far, officials from Bangladesh, Cameroon, Mauritania, Nigeria and Peru had taken part in that programme. That programme would be continued in 2008-2009. Then there was the Summer Academy organized by the International Foundation for the Law of the Sea in 2007. Till now, 179 interns from 63 States had gained first-hand experience of the way in which the Tribunal functioned.

15. Turning to the judicial work of the Tribunal, in 2007, the Tribunal, for the first time, dealt with the simultaneous submission of two applications for prompt release of vessels and crews under article 292 of the Convention. Those applications were filed on 6 July 2007. On 6 August 2007, the Tribunal delivered its judgments. Thus, the Tribunal delivered its Judgments in both the cases within one month after receiving the applications. The judges and the Registry worked even on weekends to make that possible. The Judgments were adopted unanimously. What was more significant was that the parties – Japan and Russia –

implemented those Judgments without delay. This underlined the high importance given by the Tribunal to the expeditious and efficient management of cases. The Tribunal had set up new standards in this regard.

16. If the parties so desired, cases might also be dealt with in special chambers. Following an agreement between Chile and the European Community, the Tribunal formed, in 2000, a special Chamber to deal with a dispute between Chile and the European Community concerning the conservation and sustainable exploitation of swordfish stocks. States were encouraged to look at that option in place of ad hoc arbitral tribunals. Very recently, in 2007, the Tribunal established a Chamber for Maritime Delimitation Disputes and that was welcomed by the UN General Assembly.

17. The Tribunal had two types of jurisdiction: contentious and advisory. Not much attention was paid to the Tribunal's advisory jurisdiction. It was well-known that the Assembly or Council of the International Seabed Authority may seek advisory opinions of the Seabed Disputes Chamber. He wished to drew their attention to article 138 of the Rules of the Tribunal which provided that the Tribunal might give an advisory opinion on a legal question if an international agreement related to the purposes of the Convention specifically providing for the submission to the Tribunal of a request for such an opinion. That rule further provided that a request for an advisory opinion shall be transmitted to the Tribunal by whatever body it is authorized by or in accordance with the agreement to make the request to the Tribunal. Thus, international organizations, States and even non-states entities may seek opinions of the Tribunal, if an international agreement so provided. Opinions of the Tribunal could thus be sought in regard to a wide range of issues. He noticed that at the previous AALCO Session a number of delegations observed that the UN Convention on the Law of the Sea did not provide clear guidance with regard to the applicable principles for delimitation of maritime boundaries. States may invoke the Tribunal's contentious or advisory jurisdiction for the settlement of maritime boundary disputes or for the indication of applicable legal principles in regard to such disputes.

18. Finally, he drew attention to a guide issued by the Tribunal's Registry containing practical information explaining the manner in which cases were instituted and conducted before the Tribunal. The Guide was entitled: "A Guide to Proceedings before the Tribunal". It was available on the website of the Tribunal. He thanked the AALCO for giving an opportunity to the Tribunal to place before it an account of its activities. He also informed the meeting about a book on ITLOS, containing contributions by the Judges of the Tribunal edited by him, would soon be released. He hoped that this book would be of great help to the practitioners of international law.

19. The **Delegate of the Islamic Republic of Iran** stated that the Islamic Republic of Iran welcomed consideration of maritime security and safety issues during the 9th meeting of the Consultative Process convened in June 2008, in New York. His delegation attached great importance to the issue of maritime security and safety and the work that the Consultative Process did in promoting and improving maritime security and safety, both at the national and global levels. He noted that the panel presentations tried to address the need for a better understanding of, and urgency for, marine security and safety; activities related to marine safety and security; resources and the nature and scope of national and international cooperation. He emphasized that adequate attention should be paid to the issues the Group highlighted during the consultations, in particular, the inclusion of sustainable development and capacity

building in all aspects of marine security and safety.

20. The legal regime for the States Parties to the UNCLOS was applicable to areas within ones national jurisdiction, and this was clearly regulated by UNCLOS through the recognition of the primary responsibility of the coastal state in maritime zone under it's sovereignty and the responsibility of the flag state on the High Seas. Paragraph 43 of the Secretary-General's report; document A/63/63, affirmed that "the international legal regime for maritime security consisted of a number of international instruments, all operating within the framework of the Charter and UNCLOS." Additionally, paragraph 163 of the Secretary General's report stated that "a comprehensive body of global rules and regulations had been developed to provide for maritime safety within the overall legal framework provided in UNCLOS.

21. The Convention set out the rights and duties of States in respect of maritime safety, in particular the duties of flag States. However, with regard to threats to safety and security that were beyond the scope of UNCLOS and fell outside the mandate of the Informal Consultative Process, the Islamic Republic of Iran reiterated its position that the participation of its Member States in that meeting did not constitute a recognition of the conformity of such activities with norms of the international law as codified by UNCLOS.

