



**THE LAW OF THE SEA
RESPONSES TO PIRACY: INTERNATIONAL LEGAL CHALLENGES**

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THE LAW OF THE SEA

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I. INTRODUCTION

A. Background

1. The United Nations Convention on the Law of the Sea, 1982 (hereinafter UNCLOS or the Convention), described as “constitution for the oceans”, since its entry into force nearly eighteen years ago,¹ has been serving as a guide for the international community to safeguard the capacity of ocean’s to serve the society’s many and varied needs. However, the damaging impacts of human activities are putting the diversity of life in the oceans under ever-increasing strain. Over-exploitation of marine living resources, climate change, and pollution from hazardous materials and activities, all pose a grave threat to the fragile marine environment. Likewise, the growth of criminal activities, including piracy, has serious implications for the security of navigation and the safety of seafarers.² The year 2012 marks the 30th anniversary of The UNCLOS; this would be a good opportunity for the Member States of AALCO to dwell on the past noteworthy achievements made by the Organization and look into new areas of research.

2. It is important to underline that the UNCLOS is widely recognized as setting out the legal framework within which all activities in the oceans and seas must be carried out and is considered to be of strategic importance as the basis for national and regional cooperation. However, limitations in capacity hinder States, in particular developing countries, not only from benefitting from oceans and seas and their resources pursuant to the UNCLOS, but also from complying with the range of obligations under that Convention. Therefore, the capacity-building needs of States in marine science and other areas of oceans affairs and the law of the sea remains of vital importance.

3. It may be recalled that 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. The AALCO can take reasonable pride in the fact that new concepts such as the Exclusive Economic Zone (EEZ), Archipelago States and Rights of Land Locked States originated and developed in the AALCO’s Annual Session and were later codified in the UNCLOS.

4. 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

¹ The UNCLOS, in accordance with its Article 308 (1) entered into force on 16 November 1994.

² “Secretary-General, in Message for World Oceans Day, says Human Activities place ever-increasing Strain on Diversity of Marine Life”, *UN Press Release*, SEA/1937, dated 3 June 2010.

Authority (ISBA), 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.

B. Deliberations at the Fiftieth Annual Session of AALCO (Colombo, Democratic Socialist Republic of Sri Lanka, 27 June – 1 July 2011)

5. **Dr. Xu Jie, Deputy Secretary-General of AALCO**, introduced the Secretariat's Report on the agenda item (AALCO/50/COLOMBO/2011/SD/S4). He recalled that the agenda item was taken up for consideration at the initiative of the Government of Indonesia in 1970. He mentioned that the United Nations Convention on Law of the Sea, 1982 was fast moving towards universal participation and he hoped that all the Member States of AALCO would soon accede to the UNCLOS as well as its two implementing agreements. Further, he highlighted the increase in pirate attacks and armed robbery against ships at alarming rate had raised a serious threat to international commerce and maritime navigation. He called on the Member States to take adequate measures to curb the menace of piracy by enacting adequate national legislation to criminalize acts of piracy and armed robbery at sea. The DSG also highlighted the importance of protecting the marine environment as well as preserving marine species. In that regard, he invited Member States to consider formulation of necessary legal framework on the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction.

6. The **Delegation of Japan** informed that their country attached great importance to the role played by the International Tribunal for the Law of the Sea (ITLOS) on the peaceful settlement of maritime disputes and the maintenance of legal order relating to the sea. The delegation welcomed the expansion of activities of the ITLOS in the recent years. On the matters relating to the Commission on the Limits of the Continental Shelf (CLCS), the delegation observed that CLCS was confronted with the serious 'workload issue' caused by a large increase in the numbers of submissions which had been earnestly discussed by the State Parties of the UNCLOS. They also informed that at the 21st Meeting of State Parties to the UNCLOS held in New York, their Government had announced to contribute US dollars 211,000 to the Trust Fund for the purpose of defraying the costs of participation of the members of the Commission from developing States in the meetings of the Commission. They hoped that would facilitate the more number of participation of developing countries in the CLCS meetings in the future.

7. The **Delegation of Republic of Indonesia** stated that they attach great importance on the role of the Organization in the development of the law of the sea in particular to the implementation and application of the 1982 UNCLOS. The delegation mentioned that the year 2012 would mark the 30th Anniversary of the Convention. The delegation also noted with appreciation and welcomed the Kingdom of Thailand for joining as a Member to the UNCLOS recently in the month of May. They wished to invite all other Member States of AALCO to ratify or accede the Convention soon. The delegation also informed that their country hosted the 35th Annual Conference on the Law of the Sea and Ocean Policy in Bali. The said Conference was attended by 115 participants from 14 countries aimed at sharing their experiences *inter alia*, in maritime border diplomacy. They expressed great concern on the issues relating to pirate attacks and armed robbery in the waters off the coast of Somalia.

8. The **Delegation of the People's Republic of China** expressed appreciation to the Secretariat for its comprehensive report on the Law of the Sea item. The delegation pointed out that in view of the 30th Anniversary on the adoption of UNCLOS, the Organization should deliberate upon that agenda item at its next Annual Session. He also elaborated upon three key issues, namely, i) issues relating to sustainable development of oceans, ii) safety and navigation of shipping, and iii) conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction. While discussing the issues relating to safety and navigation of shipping, the delegation stressed that piracy remains a major threat to safety of navigation. The issue of piracy was more severe especially in Asia and Africa. To solve the root causes of piracy, they would be willing to work with all countries in facilitating the peace process of relevant countries, and promoting their political stability, economic development and social order.

9. The **Delegation of Thailand** thanked the Secretariat for preparing the document on the agenda item. The delegation informed that he himself represented Group of 77 (G 77) at the 12th Meeting of the UN Open-Ended Informal Consultative Process on Oceans and Law of the Sea (ICP 12), as a panellist held at the UN Headquarters in New York which was focused on ocean related matters which would be due to the Rio+20 Meeting in 2012. The delegation mentioned that at the ICP 12, many AALCO Member States actively participated in the deliberations of ICP 12. The delegation further recommended that the AALCO Member States to consider the outcome document of ICP 12 prepared by two co-chairs from Mauritius and New Zealand, and comment on it under the agenda "the Law of the Sea" at the forthcoming UN General Assembly session, in order to enhance their collective maritime security interests at the Rio+20 Summit in June 2012.

10. The **Delegation of Malaysia** stated that UNCLOS was well recognized as the "constitution of the oceans" and "cornerstone of the maritime order". The breadth of the Convention's provisions embrace issues such as the safety of navigation as well as the protection and preservation of the marine environment. Nevertheless, the Convention could not resolve jurisdictional issues arising from unresolved maritime boundaries, the delegation remarked. On the issue related to piracy, the delegation mentioned that although it was an age-old phenomenon, its latest incarnation off the coast of Somalia poses grave cause of concern. The delegation welcomed the concerted and consolidated response plans initiated by UN through Chapter VII of the Charter of the United Nations. In order to counter the menace of piracy, they were in the process of reinforcing its anti-piracy legislative framework with reference to the UNCLOS, the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) and SUA Protocol. In that regard, the delegation stated that AALCO should come forward to provide necessary technical assistance to its Member States to deal with the need to enact specialized and comprehensive laws on piracy and other maritime security offences. Further, AALCO should explore the possibility of bringing out a comprehensive study and a legislative drafting workshop on anti-piracy legislation in order to assist the Member States on the subject matter.

Further, the delegation of Malaysia proposed that the issue of piracy be placed on AALCO's agenda for further deliberation at a special session at its Fifty-First Session of AALCO and the Special Session could focus on the cooperative legal measures and actions that could be

undertaken by AALCO Member States for the purpose of preventing and combating piracy. The delegation also pointed out issues relating to the capacity building in the areas of ocean affairs and the law of the sea and preservation of marine environment and overexploiting of marine resources.

11. The **Delegation of the United Republic of Tanzania** mentioned that their country signed and ratified the UNCLOS in 1985 and they consider that it was an instrument which was put in place for a more coherent management of the sea. The delegation stressed on the importance of maintaining international peace and security, sustainable use of ocean resources and the navigation and protection of marine environment. The delegation raised concern on the issue of piracy which posed a big problem to trade and security. In order to check the menace of piracy, their Government amended its penal legislation in order to ensure that there were adequate and comprehensive legal mechanisms for combating crimes related to piracy.

12. The **Delegation of the Republic of Kenya** at the outset welcomed Thailand as the 162nd Member State of the UNCLOS. As regards the workload of the CLCS was concerned, the delegation supported to have a full time Commission working in New York for a given initial duration until such time when the workload reduces. The delegation noted with grave concern on the issue of piracy and armed robbery against ships at sea off the coast of Somalia. Acts of piracy had adversely affected the fishing, tourism and shipping industries in East Africa. In that regard, they welcomed efforts made by the international community to combat piracy, including the establishment of a Contact Group on Piracy off the Coast of Somalia which had some deterrent effect on Piracy and armed robbery in the region. The delegation also welcomed the recent interim guidance by the International Maritime Organization (IMO), on the employment of private contract armed security personnel on board ships transiting the high risk piracy area off the coast of Somalia and in the Gulf of Aden and the wider Indian Ocean was approved by IMO's Maritime Safety Committee in May 2011.

