

AALCO/61/BALI/2023/SD/S2

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ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



THE LAW OF THE SEA

**The AALCO Secretariat
29-C, Rizal Marg
Diplomatic Enclave, Chanakyapuri
New Delhi – 110 021
(INDIA)**

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I. Background

A. AALCO and Law of the Sea

1. The Asian-African Legal Consultative Organization (AALCO) embarked on its engagement with the legal framework of the law of the sea in 1957 in its very first Annual Session. During the inaugural session of the same, two key Law of the Sea issues were presented for discussion: the “Law relating to the Regime of the High Seas, including Questions regarding rights to seabed and subsoil in open sea” (raised by Ceylon, now Sri Lanka) and India and the “Law of the Territorial Sea” (raised by Ceylon). Despite this early involvement, AALCO's influence on the 1958 Geneva Conference on the Law of the Sea was limited due to timing constraints. Nonetheless, AALCO assumed a pivotal role in the subsequent years, particularly from 1968 to 1982, by facilitating meaningful participation from Asian and African nations in the international negotiations that followed Maltese Ambassador Arvid Pardo's influential speech at the United Nations General Assembly in 1967.

2. Notably, the subject "The Law of the Sea" was introduced to AALCO's agenda upon the initiative of the Indonesian Government in 1970. Ever since, it has consistently remained a vital focus during each of the organization's Annual Sessions. AALCO's Annual Sessions played a crucial role in the development and deliberation of innovative concepts like the Exclusive Economic Zone (EEZ), Archipelago States, and the Rights of Landlocked States. These concepts, which were later incorporated into the United Nations Convention on the Law of the Sea (UNCLOS), were shaped through discussions within AALCO's forum.

B. Issues for Focussed Deliberations for the Sixty-First Annual Session of AALCO

3. The key themes of in-depth discussion during the Sixty-First Annual Session of AALCO revolve around two critical subjects:

- (1) The preservation and responsible utilization of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ); and
- (2) Illegal, Unreported and Unregulated (IUU) fishing.

This concise overview aims to highlight the relevance of these topics in relation to the interests and priorities of AALCO Member States.

4. Adopted by the Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction (BBNJ), the ‘high seas’ treaty represents a landmark agreement aimed at taking stewardship of the ocean on behalf of present and future generations, in line with the UN Convention on the Law of the Sea. The treaty's objective is to implement international regulations to protect life in oceans beyond national jurisdiction through international cooperation. It addresses critical issues such as increasing sea surface temperatures, overexploitation of marine biodiversity, overfishing, coastal pollution, and unsustainable practices beyond national jurisdiction. Comprising 75 articles, the treaty strives to protect, care for, and ensure the responsible use of the marine environment, maintaining the integrity of ocean ecosystems, and conserving the inherent value of marine biological diversity. The brief prepared by the AALCO Secretariat will provide a detailed overview of the text of this pivotal treaty, offering further insights into its impact and implementation.

5. The challenges posed by Illegal, Unreported and Unregulated (IUU) fishing for the Afro-Asian community and the need for joint regional cooperation in this matter are highlighted in this brief. The issue of IUU fishing is one of the most challenging problems facing transnational fisheries sustainability today. While the international community has created various normative mechanisms to deal with the problem, the problem of IUU fishing can only be addressed effectively by greater collaboration between countries on new and emerging challenges facing the global community. In this regard, the AALCO Secretariat is of the view that Member States come together on a common platform and explore various legal and policy approaches to unitedly face the challenges posed by IUU fishing.

6. Since AALCO has engaged with law of the sea as a topic for decades, it was felt better to broaden the engagement to the specific area of IUU fishing given its significance for the Afro-Asian region within the broader scope of law of the sea. The Secretariat notes that various AALCO Member States have strong domestic legal and policy measures in place to deal with the issue of IUU fishing and efforts are being made to strengthen their effectiveness. In this backdrop, the issue of IUU fishing deserves greater attention in the work programme of the Organization.

7. It is also believed that a discussion on IUU fishing can also possibly create a common position on the need to address the threats posed by the issue at a more general level and the Afro-Asian region could emerge as a potential regional catalyst in supplementing international efforts currently underway to deal with the problem.

II. AGREEMENT UNDER THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA ON CONSERVATION AND SUSTAINABLE USE OF MARINE BIODIVERSITY IN AREAS BEYOND NATIONAL JURISDICTION (BBNJ)

A. Background and Objectives

8. The world's oceans, covering more than 70% of the earth's surface, are a critical component of the global ecosystem. They play a vital role in regulating climate, supporting biodiversity, and providing economic resources. However, the oceans are under unprecedented stress due to human activities such as overfishing, pollution, and climate change. The high seas and areas beyond any State's exclusive economic zone (EEZ), have been particularly vulnerable due to a lack of comprehensive governance mechanisms.

9. The United Nations Convention on the Law of the Sea (UNCLOS), adopted in 1982 and in force since 1994, laid the foundational framework for the governance of the world's oceans.¹ While UNCLOS has been ratified by 167 States and the European Union, it has several gaps, particularly concerning the high seas. These gaps have led to unregulated activities that pose significant risks to marine biodiversity and the integrity of marine ecosystems. Recognizing these challenges, the United Nations initiated discussions nearly two decades ago to address the regulatory gaps in UNCLOS concerning areas beyond national jurisdiction.

10. After years of negotiations and preparatory meetings, the United Nations High Seas Treaty, formally known as the Agreement under the United Nations Convention on the Law of the Sea on Conservation and Sustainable Use of Marine Biodiversity in Areas Beyond National Jurisdiction

¹ United Nations Convention on the Law of the Sea (opened for signature 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS).

(BBNJ) was finalized on March 4, 2023, and adopted on June 19, 2023.² The Treaty aims to serve as a legally binding instrument under UNCLOS for the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction. This part aims to provide a detailed analysis of the Treaty's text.

11. The primary objective of the High Seas Treaty is to ensure the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction. It seeks to achieve this through the effective implementation of UNCLOS and further international cooperation and coordination.³ The Treaty introduces several key principles and provisions, including:

1. Marine Genetic Resources (MGRs): The Treaty aims to regulate the collection and sharing of marine genetic resources, including the development of a multilateral benefit-sharing mechanism.
2. Area-Based Management Tools (ABMTs): These tools, including Marine Protected Areas (MPAs), are designed to offer long-term conservation of marine environments.
3. Environmental Impact Assessments (EIAs): The Treaty mandates the review of environmentally harmful projects both within and beyond national boundaries.
4. Capacity Building and Transfer of Marine Technology (CB&TMT): This aims to support developing states in marine scientific and technological capacity building.

