

# THE LAW OF THE SEA

## I. INTRODUCTION

1. The year 2002 marks the twentieth anniversary of the adoption of the United Nations Convention on the Law of the Sea (hereinafter UNCLOS or the Convention) 1982.<sup>1</sup> UNCLOS is considered to be the “Constitution of the Sea” as it established “for the first time one set of rules for the oceans, bringing order to a system fraught with potential conflict.”<sup>2</sup> The scope of the Convention is vast as it covers all ocean space, with all its uses; including navigation and over flight; all uses of all its resources, living and non-living, on the high seas, on the ocean floor and beneath, on the continental shelf and in the territorial seas; the protection of the marine environment; and basic law and order.<sup>3</sup>

2. The “Law of the Sea” has been on the agenda of AALCO since 1970. The deliberations in AALCO’s annual and inter-sessional meetings for nearly a decade were focused on this single most important item. The AALCO can take reasonable pride in the fact that new concepts such as the exclusive economic zone and archipelago States originated and developed in the AALCO’s annual session and were later codified in the UNCLOS.

3. After the adoption of the UNCLOS in 1982, the AALCO’s Work Programme was oriented towards assisting Member States in matters concerning their becoming parties to the Convention and other related matters. With the entry into force of the Convention in 1994, the process of establishment of institutions envisaged in the Convention began. The AALCO Secretariat prepared studies monitoring these developments and the Secretariat documents for AALCO’s annual sessions reported on the progress of work in the International Sea Bed Authority, the International Tribunal for Law of the Sea, the Commission on the Limits of the Continental Shelf, the Meeting of States Parties to the Convention and other related developments.

4. The item “Law of the Sea” was last considered at the 41<sup>st</sup> session of the Organization held at Abuja, Nigeria, wherein, resolution 41/2 reaffirmed that in accordance with Part XI of the UNCLOS the Area was the “common heritage of the mankind and should be used for the benefit of the mankind as a whole”. It urged for the full and effective participation of Member States in the work of the International Seabed Authority (ISA) and other related bodies established by the UNCLOS, as well as in the review of the United Nations Consultative Process on the Oceans and Law of the Sea

---

<sup>1</sup> The text of the United Nations Convention on the Law of the Sea, 1982; the Agreement relating to the Implementation of Part XI of the UNCLOS, 1994 and Agreement for the Implementation of the Convention Provisions relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995 is available on the website: <http://www.un.org/Depts/los/convention-agreements/texts/unclos/closindex.htm>.

<sup>2</sup> *Oceans: The Source of Life*, Published on the occasion of the 20<sup>th</sup> Anniversary (1982-2002) of the United Nations Convention on the Law of the Sea (UN, New York, 2002), pp.14 at p.1.

<sup>3</sup> Ibid.

(UNICPOLOS or the Consultative Process) so as to ensure and safeguard the legitimate interests of developing and least-developed States. The resolution further called upon the Member States for full and effective participation in the UN General Assembly's (UNGA) Special Meeting to commemorate the twentieth anniversary of the UNCLOS. It also decided to place the item on the agenda of its forty-second session.

5. Accordingly, the current document attempts to furnish an overview of the commemoration of the twentieth anniversary of the UNCLOS at the UNGA; the activities under the UNCLOS and its implementing Agreements; the consideration of the Oceans and the Law of the Sea issues at the UN Consultative Process and the World Summit on Sustainable Development and finally it attempts to identify key areas of concern regarding this item.

## **II. COMMEMORATION OF THE TWENTIETH ANNIVERSARY OF THE ADOPTION OF UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS) AT THE UN GENERAL ASSEMBLY, 9-10 DECEMBER 2002**

6. The General Assembly vide its resolution 56/12 decided to devote two days of plenary at its fifty-seventh session to commemorate the twentieth anniversary of the adoption of the United Nations Convention on the Law of the Sea. Accordingly, the 57<sup>th</sup> Session of the Assembly met on 9<sup>th</sup> and 10<sup>th</sup> December 2002 and in three meetings of plenary deliberated upon the success of the UNCLOS and the challenges to its implementation. Apart from the plenary meetings, deliberations were also held in two meetings of the Informal Panel at the UN Headquarters in New York.<sup>4</sup> Both these meetings saw participation at the highest level as well as also of some of the important persons associated with the elaboration of the UNCLOS.

7. Herein, an attempt is made to summarize the discussion at the plenary and the informal panel meetings. In doing so, emphasis is given to the views expressed by important dignitaries and the representatives of the AALCO Member States.<sup>5</sup> Broadly speaking, the views expressed on the occasion could be presented under the following heads: (a) the UNCLOS; (b) the Settlement of Disputes; (c) the Institutions established by the UNCLOS; (d) the Challenges to the Implementation of the UNCLOS; and (e) The Future Course.

---

<sup>4</sup> The organizational arrangements for the plenary meetings and the informal panel for the commemoration of the twentieth anniversary of the opening for signature of the United Nations Convention on the Law of the Sea was decided by the General Assembly resolution A/RES/57/33 adopted on 22 November 2002.

<sup>5</sup> In summarizing the discussion recourse to the Statements at the Plenary and Informal Panel meetings of the following dignitaries has been made: Clifford S. Mamba (Swaziland-Acting President of the General Assembly on behalf of the Assembly President Jan Kavan of Czech Republic); Kofi Annan (Secretary-General of the UN); Tommy Koh (Singapore-President of the Third United Nations Conference on Law of the Sea); Ugo Mifsud Bonnici (former President of Malta); Koichi Haraguchi (Japan); Don Mackay (New-Zealand-President of the twelfth meeting of States Parties to the UNCLOS); Martin Belinga-Eboutou (Cameroon-President of the Assembly of the International Seabed Authority); Satya N. Nandan (Secretary-General, International Seabed Authority); Judge Raymond Ranjeva, (Member of the International Court of Justice on behalf of the Court's President Judge Gilbert Guillaume); Alexander Yankov (Judge of the International Tribunal for the Law of the Sea on behalf of the President Judge L. Dolliver M. Nelson); Peter Croker (Chairman of the Commission on the Limits of the Continental Shelf); Charles Manyang D'Awol (Sudan); Hasmy Agam (Malaysia); Yoshiyuki Motomura (Japan); Kishore Mahbubani (Singapore); Chithambaranatham Mahendran (Sri Lanka); Enrique A. Manalo (Philippines); A. Gopinathan (India); Wang Yingfan (China); Sun Joun-Yung (Republic of Korea); Shabtai Rosen (Israel) and Felipe Paolillo (Uruguay). This summary is drawn from the following Press releases of the UN General Assembly – "Law of Sea Convention Praised as Milestone for Rule of Law, United Nations", *UN Press Release*, GA 10116 dated 9 December 2002 (Fifty-seventh General Assembly Plenary 70<sup>th</sup> Meeting); "Importance of Dispute Settlement, Establishment of Maritime Boundaries", *UN Press Release*, GA 10116 dated 9 December 2002 (Fifty-seventh General Assembly Informal Panel 1 on Law of the Sea); "Urgent Action Needed on Deterioration of Oceans: Panel on Sea Law Convention is Told", *UN Press Release* GA/10119 dated 9 December 2002 (Fifty Seventh General Assembly Informal Panel 2 on law of the Sea), Need for Sustainable Management of Marine Resources, Protection of Marine Environment stressed in General Assembly's Discussion of Ocean Issues, *UN Press Release*, GA 10120 dated 10 December 2002 (Fifty-seventh General Assembly Plenary 71<sup>st</sup> and 72<sup>nd</sup> Meeting).

## **A. Discussion in the United Nations General Assembly**

### **a. The UNCLOS**

8. The UNCLOS was described as “milestone for the rule of law, and for the United Nations,” as the “Constitution for the oceans” established by it, served as a legal framework of general principles and rules governing the division of ocean space and regulated all activities within it. It was noted that the oceans and seas were no longer a source of division, but of solidarity. The Convention provided order, stability, predictability, and security based on the rule of law, in an element where human beings of different nations had interacted through the centuries. Procedurally, the Convention represented the success of international legal process of the highest order, Doctrinally, it provided the cornerstone of all modern efforts to develop and implement the legal framework for the oceans and seas and their resources. Practically, it had secured rights and benefits for all States, coastal and landlocked, and played a critical role in contributing to international peace and security.