13. The **Delegation of the Islamic Republic of Iran** while reiterating the high importance it attached to the agenda item, expressed its deep appreciation to the UN General Assembly for its useful consideration about the issues relating to the law of the sea and sustainable fisheries, including the 1995 Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks and called upon all the Member States to bolster their support for the United Nations framework established by the 1982 United Nations Convention on the Law of the Sea. The delegation stated that it was now acceptable that maritime piracy and armed robbery against ships at sea now in threshold of 21st century which renewed its life despite of its reduction in the through previous centuries. The delegation urged the Member States to criminalize acts of piracy and prosecute pirates. The delegation also emphasized that AALCO Member States should take lead in formulating a legal framework in order to conserve as well as sustainable use of marine biodiversity in areas beyond national jurisdiction.

14. The **Delegation of India** stated that the topic of the Law of the Sea was of great importance to India and the delegation recalled the significant contributions made by AALCO to that agenda item. The delegation also welcomed Thailand as a new Member to the UNCLOS. On the issues relating to piracy, the delegation stated that Indian crew and seafarers were victims of piracy and in order to combat piracy, the Indian Navy was cooperating with other countries in

the region. The delegation also mentioned that their country was in the process of updating its law on piracy, and it would soon come up with new legislative measures. The delegation was of the view that as the fishery resources were depleting at the increasing rate and stressed on the need to utilize the fishery resources at a sustainable basis. In that regard, the delegation was of the view that coastal States must be given power to enforce the regulation of fishery resources not only in the territorial sea but also there was a need to have higher role in enforcing the conservation measures of fishery resources in high seas adjoining the Exclusive Economic Zone.

15. The **Delegation of the Arab Republic of Egypt** expressed its concern on growing piracy and its threats to safe international navigation. The delegation highlighted that due to increased rate of piracy activities, the cost of navigation and insurance had increased and caused great challenge to international community. Then, the delegation condemned the Israeli action in the international waters against the humanitarian fleet carrying food and medicines for the besieged Gaza strip and stated that UN and other Organizations should evolve necessary punitive actions. The delegation was of the view that it constituted clear violation of safety navigation and international law. The delegation observed that stern laws were required to suppress piracy and terrorism at Sea. In connection to it, the delegation recommended that AALCO should take up piracy as a priority item and incorporate the topic in the next Annual Session of AALCO and invited the Member States serious consideration on the issues related to piracy.

16. The **Delegation of Pakistan** highlighted its role in combating piracy and explained the recent actions taken against piracy thus saving people of different nationalities.

17. The resolution on the subject Law of the Sea RES/50/S 2, adopted on 1 July 2011, at the Fiftieth Annual Session of AALCO emphasized upon the universal character of the UNCLOS and its legal framework governing the issues relating to the management of the oceans. It urged for the full and effective participation of AALCO Member States in the work of the International Seabed Authority, the Commission on the Limits of Continental Shelf and other related bodies established by the United Nations Convention on the Law of the Sea, as well as in the United Nations Informal Consultative Process so as to ensure and safeguard their legitimate interests.

18. Mindful of the above resolution, as well as the deliberations on the subject at the Fiftieth Annual Session which raised the concerns of Member States regarding the issue of piracy, the deliberations lead to a consensus among Member States to direct the Secretariat to convene a Half-Day Special Meeting on the contemporary topic of “Piracy” under the agenda item the Law of the Sea at the Fifty-First Annual Session. Towards fulfilment of that mandate, the present Secretariat Report prepared for the Fifty-First Annual Session, provides information *inter alia* on: (i) introduction to piracy; (ii) the legal regime of piracy and its shortcomings; (iii) the responses of the international community; (iv) national and regional strategies in combating piracy: prospects and possibilities. This report presents an overview of all these developments. Finally, it offers comments and observations of the AALCO Secretariat. A draft of the resolution for the consideration of the Fifty-First Annual Session is also annexed to the Secretariat Report.

C. Issues for focused consideration at the Half-Day Special Meeting on “Law of the Sea: Responses to Piracy-International Legal Challenges” at the Fifty-First Annual Session of AALCO

19. All the issues highlighted in the Secretariat’s report would be issues for focused consideration at the Fifty-First Annual Session.

II. INTRODUCTION TO PIRACY³

20. Incidents of piracy have soared from 276 in 2005 to 445 in 2010. According to the International Maritime Bureau,⁴ there were 142 attacks between January and March 2011 – 97 off the coast of Somalia – up from 35 in the same period the previous year and an all-time high.⁵ The gulfs of Aden and Oman are among the world’s major shipping lanes: About 21,000 ships, and 11 percent of global crude oil traffic, cross the Gulf of Aden every year. The sudden break out of pirate attacks has left the international community in the dark. The international response to such attacks has also failed to control the outbreak of piracy.

21. The term ‘piracy’ has its origins in Greek literature as *peirates* and is reported in Homer's Iliad and The Odyssey, as well as in Thucydides, History of the Peloponnesian War.⁶ In the 1st century BC, piracy was viewed as a legitimate practice in the Mediterranean, because pirates supplied the Roman Empire with slaves for its luxury markets.⁷ It wasn’t until pirates began disrupting vital trade routes to the East and to Africa that cities began to form alliances against pirates. The Roman Empire embraced the fights against piracy, and in 67 BC, a Roman commander, Pompey, was finally ordered to rid the Mediterranean of pirates. Because of the Roman fight against piracy, the definition of piracy can be traced back to the Roman Republic: Cicero dubbed pirates “*hostis humani generi*”,⁸ and contemporaneous laws drafted by Cicero and the Roman Senate construed piracy as both action against individuals and against the nation as a whole. Under Roman law, all crimes constituting piracy had to occur outside the municipal

³ Some portion of this Secretariat report, particularly parts II and III have heavily relied on S. Senthil Kumar (2011), “Piracy off the Coast of Somalia”, *AALCO@50: Some Reflections on International Law*, (AALCO: Centre for Research and Training, New Delhi)

⁴ The International Maritime Bureau (IMB) is a specialised division of the International Chamber Of Commerce (ICC). The IMB is a non-profit making organisation, established in 1981 to act as a focal point in the fight against all types of maritime crime and malpractice. The International Maritime Organization (IMO) in its resolution A 504 (XII) (5) and (9) adopted on 20 November 1981, has *inter alia*, urged governments, all interests and organisations to cooperate and exchange information with each other and the IMB with a view to maintaining and developing a co-ordinated action in combating maritime fraud. See more details on IMB from their website: <http://www.icc-ccs.org/home/imb>.

⁵ The news and figures of piracy can be accessed from the IMB’s Piracy Reporting Centre at http://www.icc-ccs.org/piracy-reporting-centre/piracy_newsfigures (accessed on 15 May 2011).

⁶ M. Cherif Bassiouni, “Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice”, *Virginia Journal of International Law*, vol. 42, 2001, p. 13; George P. Smith, II, “From Cutlass to Cat-O’-Nine Tails: The Case for International Jurisdiction of Mutiny on the High Seas”, *Michigan Journal of International Law*, vol. 10, 1989, pp. 277, 191.

⁷ LCDR Jon D. Peppetti, “Building the Global Maritime Security Network: A Multinational Legal Structure to Combat Transnational Threats”, *Naval Law Review*, vol. 55, 2008, p. 73.

⁸ The phrase “*hostis humani generi*” in Latin means “enemies of the human race.” See Douglas R. Burgess, Jr., “*Hostis Humanus Generi: Piracy, Terrorism and a New International Law*”, *University of Miami International and Comparative Law Review*, vol. 13, 2006, p. 293.

jurisdiction of any nation; the pirate was viewed as an enemy of the entire human race and could be prosecuted under municipal law after capture, but the right to prosecute was common to all nations. These early laws still form the foundation of international criminal law on piracy, and introduce the notion of universal jurisdiction over piracy.⁹

22. Though piracy has been, until recently, considered a relic of the past, it has returned to the Horn of Africa almost with impunity. Powerful naval powers are united in their resolve to fight it all the way. One of the perplexing questions is why this phenomenon has flourished in Somalia?. There are several possible reasons that can be identified for the prevalence of this phenomenon, chief among which is the extreme poverty which existed prior to the inception of piracy.¹⁰ Poverty may be seen as a direct result of the protracted civil war which has engulfed the country for about two decades. That civil war is directly responsible for the total collapse of the economy as well as the entire infrastructure of the country and its institutions. Even environmental reasons are also been cited as a root cause of Somali piracy problem.¹¹

23. Piracy has become particularly lucrative in Somalia because in terms of maritime traffic.¹² Somalia is one of the most geographically well positioned countries in the world. Located between the Horn of Africa and the southernmost tip of the Arabian Peninsula, Somalia is situated at the crux of all major regional shipping lanes.¹³ The strait adjacent to Somalia links the Indian Ocean, Arabian Sea, Gulf of Aden, Red Sea, and the Suez Canal. The most noticeable trend observed in the past year has been a shift in the main area of activity, from southern Somalia and the port of Mogadishu to the Gulf of Aden.¹⁴

24. Starting in 2007, the occurrence of pirate attacks intensified off the coast of Somalia, and particularly, in the Gulf of Aden, a strait between northern Somalia, the Horn of Africa and the Arabian Peninsula. In 2007 alone, piracy attacks increased by 200%, and the first few months of 2009, saw dozens of piracy attacks not only in the Gulf of Aden, but also farther out in the Indian Ocean.¹⁵ In fact, to counter the threat, nations for the first time have begun to employ maritime fleets in the Horn of Africa. But these patrols have had limited success so far.¹⁶ The Somali

⁹ Eugene Kontorovich, "International Legal Responses to Piracy off the Coast of Somalia", *ASIL Insights*, Vol. 13, Issue 2, Feb. 6, 2009, available at <http://www.asil.org/insights090206.cfm> (last visited May 13, 2011). See also, Eugene Kontorovich, "The Piracy Analogy: Modern Universal Jurisdiction's Hollow Foundation", *Harvard Journal of International Law*, vol. 197-207, 2004; Eugene Kontorovich and Steven Art, "An Empirical Examination of Universal Jurisdiction for Piracy", *American Journal of International Law*, vol. 104, 2010, pp. 453; Kenneth C. Randall, "Universal Jurisdiction under International Law", *Texas Law Review*, vol. 66, 1988, p. 793.