22. The Delegate emphasized that the components of international issues concerning oceans and seas were closely interrelated. More than ever, coordination and cooperation among States remained a prerequisite for the application of existing norms in a coherent manner. His delegation was conscious that it was for all these reasons, that the General Assembly, aware of the complexity of the issues, had established the mandate for the Informal Consultative Process. It was important to highlight that sustainable development had three interrelated pillars, namely, environmental, social and economic. Thus, the norms emanating from sustainable development law, policy and discourse must not be lost in these consultations.

23. In the context of sustainable development, his delegation wished to underscore the obligations mandated by Article 118 of UNCLOS to cooperate in the maritime security and safety. Thus, for example, greater actions should be taken to enhance the effectiveness of the international legal framework; strengthening the implementation of maritime safety and security measures, capacity-building and cooperation and coordination. Additionally, concerns related to the potential impacts of measures to improve maritime safety and security should be given greater attention. However, they should remain focused on the issue at hand so that it was not taken out of context, specifically the principle of sovereign equality of States.

24. The **Delegate of India** welcomed the comprehensive report prepared by the Secretariat of AALCO dealing with current Law of the Sea issues in the UN. He said that India attached high importance to the effective functioning of the institutions established under the United Nations Convention on the Law of the Sea. Given the geography of India, with a coast line extending four thousand miles and with 1300 islands, it had a traditional and abiding interest in maritime and ocean affairs. The large population in its coastal areas and in the islands had always looked to the sea for sustenance. They would continue to extend their full cooperation and to participate actively and constructively in all activities pertaining to the Convention and related agreements.

25. The international community had continued to focus over the past year on issues relating to navigation, conservation and management of living marine resources,

and conservation and management of biological diversity of the sea-bed in areas beyond national jurisdiction. Discoveries of highly complex and diverse ecosystems in areas beyond national jurisdiction, coupled with advanced biotechnology sector, had led to increasing interest and activities in relation to genetic resources beyond national jurisdiction. As a corollary to these developments a general debate over the legal status of genetic resources located in the sea-bed in area beyond national jurisdiction was also getting increasingly intense. The need for devising new approaches within the confines of UNCLOS to promote international co-operation aimed at conservation and sustainable use of living resources of the high seas and benefit sharing of seabed resources located in the areas beyond national jurisdiction could not be over emphasized. Participation of developing countries in devising these new approaches greatly depended on the scientific information available to them. Promotion of flow of scientific data and information and transfer of knowledge resulting from marine scientific research, especially to developing states, was therefore needed.

26. In the area of navigation, they would like to express their serious concern over the escalation of piracy and robbery at sea. Recent incidents involving killing of crew members, hostage taking and hijacking of a ship chartered by the World Food Programme carrying food aid for Somali survivors of the Indian Ocean tsunami, reflected grave threats to maritime security. The international community must find ways and means to end that menace.

27. Their delegation had participated in the 9th Informal Consultative Process on Oceans and Law of the Sea, which dealt with the Maritime Security and safety. The consensual elements adopted as an outcome of the Consultative Process stood testimony to the developing countries effort to steer the discussion on the Law of the Sea towards addressing sustainable development related issues. The success of the efforts of the developing countries in establishing an Ad hoc Committee focusing on resources in the areas beyond national jurisdiction was another instance where developing countries contributed in setting a new agenda on the Law of the Sea.

28. It was a matter of serious concern that efforts to improve the conservation and management of the world's fisheries had been confronted by the increase in illegal, unregulated and unreported fishing activities (IUU fishing) on the high seas, in contravention of conservation and management measures adopted by regional fisheries organizations and arrangements, and in areas under national jurisdiction in violation of coastal States' sovereign rights to conserve and manage their marine living resources. Fishing over capacity was another negative factor which was responsible for creating a situation where the harvesting exceeded the amount of resource available to harvest. Any action that would help in reversing the trend of over-fishing in many areas would help in the reduction of IUU fishing and would guarantee the enforcement of the rights of developing coastal States. Another way of eliminating IUU fishing was to eliminate subsidies that contributed to illegal, unreported and unregulated fishing.

29. In the context of sustainable fisheries, the need for enabling developing countries to develop national, regional, and sub regional capacities for infrastructure and integrated management and the sustainable use of fisheries, cannot be over emphasized. A better understanding of the oceans through application of marine science and technology, and a more effective interface between scientific knowledge and decision making, were central to the sustainable use and management of the oceans. Marine scientific research could lead to a better understanding and utilization of almost every aspect of the ocean its resources,

including fisheries, marine pollution, and coastal zone management. Accordingly, it was vital that developing countries had access to and share in the benefits of scientific knowledge on the oceans. Developing countries also needed to be provided assistance for capacity building, as well as development of information and skills to manage the oceans for their economic development. They particularly supported, therefore, operative paragraph 16 of the draft resolution on sustainable fisheries which, *inter alia*, invited States and international financial institutions and organizations of the United Nations system to provide assistance to developing States, to enable them to develop their national capacity to exploit fishery resources.

