

**Presentation by H. E. Prof. Dr. Rahmat Mohamad,  
Secretary-General of AALCO  
at the  
International Workshop on the  
“New Developments on the Law of the Sea”**

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Dear fellow colleagues and Participants,

It gives me immense pleasure to be a part of this International Workshop on the “New Developments on the Law of the Sea”, which has been an important agenda item of the Asian-Africa Legal Consultative Organization (AALCO), where I have the privilege to serve as the Secretary-General. On behalf of the member States, I thank the organizers, especially Professor Kuenchen-Fu, Dean of South China Sea Institute, Xiamen University and Prof. Kening Zhang, Professor of Law, South China Sea Institute and Director of Centre for Oceans Policy and Law for inviting me at this Workshop.

During this brief presentation, I shall focus on “AALCO’s Contribution to the Development of Law of the Sea”, which is divided into three sections, (i) AALCO’s contribution in the field of international law of the Sea, (ii) AALCO’s contemporary work related to this subject, and (iii) Future Challenges under the Law of the Sea Regime.

(1) *AALCO’s Contribution towards the Progressive Development of Law of the Sea*

Mr. Chair, allow me to highlight the establishment of AALCO way back in 1956, which coincided with the general awareness of the importance of the changing nature of international law of the sea. Coastal states began to extend their maritime jurisdiction further and further into the oceans at the expense of the ever-receding high seas following President Truman’s Proclamation of

US jurisdiction over the submarine areas adjacent to the West-Coast, as well as the decision of the International Court of Justice in the Anglo-Norwegian Fisheries Case between United Kingdom and Norway, which recognized the necessity and validity of Norwegian straight base lines and four miles limits of Norwegian territorial sea. In the meantime, Indonesia was poised in 1957 to claim its archipelagic seas. At the First Session of AALCO in New Delhi, Sri Lanka and India took the initiative to refer to AALCO the Question relating to the Regime of High Seas including questions relating to the rights to seabed and subsoil in open sea.

The real momentum on the issue came in August 1967, when Arvid Pardo, Ambassador of Malta to the United Nations proposed an agenda item on the law of the sea for consideration by the United Nations General Assembly. Under the leadership of the then Secretary-General Mr. B. Sen, AALCO's objective achieved the desired result because the negotiations of UNCLOS III witnessed effective participation from the Asian-African countries. Pursuant to a reference by Indonesia in 1970, this agenda item has continuously been on AALCO's agenda since then.

The decade long negotiations lasted until December 1982 by the adoption of the UN Convention on the Law of the Sea (UNCLOS) and have been described as one of the most ambitious and original negotiating process ever undertaken within the United Nations. AALCO's contribution in the emergence of this Convention could be said to be three fold; namely,

- to assist the developing countries of the Asian African region to participate effectively in the negotiations;
- helping to build a consensus among the Asian African States on several issues and to bring about an understanding with the Latin American States on several issues, and;
- helping in developing of some of the concepts which ultimately found acceptance of the world community. This means, in particular, that the

concept of the exclusive economic zone (EEZ), the archipelagic States as well as the regime for the Straits used for international navigation which eventually helped in the emergence of an acceptable package to settle the question of the breadth of the territorial sea.

Mr. Chair, AALCO has continued to make contributions to the discourse and the progressive development of the law of the sea in the recent past. They also pushed hard in support of the inclusion of the concept of the common heritage of mankind. Thus, by the time the Convention was adopted, on 10 December 1982, the international community and the law of the sea, as well as multilateral diplomacy, looked much different than it did in 1973.

(2) AALCO's contemporary work related to this subject

Contemporarily, many disputes have arisen between States which were primarily based on jurisdiction over natural resources, maritime delimitation, maritime boundary and piracy at sea. The differing nature of cases depicts the involvement, beyond bilateral negotiations, of diverse judicial bodies such as ITLOS, International Seabed Authority and ICJ, and many arbitration tribunals. One of the major concerns of developing countries is of marine scientific exploration and the non-compliance with the obligation of access and benefit-sharing of the marine resources. The concept of Scientific Exploration as per requires that all nations have the right to conduct 'marine scientific research' (Part XIII with specific reference to Article 143 of the UNCLOS) in the oceans, provided that the research is -

- 1) conducted exclusively for peaceful purposes;
- 2) conducted with acceptable scientific methods;
- 3) does not interfere with other legitimate uses of the sea; and
- 4) conducted with respect to the other terms of the UNCLOS, including those pertaining to protection and preservation of the marine environment.