¹⁰ Raymond Gilpin, *Counting the Costs of Somali Piracy*, (2009) United States Institute of Peace, <http://www.usip.org/files/resources/1_0.pdf>.

¹¹ See Edward G Howard-Clinton, 'The Emerging Concepts of Environmental Issues in Africa' (1984) 8 *Environmental Management* 3, 187; Raneer Khooshie Lal Panjali, "Pirates of Somalia: Opportunistic Predators or Environmental Prey?", *William and Mary Environmental Law and Policy Review*, vol. 34, 2010, pp. 371-491.

¹² See Rutkowski, Lawrence. et al. "Mugged Twice?: Payment of Ransom on the High Seas." *American University Law Review* 59, no.5, June 2010, pp. 1425-1448.

¹³ Lauren Ploch et al., *Piracy Off the Horn of Africa*, (Cong. Research Serv., CRS Report for Congress Order Code RL 40528, no. 4, Apr. 21, 2009).

¹⁴ Roger Middleton, *Piracy in Somalia: Threatening Global Trade, Feeding Local Wars*, *Chatam House Briefing Paper*, October 2008, available at www.chathamhouse.org.uk.

¹⁵ Katharine Houreld, *Somali pirates avoid warships to hijack 3 ships*, Apr. 6, 2009, available at http://townhall.com/news/world/2009/04/06/somali_pirates_avoid_warships_to_hijack_3_ships

¹⁶ James Kraska and Brian Wilson, "Fighting Pirates: The Pen and the Sword", *World Policy Journal*, vol. 25, 2008/2009, pp. 41-52.

pirates are currently holding more than to 200 hostages or crewmembers of a dozen ships according to different sources.¹⁷

25. The modus operandi seems simple: the Somali pirates sail out of Somali ports, equipped with potent weapons and fast ships in search of victims; they attack ships by firing at them, boarding them and overtaking their crew members. Recently, pirates have also begun to capture larger vessels, which they use as “mother ships,” and from which their tiny skiffs operate throughout hundreds of miles in the Indian Ocean. Most cargo ship crew members are not equipped with defensive weapons and not trained to fight pirates.¹⁸

26. In fact, shipping companies themselves instruct their personnel not to risk lives by engaging in fights with pirates. After ships are seized, the Somali pirates retreat back to Somali ports and coastal towns, where they enjoy complete impunity. In fact, entire coastal towns in Somalia live off the proceeds of piracy: thus, pirates seem to drive the local economy and enjoy societal protection everywhere within their country. Poverty levels are high in Somalia, and statistics show that a single seizure of a ship can earn each individual pirate up to \$150,000. Thus, pirates operate driven by financial needs and the promise of large sums of money quickly, with low risks of ever being caught. Shipping companies have routinely paid millions of dollars in ransom money to the Somali pirates.¹⁹

27. Thus, modern-day piracy that has surged in Somalia seems to be largely driven by poverty and the lack of effective government machinery and other criminal law enforcement mechanisms in Somalia.²⁰ Moreover, until now, the lack of a strong international response to fight Somali piracy has also contributed to the proliferation of piracy acts in the Gulf of Aden and in the Indian Ocean. However, the fight against piracy on the whole will not be complete without a full re-examination, and possible elaboration, of international law, to define and sharpen the legal tools that need to capture and prosecute both pirates themselves and the masterminds of piracy operations. Without such reliance on international law, piracy may surge in other areas of the world.

III. THE LEGAL REGIME ON PIRACY AND ITS SHORTCOMINGS

28. The single most controversial aspect of customary international law on piracy is the definition of the term, "piracy." There was no authoritative definition of the term. In 1932, the Harvard Research Project attempted to codify the customary regime on piracy.²¹ In the modern international law regime, the piracy has been defined in several Conventions.

¹⁷ *Ibid*, p. 42.

¹⁸ Lauren Ploch et al, *Piracy off the Horn of Africa*, [R40528] Congressional Research Service (28 September 2009), 5 <<http://italy.usembassy.gov/pdf/other/R40528.pdf>> at 10 July 2010; Peter Chalk, *The Maritime Dimension of International Security. Terrorism, Piracy, and Challenges for the United States* (2008) RAND Project Air Force, 8 <http://www.rand.org/pubs/monographs/2008/RAND_MG697.pdf> at 10 July 2010.

¹⁹ Houreld, note 16.

²⁰ See generally, Sterio, Milena. "The Somali Piracy Problem: A Global Puzzle Necessitating a Global Solution." *American University Law Review*, vol. 59, no.5, 2010, pp. 1499-1497.

²¹ Harvard Research in International Law, Draft Convention on Piracy with Comments, *American Journal of International Law Supplement*, (1932).

A. United Nations Convention on the Law of the Sea (UNCLOS)

29. UNCLOS, although concerned with the sea, did not spring fully formed from the waves like Venus. It opened for signature in 1982 but the preceding negotiations began eleven years earlier and took account of negotiations and unilateral changes that stretched back to the Truman Proclamation of 1947.

30. The treaty as a whole consists of three hundred and twenty articles and nine annexes of which *only seven are concerned with piracy*. The remaining covers the breadth and extent of the territorial sea, navigation rights of naval and commercial shipping, states' rights over the ocean's economic resources and the resources of the sea bed, a comprehensive regime for environmental and pollution control, scientific research, and the settlement of disputes.

31. Naturally, any treaty that is as comprehensive as UNCLOS must involve many compromises. It was born in an era when the number of States was growing rapidly as a consequence of decolonialization, and when resource scarcity appeared to be a very real possibility. While the maritime interests of most States in the "developing world"- which was often referred to then as "the third world" - were generally limited and local, many were attracted to the negotiations for two reasons. The first was a desire to limit the military activities of the major powers and increase their own security. This sometimes found expression in the creation of zones of peace. The second was economic. They believed that it would give them greater control over their own resources and a share in the mineral deposits that it was thought were to be found in abundance on the seabed, under waters that had traditionally not been regarded as the preserve of any State. Some, indeed, saw the treaty as the partial realization of the "New International Economic Order (NIEO)," a redistributive agenda that started life in 1948 and reached its high water mark in the late 1970s. The control of fish stocks was also a major concern, one that was shared if not driven by developed nations such as Canada and Iceland. For the United States, on the other hand, the primary benefit of the treaty was to restrict and standardize the breadth of territorial waters to ensure freedom of navigation for the U.S. fleet. The interest in natural resources might have been of recent origin but the piracy provisions were born out of older concerns.

32. The first successful modern-day attempt to codify the law of piracy occurred in 1958, addressing piracy directly were adopted in Geneva and included in the Convention on the High Seas.²² These articles were subsequently included in the 1982 United Nations Conference on the Law of the Sea (UNCLOS).²³ However, the above said treaty regime was not the first attempt at making provisions on piracy. As early as 1924, during the era of the League of Nations, an attempt was made to provide an international agreement on the subject. But the effort fizzled out as it was thought that piracy was not an urgent problem then and that it was not likely that an agreement would be reached. As a result, the issue was dropped.

33. UNCLOS, while not ratified by all countries, including the United States, nonetheless represents "the best evidence of international law relating to the maritime regime, and is therefore binding on all nations." widely accepted as a reflection of customary law and

²² *Convention on the High Seas (Geneva Convention)*, opened for signature 29 April 1958, 450 United Nations Treaty Series 11 (entered into force 30 September 1962), art 15.

²³ *United Nations Convention on the Law of the Sea (UNCLOS)*, opened for signature 10 December 1982, 1833 UNTS 3 (entered into force 14 November 1994).

recognized as the most authoritative codification of piracy law, significantly narrows the definition of piracy.

34. Under UNCLOS, an act must satisfy four criteria in order to constitute piracy: 1) it must be committed on the high seas; 2) it must be of a violent nature; 3) it must include at least two vessels; and 4) it must be committed for solely private aims.

35. The provisions of UNCLOS dealing with piracy span Articles 100 to 107. These Articles start by enjoining all States to cooperate to the fullest extent possible in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State. The most important, and by far the most controversial, part is Article 101, which defines piracy. Article 101 states:

Piracy consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or passengers of a private ship or a private aircraft and directed:

(i) on the high seas against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

1. Illegal Act of Violence, Detention or Depredation

36. The first limb of the definition of piracy contained in Art 101(a) of UNCLOS requires an illegal act of violence, detention or depredation (plundering or robbery). Therefore, piracy is not confined to acts of plunder as may have traditionally been perceived. Instead, it encompasses a broader range of acts. Many pirate attacks involve threatened rather than actual violence. While threatened violence is not expressly included in the illegal acts listed it is likely covered by violence. Alternatively, threatened violence may come within the ambit of depredation. Depredation requires an act committed with an element of force and threatened violence can be regarded as a forceful act thereby satisfying that element.