30. The **Delegate of Japan** made its statement on the three issues identified by the Secretariat. First, on the question of equitable geographical distribution of seats in the Commission on the Limits of Continental Shelf and the International Tribunal for the Law of the Sea; it was of the view that the posts for elections in international organizations should be equitably distributed to each region. Japan considered the joint proposal made by the Asian-African (AA) group to be legitimate and supported that initiative. They noted that some of the AA group countries wanted to put the joint proposal to a vote during the Meeting of State Parties to the UN Convention on the Law of the Sea. Though they understood the motivation for that, they feared that such an action might drive a wedge between the developed and developing countries on questions concerning the law of the sea. This issue was of such importance that they believed voting should be avoided, and they should instead continue their efforts to achieve a consensus. They were glad to note that the Meeting of State Parties of the UNCLOS came up with a conclusion in that direction.

31. Second, on the relevant legal regime for marine genetic resources in areas beyond national jurisdiction, Japan believed that the international community should promote and enhance research activities on marine genetic resources because they might bring potential benefits for all human beings – such as new types of medication. Japan was of the view that marine genetic resources found on the high seas and in the deep seabed were not regulated under the provision of Part XI of the UNCLOS because they were not mineral resources; but should, however, be regulated under the Provision of High Seas (Part VII).

32. Third, on the right of transit passage through Straits used for international navigation Japan considered that state practices had not been sufficiently accumulated for them to have a definitive view. As a major maritime country, they advocated that free passage should be guaranteed to the best extent possible. Japan was concerned that some states bordering straits had adopted laws and regulations such as compulsory pilotage, which practically restrained the right of transit passage of other states. Particularly on the issue of the Torres Straits, Japan had raised concern over Australia's actions in IMO and UNGA. They were now considering how best to resolve that issue, and that did not exclude the possibility of requesting the ITLOS for an Advisory Opinion. Japan also had interests on the issue of the Arctic, especially the passages in the Arctic Ocean, but it was not the time to go into detail on that issue.

33. The **Delegate of Malaysia** thanked Dr. Xu Jie and Dr. P. C. Rao for their statements. The delegate addressed the meeting on the three issued identified by the Secretariat.

A. Question of equitable geographical distribution of seats in the CLCS and ITLOS

34. As contained in Articles 2 of Annex II and Annex VI of UNCLOS 1982, the

allocation of seats in the CLCS and ITLOS was guided by the principle of equitable geographical distribution. At present for both the CLCS and ITLOS, 5 seats were allocated to the African states, 5 seats to Asian States, 4 seats to Western Europe and other States, 4 seats to Latin America and Caribbean and 3 seats to Eastern Europe. This was a result of informal consultations conducted by the President of the Sixteenth Meeting of the States Parties to the United Nations Convention on the Law of the Sea in 2006 regarding the regional allocation of seats.

35. In light of the significant increase in the number of Africa and Asian countries being States Parties to UNCLOS 1982, Malaysia would like to show her full support towards the proposal made by the Asian and African Group of States during the recently held Eighteenth Meeting of States Parties to the United Nations Convention on the Law of the Sea from 13-20 June 2008 as contained in SPLOS/L56 whereby an additional seat for the African and Asian Groups in the CLCS and ITLOS is to be allocated on a rotational basis. It was his delegations fervent hope to see both proposals would be accepted and positively embraced by member countries.

36. Malaysia also took the opportunity to inform that it would be presenting its submission to CLCS for extended continental shelf in the area of the South China Sea before 13 May 2009.

B. Relevant legal regime for "marine genetic resources" in areas beyond national jurisdiction

37. It was noted that UNCLOS 1982 did not make any reference to "marine genetic resources" or "genetic resources". However, Malaysia was of the view that activities related to marine genetic resources were to be governed by the relevant legal framework established under UNCLOS 1982 since all activities in the oceans were regulated by the said Convention.

38. In this regard, it was admitted that UNCLOS 1982 did not provide a definition for the term "areas beyond national jurisdiction". However, it was generally accepted that the term indirectly referred to the high seas and the Area.

39. In accordance with article 86 of UNCLOS 1982, the high seas are parts of the sea that are not included in the exclusive economic zone, territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. Whereas, the Area was defined under article 1 of UNCLOS 1982 as the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.

40. In view of the fact that separate legal regimes applied to the high seas and the Area, different considerations were warranted vis-à-vis the legal regime of the marine genetic resources.

41. In relation to the high seas, under article 87 of UNCLOS 1982 there exists freedom of the high seas whereby the high seas were open to all States. Since the freedoms contained in article 87 of UNCLOS 1982 were not exhaustive, such freedoms could include activities relating to the collection and sampling of marine genetic resources. As such, in accordance with article 92 of UNCLOS 1982, activities carried out by ships in the high seas were subject to the exclusive jurisdiction of the State under whose flag the ship is operating.