12. The Treaty aligns with broader international objectives, such as the 2030 Agenda for Sustainable Development and the Kunming-Montreal Global Framework for Biodiversity. For the Treaty to come into effect, it requires ratification by a minimum of 60 UN Member States. Given that UNCLOS took over a decade to come into force, the ratification process for the High Seas Treaty is expected to be a lengthy one. However, the Treaty is anticipated to be implemented before the June 2025 United Nations Ocean Conference in Nice, France.⁴ This part delves into

² Agreement under the United Nations Convention on the Law of the Sea on Conservation and Sustainable Use of Marine Biodiversity in Areas Beyond National Jurisdiction (adopted 19 June 2023, not yet in force) UN Doc A/CONF.232/2023/4 (High Seas Treaty).

³ High Seas Treaty, Article 2

⁴ “Statement by Ms. Diarra Dime-labille, Legal adviser of France to the United Nations, Permanent Mission of France, 20 June 2023 <<https://onu.delegfrance.org/marine-biodiversity-france-welcomes-the-conclusion-of-an-ambitious-treaty-for>>

each of these aspects in greater detail, examining their implications for AALCO Member States and offers recommendations for effective implementation and compliance.

B. Key Principles and Provisions of the Treaty

13. As mentioned above, the High Seas Treaty introduces, and employs, certain principles that form the basis of the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction. These are Marine Genetic Resources (MGRs), Area-based Management Tools (ABMTs), Capacity Building and Transfer of Marine Technology (CB&TMT), and the polluter pays and precautionary principles.

1. Marine Genetic Resources (MGRs)

14. One of the most groundbreaking aspects of the High Seas Treaty is its focus on Marine Genetic Resources, which include biochemical compounds that have potential applications in sectors like pharmaceuticals, cosmetics, and food supplements.⁵ The Treaty aims to develop a multilateral benefit-sharing mechanism for these resources, thereby ensuring that their economic value is equitably distributed among States.

15. The Treaty imposes robust notification requirements prior to the collection, use, and commercialization of these genetic resources.⁶ However, it is worth noting that there remains ambiguity around who should pay and how monetary and non-monetary benefits will be distributed. For AALCO Member States, this provision offers an opportunity to participate in the economic benefits derived from marine genetic resources.

2. Area-Based Management Tools (ABMTs)

16. The Treaty introduces Area-Based Management Tools, including Marine Protected Areas (MPAs), as the primary structures for the protection of the marine environment in areas beyond

⁵ High Seas Treaty, Part II

⁶ High Seas Treaty, Article 12

national boundaries.⁷ These tools are designed to balance environmental protection with food security and other socio-economic objectives. The establishment of MPAs is particularly significant as it offers a mechanism for long-term conservation, which was previously lacking under UNCLOS. For AALCO Member States, the implementation of ABMTs presents both challenges and opportunities. While it may restrict certain economic activities like fishing, it also provides a framework for sustainable resource management, which is crucial for long-term economic stability.

3. Environmental Impact Assessments (EIAs)

17. The Treaty mandates Environmental Impact Assessments for projects that may cause substantial pollution or significant changes to the marine environment in areas beyond national jurisdiction.⁸ These assessments must consider ‘cumulative impacts’, which include the consequences of climate change and ocean acidification. This provision is particularly relevant for AALCO Member States engaged in offshore energy projects, deep-sea mining, or submarine cable-laying activities.

4. Capacity Building and Transfer of Marine Technology (CB&TMT)

18. Recognizing the disparities in marine scientific and technological capacities among nations, the Treaty includes provisions for Capacity Building and the Transfer of Marine Technology.⁹ This is aimed at supporting developing states, including many AALCO Member States, in building their marine scientific and technological capacities. The Treaty outlines various types of capacity building and technology transfer, such as the sharing of information and research results, and the development and strengthening of institutional capacities.

5. The Polluter Pays and Precautionary Principles

19. Aligned with global environmental governance norms, the Treaty incorporates the ‘polluter pays’ principle, placing the responsibility on polluters to manage and bear the costs of their pollution.¹⁰ The Treaty also includes the precautionary principle, advising states not to let the lack of scientific certainty deter them from taking action to prevent serious or irreversible damage to

⁷ High Seas Treaty, Article 17

⁸ High Seas Treaty, Part IV

⁹ High Seas Treaty, Part V

¹⁰ High Seas Treaty, Article 7 (a)

the high seas.¹¹ These principles are crucial for proactive environmental governance and are of particular importance to AALCO Member States that are vulnerable to the impacts of climate change and biodiversity loss.

C. Institutional Mechanisms and Governance

20. The Treaty introduces a robust institutional framework to oversee its implementation and compliance. This includes the Conference of the Parties (COP), the Scientific and Technical Body, the Secretariat, and the Clearing-House Mechanism. Understanding these institutional arrangements is crucial for effective participation and influence in the Treaty's governance.

1. Conference of the Parties (COP)

21. The COP serves as the primary decision-making body and will convene one year after the Treaty enters into force.¹² It is responsible for reviewing and evaluating the Treaty's implementation. Decisions at the COP are ideally made by consensus, but if that proves unattainable, a two-thirds majority of the parties present and voting can adopt decisions. This mechanism allows for a balanced representation of interests, including those of AALCO Member States.

2. Scientific and Technical Body

22. Comprising members nominated by the parties and elected by the COP, the Scientific and Technical Body provides scientific and technical advice to the COP.¹³ It plays a vital role in reviewing area-based management tools and commenting on environmental impact assessments. AALCO Member States can leverage this body to ensure that their scientific contributions and concerns are adequately represented.

3. The Secretariat and Clearing-House Mechanism

23. The Secretariat is responsible for administrative and logistical support¹⁴, while the Clearing-House Mechanism facilitates information sharing and international cooperation.¹⁵ These

¹¹ High Seas Treaty, Articles 7 (e) and 24

¹² High Seas Treaty, Article 47

¹³ High Seas Treaty, Article 49

¹⁴ High Seas Treaty, Article 50

¹⁵ High Seas Treaty, Article 51

entities can serve as valuable resources for AALCO Member States, especially those with limited capacities to engage in extensive scientific research or data management.

4. Committees for Specialized Functions

24. In addition to the primary institutional bodies, the Treaty establishes specialized committees for access and benefit-sharing, capacity-building and transfer of marine technology, financial resources, and implementation and compliance.¹⁶ These committees offer specialized platforms where AALCO Member States can engage in more focused discussions and negotiations on issues directly relevant to them.

5. Compliance and Monitoring

25. Five years after the Treaty enters into force, the COP is mandated to review its implementation.¹⁷ This review process provides an opportunity for AALCO Member States to assess the Treaty's effectiveness and propose amendments or improvements. It serves as a mechanism for accountability and ensures that the Treaty remains responsive to emerging challenges and scientific discoveries.

D. Marine Genetic Resources and Economic Equity

26. The Treaty places significant emphasis on the conservation and sustainable use of marine genetic resources (MGRs). This section delves into the complexities surrounding MGRs, focusing on the principles of fair and equitable benefit-sharing and their implications for economic justice and equity.