It was noted that aware of the extreme importance to elaborate a new and comprehensive regime for the law of the sea, the international community worked together – for twenty years from 1973 until 1982, under the umbrella of the Third United Nations Conference on the Law of the Sea (UNCLOS III) – through mutual cooperation overcame numerous conflicting interests, to adopt the Convention. The Conference was probably the first truly global effort of humankind to work collaboratively in the development of international law. It developed, tested and refined diplomatic techniques and processes for reaching agreements that lived on today in the United Nations and many multilateral Conferences. The elaboration of the Convention represented an attempt to establish true universality in the effort to achieve a “just and equitable international economic order” governing ocean space. The Convention offered for the first time, a universal and complex legal framework for sharing the oceans as a common heritage of humankind. The text of the Convention was not only the result of the codification of customary law; it embodied the progressive development of international law and international institutions reflected through the constitution of International Seabed Authority (ISA) and International Tribunal for the Law of the Sea (ITLOS).

The Convention had made a significant contribution to international peace and security by replacing a plethora of conflicting claims with universally-agreed limits on the territorial sea, the contiguous zone, the exclusive economic zone (EEZ) and the continental shelf. Agreement on these important jurisdictional questions had eluded the world community for centuries. The world community’s interest in the freedom of navigation had been well served by the delicate compromises contained in the Convention on the status of EEZ, the regime of the innocent passage through the territorial sea, the regime of transit passage through straits used for international navigation and the regime of archipelagic sea lanes passages.

Another speaker noted that the Convention represented a delicate balance between competing interests in the use of the ocean and its resources, by taking a functional

approach in establishing the various maritime zones and the rights and duties of States in those zones. Its norms were precise, but it also established principles, which lent inbuilt flexibility, which allowed for the development of new norms in response to evolving circumstances. Within those parameters, the Convention had created the conditions necessary for resolving the contemporary problems of ocean management.

The underlying philosophy of the Convention was that ocean space should be treated as ecological whole. It provided for the rational exploitation of living and non-living marine resources, as well as for the conservation of living resources. It had established a comprehensive and forward-looking framework for the protection of the marine environment, a regime for marine scientific research, principles for transfer of technology and a binding system for dispute settlement. The instrument was one of the rare treaties that articulated a basic environmental norm in an unqualified form. It provided that States had the obligation to protect and preserve the marine environment, including marine life and the ecosystems and habitats that supported such life. It also set out obligations for the development of international rules and standards on sources of pollution.

The Convention had stood the test of time, and tribute should be paid, in this regard, to both its framers and the Secretariat of the United Nations. The contribution made by Ambassadors Arvid Pardo of Malta, Hamilton Shirley Amerasinghe to the elaboration of the UNCLOS was also recalled, and glowing tributes were paid to them.

The high number of States Parties to the Convention was the best proof of the magnificent success of all those who participated in the work. Its universal acceptance was also evident from its widespread application and implementation of its principles in domestic law and practice by States and non-parties alike. Thus, the UNCLOS was a major United Nations achievement and an immense act of faith and a hymn to cooperation and international solidarity.

## **b. Settlement of Disputes**

9. Concerning the settlement of disputes, the Convention's settlement regime was hailed as an important step in the development of international law. It was said that the treaty's most important contribution had been the strengthening of the rule of law in international affairs, by declaring that any dispute could be submitted at the request of any party to arbitration. The treaty had served as a model for the creation of other judicial bodies in step with globalization, the transformation of international society and the emergence of new actors, and the growth and expansion of international law.

The Convention was the first major multilateral treaty that contained mandatory provisions for dispute settlement, not an optional system of dispute settlement. In the past 20 years, there had been no instance of a dispute involving the interpretation of the Convention, which had led to the use of force. Instead, such disputes had been referred to the ITLOS, the ICJ, conciliation, or arbitration.

The ITLOS, which began its work in 1996, had already started making contribution and it was generally acknowledged that the Tribunal made a contribution to the development of international law, by adjudication upon variety of issues such as the nationality of claims, reparation, and the use of force in law enforcement activities, hot pursuit and the question of flags of convenience.

It was sometimes pointed, that the multiplication of international tribunals might pose a real risk to the unity of international law. The Tribunal, for its part, it was mentioned, had not shown any disinclination to be guided by the decisions of the ICJ. In fact, decisions of the ICJ had been cited both in judgments of the Tribunal and in the separate and dissenting opinions of the members of the Tribunal. The Tribunal had not yet fully developed its potential as the specialized judicial organ of the international community for the settlement of disputes concerning the interpretation or application of the Convention. The last six years represented only a chapter of its earliest beginnings.

### **c. Institutions Established by the UNCLOS**

10. The UNCLOS had declared the seabed outside of national jurisdictions to be the “common heritage of mankind”, and to this end had created a new organization to preserve its resources, the International Seabed Authority (ISA). The Authority had adopted the rules covering the exploration and mining of polymetallic nodules and concluded contract with seven pioneer investors. The future work of the Authority would be concentrated on monitoring exploration contracts, the promotion of scientific marine research and the dissemination of its results, the creation of scientific and technological databases for the better understanding of the seabed environment and the continued development of appropriate regulations for the development of other mineral resources. States were urged to continue to support the Authority and participate in Authority meetings as reduced participation made it difficult at times to take important decisions. Despite the controversies that surrounded Part XI of the Convention, the ISA had established itself as a credible, cost-effective, and efficient organization. Through its programmes of scientific and technical workshops, the Authority had also firmly established a role for itself as forum for cooperation and coordination of marine scientific research.

The Commission on the Limits of Continental Shelf adopted in May 1999 Scientific and Technical Guidelines, which were the first authoritative and detailed scientific and technical interpretation of Article 76 of the Convention. The Commission was now receiving submissions and it was pointed out that there were now some 30 to 60 coastal States with an extended continental shelf beyond 200 nautical miles. These coastal States were urged to make their submissions as soon as possible as there was a 10-years deadline for submissions and that the costs to do so could be substantial. To assist least developed and small island States, in the preparation of their submissions, the General Assembly had in October 2001, set up a Trust Fund.

#### **d. Challenges to the Management of Oceans and Sea**

11. A speaker observed that “The Oceans are the source of life and the oceans are sick.” He called for the situation to be addressed urgently. In his view, the deterioration of the oceans due to recent accidental oil spills was disturbing. Moreover, other dangerous conditions created by human activity including excess growth of certain types of vegetation that threatened ecosystem and increases in criminal activities such as trafficking in drugs and human beings was detrimental to maritime safety and security. He felt that the deterioration of the oceans came from the inadequate implementation of the Convention, rather than from any inherent weakness in it. Lack of information, inadequate resources, insufficient infrastructure and lack of political will were among the causes of slow implementation.

Identifying the two key challenges still facing the world, another speaker said that the first was the pollution, over-exploitation, destruction, and degradation of marine ecosystems. The combined value of ocean resources and uses was estimated at \$ 7 trillion annually, while the World Bank estimated that by 2008, nearly 4.5 billion people would live within 60 kilometers of the coast. The significant increase in population and economic activities had placed immense pressures and demands on the oceans and seas. The second challenge was to ensure maritime safety and security. The terrorist attacks of 11 September 2001 had added new dimensions to the threat of terrorism on the high seas and the danger of terrorists linking up to attack ships at ports. Another speaker also identified terrorism and illegal trafficking in drugs as new problems that had not been anticipated by the Convention.

A speaker from Asia observed that the coast ecosystems of Asia were damaged. In the last 30 years, two-thirds of that period with the Convention in place, 11 per cent of the coral reefs had collapsed, 48 per cent were in critical condition, while 80 per cent were at risk. Mangroves, on the other hand, had lost 70 per cent of their cover in the last 70 years. Unless remedial measures and effective management were conducted to conserve those ecosystems, at the current rate of loss, all mangroves would disappear by 2030, and coral reefs could suffer total collapse within 20 years.