Coastal nations have the exclusive right to regulate, authorize, and conduct scientific research in their territorial sea, which means that scientific research within the territorial sea can only be conducted with the expressed consent of the nation. However, it is more of access to genetic and marine resources that remain the concerns of developed countries whereas benefit-sharing which is also an obligation is never given much serious thought by the developed countries.

Mindful of the increasing challenges faced by Member States of AALCO in the field of law of the sea, AALCO had in the past convened various Legal Experts Meetings. However, due to paucity of time, I shall delve into the recent ones. Recalling the contributions of AALCO towards the codification of international law of the Sea, at the 30<sup>th</sup> Anniversary of the United Nations Convention on the Law of the Sea (UNCLOS), the Organization had convened a Commemorative Legal Experts Meeting in March 2013.

This Meeting was hosted jointly with the Legal and Treaties Division Ministry of External Affairs, Government of India. The Meeting also coincided with the 30<sup>th</sup> Anniversary of the UN Convention on the Law of the Sea and therefore proved to be an auspicious occasion, the success of which led to the meeting becoming an annual affair at AALCO. The meeting focused on four major areas which were: Dispute Settlement under the UNCLOS; Current Challenges in the Preservation and Protection of the Marine Environment; Issues Relating to Maritime Security; and UNCLOS and AALCO.

On Dispute Settlement under UNCLOS, the focus was on the advantages offered by the ITLOS as a forum, as well as the ITLOS' contribution to the jurisprudence of the law of the sea, while also addressing some of its perceived disadvantages and criticisms such as the question of fragmentation of international law.

During the meeting, couple of important topics like, “Conservation and Sustainable use of Biodiversity in Areas Beyond National Jurisdiction”, and “Genetic Resources and Developing Countries: Access and Benefit Sharing under the Nagoya Protocol “Issues for Developing Countries under the Nagoya Protocol”, were discussed and critiqued. The Nagoya Protocol primarily respects the Access and Benefit Sharing of genetic resources. Maritime security issues, especially to combat piracy focused on the counter-piracy initiatives and programs of the UNODC; legality and legal liabilities relating to the carrying of weapons and armed guards on-board civilian vessels; maritime security and initiatives in the Straits of Malacca; and addressed the maritime piracy regime while identifying the problems in the regime and the UNCLOS regime and highlighting the developments and progress.

Mr. Chair, based on the success trend and the increased participation level by the member States of AALCO during the meeting, a sequel was organized in February 2014 to update on the recent major developments and trends in the field of law of the Sea. This meeting was held in collaboration with academic institutions, mainly Xiamen University, China; Universiti Malaysia Terengganu; and South Asian University, New Delhi. The contemporary challenges include the issue of Marine Biodiversity; Fragmentation of International Law and the Law of the Sea; Need for Piracy Legislation; Regional Cooperation on Maritime Issues; and recollecting the Afro-Asian Traditional Wisdom in Dispute Settlement.

The highlights of this meeting were the following observations. The genetic resources in the world’s oceans are not only of commercial use and exploitation but also needs to be protected and preserved. The ratio of potentially useful natural compounds are of higher in marine than terrestrial organisms, hence, the commercial interest aspect leads to increasing patenting in the various uses. The close nexus with the Intellectual Property Rights regime, science and policy matters shows that this subject highly sought after.

The resources are spread across national jurisdiction and hence there is an overlapping application of UNCLOS as well as Convention on Biological Diversity (CBD). The nuances of the same vests with categorizing marine genetic resources as: Common heritage/global good; common property which involves developing the IP regime; and exploitation of physical components.