27. Marine genetic resources have garnered increasing attention due to their potential applications in various sectors, including pharmaceuticals, cosmetics, and food supplements. While the exact economic value remains uncertain, the potential for profits has led to increased interest in the exploration and exploitation of these resources. AALCO Member States, especially those with extensive coastlines or maritime zones, stand to benefit from this burgeoning field, provided that the Treaty's provisions ensure equitable access and benefit-sharing.

¹⁶ High Seas Treaty, Articles 15, 46, 52, 55

¹⁷ High Seas Treaty, Article 47 (8)

28. One of the Treaty's cornerstone principles is the fair and equitable sharing of benefits derived from MGRs.¹⁸ This includes both monetary and non-monetary benefits, such as the sharing of research results and technological know-how. An Access and Benefit-Sharing Committee will be established to provide guidelines for transparent, fair, and equitable benefit-sharing.¹⁹ For AALCO Member States, active participation in this committee is crucial to ensure that their interests and unique circumstances are adequately considered.

29. The Treaty's negotiations revealed contentious points, particularly whether the provisions about MGRs should apply to 'fish' and 'fishing activities.' The final text states that these provisions do not apply to fish and fishing in areas beyond national jurisdiction. This exclusion could limit the Treaty's effectiveness in achieving its objectives, as fish are a major component of marine biodiversity. AALCO Member States with significant fishing industries must be vigilant in future negotiations to ensure that the Treaty adequately addresses this gap.

30. Another point of dispute was the mechanism for benefit-sharing. While the Treaty ultimately agreed to regulate both monetary and non-monetary benefits,²⁰ the specifics are yet to be determined. AALCO Member States may opt to advocate for a benefit-sharing mechanism that recognizes their developmental needs and contributes to economic justice.

31. The Treaty also acknowledges the importance of capacity building and transfer of marine technology, particularly for developing States. This focus aligns with the interests of many AALCO Member States, which may lack the technological infrastructure to fully exploit MGRs. Active engagement in the Capacity-Building and Transfer of Marine Technology Committee will be essential for these states to ensure that the Treaty's implementation supports their technological and economic advancement.²¹

¹⁸ High Seas Treaty, Article 9

¹⁹ High Seas Treaty, Article 15

²⁰ High Seas Treaty, Article 14

²¹ High Seas Treaty, Article 46

E. Environmental Impact Assessments and Sustainable Development

32. Environmental Impact Assessments (EIAs) are a pivotal component of the Treaty, serving as a tool for the sustainable management of marine resources.²² The Treaty's EIA provisions offer a structured approach to balance economic development with environmental conservation. EIAs are designed to predict, reduce, and prevent the adverse effects of human activities on marine biodiversity and ecosystems. While EIAs are well-established within national jurisdictions, their application in areas beyond national jurisdiction has been less developed. The Treaty fills this gap by obliging participating parties to conduct EIAs for activities that may impact the marine environment.

33. In addition to EIAs, the Treaty introduces the concept of Strategic Environmental Assessments (SEAs)²³, which offer a more holistic and long-term approach to environmental protection. Unlike EIAs, which focus on specific projects, SEAs consider broader plans and programs related to activities in areas beyond national jurisdiction. While SEAs are not obligatory under the Treaty, AALCO Member States should consider their potential benefits in achieving long-term sustainability.

34. The EIA provisions are closely aligned with the United Nations Sustainable Development Goals (SDGs), particularly Goal 14, which aims to “conserve and sustainably use the oceans, seas, and marine resources.”²⁴ By incorporating EIAs into their national policies, AALCO Member States can make strides toward achieving this goal, thereby fulfilling their commitments under the 2030 Agenda for Sustainable Development.

35. One challenge lies in the Treaty's language, which leaves some ambiguity regarding the jurisdiction or control over the activity requiring an EIA. This could lead to gaps in the application of EIAs, particularly for activities conducted by non-state actors. AALCO Member States may seek clarification on this issue in future negotiations to ensure comprehensive environmental protection. Another consideration is the Treaty's focus on ‘cumulative impacts’,²⁵ which include

²² High Seas Treaty, Article 27

²³ High Seas Treaty, Article 39

²⁴ United Nations General Assembly, 'Transforming Our World: The 2030 Agenda for Sustainable Development' (21 October 2015) A/RES/70/1.

²⁵ High Seas Treaty, Article 1(6)

the consequences of climate change and ocean acidification. Given that many AALCO Member States are disproportionately affected by climate change, the inclusion of cumulative impacts in EIAs offers an opportunity to address these broader environmental challenges.

III. ILLEGAL, UNREPORTED AND UNREGULATED (IUU) FISHING

36. ‘Illegal, Unreported and Unregulated (IUU) fishing’ incurs considerable damage to the marine ecosystems, fish populations, and the livelihoods of coastal communities that has been dealt with for years within the framework of the law of the sea; due to its significance for AALCO member States, we discuss the issue in this section.

A. Introduction

37. Sustainable use of ocean resources including fisheries conservation and management has been an area of interest for AALCO in the larger backdrop of safeguarding marine biodiversity in areas beyond national jurisdiction. The organization strongly supports international law mechanisms created to combat the problem of IUU fishing, especially the Port State Measures Agreement, 2009 which is amongst the strongest binding legal instrument created by the international community to deal with the problem of IUU fishing. As the only international law organization created by the Afro-Asian community to address legal matters of common concern, AALCO accords high priority to the issue of ocean and marine sustainability. This part of the brief endeavours to apprise AALCO Member States on the international legal framework of IUU fishing encouraging them to engage with these legal instruments at a deeper level to combat the transnational problem of IUU fishing in the spirit of solidarity and cooperation. Regional collaboration between the States of Asia and Africa as part of the broader global efforts to deal with the problem is imperative to address the challenges posed to sustainable fisheries management in the larger interests of ocean conservation and protection of livelihoods across the world.