He said that fish production had also fallen in Asia. Peak production had been reached in 1988 and 1991 in the Northwest Pacific Ocean and West Central and Southwest Pacific Ocean respectively. Data from those regions showed that the change in catch from the peak year to 1992 ranged from two to 10 per cent. He attributed the rapid decline in fish production to open access and over-fishing.

He further said a growing population and increasing international trade had also affected ocean space. Again, the Asian region clearly illustrated that point: there was today a total of six coastal mega-cities in East Asia with more than 10 million people, and it was predicted that number would increase to eight by 2015. The high level of urbanization resulted in the rapid growth of populations of smaller coastal cities in the region, thus adversely impacting on the health of the ocean space, through increased

pollution and the degradation and depletion of marine resources. Added to all that was the rapid increase in trade as a share of gross domestic product in the region.

Advances in technology also placed enormous pressure on the effectiveness of the legal framework established in the Convention. The depredations of man to attain illegal gain also posed a grave threat to the security and safety of the maritime commons. He said that for centuries, the international community had been besieged in the ocean space by organized crime and other illegal acts. Without sustained global attention and action to interdict acts of terrorism, piracy, smuggling of migrants, illicit trafficking in narcotics and arms, as well as illegal fishing practices, maritime resources would become highly unsustainable.

Thus, the challenges to the effective implementation of the Convention as identified by the speakers may be enumerated as under:

- (a) Increasing depletion of world fisheries and the need to deal with the problems of illegal, unregulated and unreported fishing;
- (b) Serious degradation of the marine environment both from land-based sources and pollution from ships;
- (c) Problem of burden sharing among users of straits used for international navigation;
- (d) Need for equitable sharing of the benefits of marine scientific research;
- (e) National capacity building for the protection of the marine environment.
- (f) Need to establish a mechanism to coordinate ocean issues on an inter-agency basis;
- (g) Preventing and suppressing crimes at sea, such as piracy, illicit traffic in narcotic drugs, hazardous wastes, and smuggling of migrants;
- (h) Improvement of maritime safety policy in order to reduce the risk of incidents such as accidental oil spills that resulted in loss of life and marine pollution;
- (i) Illegal immigrants in distress at sea;
- (j) Preventing ships from becoming a tool for terrorists;
- (k) Preventing the possibility of creation of new illegal international transport routes for radioactive materials and wastes; and
- (l) Ensuring maritime safety and security.

#### **e. Future Course**

12. It was observed that there was a need for an appropriate mechanism to consider the interrelated problems of the oceans as a whole and to identify issues, programmes and strategies that were needed to ensure that governance of the oceans was not fragmented and would be in line with the progress in sustainable development. In this regard, a speaker believed that the appropriate mechanism to consider the interrelated problems of oceans as a whole was the General Assembly itself. He said that although the Consultative Process had somewhat fulfilled that role, it lacked judicial, technical, and economic functions. He proposed therefore the transformation of the Consultative



Process from a mere process of consultation to an Ocean Assembly tasked to study the development in ocean affairs under the framework of UNCLOS, United Nations Conference on Environment and Development (hereinafter UNCED or Earth/Rio Summit) and the World Summit on Sustainable Development (WSSD or Johannesburg Summit) work would be undertaken against the backdrop of overall developments of all ocean issues, and it would be capable of becoming a forum for negotiation as well as possessing power to make decisions and direct agencies under the United Nations umbrella to perform certain tasks as required. The international community should make its common responsibility to guarantee that that international legal regime under the UNCLOS remained relevant and gained universal acceptance.

Another speaker proposed that a “coordination network” for ocean affairs and the law of the sea be established, with Assembly at its center. Its task would be to continue the consideration of the functions of relevant international organizations with respect to issues of the law of the sea, while focusing its work on strengthening cooperation and coordination among those organizations on oceans affairs.

Another speaker focused on the need to cooperate and coordinate efforts with the Department of Oceans and emphasized upon the need to establish a mechanism to coordinate ocean issues on inter-agency basis. He also stressed that the implementation of the General Assembly resolutions was essential to strengthen the least developed countries so that they could participate in international scientific forums, relating to oceans and seas.

It was stressed that much was needed to be done to redress the degradation of the marine ecosystem and to ensure the long-term sustainability of marine resources. In this regard, concrete results would depend on capacity-building at both the national and regional levels, as well as the transfer of technology from developed to developing countries. Further, in order to eradicate the scourge of terrorism the international community should act in unison to combat threats and the initiative of the International Maritime Organization (IMO) to review measures and procedures for the prevention of acts of terrorism at sea and to safeguard shipping were a welcome step.

## **B. Resolutions adopted by the General Assembly**

13. The General Assembly on 12 December 2002 adopted three resolutions under the agenda item Oceans and law of the Sea. The titles of these three resolutions are:

- (i) Oceans and the law of the Sea;<sup>6</sup>
- (ii) Large-scale pelagic drift-net fishing, unauthorized fishing in zones of national jurisdiction and on the high seas/illegal, unreported and unregulated fishing, fisheries, fisheries by-catch and discards, and other developments;<sup>7</sup>

---

<sup>6</sup> UNGA Res.A/57/141 dated 12 December 2002.

<sup>7</sup> UNGA Res. A/57/142 dated 12 December 2002.

- (iii) 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.<sup>8</sup>

14. UNGA Resolution on the Oceans and law of the Sea inter alia emphasized the “universal and unified character of the Convention and its fundamental importance for the maintenance and strengthening of international peace and security, as well as for the sustainable development of the oceans and seas”. The Resolution recognizes that the “problems of ocean space are closely interrelated and need to be considered as a whole through an integrated, interdisciplinary and inter-sectoral approach”. The resolution underlines once again “the essential need for capacity-building to ensure that all States, especially developing countries, in particular the least developed countries and small island developing States, are able both to implement the Convention and to benefit from the sustainable development of the oceans and seas, as well as to participate fully in global and regional forums dealing with oceans and law of the sea issues”. It reiterates its concern “at the adverse impacts on the marine environment from ships, including pollution, in particular through the illegal release of oil and other harmful substances and by dumping of hazardous waste, including radioactive materials, nuclear waste and dangerous chemicals, as well as physical impacts on coral”.

15. UNGA Resolution on the Large-scale pelagic drift-net fishing, unauthorized fishing in zones of national jurisdiction and on the high seas/illegal, unreported and unregulated fishing, fisheries, fisheries by-catch and discards, and other developments inter alia welcomed the outcome of the WSSD “concerning the importance of achieving sustainable fisheries to the maintenance of oceans, seas, islands and coastal areas as an integrated and essential component of the Earth’s ecosystem, for global food security and for sustaining economic prosperity and the well-being of many national economies, particularly in developing countries”. The resolution emphasized upon the importance of the wide application of the precautionary approach to the conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks. It noted with concern that “illegal, unreported and unregulated fishing threatens seriously to deplete populations of certain fish species and significantly damage marine ecosystems and that illegal, unreported and unregulated fishing has a detrimental impact on sustainable fisheries, including the food security and the economies of many States”. The Resolution welcomed the adoption by the Food and Agriculture Organization (FAO) in 2001 of an International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing, which focuses upon the primary responsibility of the flag State and the use of all available jurisdiction in accordance with international law, including port State measures, coastal State measures, market-related measures and measures to ensure that nationals do not support or engage in illegal, unreported and unregulated fishing. The resolution also expressed its concern over the practice of large-scale drift-net fishing and noted that it remained a threat to marine living resources.

---

<sup>8</sup> UNGA Res. A/57/143 dated 12 December 2002.

The Resolution also called upon “States not to permit vessels flying their flag to engage in fishing on the high seas or in areas under the national jurisdiction of other States unless duly authorized”. It affirmed the need to strengthen, where necessary, the international legal framework for intergovernmental cooperation in the management of fish stocks and in combating illegal, unreported and unregulated fishing, in a manner consistent with international law.