42. Thus, in referring to the activities of marine genetic resources in the high seas, States should also be free to study the ecology, biology and physiology of marine species and organisms; to search for biological compounds of actual or potential value to various applications; and to exploit genetic resources for commercial purposes.

43. However, taking into consideration of the fact that the freedom of high seas was to be exercised with due regard for the interests of other States, it was arguable whether marine genetic resources could be subject to free access and private ownership. Furthermore, as provided under articles 117 – 119 of UNCLOS 1982, States must cooperate in the conservation and management of the living resources of the high seas.

44. With regard to the Area, its activities were regulated in accordance with Part XI of UNCLOS 1982 (articles 133 – 191) and the 1994 Implementation Agreement in relation to Part XI of UNCLOS 1982. Under article 136 of UNCLOS 1982, the Area and its resources are the common heritage of mankind. Article 140 of UNCLOS 1982 further provided that the activities in the Area shall be carried out for the benefit of mankind as a whole and that the International Seabed Authority had been vested with the power to regulate the exploitation of the resources of the Area.

45. However, due regard should be made to the fact that the resources referred to under article 133 of UNCLOS were solid, liquid or gaseous mineral resources including polymetallic nodules. In this respect, it was noted that differing views had been expressed by States as to whether the International Seabed Authority had jurisdiction vis-à-vis the marine genetic resources activities in the Area.

46. Other than UNCLOS 1982, it should be noted that the conservation and sustainable use of marine genetic resources was also provided under the Convention on Biological Diversity (CBD). Under article 22 of the CBD States were obliged to implement the CBD with respect to marine environment consistently with the rights and obligations of States under the framework of the law of the sea. However, with regard to areas beyond national jurisdiction the rights and obligations of States was only limited to the extent that States regulated the activities of their own nationals.

47. As far as his delegations was concerned, all States irrespective of their geographical location had the right to conduct marine scientific research in the Area and the high seas in relation to marine genetic resources as provided for under articles 256 and 257 of UNCLOS 1982, respectively. States should also be mindful that with regard to the Area, any marine scientific research should be carried out exclusively for peaceful purposes and for the benefit of mankind as a whole as stated in article 143 of UNCLOS 1982.

48. It was observed, however, even though UNCLOS 1982 and the CBD provided the legal framework governing uses of the ocean, their current provisions do not adequately cover activities relating to marine genetic resources in areas beyond national jurisdiction especially in relation to access and benefit sharing. This was important seeing that marine genetic resources could be further developed into new products and be commercialized. In this regard, the issues relating to intellectual property rights in respect of marine genetic resources in areas beyond national jurisdiction should be adequately addressed by the international community.

49. In addition to the above, the environmental impact of marine scientific research in relation to marine genetic resources, which require sampling and drilling, and to a certain extent the use of explosives would also require further consideration. In any event a detailed study of such environmental impact would have to be conducted with the consultation of the scientific community.

50. Malaysia was of the view that a regulatory mechanism in the form of an implementing agreement to UNCLOS 1982 might become necessary to further clarify

matters relating to marine generic resources beyond national jurisdiction especially in relation to access and benefit sharing. Moreover, such regulatory mechanism must be in accordance with international law taking into account the legitimate interests of all States.

51. Malaysia was firmly of the view that any technological advances and developments from the activities of marine genetic resources beyond national jurisdiction should be shared with developing States and less developed States.

C. Right of transit passage through Straits used for international navigation

52. Part III of the 1982 of UNCLOS 1982 i.e. Articles 34-35, sets out the principles governing the regime of transit passage. Article 38(1) of UNCLOS 1982 provides that, in straits used for international navigation, all ships and aircraft enjoy the right of transit passage. Article 38(2) of UNCLOS 1982 goes on to provide that transit passage is the unimpeded exercise of the freedom of navigation and over flight solely for the purpose of continuous and expeditious transit of the straits.

53. As one of the littoral States bordering the Straits of Malacca, Malaysia held the view that ships and aircrafts whilst exercising the right of transit passage were bound to refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering it. Furthermore, ships and aircrafts were also required to proceed without delay and to refrain from any activities other than that incidental to their normal modes of continuous and expeditious transit unless rendered necessary by force majeure or by distress.

54. His delegation would like to emphasize that it was fully committed in ensuring the maritime safety and security in the Straits of Malacca. Among the steps that had been taken thus far to maintain maritime safety in the Straits of Malacca include the implementation of the IMO's Traffic Separation Scheme in 1981 and the introduction of a system named STRAITREP (Straits Reporting) which came into force on 1 December 1998. At the same time Malaysia together with Indonesia and Singapore had developed the Marine Electronic Highway in 2005.