(3) Future Challenges of the Law of the Sea Regime

The topic law of the sea has come a long way from its traditional interpretation. In present day, various concerns have arisen involving environmental pollution, land based and atmospheric pollution, pollution from ships, dumping at sea, fishing rights, protection of marine environment including marine biodiversity, marine resources and protecting marine mammals, and so on and so forth. In the parlance of “The Law of the Sea in the Era of Rapid Development of Marine Science and Technology”, the issue relating to sustainable development and environmental protection are crucial. On the basis of importance, I shall be focusing on four key issues and challenges that are of State’s primary concern which are of transboundary nature like biodiversity beyond national jurisdictions (BBNJ). In view of this background, a few key challenges should be highlighted; namely,

- Access to genetic resources and benefit-sharing on BBNJ
- Oil pollution and other kinds of pollution affecting the marine biodiversity
- Ensuring food security, and
- Scientific exploration at international seabed area and implications for developing countries.

### 3.1. Marine Genetic Resources

The management and governance of high seas areas, challenges the international community by warning the States that development of an effective regime for the protection of biodiversity in areas beyond national

jurisdiction is seen to be circumscribing some of the traditional high seas freedoms. The challenges of protecting, conserving and ensuring sustainable management of marine biodiversity beyond national jurisdiction are thus enormous. The utilization of natural oceanic resources and the synthesis of useful materials from marine genetic resources is increasingly becoming the main driving force for the development of the law of the sea, and this trend will no doubt continue as we move forward. The utilization, conservation and protection of marine resources, along with Access and Benefit Sharing, are some of the most pertinent ongoing issues facing developing countries, primarily Asian and African countries, particularly since almost all of the 'mega-diverse' countries are situated in Latin America, Asia, and Africa.

It was only in 1977, when the UNCLOS III was about to finalise its draft on the deep seabed regime covering mineral resources only, that the scientists on board the American submersible 'Alvin' made the first discovery of deep seabed hydrothermal vents with abundant life. These newly discovered vents were host to unique seabed ecosystems with variety of macro and microorganisms. The genetic resources from these rare environments have particularly unique value for all areas of biotechnology. Biotechnological applications have already led to the development of novel products and processes for application in a range of sectors, including pharmaceuticals, including pharmaceuticals, enzymes, biofuels, cosmetics, agrichemicals and environmental remediation.

In fact, the filing of patents associated with marine organisms is increasing at the rate of 12% per annum. Most patents and products are based on organisms found in coastal areas or EEZ's but increasingly as oceanic and seabed exploration improves, they are being synthesized from organisms found in areas beyond national jurisdiction.

The fact that these rare new ecosystems are proving to be a goldmine of useful and valuable genetic resources with a wide array of commercial applications necessitates their protection and the enforcement of sustainable practices when it comes to harnessing these resources particularly when the sources of these useful marine genetic resources are in areas beyond national jurisdiction. Various arguments have been put forward over how the regulation of the utilization and exploitation of marine genetic resources should take place and about whether the existing legal frameworks provided by the UNCLOS and the Convention on Biodiversity (CBD) are adequate for this task.

Additionally, Access and Benefit Sharing have also become an important topic for Asian and African countries particularly with regards to the CBD. One of the main objectives of the CBD is to provide fair and equitable sharing of benefits arising out of the use of genetic resources, in addition to protecting the claims and rights of indigenous communities with traditional knowledge. To this extent the sovereign rights of States over their genetic resources and the power to determine access to genetic resources by external parties is of great importance, and the mechanisms that enable this to happen need to be scrutinized. The exploitation of Marine Genetic Resources and conservation of Marine Biodiversity must be a participatory process with clear guidelines.

### 3.2. Oil pollution and other kinds of pollution affecting the marine biodiversity

The importance of the protection of marine environment brings with it an additional wrinkle. While the management of the utilization of marine genetic resources is of paramount importance in order to protect the marine environments that provide these genetic resources, unsustainable exploitation is not the only hazard faced by them. Marine pollution is a widespread problem that also requires intense scrutiny and effective solutions.