16. UNGA Resolution on 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 welcomed the entry into force of the Agreement and noted that it entails responsibilities for States parties. It deplored the fact that the straddling fish stocks and highly migratory fish stocks in many parts of the world are over-fished or subject to sparsely regulated and heavy fishing efforts, mainly as a result of unauthorized fishing, inadequate regulatory measures and excess fishing capacity.

### **III. ACTIVITIES UNDER THE UNCLOS AND ITS IMPLEMENTING AGREEMENTS**

#### **A. Status of the Convention and its implementing Agreements**

17. As at 10 December 2002, the United Nations Convention on the Law of the Sea had 141 Parties, of which 37 States are AALCO Member States.<sup>9</sup>

18. The Agreement relating to the implementation of Part XI of UNCLOS was adopted on 28 July 1994 and has entered into force on 28 July 1996. As regards the status of this Agreement, 107 Member States have ratified or acceded to it, of which 27 States are AALCO Member States.<sup>10</sup> Article 2 of the Agreement deals with the relationship between the Agreement and Part XI of the UNCLOS, providing thereby that the two shall be interpreted and applied together as a single instrument. However, in the event of an inconsistency between the Agreement and Part XI, the provisions of the Agreement shall prevail.

19. The Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995 (hereinafter the Straddling Stocks Agreement) was adopted on 4 August 1995 and has been signed by 59 States<sup>11</sup> and ratified by 31 States, of which five are AALCO Member States. The Agreement came into force from 11 December 2001 after receiving the requisite 30 ratifications or accessions.

20. The Straddling Stocks Agreements provides principles for the conservation and management of fish stocks based on “best available scientific information” and a precautionary approach. The Agreement provides for a fundamental principle that States should cooperate to ensure the conservation and promotion of optimum utilization of fisheries resources within and beyond the exclusive economic zone.

21. Resolution 57/141 on Oceans and Law of the Sea adopted by the General Assembly called once again upon States “to harmonize, as a matter of priority, their national legislation with the provisions of the Convention, to ensure the consistent application of those provisions and to ensure also that any declarations or statements that they have made or make when signing, ratifying or acceding to the Convention are in conformity therewith and, otherwise, to withdraw any of their declarations or statements that are not in conformity”. It also emphasized “the essential need to also improve the

---

<sup>9</sup> The AALCO Member States Parties to the UNCLOS are: Bahrain, Bangladesh, Botswana, China, Cyprus, Egypt, Gambia, Ghana, India, Indonesia, Iraq, Japan, Jordan, Kenya, Kuwait, Lebanon, Malaysia, Mauritius, Mongolia, Myanmar, Nepal, Nigeria, Oman, Pakistan, Philippines, Qatar, Republic of Korea, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, Sri Lanka, Sudan, Uganda, United Republic of Tanzania and Yemen. Also, see the table in Annex.

<sup>10</sup> As at 10 December 2002 the AALCO Members who have ratified the Agreement include: Bangladesh, China, Cyprus, India, Indonesia, Japan, Jordan, Kenya, Kuwait, Lebanon, Malaysia, Mauritius, Mongolia, Myanmar, Nepal, Nigeria, Oman, Pakistan, Philippines, Republic of Korea, Saudi Arabia, Senegal, Sierra Leone, Singapore, Sri Lanka, Uganda and the United Republic of Tanzania. Also, see the Table in Annex.

<sup>11</sup> The AALCO Member States Parties to the Straddling Stocks Agreement are: Cyprus, Islamic Republic of Iran, Mauritius, Senegal, and Sri Lanka. Also, see the Table in Annex.

implementation of international agreements in accordance with Article 311 of the Convention and where appropriate, to foster the conditions for the application of instruments of a voluntary nature”.

## **B. Twelfth Meeting of States Parties to the UNCLOS’ 82**

22. In accordance with Article 319(2) (c) of UNCLOS, the twelfth Meeting of States Parties (MOP) was held at the UN Headquarters from 16 to 26 April 2002.<sup>12</sup> Ambassador Don Mackay of New Zealand was elected as the President. During the course of the Meeting a number of important issues were discussed, chief among them being: the matters related to the International Tribunal for the Law of the Sea; activities of the International Seabed Authority; work of the Commission on the Limits of the Continental Shelf and matters related to Article 319 of the UNCLOS that deals with the role of the MOP in considering issues relating to the implementation of the Convention.

23. The MOP elected five new judges of the Tribunal to replace those members whose terms of office would expire on 30 September 2002.<sup>13</sup> The Meeting also took note with appreciation the Report of the Tribunal, approved the Budget for 2003, and adopted the Financial Regulations of the Tribunal.

24. As regards the Commission on the Limits of the Continental Shelf, it may be recalled that the terms of office of the members of the Commission elected at the first election began on the date of the first meeting of the Commission, i.e., 16 June 1997. The terms of office of the 21 members of the Commission thus expired on 15 June 2002. Therefore, MOP elected 21 new members.<sup>14</sup>

25. The role of the Meeting of the States Parties relating to the implementation of Article 319 of UNCLOS was the subject of intense discussion at the 12<sup>th</sup> MOP. On the one hand, some delegations were of the view that the Meeting of States Parties should consider issues relating to the implementation of the Convention and that the meeting should receive a report every year from the Secretary-General. Whereas on the other hand, some delegations were of the view that the Meeting of Parties does not have the competence to consider issues, relating to the implementation of the Convention and proposed that the item be removed from the Agenda of the Meeting of States Parties. They were of the view that there was no legal basis in the Convention for such a role. It

---

<sup>12</sup> For details see United Nations Convention on the Law of the Sea: Report of the Twelfth Meeting of the States Parties; Document SPLOS/91, dated 13 June 2002.

<sup>13</sup> The newly elected judges are: Lennox Fitzroy Ballad (Trinidad and Tobago), Guangjian Xu (China), Hugo Caminos (Argentina), Jean-Pierre Cot (France) and Tullio Treves (Italy). The MOP also elected Lennox Fitzroy Ballad, nominated by Trinidad and Tobago to serve the remaining term of Judge Edward Laing of Belize who passed away on 11 September 2001.

<sup>14</sup> The newly elected members of the Commission are: Noel Newton St. Claver Francis (Jamaica), Lawrence Folajimi Awosika (Nigeria), Indurlall Fagoonee (Mauritius), Yuri Borisovitch Kazmin (Russian Federation), Alexandre Tagore Medeiros de Albuquerque (Brazil), Galo Carrera Hurtado (Mexico), Mihai Silviu German (Romania), Yao Ubuena Woeledji (Togo), Osvaldo Pedro Astiz (Argentina), Samuel Sonah Betah (Cameroon), Mladen Juracic (Croatia), Naresh Kumar Thakur (India), Peter F. Croker (Ireland), Wenzheng Lu (China), Fernando Manuel Maia Pimentel (Portugal), Kensaku Tamaki (Japan), Hilal Mohamed Sultan Al-Azri (Oman), Yong-Ahn Park (Republic of Korea), Harald Brekke (Norway), Abu Bakar Jaafar (Malaysia) and Philip Alexander Symonds (Australia).

was pointed out that issues relating to the implementation of the Convention were being dealt with in other forums, especially by the General Assembly. However, several delegations expressed support for the retention of the agenda item and the Meeting of the State Parties decided to retain the item entitled “Matters related to Article 319 of the United Nations Convention on the Law of the Sea” on the provisional agenda of its next meeting.

26. Resolution 57/141 adopted by the General Assembly requested UN Secretary-General to convene the thirteenth Meeting of States Parties to the Convention in New York from 9 to 13 June 2003.

### **C. Informal meeting of States parties to the 1995 Fish Stocks Agreement**

27. An informal meeting of the States parties to the 1995 Fish Stocks Agreement was held in New York from 30 to 31 July 2002, pursuant to paragraph 6 of General Assembly resolution 56/13 of 28 November 2001, in which the Assembly had requested the Secretary-General to consult with the States parties, upon the entry into force of the Agreement, with a view to, inter alia, considering the regional, sub regional and global implementation of the Agreement; making any appropriate recommendations to the General Assembly on the scope and content of the annual report of the Secretary-General relating to the Agreement; and preparing for the review conference to be convened by the Secretary-General pursuant to Article 26 of the Agreement.