B. IUU Fishing: Challenge to Fisheries Sustainability

38. IUU fishing poses an immense threat to the delicate balance of marine ecosystems. It is estimated by the Food and Agriculture Organization (FAO) that IUU fishing represents up to 26 million tonnes of fish caught annually.²⁶ This destructive practice has the alarming ability to undermine the well-intentioned efforts of States to responsibly manage their fisheries and safeguard marine biodiversity. According to the *Chasing Red Herrings* Report, the financial impact of IUU fishing is estimated to reach as high as USD 23.5 billion annually²⁷. However, the overall expenses associated with fisheries-related criminal activities, encompassing tax evasion and additional associated crimes, go well beyond the mere value of the depleted marine resources²⁸. Coastal states that are particularly susceptible bear the brunt of these repercussions, experiencing a shortfall in revenue, diminished prospects for employment, and hindered progress in building infrastructure. Moreover, they grapple with the adverse effects of inadequate food supply, instability, and the depletion of biodiversity. IUU fishing encompasses a wide range of fishing techniques or actions that violate established fisheries laws, regulations, and conservation measures. This includes activities like fishing in restricted areas or times, specifically targeting protected species, employing prohibited fishing methods, and fishing without proper licenses. The problem is particularly acute in developing countries which may lack the necessary financial and material capabilities for effective Monitoring, Control and Surveillance (MCS) of their fishing activities.²⁹

39. According to the Food and Agriculture Organization of the United Nations (FAO), approximately 10 to 12 percent of the world's population derive their livelihoods from the fishing and aquaculture sector³⁰. Additionally, around 3.1 billion individuals rely on fish and fish-related items to constitute almost 20 percent of their intake of animal-based proteins³¹. This places the

²⁶Food and Agriculture Organization of the United Nations 'Illegal, Unreported and Unregulated (IUU) fishing' (FAO, 2023) <https://www.fao.org/iuu-fishing/en/>,

²⁷ North Atlantic Fisheries Intelligence Group and INTERPOL. (2017). *Chasing Red Herrings: Flags of Convenience and the Impact on Fisheries Crime Law Enforcement*. (NA-FIG: Oslo)

²⁸ *ibid*

²⁹ Food and Agriculture Organization of the United Nations, 'Illegal, Unreported and Unregulated (IUU) fishing', (FAO, 2023) <https://www.fao.org/iuu-fishing/en/>

³⁰ North Atlantic Fisheries Intelligence Group and INTERPOL. (2017). *Chasing Red Herrings: Flags of Convenience and the Impact on Fisheries Crime Law Enforcement*. (NA-FIG: Oslo)

³¹ *ibid*

fisheries industry, including aquaculture, as one of the utmost crucial sectors, playing a pivotal role in ensuring global food security, alleviating poverty, and fostering human well-being across the globe.

40. The problem of IUU fishing is not merely limited to areas within the maritime boundaries of a State but also beyond it i.e., the high seas. It infiltrates every facet and phase of the fishing process, from capture to utilization, and occasionally even intersects with organized criminal activities. By indulging in IUU fishing, unscrupulous actors strip away valuable fisheries resources that should rightfully belong to legitimate fishermen.³² This plundering of resources can have dire consequences, especially for local fisheries, often leading to their collapse.³³ Vulnerable small-scale fisheries in developing countries are particularly susceptible, suffering the brunt of this devastation. The repercussions extend beyond the confines of the fishing industry. IUU fishing can have far-reaching impacts, as its ill-gotten products often find their way into international trade markets. This influx of illegally sourced fish products can choke local food supplies, as the products are diverted to foreign markets, leaving communities that depend on these resources for sustenance in a state of desperation.

41. Consequently, the looming threat of IUU fishing places livelihoods in jeopardy, exacerbates existing poverty, and contributes to the harrowing spectre of food insecurity. In essence, IUU fishing is not merely a violation of fishing regulations; it is an intricate web of interconnected problems that entwines environmental, economic, and social elements.³⁴ Urgent and collective action at the Afro-Asian regional level is imperative to combat this pervasive menace, as it stands as a formidable barrier to the sustainable and equitable management of precious marine resources and the achievement of ocean sustainability goals.

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

42. The United Nations Convention on the Law of the Sea (UNCLOS) serves as the foundational framework for governing ocean activities and the rights and responsibilities of

³² Food and Agriculture Organization of the United Nations, ‘Illegal, Unreported and Unregulated (IUU) fishing’, (FAO, 2023) <https://www.fao.org/iuu-fishing/en/>

³³ *ibid*

³⁴ *ibid*

nations concerning maritime affairs. It grants all nations access to fishing in international waters, but it also places a general obligation on countries to collaborate in preserving and effectively managing the marine life in these areas. Consequently, UNCLOS lays the groundwork for overseeing deep-sea fishing and safeguarding marine resources in the high seas that are beyond national jurisdiction (ABNJ).³⁵

43. A key principle of UNCLOS is the concept of ‘flag State jurisdiction’ which necessitates that countries establish a substantial connection with vessels sailing under their flag.³⁶ These flag States are also required to assert their authority and oversight in administrative, technical, and social matters involving their flagged vessels.³⁷

44. There are provisions in UNLCOS that deal with marine resources. Article 61 provides regulations for a coastal state's exclusive economic zone (EEZ). It empowers the coastal state to determine allowable catches and prevent over-exploitation of living resources. Conservation measures aim to maintain sustainable yields, considering environmental, economic factors, and the needs of fishing communities. Cooperation with international organizations is encouraged for data exchange and species protection. Article 62 emphasizes the promotion of optimum resource utilization, allowing other states access to surplus catches if the coastal state lacks the capacity to harvest them. Factors considered include economic significance, international obligations, and minimizing disruption for existing fishing communities. Nationals of other states must adhere to coastal state regulations consistent with international conventions. Article 63 requires States to collaborate, possibly through regional organizations, to establish conservation and development measures. Similarly, where fish stocks extend beyond the EEZ into adjacent areas, the coastal state and fishing states should cooperate to conserve them, potentially through regional organizations. Article 64 requires States to cooperate directly or through appropriate international organizations for the protection and conservation of highly migratory species. Additionally, Annex I of UNCLOS provides guidelines for flag States to ensure that their vessels do not engage in IUU fishing.

³⁵ Lenel, S. 2020. Monitoring, control, and surveillance of deep-sea fisheries in areas beyond national jurisdiction. Rome, FAO. <https://doi.org/10.4060/ca7320en>

³⁶ *ibid*

³⁷ *ibid*

D. Agreement on Port State Measures (PSMA)

45. The Agreement on Port State Measures (PSMA) is a legally binding international law instrument aimed at addressing the problem of IUU fishing. Formulated in 2005 and endorsed during the FAO Conference in its Thirty-sixth Session on 22 November 2009, the Agreement became effective in June 2016, just thirty days after the 25th instrument of adherence was submitted.³⁸ The agreement seeks to interdict the activities of vessels involved in such nefarious practices from exploiting ports and unloading their illicit catches.³⁹ By taking this strategic stance, the agreement effectively erodes the allure for these rogue vessels to persist in their destructive activities. Simultaneously, it acts as a resolute barrier, preventing fishery products derived from IUU fishing from infiltrating both domestic and global markets. The ramifications of PSMA's robust execution extend well beyond its immediate impact. The agreement's successful application bears profound implications for the enduring safeguarding and sustainable management of the precious living marine resources and intricate marine ecosystems that grace our planet. By impeding the entrance of IUU-affiliated vessels into foreign ports, the PSMA acts as a guardian at the gate, ensuring that the hard-won gains in marine conservation and resource management are not undone by unscrupulous actors.⁴⁰ Crucially, the scope of the PSMA's provisions is firmly fixed on fishing vessels that endeavour to access designated ports situated in a state different from their flag State.⁴¹ This targeted approach underscores the international nature of the IUU fishing predicament and the collaborative effort required to curtail its widespread impact. By doing so, the PSMA bolsters the coordinated response against IUU fishing, uniting nations in a shared commitment to enforce stringent measures that obstruct these vessels' access to markets and curtail their destructive activities.⁴²

46. The PSMA also plays a crucial role in realizing the objectives of the United Nations Sustainable Development Goals (SDGs). Within SDG 14, which focuses on the well-being of aquatic ecosystems, Article 14.4 emphasizes the need to eradicate illegal, unreported, and

³⁸ Food and Agriculture Organization of the United Nations, *Illegal, Unreported and Unregulated (IUU) fishing, Agreement on Port State Measures (PSMA)*, (FAO, 2023) <https://www.fao.org/iuu-fishing/international-framework/psma/en/>

³⁹ *ibid*

⁴⁰ *ibid*

⁴¹ *ibid*

⁴² *ibid*

unregulated (IUU) fishing. Additionally, Article 14.6 underscores the importance of ending financial incentives that support IUU fishing practices.