2. Private Ends Requirement

37. The second, requirement is that the act of piracy must be committed for private ends. This requirement has historical roots. UNCLOS does not define "for private ends" nor did the 1958 High Seas Convention. However, it is a commonly held view that acts of violence committed on religious or ethnic grounds or for political reasons cannot be treated as piracy. It has been suggested that the phrase, "for private ends" "must be understood to distinguish between State-sponsored piracy or privateering which could be redressed under the laws of war and piracy which could not. Again, essential to piracy's definition is not the actor's intent, but whether any State can be held liable for the actor's actions." Thus, a war ship, as a general rule, cannot be a pirate ship unless its crew has mutinied and taken control of the ship. In that situation, the acts of piracy committed by the ship would be assimilated to acts committed by a

private ship or aircraft. This is the purport of Article 101 of UNCLOS. The rationale for the "for private ends" requirements is that it reflects the underlying concern about interfering with commercial shipping and transportation and the reluctance of other States to assert jurisdiction over politically motivated acts that do not have a commercial aspect.

3. *Two Ships Requirement*

38. The third requirement is the so-called two-ship requirement. Under Article 101, the illegal act must be directed against another ship or aircraft or against persons or property on board such ship or aircraft. It is thought that this requirement emanates from the notion that a ship is always under the jurisdiction of the flag State. In fact, a ship is considered the floating island of the flag State. The consequence is that any act or offense committed on board a ship is subject to the domestic laws of the flag State. The primary concern of international law therefore, especially in the "no man's land" of high seas, is to protect outsiders and not necessarily the passengers of a given ship.

4. *High Seas*

39. Piracy is geographically limited under Art 101(a)(i) to being an offence committed on the high seas or outside the jurisdiction of any state. This is considered to be the most The first requirement is that the act must occur in the high seas or in "a place outside the jurisdiction of any State." Although this requirement is heavily criticized, it is suggested that it comports more with international orderliness. Certain acts which would otherwise have been treated as piracy under international law, would not be treated as so under Article 101; however, it does not necessarily mean that those acts should go unpunished or without redress. For instance, if a foreign ship is attacked in the territorial waters of a State, the State, whose flag the ship is flying, is entitled, under international law, to demand that the other State, in whose territorial waters the act occurred, punish the perpetrators or otherwise redress the act. If the latter State does not redress the ship's act, the State is in breach of its international obligation and a victim State would have the normal remedies available for such international delict.

40. There is a divergence of opinion as to whether or not confining piracy to the high seas under UNCLOS is representative of earlier customary law. Regardless of whether or not this is the case, the definition found in UNCLOS is now binding, both as a matter of treaty law and by force of customary international law. The practical impact of confining piracy to an offence committed only on the high seas is that international law is not interested in piratical acts within territorial waters. Such acts are instead a matter of exclusive domestic jurisdiction for the coastal state. International law presumes the coastal State has legislation applicable to such acts and is able to enforce those laws. Many international Organisations and academics have expressed frustration with the delineation between territorial and international waters with respect to piracy.

41. According to this definition, piracy is a crime that can only be committed on or over international waters. This includes the high seas, and presumably exclusive economic zones, contiguous zones, international airspace and other places beyond the territorial jurisdiction of any state. By necessary implication, therefore, if the very same acts are committed in the territorial waters or the airspace of a given nation, they do not count as piracy. This clearly excludes the coastal areas of Somalia. The majority of the attacks in that area occur within Somali territorial waters. Under *UNCLOS*, only a State in whose territorial waters the attack occurred would be entitled to prosecute offenders, but it is common knowledge that Somalia is

unable to carry out such prosecution as it is a dysfunctional State, lacking in skills and ability to act.²⁴

B. SUA Convention

42. Shortly after the adoption of *UNCLOS*, it became evident that its elucidation of piracy did not encompass all possible crimes of violence committed on board ships as demonstrated by the *Achille Lauro* incident of 7 October 1985,²⁵ when four armed stowaways onboard the Italian cruise liner *Achille Lauro*, hijacked it and murdered one American passenger. The fact that the attack was clearly politically motivated, took place within Egyptian waters, and originated from the ship itself rather than from another ship, removed it from the ambit of the *UNCLOS* definition of piracy and, presumably, beyond the purview of universal jurisdiction. The United States, and other States that may have had an interest in prosecuting the attackers, were apparently left without the authority under the law of the sea to do so.

43. After the *Achille Lauro* attack, the international community, through the UN and the International Maritime Organization (IMO), promulgated the *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention)*,²⁶ which established a legal basis for prosecuting maritime violence that did not fall within the *UNCLOS* piracy framework. The *SUA Convention* made it unlawful to seize or take control of a ship by force or the threat of force, to perform an act of violence against a person on board a ship if it is likely to endanger safe navigation of that ship, to destroy or damage a ship or its cargo, if it is likely to endanger safe navigation, to place devices or substances on a ship that are likely to destroy that ship, to knowingly communicate false information to a ship that would endanger safe navigation, and to injure or kill any person in connection with any of the above acts.²⁷ The *SUA Convention* authorises and, under certain circumstances, requires State parties to establish jurisdiction over the perpetrators, and to either prosecute or extradite them to another interested signatory State. The State of which the perpetrator is a national, the State in whose territorial waters the act is committed, and the Flag State of the ship against whom the act is committed, are all required to take measures necessary to establish jurisdiction over the alleged offences.²⁸

44. SUA requires the signatories of the Convention to prosecute anyone who “seizes or exercises control over a ship by force or threat of force or any other form of intimidation.”²⁹ Jurisdiction is also readily available for countries whose nationals are seized, threatened, injured, or killed during an attack.³⁰ SUA has certain advantages over *UNCLOS* as a basis for

²⁴ Omer Elagab, “Somali Piracy and International Law: Some Aspects”, *Australia and New Zealand Maritime Law Journal*, vol. 24, 2010, pp. 59-75 at p. 62. See also, Tullio Treves, “Piracy, Law of the Sea, and Use of Force: Developments off the Coast of Somalia”, *European Journal of International Law*, vol. 20, no.2, 2009, pp. 399-414, at p. 408.

²⁵ See generally, George R Constantinople, “Towards a New Definition of Piracy: The *Achille Lauro* Incident” (1986) 26 *Virginia Journal of International Law* 723; Havina Halberstam, “Terrorism on the High Seas: The *Achille Lauro*, Piracy and IMO Convention on Maritime Safety”, *American Journal of International Law*, vol. 89, 1988, p. 269; Niclas Dahlvang, “Thieves Robbers & Terrorists: Piracy in the 21st Century”, *Regent Journal of International Law*, vol. 4, 2006, pp. 17-45.

²⁶ Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Mar. 10, 1988, *International Legal Materials*, vol. 27, p. 672

²⁷ *Ibid.*, Article 3.

²⁸ *Ibid.*,

²⁹ *Ibid.*, Article 3 (a).

³⁰ *Ibid.*, Article 6 (2) (b).

jurisdiction. First, it covers acts in territorial waters, not just on the high seas. Second, it makes the exercise of jurisdiction mandatory in some circumstances.³¹ Yet while SUA “obliges contracting governments either to extradite alleged offenders or submit cases to their competent authorities for the purpose of prosecution,” refusing to take custody of pirates in the first place prevents such obligations from attaching. UNCLOS, in contrast, requires nations to take active measures against piracy, but does not mandate prosecution.

45. As hitherto mentioned, the *SUA Convention* was meant to fill the gaps left by the *UNCLOS* definition of piracy. In particular, the *SUA Convention* covers acts occurring in territorial waters and acts motivated for political ends, as well as eliminating the two-vessel requirement. While the *SUA Convention* would empower States to act more decisively in responding to maritime attacks, none of the States in the region affected by the Somali piracy are particularly anxious to act, as they are not especially hard hit by the attacks.

46. Leaving aside the reluctance of the States in the region to clamp down on Somali piracy, the Convention has shortcomings that prevent it from completely covering all the acts excluded by *UNCLOS*. Although the *SUA Convention*'s definition of piracy covers attacks that do not fall within the *UNCLOS* definition, the *SUA Convention*'s provisions are only applicable within the jurisdictions of States party to the *SUA Convention*. Arguably, the scope of criminal attacks embraced by the *SUA Convention*'s definition of piracy includes acts that are not considered obligations to the international community as a whole, and therefore do not provide for universal jurisdiction.³² The acts within the *SUA Convention*'s definition of piracy are only punishable by the States that are parties to the treaty, and only if the perpetrators or victims are nationals of a State party, and if the offending acts take place in a State party's territorial waters or the offending vessel was scheduled to navigate through such waters. Furthermore, the decision by the parties to enforce the *SUA Convention* is ultimately discretionary. Even though a party may be obligated by the terms of the *SUA Convention* to act in response to an offense, the Convention does not provide for any sanctions against parties who fail to fulfil their treaty obligations. Thus, if a party authorised or obligated by the *SUA Convention* to act declines to do so, the purported attack may go unpunished, and the other State parties may have no recourse against that non-conforming State.³³

47. For the sake of entirety, reference should be made to the *2005 SUA Protocol (2005 Protocol)* which entered into force in July 2010.³⁴ This Protocol has to a great extent expanded the ambit of the *SUA Convention*. This is evidenced by the inclusion of politically motivated piracy and acts of maritime terrorism. Having said that, it is arguable that the main thrust of the changes introduced by the *2005 Protocol* do not relate to acts of common piracy or robbery at sea. Furthermore, the Protocol does not go far enough in addressing jurisdictional gaps with respect to pursuing any criminal suit where non-nationals or non-State ships are implicated.