Widespread pollution coupled with more insidious climate changes are beginning to wreak havoc on marine ecosystems and pose ecological problems that have far-reaching consequences. Chief among the major environmental problems being faced now are: soil erosion in mangrove areas; disruption of coral reef development and destruction of existing coral reefs; discharges of contaminants such as oil, butlytin, marine debris, sewage, Hazardous and Noxious Substances (HNS); noise pollution; and, introduction of invasive species.

To prevent the continued proliferation of these sorts of environmental and ecological threats, it is extremely necessary to encourage safety of navigation and to take greater pains to protect marine environments. For instance, Article 43 of the UNCLOS encourages littoral States to cooperation towards navigational safety and the protection of marine environments from pollution, but this is just the tip of the iceberg and needs to be fortified with greater proactive efforts by States to maintain natural habitats and conditions.

### 3.3. Ensuring food security

Oceans not only support life but also have a greater role in regulating the climate, and provide us with vital resources. Oceans contribute to food security for billions of people worldwide, provide a livelihood to millions of people, energy sources and a means of transport, and play a central role in the cultures of many coastal communities. Oceans are thus very important for the economic and social development of States and can help in the eradication of malnutrition, in alleviating poverty and in raising living standards. This is a very challenging task considering that oceans and their resources continue to be under increasing pressures from unsustainable human activity both at sea and on land, including overfishing and illegal, unreported and unregulated fishing, pollution, alien invasive species, climate change and the impacts of ocean acidification, physical alteration and destruction of marine habitats and unsustainable extraction of non-living marine resources, to name but a few.

In the Rio+20 outcome, States reiterated that international law, as reflected in UNCLOS, provides the legal framework for the conservation and the sustainable use of the oceans and their resources and urged all its parties to fully implement their obligations under the Convention. In Rio, parties to the UN Fish Stocks Agreement were also urged to implement their obligations under the Agreement.

UNCLOS provides the global community with a carefully balanced and equitable package of rights and duties in the various maritime zones. Central to the package is the balance of the enjoyment of rights and benefits with the concomitant undertaking of duties and obligations. Moreover, implementation cannot be effected in a piecemeal fashion since the provisions of UNCLOS are closely interrelated and form an integral package. Thus, for example, States cannot benefit from the enjoyment of rights, e.g. the sovereign right to exploit their natural resources, without also fulfilling their obligations. These relate, inter alia, to the protection and preservation of the marine environment, the conservation of the living resources and the rights of navigation of other States.

As the oceans and seas and their resources are increasingly relied upon for food, to satisfy energy requirements, to meet the demands for new sources for raw materials and for transport, it is imperative to balance the enjoyment of rights with the corresponding implementation of obligations. At the same time, sustainable development of oceans has to be carried out in a coordinated and integrated manner. Several States have developed a national ocean policy and/or established integrated ocean management frameworks.

#### 3.4. Scientific exploration at international seabed and implications for developing countries

While conducting scientific exploration, States are required to adhere to the environmental standards. This requirement ensures that there is no fragmentation in the law relating to law of the sea but there is a strong inter-linkage because general principles of international environmental law such as duty to cooperate, obligation of no-harm, precautionary principles, prior consent before conducting scientific exploration, etc., are imbedded in the language of UNCLOS – Part XII on protection and preservation of marine environment.

As mentioned earlier, scientific exploration is considered an essential feature under the UNCLOS regime, with few conditions, which also speaks about sustainable use of the same. However, considering the richness in the marine biodiversity vested in the international seabed area, States have been deliberating upon their exploration which has immense commercial value as well. The developed countries being much ahead in terms of technological advancements, their access to these resources is also very crucial because the developing countries are at a disadvantageous position. Therefore, a proper guideline is essential at regional level for ensuring equitable access to genetic resources and benefit sharing, which could be futuristically undertaken by the AALCO.

Mr. Chair, in summation, I would like to state that this subject is very relevant and demands serious deliberations and debates. On that note, I would like to conclude by thanking the organizers of this Workshop for according AALCO with a significant place and through this recognizing its contributions to law of the Sea. I look forward for joint programmes on various themes and subjects of 'law of sea' with the academia in the Asian-African regions, including the Xiamen University.

I once again thank you.