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**ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION**



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**THE LAW OF THE SEA**

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# THE LAW OF THE SEA

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# THE LAW OF THE SEA

## I. INTRODUCTION

### A. BACKGROUND

1. The 1982 United Nations Convention on the Law of the Sea (hereinafter ‘UNCLOS’), came into force on 16 November 1994, twelve months after the deposit of the sixtieth instrument of ratification with the Secretary-General of the United Nations.

2. As of 10 January 2016, 167 parties have ratified the UNCLOS<sup>1</sup>. One of the UNCLOS’s implementing agreements, namely the 1994 Agreement relating to the implementation of Part XI of UNCLOS, was adopted on 28 July 1994 and entered into force on 28 July 1996. The other implementing agreement, the 1995 United Nations Fish Stocks Agreement was opened for signature on 4 December 1995 and entered into force on 11 December 2001. Together with the UNCLOS, these agreements set up a comprehensive legal framework for the regulation of a wide range of activities in the oceans and high seas. The symbiotic regime galvanized by the UNCLOS propagates the notion that the ocean spaces are closely related and function as a global commons. This indicates that it is the responsibility of all States to abide by the universally accepted norms regulating the ocean spaces. It is unsurprising, therefore, that the regime has been widely regarded as ‘The Constitution of The Oceans.’

3. It may be recalled that the agenda “Law of the Sea” was taken up for consideration by the Asian-African Legal Consultative Organization (AALCO) at the initiative of the Government of Indonesia in 1970. Since then, it has consistently been considered as one of the crucial components of the agenda at each of the Organization’s Annual Sessions. The AALCO can take reasonable pride in the fact that new concepts such as the Exclusive Economic Zone (EEZ), Archipelago States and Rights of Land Locked States originated as well as developed in the AALCO’s Annual Session which as a result were later codified in the UNCLOS.

4. Since the adoption of the Convention in 1982, the AALCO’s Work Programme was oriented towards assisting Member States in their bid towards becoming functioning signatories to UNCLOS. With the entry into force of the UNCLOS in 1994, institutions envisaged by the legal regime began taking shape. The AALCO Secretariat prepared studies monitoring these developments. Further, the Secretariat documents for AALCO’s Annual Sessions continuously reported on the progress of work in the International Seabed Authority (ISA), the International Tribunal for the Law of the Sea (ITLOS), the Commission on the Limits of the Continental Shelf (CLCS), the Meeting of States Parties to the UNCLOS and other related developments. The

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<sup>1</sup>State of Palestine is the 167<sup>th</sup> State Party to have ratified the UNCLOS on 2 January 2016.

agenda was discussed during the Fifty-Fourth Annual Session of AALCO held from 13-17 April 2015, in Beijing, People's Republic of China.

5. It is important to underline that the UNCLOS sets out the legal framework for almost all activities in the oceans and seas. However, resource based and capacity based limitations hinder States, in particular developing countries to the UNCLOS, from complying with the range of obligations under the Convention. Therefore, attention needs to be paid to the symbiotic development of capacity based needs of States along with the evolution of the law of the seas. This symbiosis is essential for ensuring that all nations benefit equally from the ocean spaces.

6. In consonance with United Nations activities on the law of sea, AALCO has provided impetus to ongoing contemporary works in law of the sea. It has successfully deliberated at the *UMT-AALCO Legal Expert Meeting On Law Of The Sea – "Marine Biodiversity Within And Beyond National Jurisdiction: Legal Issues And Challenges* on 24 August 2015, which added more clarity to and promoted a more concrete understanding of key issues among Member States.

7. In pursuance of the mandate received from the resolution adopted on the law of the sea, at the Fifty-Fourth Annual Session, the Secretariat has prepared a Special Study entitled, "*Marine Biodiversity Beyond National Jurisdiction: An Asian-African Perspective*".

8. The Secretariat, therefore proposed that the Fifty-Fifth Annual Session could focus on Marine Scientific Research and Exploration of Deep Sea Resources and the protection of Marine Biodiversity in Areas Beyond National Jurisdiction.

## **B. SUMMARY OF DELIBERATION AT THE FIFTY-FOURTH ANNUAL SESSION OF AALCO HELD FROM 13 TO 17 APRIL 2015, IN BEIJING, PEOPLE'S REPUBLIC OF CHINA**<sup>2</sup>

9. **The Deputy Secretary-General of AALCO Mr. Feng Qinghu**, introduced the agenda item and stated that the report focused on Marine Scientific Research and Exploration of Deep Sea Resources. He highlighted issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction especially the necessity for a new international legal instrument in this regard.