³¹ *Ibid.*, Article 6 (4).

³² Elagab, note 25, p. 63.

³³ *Ibid.*,

³⁴ *Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation ('2005 Protocol')*, opened for signature 14 October 2005.

IV. THE RESPONSES OF THE INTERNATIONAL COMMUNITY

48. The international community appears to understand the severity of the problem of modern piracy and also that it will not go away unless the international community takes aggressive action to combat it. For example, because of concerns about the consequences of acts of piracy on world trade and humanitarian food aid deliveries³⁵, in November 2007, some countries—including France, Denmark, the Netherlands, and Canada—began providing naval escorts for World Food Program ships³⁶.

49. More generally, beginning in late 2008, a multinational naval force (CTF-150) started conducting counter-piracy operations around the Gulf of Aden, the Arabian Sea, and the Indian Ocean³⁷. The multinational naval force, which operated under a rotating command by the US, Germany, and Denmark, included naval vessels from some fifteen states. In January 2009, CTF-150 was replaced by CTF-151, which is also a multinational naval force that combines military force, intelligence sharing and coordinated patrols with the specific goal of countering and suppressing acts of piracy. The EU has also launched its own counter-piracy operation off the coast of Somalia using frigates and naval patrol aircraft. Non-western nations are also participating in these counter-piracy operations. Pakistan, Japan, and Turkey are among the nations that have contributed to CTF-151³⁸. China, Russia, and India have not formally joined a particular task force, but they have coordinated their actions with other forces³⁹.

50. The UN Security Council has backed these coordinated efforts to combat piracy with a number of resolutions authorizing military action against Somali pirates at sea and on Somali territory⁴⁰. In a resolution dated June 2, 2008, the Security Council authorized coalition navies for an initial period of six months to enter the territorial waters of Somalia and use “all necessary means to repress acts of piracy and armed robbery.⁴¹” This Resolution also noted that it was passed with the consent of the government of Somalia “which lacks the capacity to interdict pirates or patrol and secure its territorial waters. By Resolution 1851, on December 16, 2008, the

³⁵ Ninety-five percent of all humanitarian aid provided by the World Food Programme is transported by sea. See Secretary-General, *Report of the Secretary-General pursuant to Security Council Resolution 1846 (2008)*, ¶ 35, UN Doc S/2009/146 (Mar 16, 2009).

³⁶ See, for example, Report: *The Role of the European Union in Combating Piracy* at 8 (cited in note 1); Middleton, *Piracy in Somalia* at 7 (cited in note 1).

³⁷ See Secretary-General, *Report of the Secretary-General pursuant to Security Council resolution 1846 (2008)*, ¶ 30, UN Doc S/2009/146 (Mar 16, 2009).

³⁸ See Report: *The Role of the European Union in Combating Piracy* at 9

³⁹ *Ibid.*

⁴⁰ See *Resolution 1816*, UN Security Council (June 2, 2008); *Resolution 1838*, UN Security Council (Oct 7, 2008); *Resolution 1844*, UN Security Council (Nov 20, 2008); *Resolution 1851*, UN Security Council (Dec 16, 2008).

⁴¹ See *Resolution 1816*, UN Security Council, ¶7 (June 2, 2008).

Security Council authorized even broader military action to combat piracy, allowing states to use land-based operations in Somalia to fight piracy⁴². By that resolution, for a period of one year, “[s]tates and regional organizations cooperating in the fight against piracy and armed robbery at sea off Somalia’s coast” were permitted to take “all necessary measures ‘appropriate in Somalia,’ to interdict those using Somali territory to plan, facilitate or undertake such acts.⁴³” That resolution received unanimous support from member nations, with nations stressing the many negative consequences resulting from the acts of piracy off of Somalia’s coast⁴⁴.

51. For example, the representative from Norway emphasized the threat to his country from piracy, noting that about a thousand Norwegian ships pass through the Bay of Aden each year. The representative from Turkey pointed out that two Turkish commercial vessels had already been attacked and were still being held hostage. Yemen’s representative noted that due to regional proximity, Yemen was suffering the ill effects of the surge in piratical activity, including a proliferation of acts of piracy and human trafficking, as well as an uninterrupted flow of refugees towards its territory.

52. International cooperation aimed at repressing piracy is not only limited to the acts described above. To strengthen the international coordination called for by Security Council Resolution 1851, the US created an international Contact Group on Piracy off the Coast of Somalia (Contact Group).

53. Participants in the Contact Group formed four working groups to address counter-piracy efforts, focusing on:

- (1) military coordination and information sharing,
- (2) judicial aspects of piracy,
- (3) shipping self-awareness, and
- (4) improvement of diplomatic and public information aspects of piracy

54. Some fifty nations are now members of the Contact Group, together with international organizations such as the African Union, the League of Arab States, INTERPOL, NATO, and the EU. In addition, nations in the areas closest to important shipping lanes have also been coordinating separately to address the problem of piracy. In January 2009, seventeen states from the areas surrounding the Western Indian Ocean, the Gulf of Aden, and the Red Sea met in Djibouti, and at the conclusion of the meeting adopted a Code of Conduct concerning the

⁴² *Resolution 1851*, UN Security Council, ¶6 (Dec 16, 2008).

⁴³ *Ibid.*

⁴⁴ See Security Council Department of Public Information, *Security Council Authorizes States to Use Land-Based Operations in Somalia, As Part of Fight Against Piracy Off Coast, Unanimously Adopting 1851*, UN Doc SC/9541 (Dec 16, 2008) (reporting that the Security Council adopted Resolution 1851 unanimously, urging countries to participate actively in defeating piracy); *Resolution 1851*, UN Security Council, ¶ 12 (encouraging member states to cooperate in combating piracy). Consider UN SCOR 63rd Sess, 6046th mtg, UN Doc S/PV.6046 (2008) (recording several countries’ experiences with piracy).

repression of piracy (the “Djibouti Code”)⁴⁵. The Djibouti Code covers, among other things, the possibilities of shared patrol operations by ship and by air, as well as the use of piracy information exchange centers in Kenya, Tanzania, and Yemen. Nine states—Djibouti, Ethiopia, Kenya, Madagascar, Maldives, Seychelles, Somalia, Tanzania, and Yemen—signed the code at the conclusion of the meeting.

55. In short, the international community and individual nations are apparently willing to expend time, resources, and money to combat piracy and the threat it poses to the safety and security of ships and crews from around the globe, as well as to international trade, humanitarian aid deliveries, the stability of nations, and the environment. However, even though the international community seems to be uniquely focused on the problem of modern piracy and ways to prevent or combat it, pirate attacks have only become more common and more violent after these protective measures began in 2007. Despite the presence of these multinational naval forces, in the last week of 2009, Somali pirates seized a British-flagged chemical tanker and a Greek bulk carrier⁴⁶. Furthermore, as discussed in more detail below, the successful pirates—whose attacks occur notwithstanding the coordinated efforts of the international community to prevent them—face little threat of prosecution and punishment.

56. The escalation of piracy at sea in recent years has been a matter of great concern to the maritime community. The reality, of course, is that piracy is too complex and has become too entrenched for any one entity to deal with it effectively. The United Nations, Governments acting collectively or individually, military forces, shipping companies, ship operators, ships' crews, among others, all have a crucial part to play if shipping is to be rid of this crime and the integrity of strategically important shipping lanes maintained.

V. NATIONAL AND REGIONAL STRATEGIES IN COMBATING PIRACY: PROSPECTS AND POSSIBILITIES

57. A lot of attention has been focuses on improving international law as a way to address the threat of piracy in various places including the Horn of Africa. But the international law of maritime piracy is quite clear—any nation may assert criminal jurisdiction over the crime of piracy. The courts of the state that carried out the seizure may prosecute captured pirates in criminal court, or transfer suspects to other nations for legal disposition. The legal difficulty in countering piracy arises in implementing the international obligation to act against piracy, as

⁴⁵ See, for example, International Maritime Organization, *High-level meeting in Djibouti adopts a Code of Conduct to repress acts of piracy and armed robbery against ships* (Jan 30, 2009), online at http://www.imo.org/newsroom/mainframe.asp?topic_id=1773&doc_id=10933 (visited May 3, 2010); *IMO Djibouti meeting agrees antipiracy measures*, Marine Log (Jan 30, 2009), online at www.marinelog.com/DOCS/NEWSMMIX/2009jan00302.html (visited May 3, 2010); *Nine countries sign deal to fight Somali piracy*, Al Arabiya (Jan 29, 2009), online at <http://www.alarabiya.net/articles/2009/01/29/65299.html> (visited Apr 3, 2010). See also *The Code of Conduct Concerning the Repression Of Piracy And Armed Robbery Against Ships In the Western Indian Ocean And The Gulf Of Aden (“Djibouti Code”)*, IMO Council Doc C 102/14, Annex (2009) (visited Apr 3, 2010).