55. The Delegate emphasized that notwithstanding the above, it should also be noted that with regard to the Straits of Malacca, the sovereignty, sovereign rights, jurisdiction and territorial integrity as well as the principle of non-intervention of States bordering the Straits which included Malaysia must be fully respected since the primary responsibility for the safety and security of the Straits of Malacca lie with the three littoral States i.e. Malaysia, Indonesia and Singapore.

56. Encouraged by the support received from the international community namely the user States, the shipping industry and other stakeholders Malaysia, Indonesia and Singapore had discussed with such communities with regard to establishing a cooperative mechanism relating to maritime security in the Straits of Malacca under the ambit of its Tripartite Technical Experts Group (TTEG).

57. The Cooperative Mechanism was fully endorsed in the Singapore Meeting in 2007 as recorded in operative paragraph (b) of the Singapore Statement, where it was agreed that "the Cooperative Mechanism, which comprises of the Co-operation Forum, the Project Coordination Committee and the Aids to Navigation Fund, should be supported and encouraged". A report of the Singapore Meeting 2007 was presented by the IMO to the 24th Extra-Ordinary Session of the IMO Council in 2007.

58. The establishment of the Cooperative Mechanism represented a

landmark achievement in cooperation between coastal States bordering a strait used for international navigation and user States as well as other stakeholders, and, for the first time, brought to realization the underlying spirit and intent of article 43 of UNCLOS 1982 which states that:

"User States and States bordering a strait should by agreement cooperate:

(a) in the establishment and maintenance in a strait of necessary navigational and safety aids or other improvements in aid of international navigation; and
(b) for the prevention, reduction and control of pollution from ships."

59. In essence, the Cooperative Mechanism provided a framework for which littoral States and users of the Straits of Malacca and Singapore may promote cooperation. Fundamentally, the scope of the Cooperative Mechanism focused on safety of navigation and environmental protection in the Straits, and consisted of three main components

(a) The Cooperation Forum for open dialogues and discussions;
(b) Project Coordination Committee on the implementation of projects in co-operation with sponsoring users; and
(c) Aids to Navigation Fund to receive direct financial contribution for renewal and maintenance of aids to navigation.

60. The Cooperative Mechanism had already been formally accepted by the Governments of the three littoral States and was placed as a permanent agenda of the Tripartite Technical Experts Group (TTEG) at its 32nd meeting in Manado, Indonesia in October 2007. In this regard, Malaysia wished to highlight that it convened the first Meeting of the Aids to Navigation Fund Committee from 16 to 17 April 2008 in Penang, Malaysia. Malaysia also hosted the first Cooperation Forum on 27 and 28 May 2008 in Kuala Lumpur; and the first Meeting of the Project Coordination Committee on 29 May 2008 in Kuala Lumpur.

61. The realization of the cooperative mechanism reflected the commitment of Malaysia, Indonesia and Singapore in addressing maritime security concerns in the Straits of Malacca which was in line with the United Nations Security Council Resolution 1373 and measures adopted by the IMO.

62. The **Delegate of Republic of Indonesia** stated that 2008 marked the twenty-sixth year of the adoption of (UNCLOS) 1982. It continued moving toward universal acceptance as now there were 155 States Party to it. AALCO had always accorded matters concerning law of the sea as one of priority items in its Annual Sessions. It had played a very important role in the negotiations of the Third United Nations Conference on the Law of the Sea and had made substantive contribution to UNCLOS. Until now, AALCO continued to discuss matters relating to the implementation of UNCLOS. In that regard, AALCO's role in the implementation of UNCLOS was of significant importance.

63. As the member of AALCO and the proponent of UNCLOS, Indonesia would like to state that it was essential for AALCO, as one of the significant contributors of some concepts that finally got embodied in UNCLOS, to preserve the integrity of UNCLOS and to ensure the full implementation of UNCLOS provisions.

64. There were two issues that his delegation would like to share with Member States of AALCO in relation to AALCO's role in preserving the integrity and ensuring

the full implementation of UNCLOS. First, the issue that had been discussed in AALCO's Sessions namely rights of passage in straits used for international navigation. Secondly, the issue that had not been touched by AALCO namely the implication of UNCLOS to the application of other international law particularly international air law.

65. The right of transit passage through straits used for international navigation was a result of a compromise of the delicate balance in the negotiation of UNCLOS between the interest of coastal States and of user States. As stipulated in Article 38 ships and aircrafts exercising transit passage enjoy unimpeded and unhampered transit. Article 39 stipulated duties of ships and aircrafts in exercising transit passage. States bordering straits may adopt laws and regulations as stipulated in Article 42 provided that these laws and regulations would not have practical effect of denying, hampering or impairing the right of transit passage. Further, Article 43 stated that States bordering straits and user States should by agreement cooperate to promote safety of navigation and environmental protection in the straits used for international navigation.