E. Other International Legal Mechanisms dealing with IUU Fishing

a. FAO Compliance Agreement

47. Apart from the instruments mentioned above, there are other international instruments that address IUU fishing; the FAO Compliance Agreement, UN Fish Stocks Agreement and the FAO Code of Conduct for Responsible Fisheries are the most important of them that are briefly discussed below.

48. The Agreement for the Promotion of Adherence to International Conservation and Management Rules by Fishing Vessels in the High Seas which is also known as the Compliance Agreement seeks to strengthen the involvement of flag States in the fight against IUU fishing.⁴³ It aims to ensure that States enhance their oversight of vessels to guarantee adherence to international conservation and management regulations.⁴⁴ Approved during the 27th session of the FAO Conference in November 1993, the Compliance Agreement entered into force on 24 April 2003, following the submission of the twenty-fifth acceptance instrument to the FAO Director-General.⁴⁵

49. The agreement highlights the specific responsibility of flag States in preventing any of their vessels from engaging in high seas fishing without proper authorization, and emphasizes their effective discharge of duties to ensure their vessels follow international guidelines.⁴⁶ Furthermore, The Compliance Agreement aims to counteract the practice of transferring vessels engaged in high seas fishing to flags of countries that lack the ability or willingness to enforce global measures for conserving and managing fisheries resources.⁴⁷ The agreement extensively covers aspects such as

⁴³ *ibid*

⁴⁴ *ibid*

⁴⁵ *ibid*

⁴⁶ *ibid*

⁴⁷ *ibid*

maintaining records of fishing vessels, fostering international collaboration, and implementing enforcement mechanisms.⁴⁸

b. UN Fish Stocks Agreement

50. The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (commonly known as the UN Fish Stocks Agreement) entered into force on 11 December 2001, focuses on ensuring the sustainable and responsible management of fish stocks that cross boundaries and are highly migratory, in line with the principles of UNCLOS. The UN Fish Stocks Agreement (FSA) is a legally binding global accord established to ensure the responsible conservation and sustainable management of straddling fish stocks and highly migratory species. This agreement outlines comprehensive measures to achieve these goals. It was developed as a direct response to the call for improved fisheries management made during the United Nations Conference on Environment and Development (UNCED). The primary goal of the UN Fish Stocks Agreement is to secure the lasting conservation and rational utilization of straddling and highly migratory fish stocks, operating within the structure of UNCLOS. The UN Fish Stocks Agreement places Regional Fisheries Management Organizations and Arrangements at the core of managing fisheries in areas beyond national jurisdiction.⁴⁹ Additionally, the agreement details the responsibilities of flag States, encompassing aspects such as vessel registration, maintaining records, obtaining authorizations, and carrying out monitoring, control, and enforcement activities.⁵⁰ The agreement also covers collaboration in enforcing regulations at the international, regional and sub-regional levels, outlines protocols for boarding and inspection, and establishes measures for port States to implement.⁵¹ UNFSA outlines measures that nations must collectively agree upon to ensure the

⁴⁸ *ibid*

⁴⁹ Lenel, S. 2020. Monitoring, control, and surveillance of deep-sea fisheries in areas beyond national jurisdiction. Rome, FAO. <https://doi.org/10.4060/ca7320en>

⁵⁰ Food and Agriculture Organization of the United Nations, Illegal, Unreported and Unregulated (IUU) fishing, FAO Compliance Agreement, (FAO, 2023) <https://www.fao.org/iuu-fishing/international-framework/fao-compliance-agreement/en/>

⁵¹ *ibid*

long-term sustainability of fisheries, thereby outlining the desired qualities of RFMO/As.⁵² Additionally, UNFSA clarifies the responsibilities of flag States regarding vessels registered or licensed for fishing on the high seas.

51. Accordingly, Flag States are obligated to:⁵³

1. Establish and enforce rules and regulations for authorizing high seas fishing activities.
2. Create a national registry of vessels permitted to engage in high seas fishing.
3. Implement measures for monitoring, control, and surveillance (MCS), encompassing national, regional, and global inspection and enforcement strategies, observer initiatives, and the adoption of Vessel Monitoring Systems (VMS).
4. Develop criteria and programs for identifying vessels and equipment, maintaining records, reporting vessel positions, and confirming catches of intended and unintended species.
5. Control high seas transshipment to prevent the undermining of Conservation and Management Measures (CMMs).
6. Regulate fishing operations to ensure compliance with measures established at regional, sub-regional, and global levels.

c. FAO Code of Conduct for Responsible Fisheries

52. The 1995 FAO Code of Conduct for Responsible Fisheries was adopted on October 31, 1995, through Resolution 4/95 during the FAO Conference.⁵⁴ Serving as a groundbreaking and distinctive non-mandatory tool, the 1995 FAO Code of Conduct stands out as one of the most

⁵² Lenel, S. 2020. Monitoring, control, and surveillance of deep-sea fisheries in areas beyond national jurisdiction. Rome, FAO. <https://doi.org/10.4060/ca7320en>

⁵³ *ibid*

⁵⁴ Food and Agriculture Organization of the United Nations, Illegal, Unreported and Unregulated (IUU) fishing, Code of Conduct for Responsible Fisheries, (FAO, 2023), <https://www.fao.org/iuu-fishing/international-framework/code-of-conduct-for-responsible-fisheries/en/>

frequently referenced, prominent, and globally disseminated measures within the realm of fisheries, following the 1982 UN Convention on the Law of the Sea.⁵⁵ Distinguished by its inclusive and comprehensive nature, the 1995 FAO Code of Conduct is designed to be applied in a holistic manner by governments and all stakeholders engaged in fisheries and aquaculture. The primary objective of the 1995 FAO Code of Conduct is to establish worldwide benchmarks for responsible practices.⁵⁶ This framework aims to ensure effective conservation, management, and sustainable development of aquatic resources, while showing proper consideration for ecosystem health and biodiversity.⁵⁷ These guidelines are adaptable for implementation at various levels, including national, subregional, and regional contexts.⁵⁸ They encourage the cultivation of more conscientious conduct within the fisheries sector. Ultimately, it is anticipated that these standards and principles will lead to the realization of sustainable and lasting outcomes.⁵⁹

d. International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU)

53. During its twenty-third session in 1999, the FAO Committee on Fisheries (COFI) identified the issue of illegal, unreported, and unregulated (IUU) fishing as a significant concern and suggested the creation of an International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU).⁶⁰ After a two-year period of discussions and consultations, the IPOA-IUU was endorsed by COFI on March 2, 2001.⁶¹ The development of this plan occurred under the umbrella of the Code of Conduct for Responsible Fisheries.