⁴⁶ See Jay Bandahur, *Piracy at Sea*, NY Times A21 (Jan 4, 2010), online at <http://www.nytimes.com/2010/01/04/opinion/04bahadur.html> (visited May 3, 2010).

states may lack adequate naval capability or retain weak domestic criminal laws. In Resolution 1918 adopted in the year 2010, for example, the UN Security Council noted that the domestic criminal laws of a number of states lack provisions criminalising piracy, or are deficient in criminal procedural rules needed to effectively prosecute pirates. States also face a lack of political will and resources required to conduct expensive criminal trials and to imprison convicted pirates for long periods of time. In sum, although international law against piracy is sufficient, many nations lack the practical criminal legislation or judicial and prison capacity to prosecute piracy.

58. The two general forms of cooperative systems that are often employed in the fight against piracy are bilateral and multilateral. The recent decades have witnessed a number of bilateral anti-piracy cooperation efforts in the Asian region that include the Indonesia-Singapore Coordinated Patrols and the Malaysia-Indonesia Coordinated Patrols both established in 1992 to patrol the straits of Singapore and Malacca Straits respectively, a cooperative effort to patrol waters by Malaysia and Thailand in the Northern Malacca Straits since 2003. A cooperative effort to patrol waters by Indonesia and India in the six degree channel, west of the Malacca Straits was established since 2004 and Project SUPRIC set up by Singapore and Indonesia to monitor traffic through the straits of Singapore by way of surface pictures.

59. One of the first multilateral efforts in the region was in 2002 when the ten Member States of the Association of Southeast Asian Nations [ASEAN] concluded an agreement to cooperate in the elimination of piracy in the region. This agreement involves information sharing strategies, the study of piratical trends, cooperation with UN agencies, the IMO and the IMB, and training efforts. This agreement was furthered in 2003 through the signing of the Bali Accord II where it was agreed that, maritime issues, including piracy, was of a transboundary nature and was to be addressed in a “holistic, integrated and comprehensive manner”⁴⁷.

60. In 2003 the ASEAN Regional Forum adopted the Statement on Cooperation Against Piracy and Other Threats to Maritime Security which included the commitment of participating states to become Party to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. [SUA] and its Protocols. It is pertinent here to refer to some of the salient features of this SUA Convention.

61. The SUA is a treaty specifically dealing with violent acts against ships and persons on board. Broadly speaking it obliges States to suppress unlawful acts against the safety of maritime navigation. The SUA, which was adopted in 1988, came into force in 1992.

62. The SUA treaty was inspired by the *Achille Lauro* incident that took place in 1985. The Italian cruiser *Achille Lauro* was sailing in Mediterranean Sea was hijacked by members of some groups who had boarded the ship in Italy pretending to be tourists. The offenders held the crew and passengers hostage and killed one person when their demands were not met. This incident revealed some important gaps and limitations in the piracy rules as embodied in the Convention on the High Seas 1958 and the UNCLOS 1982. For instance, the definition of piracy contained in these instruments requires the involvement of two ships for an act of piracy to occur. This

⁴⁷ Joshua Ho, “The Security of Seas-Lanes in Southeast Asia”, July/August 2006, *Asian Survey*, Vol. XL VI, No.4, pp.558-574.

two-ship requirement was not met in this case since this merely involved a single ship. The sponsoring governments who first introduced a draft text for the Convention (Austria, Egypt and Italy) cited as part of their reason for doing so the restrictions inherent within the definition of piracy: that it necessarily involved an act for private ends, and in requiring an attack from one vessel against another it could not cover the internal seizure of a vessel.

63. Another relevant inspiration for the SUA Convention was General Assembly Resolution 40/61, which called upon the IMO to "study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures". The SUA Convention is thus commonly considered a "terrorism suppression" convention. It is important to note, however, that the word "terrorism" appears only in its preamble. A terrorist motive does not form any express element of the crime set out in the treaty. Further, the purpose of the terrorism suppression conventions was to proceed by criminalising typical terrorist acts or tactics, given that no consensus on a universal definition of terrorism could be reached

64. Hence, the principal reasons the SUA Convention was seen as necessary were, firstly, the law of piracy did not cover internal hijacking of vessels; and second, that while there existed treaties concerning the hijacking and sabotage of airplanes⁴⁸ no similar conventions yet existed for the shipping industry. It is unsurprising, then, that the SUA Convention is closely modelled on the conventions concerning offences aboard or against aircraft. The sponsors' explicit aim was to devise a comprehensive convention that would cover all forms of violence against shipping.

65. It is perhaps important to note that the SUA Convention does not expressly cover the crime of piracy and that its offences are not coterminous with the crime of piracy as defined under UNCLOS. The SUA Convention creates a separate offence as among State parties. However, the type of piracy commonly committed off Somalia involves both an attack from one vessel against another *and* acts of violence intended to seize control of a ship. Such acts can clearly constitute both piracy and an offence under the SUA Convention. Not all piracy will fall within the SUA Convention, of course. An act of theft ('depredation') that did not endanger the safety of a vessel, and was committed by one vessel against another, could be an example of piracy which would not be a SUA Convention offence. Conversely, as noted, the internal hijacking of a vessel would be a SUA Convention offence but not piracy. The crimes are distinct but may overlap on some sets of facts.

66. Unlike the law of piracy, the SUA Convention creates an express obligation upon parties to create appropriate domestic offences. Under Article 6 States parties *must* make the offences in Article 3 a crime under national law when committed:

- (a) against or on board their flag vessels;
- (b) within their territory, including their territorial sea; or

⁴⁸ Convention for the Suppression of Unlawful Seizure of Aircraft 1970, 860 UNTS 105; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 1971, 974 UNTS 177.

(c) by one of their nations.

67. In addition States parties *may* establish criminal jurisdiction where a relevant offence is committed, *inter alia*, against one of their nationals or in an effort to compel their government to do or abstain from doing any given act.

68. The most important jurisdictional provisions are those dealing with the obligation to either extradite or submit the case for consideration by prosecutorial authorities (commonly, if misleadingly, called an obligation to "extradite or prosecute"). Where a State subsequently finds a suspect or offender within its territory (the territorial State) and another State party or parties have jurisdiction under Article 6, then the territorial State:

shall ... if it does not extradite him, be obliged ... to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.]

69. To this end each party *must* establish jurisdiction "over the offences set forth in Article 3 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with" the obligations described above. Thus parties must establish jurisdiction, for example, over offences committed by other State parties' nationals or on other State parties' vessels where the offender is present within their territory and not extradited to another State party having jurisdiction.

70. Two other key multilateral initiatives in the region are the Malacca Straits Trilateral Coordinated Patrols and the "Eyes in the Sky" plan. The Trilateral Coordinated Patrols initiative, involving Indonesia, Malaysia and Singapore started off as an alternative to the United States Pacific Commands then proposed Regional maritime Security Initiative that was opposed by some States who did not take kindly to any extra-regional power patrolling the region. The initiative employs a hand-off mechanism for inter-boundary enforcement to avoid jurisdictional problem from arising.

71. Under the 'Eyes in the Sky' plan, Indonesia, Malaysia, Singapore and Thailand have agreed to conduct aerial patrols over the region's waters to supplement marine patrols. Maritime patrol aircraft are allowed to fly for up to three nautical miles into territorial airspace of any of the participant states under the plan and this allows for greater oversight of traffic and potential pirate attacks in the region.

A. Regional Cooperative Agreement against Piracy and Armed Robbery in Asia [RECAAP]

72. ReCAPP holds great significance for the Asian region as it is the first government to government agreement to cooperate in efforts, as a region, against piracy and armed robbery. The ReCAPP agreement was negotiated and finalized on 11th November 2004 by the ten ASEAN States, China, Japan, South Korea, Bangladesh, Sri Lanka and India. This agreement came into force on the 4th Sep. 2006.

73. The general obligation under the ReCAPP Agreement is to implement methods against piracy and armed robbery. The Agreement also outlines the manner in which information is to be shared between Member States, to enhance international cooperation in incident responses and taking on preventive measures. Furthermore the ReCAAP Agreement establishes an international organization known as the Information Sharing Center [ISC] an information sharing platform with focal points connected by a web-based secure network. The ISC is located in Singapore and was launched following the coming into force of this Agreement.

The ReCAAP Agreement has got three objectives:

- The sharing of information between Member States;
- The building of capacity through the sharing of best practices in combating piracy and armed robbery; and
- The participation in cooperative arrangements with other organizations of similar objectives so as to improve the ability of Member States to deal with maritime incidents.

The functions of ISC are the following⁴⁹;

- To serve as a platform for information exchange among focal points via the information network system;
- To facilitate communications and the exchange of information between participating governments to improve incident response by Member States;
- To analyse and provide accurate statistics of the incidence of piracy and armed robbery so as to foster better understanding of the situation in Asia;
- To facilitate capacity building efforts that would help improve the capacity of Member States in combating piracy and armed robbery in the region;
- To facilitate cooperative efforts with organizations and parties with similar aims, in joint exercises, information sharing, capacity building programme or other appropriate forms of cooperation and to facilitate the participation of Member States in this regard.