66. In exercising those rights and duties, Indonesia was of the opinion that both coastal and user States had to work together to achieve a balance of interests so that the provisions of the rights of transit passage could be implemented as they were intended during their negotiation. In that regard, Indonesia would like to share with AALCO Member States the efforts undertaken by Indonesia and other littoral States - Malaysia and Singapore - to ensure the rights of transit passage in the Straits of Malacca and Singapore was well exercised and to promote safety of navigation, environmental protection and maritime security.

67. Indonesia and other littoral States were of the opinion that the Straits of Malacca and Singapore were under sovereignty and sovereign rights of the littoral States. As such, the primary responsibility over the safety of navigation, environmental protection and maritime security in these Straits was with the littoral States. Measures undertaken in these Straits should be in accordance with international law especially UNCLOS. In this regard the three littoral States acknowledged the interest of user States and relevant international agencies and the role they can play in respect of the Straits.

68. In cooperation with the International Maritime Organization and other major user states, the littoral States had achieved concrete efforts to overcome the challenges and threats to maritime safety, security and environmental protection in the Strait of Malacca and Singapore. They had conducted meetings that took place in Batam, Indonesia in August 2005, followed by meetings entitled "Meeting on the Straits of Malacca and Singapore: Enhancing Safety, Security and Environmental Protection" held in Jakarta in 2005, Kuala Lumpur in 2006 and in Singapore in 2007. The meetings had reached agreements, among others, on the principle of "burden sharing" which welcomed the assistance of the user states, relevant international agencies and the shipping community in the area of capacity building, training and technology transfer. Further, at the Singapore Meeting littoral States and major user States had agreed on the establishment of Cooperative Mechanism which comprised of the Cooperation Forum, the Project Co-ordination Committee and the Aids to Navigation Fund. The mechanism was intended to coordinate and integrate effort involving user States, shipping industry and other stakeholders to participate in an endeavour to contribute, on a voluntary basis, to the work of the Cooperative Mechanism.

69. With regard to maritime security, Indonesia reiterated its view that international law provided a strong legal

basis for coastal States by virtue of their sovereignty and sovereign rights to take appropriate measures to deal with maritime threat. Therefore, any attempt to deal with threat to the maritime security should not prejudice international law, in particular UNCLOS. Maritime security had to be perceived both from the perspective of traditional and non traditional issues. Furthermore, maritime security had to cover all integrated aspects of transnational crimes and address the issues comprehensively, not only covering one isolated issue but also other related maritime issues, namely safety of navigation and environmental matters.

70. On the issue of piracy and armed robbery at sea, Indonesia was of the view that UNCLOS had provided a clear provision to deal with the issues concerned. Indonesia rejected unilateral declaration or action in defining piracy that would lead to the establishment of and become a basis of customary international law on the issue of piracy that was inconsistent with international law, particularly UNCLOS and shall not envisage any modification of the existing carefully balanced international law of the sea encapsulated in the Convention.

71. Indonesia believed that as faithful parties to UNCLOS, each of AALCO Member States had its legal obligation to preserve the rights, obligations and responsibility as Member States derived from the Convention as those were carefully crafted in order to ensure, in a balanced manner, the interest of coastal and user states that was brought into being after decades of negotiation.

72. To respond to the above mentioned issues, Indonesia proposed that AALCO could hold an event to discuss current emerging issues on the implementation of UNCLOS. AALCO Member States could share their views, identify common concerns and unite their positions to provide legal opinion to address the issue.

73. As regards the second issue, Indonesia was convinced that AALCO Member States shared the same view that international law of the sea had significantly developed since the adoption of UNCLOS in Montego Bay on 10 December 1982. UNCLOS regulated different segments of the sea i.e. internal waters, territorial waters, archipelagic waters, exclusive economic zones, continental shelf. The airspace superjacent to these segments of the sea shared and reflected the legal regime of these segments. The international air laws were applicable to the airspace of these segments. Consequently, the development of UNCLOS was of great importance for the application and interpretation of international air law instruments especially the Convention on International Civil Aviation (Chicago Convention) signed in Chicago on 7 December 1944, its Annexes and other international air laws.

74. The Legal Committee of the International Civil Aviation Organization (ICAO) had put the agenda concerning UNCLOS, implications if any, to the Chicago Convention, its Annexes and international air law instruments since 1984 in its session. It discussed that issue until recently. At the 33rd Session of the Legal Committee of the ICAO held in Montreal, Canada from 21 April to 2 May 2008, Indonesia had submitted a paper: "The Implication of the United Nations Convention on the Law of the Sea for the Application of the Chicago Convention and its Annexes and other International Air Laws Instruments". This paper which became the working paper of the Legal Committee of the ICAO (LC/33-WP/4-7) contained Indonesia's proposal to amend Article 2 of the Chicago Convention so as to reflect the current development of international law on territory, including the complete and exclusive sovereignty of states in the air, including the air above the land areas, internal waters, archipelagic waters, territorial waters with its breadth of 12 nautical miles from the baselines.