54. IUU fishing is classified as follows by the IPOA-IUU:⁶²

⁵⁵ *ibid*

⁵⁶ Food and Agriculture Organization of the United Nations, *Illegal, Unreported and Unregulated (IUU) fishing, Code of Conduct for Responsible Fisheries*, (FAO, 2023), <https://www.fao.org/iuu-fishing/international-framework/code-of-conduct-for-responsible-fisheries/en/>

⁵⁷ *ibid*

⁵⁸ *ibid*

⁵⁹ *ibid*

⁶⁰ Food and Agriculture Organization of the United Nations, *Illegal, Unreported and Unregulated (IUU) fishing, IPOA-IUU*, (FAO, 2023), <https://www.fao.org/iuu-fishing/international-framework/ipoa-iuu/en/>

⁶¹ *ibid*

⁶² Food and Agriculture Organization of the United Nations, *Illegal, Unreported and Unregulated (IUU) fishing, What is IUU fishing?* (FAO, 2023) <https://www.fao.org/iuu-fishing/background/what-is-iuu-fishing/en/>

Illegal Fishing:

1. Occurs when national or foreign vessels engage in fishing within the jurisdiction of a state without proper authorization or in violation of its laws and regulations.
2. Involves vessels flying the flags of states that belong to a relevant regional fisheries management organization but operate against the conservation and management measures established by that organization, despite their obligations.
3. Takes place in defiance of national laws or international commitments, including those made by cooperative states within a relevant regional fisheries management organization.

Unreported Fishing:

1. Encompasses fishing activities that are not disclosed or are inaccurately reported to the appropriate national authority, going against established national laws and regulations.
2. Refers to fishing undertaken within the scope of a relevant regional fisheries management organization that goes unreported or is inaccurately reported, violating the reporting procedures of that organization.

Unregulated Fishing:

1. Refers to fishing conducted within the jurisdiction of a relevant regional fisheries management organization by vessels without any nationality or those flying the flag of a non-member state. This type of fishing goes against the conservation and management measures of the organization.
2. Takes place in areas or for fish stocks where there are no applicable conservation or management measures. This occurs when fishing activities do not align with the responsibilities of states to conserve marine resources under international law.

55. The IPOA-IUU was conceived as a comprehensive toolkit, offering a wide array of strategies applicable in diverse scenarios to combat IUU fishing effectively.⁶³ It encompasses various responsibilities linked to flag, port, coastal, and market States. The plan envisions the active engagement and collaboration of multiple entities, including governments, representatives from the fishing industry, fishing communities, non-governmental organizations (NGOs), and emphasizes a holistic approach to address all ramifications of IUU fishing.⁶⁴ States are encouraged by the IPOA-IUU to establish and implement their own National Plans of Action (NPOAs), which should address responsibilities related to flag States, measures for coastal, port, and market States, and the role of Regional Fisheries Management Organizations (RFMOs) in carrying out these NPOAs.⁶⁵

e. Voluntary Guidelines for Flag State Performance (VGFSP)

56. The Voluntary Guidelines for Flag State Performance (VGFSP) offer direction to reinforce and oversee the adherence of flag States to their international obligations concerning the registration and oversight of fishing vessels.⁶⁶ These guidelines address the pertinent duties of flag States, drawing from elements found in both binding and non-binding international fisheries agreements, in accordance with established international law. The VGFSP was formally adopted during the 31st session of the FAO Committee on Fisheries (COFI) in 2014.⁶⁷

57. Key facets covered by the VGFSP encompass fisheries management, the process of vessel registration, maintaining vessel records, authorization procedures, and the establishment of Monitoring, Control, and Surveillance (MCS) measures.⁶⁸ Moreover, they emphasize the importance of collaboration between flag States and coastal States.⁶⁹ One of the core aspects of

⁶³ Food and Agriculture Organization of the United Nations, *Illegal, Unreported and Unregulated (IUU) fishing, IPOA-IUU*, (FAO, 2023), <https://www.fao.org/iuu-fishing/international-framework/ipoa-iuu/en/>

⁶⁴ Food and Agriculture Organization of the United Nations, *Illegal, Unreported and Unregulated (IUU) fishing, IPOA-IUU*, (FAO, 2023), <https://www.fao.org/iuu-fishing/international-framework/ipoa-iuu/en/>

⁶⁵ *ibid*

⁶⁶ Food and Agriculture Organization of the United Nations, *Illegal, Unreported and Unregulated (IUU) fishing, Voluntary Guidelines for Flag State Performance*, (FAO, 2023) <https://www.fao.org/iuu-fishing/international-framework/voluntary-guidelines-for-flag-state-performance/en/>

⁶⁷ *ibid*

⁶⁸ *ibid*

⁶⁹ *ibid*

the VGFSP involves proposing measures that nations can take to ensure that vessels flying their flags do not engage in IUU fishing.⁷⁰ This includes the implementation of robust MCS activities such as vessel monitoring systems (VMS) and the deployment of observers⁷¹. These guidelines advocate for the exchange of information and cooperation between countries to enable flag States to deny registration to vessels that are attempting to evade regulation by switching flags or to reject vessels that have been reported for IUU fishing activities.⁷² Furthermore, the VGFSP contains recommendations on how countries can encourage compliance and respond to non-compliance by vessels.⁷³ It also outlines ways to enhance international collaboration to support developing nations in fulfilling their responsibilities as flag States.⁷⁴

F. Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion of 2 April 2015- ITLOS

58. On April 2, 2015, the International Tribunal for the Law of the Sea (ITLOS) released an advisory opinion addressing the legal rights and obligations of flag states and coastal states regarding illegal, unreported, and unregulated (IUU) fishing activities occurring within exclusive economic zones (EEZs).⁷⁵ This advisory opinion carried significant implications and brought clarity to several crucial aspects.