28. The informal meeting of States parties to the 1995 Fish Stocks Agreement, adopted a summary of recommendations, in accordance with which the General Assembly inter alia was requested to undertake the following actions:

- (a) A programme of assistance with multiple components in favour of developing States Parties should be established under Part VII of the Agreement to complement existing programmes at the bilateral, regional and global levels;
- (b) One component of such a programme should be the establishment of a voluntary trust fund dedicated to the implementation of the objectives set forth in Article 25 and 26 in Part VII of the Agreement, to be managed by FAO in consultation with the Division for Ocean Affairs and the Law of the Sea (within the Office of Legal Affairs at the UN Secretariat);
- (c) The following activities might be considered for early implementation through the voluntary trust fund:
  - (i) Facilitation of participation by developing States in regional and sub regional fisheries management organizations and arrangements, e.g., by defraying their membership dues and travel costs to such meetings;
  - (ii) Provisions of travel costs for the participation of developing States in meetings of relevant global organizations;
  - (iii) Capacity-building activities in key areas such as monitoring, control and surveillance, data collection and scientific research;

- (iv) Support for ongoing and future negotiations to establish new regional or sub regional fisheries management organizations and arrangements in areas without such bodies currently in place, and to strengthen existing sub regional and regional fisheries management organizations and arrangements;
  - (v) Exchange of information and experience in the implementation of the Agreement.
- (d) The Secretary-General should convene a second informal meeting of States parties to the 1995 Fish Stocks Agreement in 2003, for the purposes and objectives of following up discussions initiated at the informal meeting in July 2002 on the implementation of Part VII of the Agreement, including the establishment of the trust fund to assist developing States parties and with a view to implementing other key provisions of the Agreement;

#### **D. Work of the International Seabed Authority (ISA)**

29. The International Seabed Authority (Authority or ISA) with its seat at Kingston, Jamaica, comprises all the States Parties to the UNCLOS<sup>15</sup> as well as those States who have agreed to the provisional application of the 1994 Agreement on the Law of the Sea.

30. The Authority held its eighth session in Kingston from 5-16 August 2002. It involved the meetings of both the Authority's principal organs, the Assembly-composed of all 138 members, and the 36-member Council. The Council discussed issues relating to polymetallic massive sulphides and cobalt-rich ferromanganese crust, two sources of economically valuable metals and other minerals. The Council agreed to continue its work on a future scheme to regulate prospecting and exploration of these deposits.

31. The Assembly adopted a US \$ 10.5 million budget to finance the Authority's work in 2003-04. Much of this work involves the promotion of marine scientific research relating to seabed resources, and the collection and dissemination of information on deep-sea deposits.

32. During the year 2001, the most significant achievement for the Authority had been the conclusion of 15-year exploration contracts with six registered pioneer investors, in accordance with the Regulations on Prospecting and Exploration for Polymetallic nodules in the Area approved by the Assembly in 2000.<sup>16</sup> In March 2002, the Authority concluded an exploration contract with the Government of India, the remaining registered

---

<sup>15</sup> As of 15 August 2002, the Membership of the Authority comprises 138 States. Also see the website of the Authority at: <http://www.isa.org.jm>.

<sup>16</sup> These six 'registered pioneer investors' are: Yuzmorgeologiya (sponsored by the Russian Federation); the Republic of Korea; Interoceanmetal Joint Organization (IOM), a body sponsored by Bulgaria, Cuba, the Czech Republic, Poland, the Russian Federation and Slovakia; China Ocean Mineral Resources Research and Development Company; Institut Francaise de recherche pour l' exploitation de la mer/Association francaise pour l' etude et la recherche' des nodules (IFREMER/AFFRNOD) and the Deep Ocean Resources Development Company Ltd. of Japan.

pioneer investor. As a result, the Authority was now in a contractual relationship with all the seven pioneer investors that had been registered under resolution II of the Third United Nations Conference on the Law of the Sea. The annual reports submitted by the contractors were examined for the first time by the Legal and Technical Commission, a 24-member body of experts during the course of the eighth session of the Authority.

33. The future work of the Authority has three main areas of focus: first, supervisory functions with respect to the contracts for exploration; second, promotion and encouragement of the conduct of marine scientific research in the international seabed area, and coordination and dissemination of the results of such research and analysis; and third, information gathering and the establishment of databases of scientific and technical information for the purpose of obtaining a better understanding of the deep ocean environment.

34. The General Assembly vide its Resolution 57/141 noted with satisfaction the first examination by the Council of the International Seabed Authority of annual reports on prospecting and exploration for polymetallic nodules in the Area submitted by contractors to the Authority. Further, it reiterated the importance of the ongoing elaboration by the Authority, pursuant to Article 145 of the Convention, of rules, regulations and procedures to ensure the effective protection of the marine environment, the protection and conservation of the natural resources of the Area and the prevention of damage to its flora and fauna from harmful effects that may arise from activities in the Area.

## **E. Work of the International Tribunal for the Law of the Sea (ITLOS)**

35. The Tribunal established by the Convention adjudicates disputes arising out of the interpretation and application of the UNCLOS, 1982. The Tribunal is composed of 21 independent members elected from among persons enjoying the highest reputation for fairness and integrity and of recognized competence in the field of law. Its seat is in Hamburg, Germany.

36. Eleven cases<sup>17</sup> had been submitted to the Tribunal that began its work in 1996 Australia, Belize, Chile, France, Guinea, Ireland, Japan, New Zealand, Panama, the Russian Federation, Saint Vincent and the Grenadines, Seychelles, United Kingdom, and the European Community have submitted cases to the ITLOS. In nine of these cases, the Tribunal was, called upon to exercise its compulsory jurisdiction under Article 292 and Article 290, paragraph 5 of the Convention, whereas two cases have been, instituted by

---

<sup>17</sup> These cases are: (i) The M/V "SAIGA" Case (Saint Vincent and the Grenadines v. Guinea) (ii) The M/V "SAIGA" (No. 2) Case (Saint Vincent and the Grenadines v. Guinea) (iii) & (iv) Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan) (v) The "Camouco" Case (Panama v. France) (vi) The "Monte Confurco" Case (Seychelles v. France) (vii) Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community) (viii) The "Grand Prince" Case (Belize v. France) (ix) The "Chaisiri Reefer 2" Case (Panama v. Yemen) (x) The MOX Plant Case (Ireland v. United Kingdom) (xi) The "Volga" Case (Russian Federation v. Australia). For further details regarding the website of the Tribunal at: <http://www.itlos.org>.



special agreement between the parties.<sup>18</sup>

37. On 23 December 2002, the Tribunal delivered its Judgment in *The "Volga" Case* (Russian Federation v. Australia). It ordered the prompt release of the Russian fishing vessel Volga, upon the posting of a bond or other security of Australian dollars 1, 920, 000. The dispute arose as a result of the arrest of the Volga on 7 February 2002 by Australian military personnel in the Southern Ocean for alleged illegal fishing in the Australian fishing zone.<sup>19</sup>

38. Judge Dolliver Nelson (Grenada) and Judge Budislav Vukas (Croatia) were elected as President and Vice-President of the Tribunal for a period of three years (2002, 2005). Judge Nelson succeeds Judge P. C. Rao (India) as President.<sup>20</sup>

39. The Tribunal at a meeting held on 2 October 2002 reconstituted the Seabed Disputes Chamber; the Chamber of Summary Procedure; the Chamber for Marine Environment Disputes; and the Chamber for Fisheries Disputes. Except for the Summary Disputes Chamber, the term of the other chambers is till 30 September 2005, while the Summary Disputes Chamber has a term till 30 September 2003.

#### **F. Work of the Commission on the Limits of the Continental Shelf (CLCS)**

40. Article 76 of UNCLOS envisages the establishment of the Commission on the Limits of the Continental Shelf (hereinafter the Commission or CLCS).<sup>21</sup> The Commission established in 1997 consists of 21 members who serve in their personal capacity and are experts in the field of geology, physics, geophysics, or hydrography, bearing in mind the need to give consideration to equitable geographical representation. The Commission ordinarily meets twice a year, in the spring and fall, at the UN Headquarters.