75. The Legal Committee agreed to submit the issue to the ICAO Council for further consideration. The rationale of Indonesian proposal to amend Article 2 of the Chicago Convention was as follows. Article 2 was of critical importance, since it defined the area of which contracting States shall have complete and exclusive sovereignty. Article 2 of the Chicago Convention stated that "the territory of a State shall be deemed to be the land areas and the territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State." Article 2 reflected the definition of territory in consonance with article 1 and 2 of the 1958 Convention on the Territorial Sea and Contiguous Zones.

76. While, in the development of international law of the sea as reflected in UNCLOS, there were different segments of waters that were under sovereignty of a coastal state, namely internal waters, archipelagic waters and territorial waters. Therefore, that article was no longer consonant with the stipulations in UNCLOS. It also noted that in 1984 the Secretariat of ICAO had undertaken a study about United Nations Convention on the Law of the Sea – Implication, if any, for the application of the Chicago Convention, its Annexes and other international air law instruments. The study *inter alia* found that: "*…without any need for a textual amendment of the Chicago Convention, its Article 2 will have to be read as meaning that the territory of a State shall be the land areas, territorial sea adjacent thereto and its archipelagic waters…"*. That study was perhaps a correct interpretation of the relationship between the current development of international law of the sea and Article 2 of the Chicago Convention, but Indonesia was of the view that that study was not an authoritative and a legally binding document to be abided by ICAO member States and international community.

77. Further, amendment of Article 2 of the Chicago Convention would also bring a legal certainty in a bilateral or multilateral negotiation on air service agreement. In their practical experience, deliberations in defining the territory of a state led to protracted negotiation. This would not happen should the Chicago Convention defined the territory in accordance with the current development of international law.

78. Indonesia did fervently hoped that AALCO Member States support the Indonesian proposal to amend Article 2 of the Chicago Convention for the benefit of all member countries and international community alike. Further, in line with the current program of AALCO on the subject of the Law of the Sea, Indonesia proposed that AALCO could include in its agenda the topic of the implication of UNCLOS to the application of the Chicago Convention, its Annexes and international air law instruments. AALCO could hold an event to deliberate this topic. Further, AALCO could communicate its view on this topic to ICAO and to the international bodies concerned for their considerations. It believed that AALCO's deliberations on that topic would certainly enhance the role of AALCO as stipulated in its Statutes.

79. The **Delegate of Mauritius** congratulated the Secretariat and Dr. Xu Jie and Judge P. C. Rao for their lucid statements. On the issue of equitable geographical distribution of seats in the CLCS and ITLOS his delegation encouraged the move to increase the number of seats allocated to the Asian and African Group. As regards the legal regime for marine genetic resources in areas beyond national jurisdiction his delegation was of the view that UNCLOS should regulate bio prospecting of marine genetic resources through benefit sharing regime for the common heritage of mankind. As regards the Right of transit passages through straits used for International Navigation, his delegation held the view that Articles 34 to 45 of UNCLOS should apply.

80. The **Delegate of Republic of Korea** thanked Judge Rao for his informative presentation. With regard to distribution of seats of CLCS and ITLOS, his delegation was of the view that the proposal on additional distribution for Asia and Africa, presented by Asian-African group was reasonable in light of equitable geographical distribution. Their delegation supported the proposal. As one of the leading shipping countries, his delegation believed that the right of transit passage should be upheld by State practice. It reaffirmed the rights and responsibilities of States bordering straits used for international navigation on one hand and the right and responsibilities of user States on the other hand. It stressed that all States Parties should cooperate to preserve the integrity of UNCLOS against any measure that was inconsistent with it. On the issue of marine biological diversity beyond national jurisdiction, his delegation gave great importance to the conservation and sustainable use of marine biodiversity. It hoped that future discussion on that issue would be made within the framework of UNCLOS and the Convention on Biological Diversity, balancing the protection of marine ecosystems and the sustainable use of marine biodiversity.

81. The **Delegate of the People's Republic of China** thanked Dr. Xu and Dr. Rao for their introductory statements. They also thanked the Secretariat for preparing a comprehensive and excellent report on the law of the sea. The Chinese Government attached great importance to the international ocean affairs and issues related to the law of the sea. The delegate referred to the recently concluded Eighteenth Meeting of State Parties to the UNCLOS that discussed the issue of equitable geographical distribution of seats in the CLCS and the ITLOS and decided that this issue would be discussed further next year. The Chinese Government supported the principle of equitable geographical distribution of the above-mentioned seats as a principle and hoped that the concern of some Asian and African countries would be considered seriously. It expected consensus to be reached on that issue by thorough consultation at next year's meeting of States Parties.