59. Firstly, ITLOS affirmed that the entire Tribunal, including its Seabed Disputes Chamber, possesses the authority to deliver advisory opinions. This resolution settled a previously contentious matter that had not been definitively addressed before.⁷⁶ Secondly, the Tribunal underscored that according to the United Nations Convention on the Law of the Sea (UNCLOS), flag states bear a "due diligence" responsibility to ensure that vessels registered under their flag refrain from engaging in IUU fishing. ITLOS pointed out that if a flag state fails to exercise due

⁷⁰ *ibid*

⁷¹ *ibid*

⁷² *ibid*

⁷³ *ibid*

⁷⁴ *ibid*

⁷⁵ Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, p. 4

⁷⁶ *ibid*

diligence, it could be held accountable for the actions of its vessels participating in IUU fishing.⁷⁷ Moreover, ITLOS clarified that if the authority for fisheries management has been transferred from a state to an international organization, the organization itself, rather than the flag state, might face liability for inadequate measures in preventing IUU fishing.⁷⁸ This emphasized the necessity for international organizations to take effective measures against IUU fishing. Lastly, the Tribunal confirmed that coastal states are obligated to consult and cooperate with each other in the sustainable management of shared stocks and highly migratory species. This highlighted the significance of collaborative efforts among coastal states to ensure responsible management and conservation of these valuable resources. Additionally, the Tribunal held that coastal states could hold flag states liable for their international wrongful acts of not exercising the requisite due diligence in the circumstances pertaining to IUU activities⁷⁹. Collectively, the ITLOS advisory opinion furnished crucial guidance on the roles of flag states and coastal states concerning IUU fishing within EEZs. It reinforced the obligation of flag states to diligently regulate their vessels, highlighted the potential liability of international organizations in fisheries management, and stressed the importance of joint action among coastal states for the sustainable management of shared resources and highly migratory species.

G. International Capacity Building Efforts under the PSMA

60. Under the PSMA, certain capacity building efforts have been made including FAO's Global Capacity Development Programme to support the implementation of the PSMA and complementary international instruments and regional mechanisms to combat IUU fishing⁸⁰, and the Assistance Fund to be established within the framework of Part 6 of the PSMA.

⁷⁷ibid

⁷⁸ ibid

⁷⁹ Eve de Coning, E. (2020). Why Are Some Flag States Unable or Unwilling to Address IUU Fishing? *International Community Law Review*, 22(3-4), 487-512. <https://doi-org.rru.remotexs.in/10.1163/18719732-12341444>

⁸⁰ Food and Agriculture Organization of the United Nations, Illegal, Unreported and Unregulated (IUU) fishing, Agreement on Port State Measures (PSMA), Parties suggest more awareness raising on the PSMA and global capacity development to combat IUU fishing (FAO, 2023) <https://www.fao.org/port-state-measures/news-events/detail/en/c/1636235/>

a. FAO's Global Capacity Development Programme

61. The FAO endorsed the Programme in December 2016. All initiatives developed within the framework of this Programme share the common goal of enhancing the ability of states to effectively enforce port State measures (PSMs) and conduct supplementary monitoring, control, and surveillance (MCS) activities. These endeavours are aimed at combating illegal, unreported, and unregulated (IUU) fishing. The execution of distinct elements of the Programme varies from country to country, depending on their progress in adopting and implementing provisions and procedures aligned with the PSMA and complementary MCS strategies to counter IUU fishing.

62. On a national scale, the activities of these projects encompass:

- Reinforcing the national policies and legal frameworks intended to combat IUU fishing.
- Strengthening the institutions and systems responsible for MCS enforcement, which includes collaboration through South-South Cooperation and mechanisms for regional harmonization, coordination, and cooperation.
- Enhancing the capacity to elevate the performance of flag States in accordance with the FAO's Voluntary Guidelines. This includes the ability to carry out inspections within ports and more effectively take actions against individuals and entities involved in IUU fishing.
- Implementing measures to regulate market access, such as the establishment of catch documentation and traceability schemes.

b. Part 6 of the PSMA Assistance Fund⁸¹

63. In the future, Parties affiliated with the PSMA are expected to have the opportunity to access aid through the PSMA Assistance Fund, a fund to be established and managed by the Parties

⁸¹Ibid

themselves, under the guidance of FAO as part of Part 6 of the PSMA. The preliminary outline of the terms of reference for the funding mechanisms aimed at aiding developing States parties was suggested for the Parties' consideration during their forthcoming meeting. The Part 6 Working Group made a request for FAO to create a comprehensive global Capacity Development tool. This tool's purpose is to efficiently manage and distribute information regarding developed initiatives. It's also designed to facilitate the implementation of assistance through the overarching FAO umbrella program or other applicable mechanisms.

H. Recent Developments: Fourth Meeting of the Parties to the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing held in Indonesia 8 to 12 May 2023⁸²

64. The Fourth Meeting of the Parties to the FAO Agreement on Port State Measures (MOP4) took place in Bali, Indonesia, spanning from May 8 to May 12, 2023. The gathering was attended by 53 Parties to the FAO Agreement on Port State Measures, along with representatives from 21 non-Party FAO Members as observers. Additionally, 10 intergovernmental organizations (IGOs) and 5 international non-governmental organizations (INGOs) were present at the event.

65. During the Fourth Meeting of the Parties to the FAO Agreement on Port State Measures (MOP4), the participating nations evaluated the status of the agreement and took into account the resolutions of the previous meeting. The discussions covered both progress and challenges encountered by Parties in carrying out the agreement. The significant role of Regional Fisheries Bodies (RFBs), particularly Regional Fisheries Management organizations (RFMOs), in aiding the agreement's implementation was highlighted. A key outcome of the meeting was the agreement to operationalize the Global Information Exchange System by the close of 2023. To facilitate this, the Terms of Reference for the Technical Working Group on Information Exchange were adopted. The Parties emphasized the vital necessity of aiding developing States Parties in effectively implementing the agreement. The importance of making the multilateral-partner PSMA Part 6

⁸² REPORT OF THE FOURTH MEETING OF THE PARTIES TO THE AGREEMENT ON PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING, Bali, Indonesia, 8–12 May 2023, <https://www.fao.org/3/cc6667en/cc6667en.pdf>

Trust Fund, managed by FAO, functional was reiterated. The gathering yielded the adoption of the “Bali Strategy”, a comprehensive plan to enhance the efficacy of the Agreement on Port State Measures in combating IUU fishing. Furthermore, it was agreed to modify the Terms of Reference of the PSMA Strategy ad hoc Working Group to encompass the task of monitoring the agreement's effective implementation. The meeting concluded with the adoption of an updated questionnaire for Parties, along with a new questionnaire for RFBs and other international organizations, to assess the effectiveness of the agreement as well as a schedule of future PSMA meetings.

V. Comments and Observations of the AALCO Secretariat

66. Considering the recent developments in the law of the sea, the Secretariat invites the member States of AALCO to share their comments and observations on the most pressing challenges in the field including on the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction and the IUU fishing.