41. The functions of the Commission are to consider the data and other material submitted by coastal States concerning the outer limits of their continental shelves in areas where those limits extend beyond 200 nautical miles; to make recommendations to coastal States in accordance with the UNCLOS; and to provide technical advice in this respect, if requested by the coastal States.

---

<sup>18</sup> Statement by Mr. L. Dolliver M. Nelson, President of the ITLOS on Agenda item 25 (a) at the Plenary of the Fifty-Seventh Session of the United Nations General Assembly, 10 December 2002. Available at the website: <http://www.itlos.org>.

<sup>19</sup> For details see "Judgment delivered in the 'Volga' Case Russian Federation v. Australia", ITLOS, /Press/ 75, Press Release dated 23 December 2002. For text of the judgment see the website or the Tribunal: [http:// www.itlos.org](http://www.itlos.org).

<sup>20</sup> For details see "Judge Dolliver Nelson Elected as President of The Tribunal", ITLOS/Press' 68 dated 1 October 2002; and "Judge Vukas Elected as Vice-President of The Tribunal", ITLOS/Press/69 dated 2 October 2002.

<sup>21</sup> For details see the website of the Commission at: [http://www.un.org/Depts/los/clcs\\_new/clcs\\_home.htm](http://www.un.org/Depts/los/clcs_new/clcs_home.htm).

42. On 20 December 2001, the Commission received its first submission from the Russian Federation, which was considered by the Commission at its tenth session (25 March – 12 April 2002). In accordance with Article 5 of Annex II to the Convention, a sub-Commission composed of seven members, appointed in a balanced manner and taking into account the specific elements of the Russian Federation's submission was established. The sub-commission continued its work through the end of the tenth session and upon the completion of its work, it was to submit its recommendations to the Commission.

43. The eleventh session, with the newly elected membership of the Commission was held from 24 to 28 June 2002. Following were elected at the session as officers of the Commission for a term of two and a half years—Peter F. Croker (Ireland) as Chairman, Osvaldo Pedro Astiz (Argentina), Lawrence Folajimi Awosika (Nigeria) and Mladen Juracic (Croatia) as Vice-Chairmen and Yong-Ahn Park (Republic of Korea) as Rapporteur.

44. The Commission also decided to hold its twelfth session from 28 April to 2 May 2003 and the thirteenth session from 25 to 29 August 2003.

45. The Commission at its eleventh session continued the consideration of the Russian submission and considered recommendations by the Chairman of Sub commission. The Commission made several amendments to the recommendations submitted and thereafter adopted them. It contains the results of the examination of the data and information submitted by the Russian Federation, with particular reference to the question of entitlement of the Russian Federation to the continental shelf beyond 200 nautical miles, as well as whether the formulae and the constraints had been applied as required by Article 76 of the Convention. The Commission presented its recommendations to the Russian Federation regarding four areas relating to the continental shelf beyond 200 nautical miles contained in the submission, namely, the Barents Sea, the Bering Sea, the Sea of Okhotsk and the Central Arctic Ocean. In conformity with the provisions of the Convention, the recommendations were submitted in writing to the coastal State that had made the submission, the Russian Federation, and to the Secretary-General of the United Nations.

#### **IV. THE UNITED NATIONS OPEN-ENDED INFORMAL CONSULTATIVE PROCESS ON THE OCEANS AND LAW OF THE SEA (UNICPOLOS)**

46. It may be recalled that the General Assembly by its resolution 54/33 had established the UNICPOLOS in order to facilitate the annual review by the Assembly of the developments in ocean affairs.

The third meeting of the Consultative Process was held at the UN Headquarters from 8-15 April 2002. The co-chairpersons of the UNICPOLOS Ambassador Tulioma Neroni Slade and Alan Simcock in their comprehensive report to the General Assembly suggested a number of elements for consideration under the broad headings of: (i) Cross cutting Issues (ii) the Protection and preservation of the marine environment: Integration of ocean management; including action to preserve and protect the marine environment; (iii) International Regulation and Programmes; and (iv) Implementation.

47. These issues, among others stress for integration in the management of oceans and seas, capacity-building and the central role of regional cooperation and coordination. The meeting emphasized on identifying areas where coordination and cooperation at the intergovernmental and interagency levels should be enhanced.

48. As regards the marine environment, emphasis has been on bringing into force agreed international agreements at the global and regional levels to prevent, reduce and control pollution; as well as developing new international agreements and guidance at the global level to prevent, reduce and control marine pollution. The meeting suggested better coordination on this issue with the work of the Johannesburg Summit. There was agreement that it would not be appropriate to suggest any particular issues to the General Assembly for any future meeting. It was for the General Assembly to determine what issues needed attention in the light of its review of the effectiveness and utility of the process.

49. The General Assembly at its fifty-seventh session vide its resolution 57/141 noted the contribution of the Consultative Process to strengthening the General Assembly's annual debate on oceans and law of the sea, and decided to continue with the Consultative Process for the next three years, with a further review of its effectiveness and utility at the sixtieth session. The Resolution also called the Consultative Process to organize its discussions around the following areas: (a) Protecting vulnerable marine ecosystem, and (b) Safety of navigation. The UN Secretary-General was requested by the General Assembly to convene the meeting of the Consultative Process in New York from 2 to 6 June 2003.

## **V. CONSIDERATION OF THE OCEANS AND LAW OF THE SEA ISSUES AT THE WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT**

50. The Plan of Implementation adopted by the World Summit on Sustainable Development (WSSD) held in Johannesburg, South Africa from 26 August to 4 September 2002 inter alia includes provisions relating to the sustainable development of oceans.<sup>22</sup> The Plan recognizes that: “Oceans, seas, islands and coastal areas, form an integrated and essential component of the Earth's ecosystem and are critical for global food security and for sustaining economic prosperity and the well-being of many national economies, particularly in developing countries”. In order to ensure sustainable development of the oceans, the Plan stressed the need for effective coordination and cooperation including at the global and regional levels, between relevant bodies, and actions at all levels focusing among others, on the implementation of UNCLOS and the Programme envisaged in Chapter 17 of Agenda 21 for achieving sustainable development of oceans and coastal areas. It suggested establishment of an effective, transparent and regular inter-agency coordination mechanism on ocean and coastal issues within the United Nations system; and strengthening regional cooperation and coordination between the relevant regional organizations and programmes of the UNEP regional seas programmes, regional fisheries management organizations and other regional science, health and development organizations.

51. To achieve sustainable fisheries, the Plan of Implementation called for effective implementation of fisheries agreements or arrangements, in particular the Agreement relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks and the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Sea.

52. The Plan of Implementation inter alia called for the promotion of the conservation and management of the oceans through actions at all levels, giving due regard to the relevant international instruments to: (i) Maintain the productivity and biodiversity of important and vulnerable marine and coastal areas, including in areas within and beyond national jurisdiction; and (ii) Implement the work programme arising from the Jakarta Mandate on the Conservation and Sustainable Use of Marine and Coastal Biological Diversity of the Convention on Biological Diversity, including through the urgent mobilization of financial resources and technological assistance and the development of human and institutional capacity, particularly in developing countries.

53. The Plan of Implementation called to advance implementation of the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities and the Montreal Declaration on the Protection of the Marine Environment from land-based Activities, with particular emphasis in the period 2002-2006 on municipal wastewater, the physical alteration and destruction of habitats, and nutrients, by actions at all levels. In this regard, it stressed the need to: (i) Facilitate partnerships,

---

<sup>22</sup> For details of the Johannesburg Summit see UN, *Report of the World Summit on Sustainable Development* (UN, New York, 2002), UN Doc. A/CONF. 199/20.

scientific research and diffusion of technical knowledge; mobilize domestic, regional and international resources; and promote human and institutional capacity-building, paying particular attention to the needs of developing countries; and capacity-building for the development of their national and regional programmes and mechanisms for the sustainable development of coastal and marine resources; and (ii) Make every effort to achieve substantial progress by the next Global Programme of Action conference in 2006 to protect the marine environment from land-based activities.