74. After having seen the salient features of this agreement, it is essential to portray its effect on the ground. During the initial years after the coming into force of this Agreement and until 2008, piratical attacks had indeed come down to a significant extent. The recent years witnessed a brief surge in piratical attacks. However, since the six years or so since the entry into force of the Agreement, participation by States has increased considerable, both in the number of nations participating and the willingness to cooperate with each other for a common goal. Measures adopted appeared to have been having a dual effect in dampening piratical attempts and attacks and bolstering cooperative efforts and confidence in safe maritime passage in the region. As such the ReCAAP Agreement and the ISC do appear to have been enjoying success or at least be on the path of success in their aims and endeavours. This understanding was confirmed in 2011 when the ReCAAP ISC received praise from IMO as being a “good example of successful regional cooperation” in its message for world maritime day 2011.

⁴⁹ Article 7, Regional Cooperation Agreement on Combating Piracy and Armed Robbery in Asia.

B. Code of Conduct Concerning the Repression of Piracy and Armed Robbery Against Ships in the Western Indian Ocean and the Gulf of Aden 2009

75. In January 2009, Representatives of 17 regional governments met at an IMO sponsored meeting in Djibouti and adopted a Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the western Indian Ocean and the Gulf of Aden⁵⁰ [The Djibouti Code of Conduct]. The Djibouti Code of Conduct, which seeks to replicate the counter-piracy efforts of the Asia, particularly, the ReCAAP and was signed in Djibouti on 29 January 2009, is the first regional agreement between Arab and African countries against acts of piracy against ships in the Gulf of Aden, the Red Sea and the western Indian Ocean.

76. The Djibouti Code of Conduct recognizes the extent of the problem of piracy and armed robbery against ships in the region and the signatories declare their intention to cooperate to the fullest possible extent, and in a manner consistent with international law, in the repression of piracy and armed robbery against ships. It envisages three regional information-sharing centres (Djibouti Code of Conduct ISCs) in Dar es Salaam, United Republic of Tanzania, Mombasa, Kenya and Sana'a, Yemen. The three ISCs were declared operational in the first half of 2011 and have since actively collected and disseminated piracy related information. The Parties also agreed to resolutions on technical cooperation on and the establishment of a regional training center in Djibouti.

77. Since, the Djibouti Code of Conduct is not a legally binding instrument, the nations are expected to act only in accordance with their available resources and related priorities and in accordance with their respective national laws and regulations. The IMO has been assisting the states in the region to meet their commitments under the code. It needs to be noted here that Japan has been making significant financial contributions towards technical cooperation and capacity-building programmes and was instrumental in the creation of IMO Djibouti Code of Conduct trust Fund.

78. Given the Code's non-binding status and express intention not to alter existing law, it does not create any new powers of enforcement, but it does recognise the manner in which Participant States may cooperate to coordinate their existing legal authorities.

C. Ending the Culture of Impunity

79. In any effort to eradicate piracy and armed robbery at sea, it is indispensable that criminal proceedings are instituted against persons who have allegedly engaged in pirate attacks. However, States which have captured suspected pirates and armed robbers at sea, have frequently (and for various reasons) either been unable or unwilling to initiate domestic criminal proceedings against alleged perpetrators. Sometimes, they are also generally transferred to regional states willing to prosecute them.

80. It is true that there is an international legal framework under the UNCLOS for the apprehension and prosecution of pirates and the SUA Convention provides for the transfer of

⁵⁰ The signatory states included: Comoros, Djibouti, Egypt, Eritrea, Ethiopia, Jordan, Kenya, Madagascar, Maldives, Mauritius, Oman, Saudi Arabia, Seychelles, Somalia, Sudan, Tanzania, Yemen and UAE

captured SUA offenders ashore and mutual legal assistance between States Parties to the SUA Convention. In practice, however, efforts to bring pirates to justice in national courts have foundered due to many legal and practical challenges. Some of them are of legal nature; a lack of jurisdiction, the absence of specific substantive criminal norms covering piracy and others. Besides these two critical issues, there are other political, financial and logistical concerns that trigger disinclination to initiate or continue prosecuting pirates in domestic criminal jurisdictions. They include concerns regarding the high expenses of the proceedings, a lack of clarity with respect to the steps that capturing ships must take in order not to run afoul of their human rights obligations, difficulties in the process of preserving and transporting evidence, and reluctance on the part of countries to prosecute pirates for fear that they will be forced to grant them (and their families) asylum once their sentence has been served. Additionally, there are no uniform procedural standards across the national contexts where prosecution might occur and domestic legal systems may lack the necessary legislation to prosecute fairly and effectively. Finally, because not all countries would mete out the same punishment for the crime of piracy, domestic prosecution of piracy could raise issues of legitimacy and accountability.

D. The Case of Universal Jurisdiction

81. It is generally agreed that piracy is a crime of universal jurisdiction, grounded as it is, in international customary law and the UNCLOS. As such, any state is authorized to prosecute the crime of maritime piracy. Though, any country may prosecute piracy on the high seas, but in practice few do so. By June 2011, 20 countries around the world had prosecuted just over 1,000 pirates in their courts⁵¹.

82. States that are directly affected by acts of piracy (flag states, states whose citizens have become victims of piracy and states whose citizens are themselves pirates) have been reluctant to take on piracy prosecutions. Some have taken pirates to their countries (Yemen, Spain, France, the Netherlands and the United States) for trial when their nationals or vessels are victims of an attack, but the international community has generally preferred to seek a regional solution. The Netherlands is one of the few countries to have prosecuted pirates where the only connection with the Netherlands was that the Dutch navy captured them.

83. The problem is not a lack of jurisdiction. International law permits – but probably does not oblige – states to prosecute suspected pirates:

Customary international law permits any State subsequently finding a pirate within its territory to prosecute him or her as an exercise of universal jurisdiction. This jurisdiction equally covers cases where pirates are transferred into that State's territory by agreement. The mere existence of such jurisdiction, however, does not necessarily oblige States to use it, as many argue.

While UNCLOS requires that States must "cooperate to the fullest possible extent in the repression of piracy" (Article 100), it only provides that a seizing warship *may* send pirates for trial before national courts (article 105). The inference is that States

⁵¹ Report of the UN Secretary-General on the modalities for the establishment of specialized Somali and anti-piracy courts S/2011/ 360, 21 June 2011, Annex I.

have no duty to enact relevant offences into national law and have "a certain latitude" to cooperate in suppressing piracy by means other than prosecution.

84. Nor does UNCLOS require states to extradite suspected pirates if it does not submit them for prosecution.

85. States that have not made piracy on the high seas a criminal offence clearly cannot prosecute people for piracy there (although other offences may have been committed). The UN Security Council has noted that many states have not made piracy on the high seas a criminal offence under their domestic law⁵². Some states have criminalised piracy itself but not cruising with pirate intent or inciting or intentionally facilitating piracy. In Somalia, only Puntland has a piracy law, despite the efforts of UN experts to agree draft legislation –prosecutions have otherwise been for other criminal offences including illegal possession of weapons.

The SUA Convention is couched in stronger terms, in that it provides that :

- Flag ships of a SUA Convention state can deliver people suspected of committing a SUA offence to any other SUA convention state, which has a primary responsibility to accept them.
- States must adopt the SUA Convention offences as crimes under national law when committed against or on board their flag vessels, within their territory or territorial sea, or by one of their nationals.
- States must also either extradite suspects or submit them for prosecution.

But there is a question over whether suspects held on warships are within the flag state's "territory" for the purposes of the SUA Convention, which would require the state to extradite or prosecute.

E. Piracy and the International Criminal Court

86. Since piracy is an international problem and pirates are not prosecuted as a matter of course for a variety of reasons that we have already mentioned, the possibility of using the International Criminal Court seems interesting. The ICC which came into existence in 2002, and has jurisdictions over crimes such as genocide, crimes against humanity, war crimes, can be utilized to prosecute piracy.

87. There are many theoretical and practical reasons to include piracy within the jurisdiction of the ICC. Piracy, like the other crimes already covered by the ICC treaty, is a serious crime of concern to the international community as a whole. Piracy is the first crime over which states decided the exercise of universal jurisdiction was appropriate, both because of the heinousness of piratical attacks and also because piracy by its very nature harms the world community as a whole. In addition, even though a pirate attack cannot be compared to a genocide that involves the mass murder of hundreds or thousands of people, its inclusion within the ICC will not

⁵² Preamble, UN Security Council Resolution 1976 (2011).

trivialize the court or its mission in ending impunity for the most serious crimes of concern to the international community. Pirate attacks are characterized by increasing cruelty and violence which will certainly not cease until pirates are brought to justice. In fact, pirates are committing some of the very acts that are included within the definition of acts that can constitute crimes against humanity when committed as part of an attack against a civilian population: namely, murder, torture, and rape⁵³.

88. Another reason why piracy could be included within the purview of ICC is the fact that the ICC already exists. As a result, including piracy within the ICC's jurisdiction would be less costly than establishing an entirely new international tribunal to adjudicate piracy cases. Furthermore, if states wish the ICC to adjudicate piracy cases in those regions where piracy offenses most frequently occur, the court is permitted to sit regionally. Having the ICC sit regionally could potentially produce additional cost-savings because at least some defendants or witnesses may not have to be transported to the ICC's current headquarters in The Hague. If the court does sit regionally, another benefit may result: the ICC may be able to share its expertise and resources with local judges and lawyers, thereby building local capacity to prosecute piracy cases.