82. As regards the issues relating to "marine genetic resources" in areas beyond national jurisdiction, the delegate stated that this issue had attracted much attention of the international community. It proposed three points in that regard. Firstly, UNCLOS established the legal framework for all human marine activities. That framework applied also to the conservation and sustainable use of marine genetic resources in areas beyond national jurisdiction. They should discuss the issues based on the existing regimes governing the high seas and the Area. Secondly, international community should achieve a balance between the sound conservation and utilization of the marine genetic resources in areas beyond national jurisdiction. Thirdly, they supported the position that the benefits derived from marine genetic resources in areas beyond national jurisdiction should benefit the human kind as a whole. Developed countries and relevant international organizations and financial institutions should, through bilateral, regional and global cooperation programs and technology-transfer programs, support the capacity-building of developing countries in the research and use of marine genetic resources in areas beyond national jurisdiction.

83. With respect to the right of transit passage through straits used for international navigation, his delegation believed that to facilitate marine navigation was a major goal of UNCLOS. The regime established by UNCLOS for governing the transit passage was one of the key elements for ensuring freedom of navigation and should be strictly obeyed by all States. They upheld the regime established in the UNCLOS. Laws and regulations promulgated by any coastal State to protect marine and coastal environment should be in compliance with

UNCLOS and relevant international law and should not undermine the principle of freedom of navigation.

84. The **Delegate of Republic of Kenya**[1]addressed the meeting on the three issued identified by the Secretariat.

A. Progress of the Delineation of the Outer Limits of the Continental Shelf Beyond 200 Nautical Miles

85. At the outset, Kenya acknowledged the responsibility of all States Parties to the United Nations Convention on the Law of the Sea to fulfil in good faith the obligations assumed by them under the Convention. In that regard, they were on course with the process of establishing the extent of their outer continental shelf and expected to make a submission to the Commission on the Limits of the Continental Shelf before May 2009. They indicated that position at the recently concluded Eighteenth Meeting of the States Parties to the United Nations Convention on the Law of the Sea.

86. The complexity of the issues to be investigated and costs involved in compiling a credible submission were enormous. Implementation of Article 76 of the Convention required collection, assembly, and analysis of a body of relevant hydrographic, geological and geophysical data in accordance with the provisions outlined in the Scientific and Technical Guidelines. The complexity, scale and the cost involved in such a programme, though varying from State to State according to the different geographical and geophysical circumstances require enormous amounts of resources.

B. Marine Safety and Security

87. Piracy and armed robbery against ships had become a challenge and a threat to their maritime activities. In particular, these continued to threaten maritime security, security of navigation, scientific research and commerce.

88. Kenya welcomed international efforts geared towards addressing that menace and urged all Members in the spirit of Article 100 of the United Nations Convention on the Law of the Sea to cooperate to the fullest possible extent in the suppression of piracy.

89. Like many other developing coastal states, Kenya faced challenges and constraints in addressing illegal unreported and unregulated fishing. It was well known that continued lack of effective control by states over fishing vessels flying their flag created an environment that enables IUU fishing to flourish.

90. All efforts should be made to implement the Food and Agriculture Organisation's Code on responsible fishing and other initiatives in order to address the challenges posed by illegal unreported ad unregulated fishing.

C. The allocation of seats on the Commission on the Limits of the Continental Shelf and the International Tribunal for the Law of the Sea

91. Kenya reaffirmed its support for the joint African and Asian proposal made at the Eighteenth Meeting of the States Parties to the United Nations Convention on the Law of the Sea to increase the number of allocated seats in the Commission and the Tribunal to African and Asian States. This proposal was based upon the past substantial growth in the number of States Parties to the Convention, in particular African and Asian States Parties. The proposal was made to satisfy the need for revision of, and some certainty in, the equitable geographical representation in the composition of the

[1] The statement by the Delegation of the Republic of Kenya was not delivered in the Plenary meeting. It was handed over to the Secretariat for inclusion in the Records.

Commission. The delegate urged members to make all efforts to reach a general agreement on that matter with other Regional Groups before the nineteenth Meeting of States Parties to the Convention on the allocation of seats for the Commission and the Tribunal.

D. Regulations on prospecting for poly-metallic sulphides

92. Kenya appreciated the current efforts under the auspices of the International Seabed Authority to finalize discussions on the formulation of regulations on prospecting for poly-metallic sulphides. It wished to recall the provisions of article 140 of UNCLOS which stipulated that the activities of the Area be carried out for the benefit of mankind as a whole irrespective of the geographical location of states. In that regard, it would like to urge that activities in the Area be conducted in such a way that enhanced opportunities for all states, irrespective of their social and economic system and geographical location. Further, efforts must be put in place to endure that there is no monopolization of activities within the Area.

E. Capacity building and Technical Assistance

93. The lack of capacity and technical knowhow had immensely contributed to the inability of developing countries to utilize marine resources found within their national jurisdictions. They appreciated the opportunity granted by the UN – Nippon Foundation of Japan Fellowship Programme to a Kenyan scientist to undertake advanced academic research. This assistance would go a long way towards enhancing capacity to prepare the submission we stated earlier.

The meeting was thereafter adjourned.