54. For enhancing maritime safety and protection of the marine environment from pollution, among others it called for actions at all levels to implement the conventions and protocols and other relevant instruments of the International Maritime Organization (IMO) relating to the enhancement of maritime safety and protection of the marine environment from marine pollution and environmental damage caused by ships, including the use of toxic anti-fouling paints and urge IMO to consider stronger mechanisms to secure the implementation of IMO instruments by flag States.

55. Resolution 57/141 adopted by the General Assembly, welcomed the Plan of Implementation, adopted by the WSSD, and noted that it “once again emphasized the importance of addressing the sustainable development of oceans and seas and provided for the further implementation of chapter 17 of Agenda 21”. It also welcomed the “commitments set out in the Plan of Implementation to actions at all levels, within specific periods for certain goals, to ensure the sustainable development of the oceans, including sustainable fisheries, the promotion of the conservation and management of the oceans, enhancement of maritime safety and protection of the marine environment from pollution, and the improvement of scientific understanding and assessment of marine and coastal ecosystems as a fundamental basis for sound decision-making.”

## **VI. KEY AREAS OF CONCERN**

56. Based upon the discussion at the Plenary, the Report of the Secretary-General and the deliberations and the outcome of the World Summit on Sustainable Development inter alia following key areas of concern can be discerned:

### **A. Protection of Marine Environment**

57. The state of the world's oceans continues to deteriorate. A study carried out in 2001 by United Nations Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP)<sup>23</sup> and by the Global Conference on Oceans and Coasts at Rio+10 identifies amongst others the following threats to the marine environment worldwide: (a) the destruction and alteration of habitats - at least half of the world's mangrove forests have been lost over the last century; 70 per cent of coral reefs are threatened and important sea grass habitats are rapidly being destroyed; (b) over fishing and the effects of fishing on the environment - 47 percent of global fisheries are fully utilized and 28 percent are over utilized, while 75 percent require urgent management to freeze or reduce capacity; (c) the effects of sewage and chemicals on human health and the environment - while the presence of some pollutants in the marine environment has been reduced, research shows that sewage pollution has a massive effect on health worldwide and some chemicals are suspected of causing cancer, disrupting reproduction and altering behavior; (d) increasing eutrophication - excessive growth of marine plant life is seriously disrupting ecosystems and threatening life throughout the world; (e) changes to hydrology and the flow of sediments caused by such developments as building dams and causeways, creating reservoirs, establishing large-scale irrigation schemes and changing the way land is used; (f) the introduction of alien species - it is estimated that 3,000 species of animals and plants are transported every day around the world in the ballast water of ships, or in their hulls, while other species enter the sea after being released from aquaria and fish farms; (g) climate change - Intergovernmental Panel on Climate Change projections show that continued use of fossil fuels will exacerbate global climate changes, with severe consequences for the oceans and coastal ecosystems.

58. Furthermore, large-scale movements of populations to coastal areas coupled with a significant increase in economic activity and industrialization along the coastline has put to risk vast resources of the oceans and the many economic benefits that humanity derives from them, estimated to be about \$ 7 trillion per year.<sup>24</sup>

59. The UN General Assembly vide resolution 57/141 under the head "Marine environment, marine resources and sustainable development" emphasized once again "the importance of the implementation of Part XII of the Convention in order to protect and preserve the marine environment and its living marine resources against pollution and physical degradation". It called upon all States to cooperate and take measures for the preservation and protection of the marine environment and to continue to prioritize action

---

<sup>23</sup> "A Sea of Troubles", GESAMP Report and Studies No. 70, 2001, cited in the Report of the Secretary-General, at p. 99.

<sup>24</sup> *Oceans: The Source of Life*, note 2, p.3

on marine pollution from land-based sources as part of their national sustainable development strategies and programmes in an integrated and inclusive manner, as a means of implementing the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities. Recalling the recommendation of the Johannesburg Summit, the Resolution decided to establish by 2004 a regular process under the United Nations for the global reporting and assessment of the state of the marine environment, including socio-economic aspects.

60. It is pertinent to add in here that there have been significant advances in the international rules and standards for the protection and preservation of marine environment. However, ratification and implementation of multilateral agreements as well as implementation of soft-law instruments needs to be broader. Further, implementation at the national level is also a key issue for attaining the goal of sustainable development of oceans and seas.

## **B. Crimes at Sea**

61. Maritime safety and security is increasingly being threatened by the rising incidents of piracy and armed robbery. Added to these are the criminal activities such as smuggling of migrants, illicit traffic in narcotic drugs or psychotropic substances, and illicit traffic in firearms. The Report of the Secretary-General<sup>25</sup> points out with concern in this regard:

Many of these crimes are the work of organized criminals whose global reach and evasion of national controls threaten the stability of all States and make effective national measures and global action imperative.

62. The Report noted that 20 years since the adoption of the UNCLOS, crimes at sea have become more prevalent and are increasing. Major obstacles for coastal States in the suppression and combating of crimes at sea include the lack or shortage of trained personnel and equipment; the obsolescence or inadequacy of most national legislation; and weak maritime law enforcement capability of national agencies.<sup>26</sup>

63. The General Assembly in its resolution 57/141 under the head "Maritime safety and security" took note of the "increasing problem of unsafe transport at sea generally, and particularly in smuggling or migrants". It called upon all States and relevant international bodies to cooperate to prevent and combat piracy and armed robbery at sea by adopting measures, including those relating to assisting with capacity-building, prevention, reporting and investigating incidents, and bringing the alleged perpetrator to justice, in accordance with international law, and through the adoption of national legislation, as well as through training seafarers, port staff and enforcement personnel, providing enforcement vessels and equipment and guarding against fraudulent ship registration. The resolution also urged States to become parties to the (i) Convention for

---

<sup>25</sup> UNGA, Oceans and Law of the Sea: Report of the Secretary-General, UN Doc. A/57/57, dated 7 March 2002 at p. 26 and also see Addendum UN Doc. A/57/57/Add.1 dated 8 October 2002.

<sup>26</sup> Ibid. p.26.

the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its Protocol; (ii) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime and to take appropriate measures to ensure its effective implementation. It also welcomed the initiative by the International Maritime Organization, the Office of the United Nations High Commissioner for Refugees and the International Organization for Migration to address the issue of the treatment of persons rescued at sea.



## **VII. AALCO SECRETARIAT COMMENTS AND OBSERVATIONS**

64. The deliberations at the Plenary and the Informal Panel Meetings of the General Assembly to commemorate the twentieth anniversary of the adoption of the UNCLOS had reinvigorated the debate on the management of the oceans and seas. It has identified the key challenges facing the implementation of the UNCLOS and its implementing agreements.

65. The General Assembly vide its resolution 57/141 giving an extension of further period of three years to the Informal Consultative Process (UNICPOLOS) is a welcome step. This would ensure that the General Assembly continues to remain the forum for the consideration of the Oceans and the law of the sea issues. However, there is a need to provide a permanency to the Consultative Process so that it ensures better coordination and management of oceans issues within the UN. The suggestion made by an AALCO Member State to convert UNICPOLOS into an Ocean Assembly may be seriously considered.

66. The Russian Federation had submitted its claim on Continental Shelf beyond 200 nautical miles to the Commission on Continental Shelf at its tenth session in December 2001. The Commission had within a period of six months at its eleventh session had submitted its recommendation. The timely disposal of the Russian claim shows the efficacy of the CLCS. In this regard, it is hoped that AALCO Member States with coastline would prepare themselves for making submissions before the Commission in time and would also utilize the technical expertise of the Commission's members as well as the least developed and small island member states would seek assistance from the Trust Fund established by the General Assembly for this purpose.