10. Following the introduction, a brief presentation was made by **Mr. H.P.Rajan, Legal Adviser of AALCO**. In his presentation, he highlighted that marine scientific research is an important and essential component to understand the nature of deep sea resources as well as to develop appropriate technology and devise mechanisms for the protection and preservation of the marine environment and its biodiversity. He pointed out that while the Convention recognized the conduct of marine scientific research as a freedom of the high seas, it also contained general

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<sup>2</sup> The records of the full deliberations may be accessed on the AALCO website at <<http://www.aalco.int/54thsession/LOS%20Final%202015.pdf>>

principles for the conduct of marine scientific research in the various maritime zones of coastal States. He explained that although the term marine scientific research was not defined in the Convention, the three Regulations adopted by the International Seabed Authority for prospecting and exploration of polymetallic nodules, sulphides and cobalt-rich ferromanganese crusts all defined marine scientific research as well as other terms like prospecting, exploration, exploitation, marine environment, serious harm to marine environment etc. He stated that there were several practical difficulties involved in determining what activities constitute marine scientific research and what activities go beyond marine scientific research. He was of the view that in view of several contemporary developments, and the importance of the subject to Member States of AALCO, it would be very useful to convene a workshop that would provide an opportunity for an in-depth discussion of the complex legal and practical issues involved.

11. An expert presentation was also made by **Ms. Alice Hicuburundi, Senior Legal Officer, Division on Ocean Affairs and the Law of the Sea, UN**, on the issues of Marine Scientific Research. She explained the legal regime of marine scientific research under Part XIII of UNCLOS. She said that the deep sea is seen as the source of future scientific discoveries and resources. She highlighted that strong and dependable scientific knowledge base is fundamental to informed political and economic decision-making. She advocated strengthening co-operation and co-ordination among States and international organizations, at the global and regional level. She underlined the need for establishing better links between marine scientists and policy makers and managers. She called for strengthening capacity building and better dissemination of knowledge, information and data sharing among Member States.

12. Thereafter, the delegates of **Thailand, Japan, Republic of Indonesia, Ghana, People's Republic of China, Nepal, India, Pakistan, Malaysia, Sultanate of Oman, South Africa and Iran** presented their views on the agenda item. The observer delegation of **Vietnam** also made a statement.

13. Many delegates appreciated the focus of the secretariat report on Marine Scientific Research and Exploration of Deep Sea Resources. Most delegates applauded the progress made by the Working Group to study issues relating to the Conservation and Sustainable Use of Marine Biological Diversity beyond Areas of National Jurisdiction (BBNJ). One delegate supported the Secretariat's suggestion on conducting study, sponsoring seminars and workshops on BBNJ and exploration of deep sea resources. Some delegates were of the view that strengthening of capacity-building programs is significant for the Asian and African States to meaningfully participate in international marine affairs.

14. One delegate stated that his country is yet to explore in deep sea mining but it has been closely following the work and rules of International Sea Bed Authority. Many delegates urged other Member States to intensify marine scientific research as provided under Part XIII of

UNCLOS and also to respect sovereignty, jurisdiction and rights of coastal states. One delegate said with reference to deep sea bed mining, there is a lot which needs to be done in terms of capacity building for developing countries and land-locked States. Many delegates emphasized that the mineral resources in the Area are the “Common Heritage of Mankind”.

## **II. STATUS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS) AND ITS IMPLEMENTING AGREEMENTS**

15. The United Nations Convention on the Law of the Sea as at 10 January 2016 has 167 parties, of which 41 States are AALCO Member States.<sup>3</sup>

16. The Agreement relating to the Implementation of Part XI of the UNCLOS was adopted on 28 July 1994 and has entered into force on 28 July 1996. As regard to the status of this Agreement, as at 10 January, 2016, there are 147 parties to it, of which 33 states are AALCO Member States.<sup>4</sup>

17. The 1995 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 (the United Nations Fish Stocks Agreement) was adopted on 4 August 1995 which has been signed by 59 member States as on 10 January 2016 and was ratified by 82 States of which 14 are AALCO Member States. The Agreement came into force from 11 December 2001 after receiving the requisite 30 ratifications or accessions<sup>5</sup>. It can therefore be said that we are swiftly moving towards the setting up of a regime that fosters universal participation.

## **III. THIRTY-SEVENTH AND THIRTY-EIGHTH SESSIONS OF THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF**

18. The commission on the Limits of the continental Shelf (CLCS) held its thirty-seventh and thirty- eighth sessions at United Nations Headquarters from 2 February to 20 March and 20 July to 4 September 2015 respectively. Apart from the work carried out in plenary meetings, the commission also proceeded with the technical examination of the submissions made by the

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<sup>3</sup> The AALCO Member States Parties to the UNCLOS are: Bahrain, Bangladesh, Botswana, State of Palestine, Brunei Darussalam, Cameroon, China, Cyprus, Egypt, Gambia, Ghana, India, Indonesia, Iraq, Japan, Jordan, Kenya, Kuwait, Lebanon, Malaysia, Malaysia, Mauritius, Mongolia, Myanmar, Nepal, Nigeria, Oman, Pakistan, Qatar, Republic of Korea, Saudi Arab, Senegal, Sierra Leone, Singapore, Somalia, South Africa, Sri Lanka, Sudan, Uganda, United Republic of Tanzania, Thailand and Yemen. Out of Forty-seven Member States only six states, namely Democratic Peoples’ Republic of Korea, Islamic Republic of Iran, Libya Arab Jamhariya, Syrian Arab Republic, Turkey and United Arab Emirates are not yet parties to the UNCLOS.