89. Although piracy could be added to the crimes included within the court's jurisdiction by amendment to the Rome Statute, proceeding by way of an optional protocol would arguably be more efficient and expeditious⁵⁴. Amendments to the Rome Statute may only occur upon adoption by two-thirds of the states parties, which must then be ratified by seven-eighths of the states parties in order to take effect. Even so, states that have not accepted the amendment have certain rights to withdraw as states parties to the Rome Statute⁵⁵.

90. By contrast, an optional protocol will come into effect for those states that sign it. Any such protocol should create a separate chamber within the ICC to handle piracy cases specifically⁵⁶. Having a separate chamber could ensure that piracy cases would be investigated, prosecuted, and adjudicated by those with the necessary expertise. Such a focus on expertise should also produce benefits in terms of fairness, speed, and efficiency. In addition, having a special chamber for piracy cases should make decisions about whether to have such a chamber sit regionally easier because only personnel specifically assigned to that chamber would be involved in and affected by the decision.

⁵³ See Rome Statute, Art 7(1)

⁵⁴ The idea of potentially proceeding by a protocol, rather than by amendment, was raised during an Expert Workshop on Piracy hosted by the One Earth Future Foundation and the American Society of International Law on October 16–17, 2009 entitled *Suppressing Maritime Piracy: Exploring the Options in International Law*.

⁵⁵ See Rome Statute at Art 121.

⁵⁶ The idea of potentially creating a separate chamber to handle piracy cases was also raised and discussed at the October 16–17, 2009 Workshop entitled "Suppressing Maritime Piracy: Exploring the Options in International Law."

F. Regional prosecution: Kenya, Seychelles, Tanzania

91. There are several instances of regional cooperation for the suppression of piracy. At a regional level, Countries are working together to combat piracy. In the Caribbean, Dutch, French, American British, Jamaican and Venezuelan naval units and coastguard vessels are working together to confront drug trafficking and piracy. National and regional efforts to control piracy are of course supported by significant international informational resources from the International Maritime Organization [IMO] and the International Maritime Bureau [IMB] both of which provide invaluable data gathering services and coordination activities. Among its most important contributions to maritime security, the IMO has helped improve inter-ship communication systems and has developed piracy response protocols for crew.

92. In the area of prosecution, Countries have given assistance to States who were unable to respond effectively to incidents of piracy. For instance, since Somalia was not yet in a position to prosecute or imprison large numbers of pirates, the UK and others have been encouraging and supporting countries around Somalia to do so. However, legal obstacles and the potential scale and expense of prosecuting and imprisoning large numbers of pirates mean this is not always straightforward.

93. Any state may accept the transfer of a suspected pirate, because international customary law provides universal jurisdiction for piracy. Furthermore, certain states may also have jurisdiction over suspected pirates under the ordinary principles of criminal jurisdiction:

- the state of the suspected pirate's nationality
- the State of nationality of the suspected pirate's victim
- the flag State of any involved vessels

94. Several states might have equally valid claims to exercise jurisdiction over an offence; but no state is under a duty to prosecute, and international law does not provide a rule of priority between competing potential jurisdictions. States therefore have to cooperate over what to do with suspects, and they often tend to prosecute only when their nationals are involved – and only then, of course, when their domestic law has a relevant offence.

95. Kenya was one of the first regional countries to provide assistance. It changed its domestic law and signed a series of bilateral agreements under which it prosecuted and imprisoned 50 Somalis captured by international navies. But in March 2010 the Kenyan government announced that it would not accept any new pirate suspects for prosecution. It has a backlog of suspects, perhaps as a result of underestimating the scale of transfers, and some domestic legal questions.¹⁰⁹ Kenya is now accepting some suspects on a case-by-case basis where there is sufficient connection with Kenya.

96. Kenya, Tanzania and Seychelles have all changed their domestic legislation to make international piracy on the high seas an offence – previously they could prosecute only piracy in

their territorial waters. Seychelles is the only one of the three with an offence of going equipped or with intent for piracy.

VI. COMMENTS AND OBSERVATIONS OF THE AALCO SECRETARIAT

97. Piracy is a serious crime of international concern that is only increasing in frequency and severity despite the unique ways in which the international community has been working together recently in an effort to repress and combat piracy. Although nations have implemented a variety of measures aimed at disrupting piratical attacks—for example, by forming naval patrols that roam pirate-infested waters—such measures alone are not sufficient to deter all or most acts of piracy. Despite the presence of piracy and its effects on the security of ships, crews, and cargo passing through international and territorial waters, individual nations and the international community as a whole are doing little to ensure that pirates who succeed in committing their violent attacks are arrested, prosecuted, and punished.

98. Apparently, states have used universal jurisdiction as a basis for prosecuting acts of piracy only in very few instances— even though such jurisdiction has existed for many years. States have used the provisions of UNCLOS and the SUA Convention even more rarely as a basis on which to prosecute acts of piracy. Furthermore, it is unlikely that many states have even incorporated those treaty provisions into their national laws. Failing to incorporate treaty provisions aside, some states do not even have national laws that criminalize piracy, and where states have such laws, they are not uniform in how they operate or the conduct they prohibit.

99. It needs to be pointed out, however that lack of sufficient laws alone cannot explain the reluctance of nations to help end impunity for piracy because many nations have neither tried to use the laws that exist nor adopted domestic legislation criminalizing the conduct that comprises modern piracy. For example, even with sufficient laws, the lack of domestic law enforcement capabilities in certain interested states may make it virtually impossible for them to prosecute many acts of piracy. Some territorial states or states whose nationals are committing pirate attacks are either failed states or otherwise lack the institutional capacity to bring pirates to justice, making it unrealistic to expect that these states could alone manage the burden of prosecutions.

100. The difficulties inherent in prosecuting pirates point out the need for the development of model legislation and reliance on international courts that would help domestic legal systems reform their substantive law and prosecute in a manner consistent with international law. In this context, AALCO could indeed play a very vital role in developing any such legislation that could be used by its Member States to prosecute and punish alleged pirates. In this regard, AALCO would be more than willing to collaborate with other inter-governmental organizations such as IMO and UNCLOS who have expertise in anti-piracy efforts.

ANNEX

SECRETARIAT'S DRAFT
AALCO/DFT/RES/51/SP 1
22 JUNE 2012

**RESOLUTION ON HALF-DAY SPECIAL MEETING ON
“THE LAW OF THE SEA
RESPONSES TO PIRACY: INTERNATIONAL LEGAL CHALLENGES”
(Deliberated)**

The Asian-African Legal Consultative Organization at its Fifty-First Session,

Considering the Secretariat Document No. AALCO/51/ABUJA/ 2012/S 2;

Noting with appreciation the introductory remarks of the Deputy Secretary-General and the views expressed by the Chairperson and the Panelists and the statements of the Member States during the Special Meeting on “The Law of the Sea – Responses to Piracy: International Legal Challenges” jointly organized by the Government of the Federal Republic of Nigeria, AALCO and the **United Nations Division of Ocean Affairs and the Law of the Sea** held on 20th June 2012 at Abuja, Nigeria

Recognizing the universal character of the United Nations Convention on the Law of the Sea 1982 (UNCLOS), and its legal framework governing the issues relating to the management of the oceans;

Mindful of the historical contribution made by the Asian-African Legal Consultative Organization in the elaboration of the UNCLOS;

Conscious that the AALCO has been regularly following the implementation of the UNCLOS and its implementing agreements;

Hopeful that in view of the importance of the law of the sea issues, AALCO would maintain its consideration on the agenda item and continue to perform its historical role on the law of the sea matters;

Taking note of the deliberations at the United Nations Open-ended Informal Consultative Process established by the United Nations General Assembly to facilitate annual review of the developments in ocean affairs;

Welcoming the pre-eminent contribution and active role being played by the institutions established under the UNCLOS in relation to the peaceful settlement of disputes with regard to ocean related matters and the establishment of the outer limits of the Continental Shelf International Tribunal for the Law of the Sea (ITLOS) in the peaceful settlement of disputes with regard to ocean related matters and the administration of the “Area”;

Noting with satisfaction the upcoming commemoration of the 30th Anniversary of the opening for signature of UNCLOS on 10 December 2012;

Being aware of the challenges faced by the international community on account of piracy:

Condemning the increasing incidents of all acts of piracy and armed robbery against vessels;

1. **Reaffirms** that in accordance with the UNCLOS, the “Area” and its resources are the common heritage of mankind.
2. **Urges** the full and effective participation of its Member States in the work of the International Seabed Authority, and other related bodies established by the United Nations Convention on the Law of the Sea, as well as in the United Nations Informal Consultative Process and also through effective contribution to the work of the Commission on the Limits of Continental Shelf, so as to ensure and safeguard their legitimate interests.
3. **Calls upon** the Member States that have not yet done so to ratify or accede to and implement fully the 1982 United Nations Convention on the Law of the Sea.
4. **Requests** the Secretary-General to forward this resolution to the Secretariat of UNCLOS in commemoration of the 30th Anniversary of the UNCLOS.
5. **Also Requests** the Secretary-General to explore the possibility of bringing out a comprehensive study on anti-piracy legislations in order to assist the Member States on the subject matter.
6. **Decides** to place this item on the provisional agenda of the Fifty-Second Annual Session.