67. The protection and preservation of the marine environment remains a key challenge for the humanity. The Plan of Implementation adopted at the World Summit on Sustainable Development on 4 September 2002 provides for an integrated approach on this issue. It adds to the existing soft-law instrument i.e. Chapter 17 of the Agenda 21. Effective implementation of these instruments at global, regional, and national levels is essential for the protection and preservation of marine environment. Further, the General Assembly acceptance of the recommendation of Johannesburg Summit to establish by 2004 a regular process under the United Nations for the global reporting and assessment of the state of the marine environment, including socio-economic aspects is a welcome step.

68. There is a need to strengthen the enforcement mechanisms for combating crimes at sea. In this regard on the issue of armed robbery and piracy, the work done by the International Maritime Organization need to be considered and effective implementation of the IMO Convention on the subject, as desired also by the General Assembly be promoted. A study by the Secretariat on the topic "Combating Armed Robbery and Piracy" may be taken up as some of the worst affected sea routes by armed robbery and Piracy fall within the Asian and African continents.

**VIII. Status of the Participation of AALCO Member States in the United Nations Convention on the Law of the Sea, of the Agreement relating to the implementation of Part XI of the Convention and of the Agreement for the Implementation of the provisions of the Convention relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks**

S. No.	Member States	United Nations Convention on the Law of the Sea (in force as from 16 November 1994)		Agreement Relating to implementation of Part XI of the Convention (in force as from 28 July 1996)		Agreement for the implementation of the Provisions of the Convention Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (in force as from 11 December 2001)	
		Signature	Ratification, Formal Confirmation (c), Accession (a), Succession (d)	Signature	Ratification, Formal confirmation (c), Accession (a), Definitive signature (s), Simplified procedure (p), Consent to be bound (P)	Signature	Ratification, Accession (a)
1.	Arab Republic of Egypt	10 December 1982	26 August 1983	22 March 1995	—	5 December 1995	—
2.	Bahrain	10 December 1982	30 May 1985	—	—	—	—
3.	Bangladesh	10 December 1982	27 July 2001	—	27 July 2001 a	4 December 1995	—
4.	Botswana	5 December 1984	2 May 1990	—	—	—	—
5.	China	10 December 1982	7 June 1996	29 July 1994	7 June 1996 (P)	6 November 1996	—
6.	Cyprus	10 December 1982	12 December 1988	1 November 1994	27 July 1995	—	25 September 2002 (a)
7.	DPR Korea	10 December 1982	—	—	—	—	—
8.	Gambia	10 December 1982	22 May 1984	—	—	—	—
9.	Ghana	10 December 1982	7 June 1983	—	—	—	—
10.	India	10 December 1982	29 June 1995	29 July 1994	29 June 1995	—	—
11.	Indonesia	10 December 1982	3 February 1986	29 July 1994	2 June 2000	4 December 1995	—
12.	Islamic Republic of Iran	10 December 1982	—	—	—	—	17 April 1998 (a)
13.	Iraq	10 December 1982	30 July 1985	—	—	—	—
14.	Japan	7 February 1983	20 June 1996	29 July 1994	20 June 1996	19 November 1996	—
15.	Jordan	—	27 November 1995 a	—	27 November 1995 (p)	—	—
16.	Kenya	10 December 1982	2 March 1989	—	29 July 1994 (ds)	—	—
17.	Kuwait	10 December 1982	2 May 1986	—	2 August 2002	—	—

18.	Lebanon	7 December 1984	5 January 1995	—	5 January 1995 (p)	—	—
19.	Libyan Arab Jamahiriya	3 December 1984	—	—	—	—	—
20.	Malaysia	10 December 1982	14 October 1996	2 August 1994	4 October 1996 (p)	—	—
21.	Mauritius	10 December 1982	4 November 1994	—	4 November 1994 (p)	—	25 March 1997 (a)
22.	Mongolia	10 December 1982	13 August 1996	17 August 1994	13 August 1996 (p)	—	—
23.	Myanmar	10 December 1982	21 May 1996	—	21 May 1996 (a)	—	—
24.	Nepal	10 December 1982	2 November 1998	—	2 November 1998 (p)	—	—
25.	Nigeria	10 December 1982	14 August 1986	25 October 1994	28 July 1995 (sp)	—	—
26.	Oman	1 July 1983	17 August 1989	—	26 February 1997 (a)	15 February 1996	—
27.	Pakistan	10 December 1982	26 February 1997	10 August 1994	26 February 1997 (p)	15 February 1996	—
28.	Palestine	—	—	—	—	—	—
29.	Philippines	10 December 1982	8 May 1984	15 November 1994	23 July 1997	30 August 1996	—
30.	Qatar	27 November 1984	9 December 2002	—	9 December 2002 (p)	—	—
31.	Republic of Korea	14 March 1983	29 January 1996	7 November 1994	29 January 1996	26 November 1994	—
32.	Saudi Arabia	7 December 1984	24 April 1996	—	24 April 1996 (p)	—	—
33.	Senegal	10 December 1982	25 October 1984	9 August 1994	25 July 1995	4 December 1995	30 January 1997
34.	Sierra Leone	10 December 1982	12 December 1994	—	12 December 1994 (p)	—	—
35.	Singapore	10 December 1982	17 November 1994	—	17 November 1994 (p)	—	—
36.	Somalia	10 December 1982	24 July 1989	—	—	—	—
37.	Sri Lanka	10 December 1982	19 July 1994	29 July 1994	28 July 1995 (sp)	9 October 1996	24 October 1996
38.	Sudan	10 December 1982	23 January 1985	29 July 1994	—	—	—
39.	Syrian Arab Republic	—	—	—	—	—	—
40.	Thailand	10 December 1982	—	—	—	—	—
41.	Turkey	—	—	—	—	—	—
42.	Uganda	10 December 1982	9 November 1990	9 August 1994	28 July 1995 (sp)	10 October 1996	—
43.	United Arab Emirates	10 December 1982	—	—	16 November 1994	—	—
44.	United Republic of Tanzania	10 December 1982	30 September 1985	7 October 1994	25 June 1998	—	—
45.	Yemen	10 December 1982	21 July 1987	—	—	—	—

**Note:**

1. The information stated in the above table has been compiled from “Table recapitulating the status of the Convention and of the related Agreements, as at 10 December 2002, available on the website: <http://www.un.org/Depts/los/index.htm#oceans>; and *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2001* (UN, New York, 2002), vol, II, pp. 221-64.
2. The Arab Republic of Egypt, Bangladesh, China, India, Islamic Republic of Iran, Iraq, Kuwait, Malaysia, Oman, Pakistan, Philippines, Qatar, Saudi Arabia, Sudan, United Republic of Tanzania and Yemen have made Declarations to the UNCLOS, 1982.
3. China has made a declaration regarding the Straddling Fish Stocks Agreement.

**Inferences:**

Following inferences as to the participation of AALCO Member States to the UNCLOS and its implementing Agreements may be made from the information mentioned in the Table:

**(i) UNCLOS**

UNCLOS 1982 has near universal adherence from the AALCO member states. Out of forty-five Member States only seven states, namely, Democratic Peoples’ Republic of Korea, Islamic Republic of Iran, Libyan Arab Jamahiriya, Syrian Arab Republic, Thailand, Turkey and United Arab Emirates are not Parties to the UNCLOS. All these Member States are from the Asian region.

**(ii) Agreement relating to the implementation of Part XI of the Convention**

Twenty-seven AALCO Member States are Parties to this Agreement. Region-wise break-up of the AALCO Member States Parties to this Agreement is as under:

**Asia:** China, Cyprus, India, Indonesia, Japan, Jordan, Kuwait, Lebanon, Malaysia, Mongolia, Myanmar, Nepal, Oman, Pakistan, Philippines, Qatar, Republic of Korea, Saudi Arabia, Singapore, and Sri Lanka.

**Africa:** Kenya, Mauritius, Nigeria, Senegal, Sierra Leone, Uganda, and United Republic of Tanzania.

**(iii) Agreement for the implementation of the Provisions of the Convention relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks**

Only five AALCO Member States are Parties to this Agreement. Region-wise break-up of the Parties to this Agreement is as under:

**Asia:** Cyprus, Sri Lanka, and Islamic Republic of Iran.

**Africa:** Mauritius and Senegal.