A. Law of the Sea on Conservation and Sustainable Use of Marine Biodiversity in Areas Beyond National Jurisdiction

67. The High Seas Treaty is not an isolated legal instrument but rather a complementary extension of the United Nations Convention on the Law of the Sea (UNCLOS). It aims to fill the regulatory gaps left by UNCLOS, particularly in areas beyond national jurisdiction. The Treaty also aligns with the objectives of the 2030 Agenda for Sustainable Development and the Kunming-Montreal Global Framework for Biodiversity. This alignment ensures a cohesive approach to ocean governance, making it easier to integrate the Treaty's provisions into existing national and regional frameworks.

68. The High Seas Treaty stands as a significant milestone in the realm of multilateral diplomacy. At a time when global cooperation is facing numerous challenges, the Treaty serves as a testament to what can be achieved through collective action. It not only addresses the pressing

issues of marine biodiversity conservation but also revitalizes faith in the effectiveness of multilateral institutions.

69. As the Treaty moves closer to ratification, the AALCO Secretariat acknowledges the significant strides made in the governance of marine biodiversity in areas beyond national jurisdiction. The Treaty, which has been years in the making, is a testament to the international community's commitment to sustainable ocean management. However, as Member States prepare to engage with the Treaty's provisions, the Secretariat offers the following analytical insights aimed at elucidating the Treaty's core obligations and rights.

70. The Treaty's text, finalized during an intergovernmental conference at the UN, is expected to serve as a cornerstone for the conservation and sustainable use of marine biodiversity. It is crucial for Member States to distinguish between the Treaty's procedural and substantive obligations. While procedural obligations may involve reporting requirements and periodic reviews, substantive obligations could entail specific actions or standards that Member States must adhere to.

71. A key point of consideration for Member States is the Treaty's enforcement mechanisms. The Treaty introduces a new institutional framework, including the Conference of the Parties and the Scientific and Technical Body. Understanding the roles and responsibilities of these entities is essential for effective engagement with the Treaty.

72. The Treaty's obligations range from the conservation and sustainable use of marine biodiversity to the conduct of Environmental Impact Assessments (EIAs). These obligations are not merely aspirational; they carry legal weight and are central to the Treaty's effectiveness. Member States should be aware of the dual nature of these obligations—both as duties and as enabling frameworks that provide the right to participate in global marine governance.

73. The AALCO Secretariat emphasizes the need for a balanced approach in implementing the Treaty's obligations. While the Treaty does provide for the establishment of marine protected areas and the fair and equitable sharing of benefits from marine genetic resources, it also leaves room for national discretion in several areas. This balance between universal standards and national flexibility is crucial for the Treaty's success.

74. One of the Treaty's strengths lies in its adaptability. The inclusion of mechanisms like area-based management tools (ABMTs) and EIAs indicates a forward-looking approach. However, the Treaty also allows for the incorporation of traditional knowledge and practices, providing a blend of modern and traditional governance methods. This adaptability is particularly relevant for AALCO Member States, which comprise a diverse set of nations with varying levels of technological and governance capabilities.

75. As mentioned earlier, the Treaty does not operate in isolation; it is an extension of the United Nations Convention on the Law of the Sea (UNCLOS) and interacts with other international legal frameworks. Understanding this interplay is crucial for Member States. For instance, the Treaty's provisions on EIAs could have implications for national processes and may require harmonization with existing environmental laws.

76. The Treaty's provisions on Capacity Building and the Transfer of Marine Technology (CB&TMT) are of particular interest to AALCO Member States. The Treaty acknowledges the importance of equitable access to marine technology and scientific research. It aims to level the playing field by facilitating the sharing of information, research results, and technological advancements. The Secretariat underscores the need for Member States to actively engage in these processes to ensure that the benefits of marine biodiversity are shared equitably. A dedicated committee will be established to monitor and review initiatives under CB&TMT. The Secretariat encourages Member States to participate actively in this committee to ensure that the unique challenges and opportunities facing developing nations are adequately addressed.

77. While the Treaty's immediate relevance to marine and offshore insurers may appear limited, the Secretariat advises Member States to consider its long-term implications. The establishment of marine protected areas and stricter environmental regulations could affect shipping routes and offshore installations, thereby influencing insurance premiums and liability coverage. Understanding these dynamics is crucial for Member States with significant maritime industries.

78. The Treaty introduces several compliance and enforcement mechanisms, including an 'implementation and compliance committee.' While these mechanisms are designed to ensure adherence to the Treaty's provisions, the Secretariat notes that the effectiveness of these mechanisms will largely depend on the willingness of Member States to cooperate. Given that the

Treaty will be open for signature soon, the Member States should consider their compliance strategies proactively.

79. The Treaty will be open for signature in New York City soon, and Member States are encouraged to prepare for this milestone. Given that the Treaty needs to be ratified by at least 60 UN Member States to enter into force, the Secretariat emphasizes the importance of timely action. Lastly, the Secretariat wishes to draw attention to the ongoing opportunities for Member States to influence the Treaty's implementation guidelines and annexes. Active participation in these processes is crucial for ensuring that the Treaty reflects the collective interests of AALCO Member States.

80. As the High Seas Treaty inches closer to becoming a cornerstone of international marine law, the AALCO Secretariat reiterates the importance of comprehensive understanding and proactive engagement by its Member States. Understanding the Treaty's core obligations and rights is not just a legal necessity but also a pathway to sustainable ocean governance. The Treaty presents both challenges and opportunities, but its ultimate success will depend on the collective actions of the international community. The Secretariat remains committed to supporting its Member States in navigating this complex but crucial legal landscape, and hopes that these comments and observations will serve as a valuable guide for AALCO Member States as they prepare for the Treaty's upcoming milestones.

B. Illegal, Unreported and Unregulated (IUU) Fishing

81. There is clearly still a need for the creation of healthy and sustainable oceans through the elimination of IUU fishing practices in the larger interest of global sustainability and livelihood concerns of the most vulnerable sections of the Afro-Asian population.

82. On a relevant note, capacity development among Afro-Asian States to strengthen the implementation of the PSMA is of utmost significance and in this context, the AALCO Secretariat welcomes the technical assistance provided by FAO under the PSMA Global Capacity Development Programme. AALCO also restates the necessity to activate the operational functionality of the multilateral-partner PSMA Part 6 Trust Fund, overseen by FAO.

83. Regional Fisheries Bodies (RFBs), in particular Regional Fisheries Management Organizations (RFMOs) play a prominent role in supporting the implementation of the Agreement including adopting Conservation and Management Measures (CMMs) consistent with the PSMA.

84. AALCO notes that Member States employ high-end technology in combatting IUU fishing like Vessel Monitoring Systems (VMSs), Automatic Identification Systems (AISs) and Satellite Imagery and encourages them to continue this trend with regular technical upgrades.

85. The AALCO Secretariat requests the Member States to actively participate in deliberations on the topic while emphasising the need for the Afro-Asian community to strengthen Sustainable Development Goal-14 and support all measures taken by the United Nations towards this end.