<sup>4</sup> The AALCO Members who have ratified the Agreement include: Bangladesh, Botswana, Brunei Darussalam, Cameroon, China, Cyprus, India, Indonesia, Japan, Jordan, Kenya, Kuwait, Lebanon, Malaysia, Mauritius, Mongolia, Myanmar, Nepal, Oman, Pakistan, Qatar, Republic of Korea, Saudi Arabia, Senegal, Sierra Leone, Singapore, South Africa, Sri Lanka, Uganda, The United Republic of Tanzania. Ibid.

<sup>5</sup> The AALCO Member States Parties to the Straddling Stocks Agreement are: Bangladesh, Cyprus, India, Indonesia, Islamic Republic of Iran, Japan, Kenya, Mauritius, Nigeria, Oman, Republic of Korea, Senegal, South Africa and Sri Lanka. AALCO Members signatories to this agreement include: Bangladesh, Egypt, Indonesia, Pakistan and Uganda. Ibid.

coastal states in accordance with Article 76 of the UNCLOS, 1982. Brief summaries of the proceedings in those sessions are provided below.

#### **A. THIRTY- SEVENTH SESSION OF THE CLCS**

19. Pursuant to the decision adopted at its thirty-fifth session<sup>6</sup> as endorsed by the General Assembly in paragraph 85 of its resolution 69/245, the Commission on the Limits of the Continental Shelf held its thirty-seventh session at the United Nations Headquarters from 2 February to 20 March 2015. The plenary parts of the session were held from 9-13 February and from 9-13 March. The other periods were used for the technical examination of submissions at the geographic information system (GIS) laboratories of the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs of the Secretariat.

20. The Chair of the Commission, Mr. Awosika, opened the plenary of the thirty-seventh session of the Commission. The Commission recalled its decision taken at the thirty-fifth session<sup>7</sup> that, in 2015, it would hold three sessions of seven weeks each, including plenary meetings, for a total of 21 weeks of meetings of the Commission and its sub-commissions, on the understanding that that decision could be revisited during the thirty-seventh session, in the light of the progress made in the work of the sub-commissions and other developments related to both the workload of the Commission and the conditions of service of its members.

21. The Commission took note of relevant provisions of General Assembly resolution 69/245, in particular paragraphs 80 to 85, and of information provided by the Secretariat with regard to medical insurance coverage and working space for the members of the Commission. The Commission emphasized its understanding that the reimbursement of the costs of medical travel insurance for those members who benefit from the trust fund established pursuant to General Assembly resolution 55/7 for facilitating the participation of members of the Commission from developing countries in the meetings of the Commission was an interim measure and that a more permanent solution would be presented in the future.

22. The Commission heard the Submissions made by coastal States<sup>8</sup> pursuant to Article 76, paragraph 8, of the United Nations Convention on the Law of the Sea; General Assembly resolution 69/245; Communications received from Canada (29 December 2014), Côte d'Ivoire (17 and 19 November 2014), Federated States of Micronesia (21 November 2014), France (17 December 2014), Iceland (2 March 2015), Kenya (24 October 2014), Morocco (10 March 2015), Nigeria (12 March 2015), Norway (17 December 2014), Oman (10 November 2014), Pakistan (9 October 2014), Somalia (7 October 2014), Sri Lanka (12 February 2015), the United Republic of Tanzania (17 October 2014), the United States of America (two communications dated 12 November 2014) and Yemen (10 December 2014).

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<sup>6</sup> CLCS/85, para. 87

<sup>7</sup> *Ibid.*

<sup>8</sup> For a full list of the submissions made to the Commission, see <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/112/55/PDF/N1511255.pdf?OpenElement>

23. The Chair of the Training Committee, Mr. Carrera, reported that no meeting of the Committee had been required during the period under review. He informed that when approached by States interested in organizing future trainings he had advised them to address their requests to the Division. The Commission took note of the report and of the information provided by the Division with regard to possible future training activities.

24. The Commission considered again the possibility of devoting time to internal discussions of topics of a scientific and technical nature during a future session. Keeping in mind the heavy workload of the thirty-seventh session related to the consideration of submissions, it was decided that such internal discussions might be held at future sessions when the workload so permits.

25. The Statement by the Chair provides information on the work carried out by the Commission on the Limits of the Continental Shelf and its sub-commissions during the thirty-seventh session. In particular, it contains an overview of the work on the submissions made by the following: Uruguay, the Cook Islands (in respect of the Manihiki Plateau), Argentina, Iceland (in respect of the Ægir Basin area and the western and southern parts of the Reykjanes Ridge), Pakistan, Norway (in respect of Bouvetøya and Dronning Maud Land), South Africa (in respect of the mainland of the territory of the Republic of South Africa), jointly by the Federated States of Micronesia, Papua New Guinea and Solomon Islands, (concerning the Ontong Java Plateau), jointly by France and South Africa (in the area of the Crozet Archipelago and the Prince Edward Islands) and Mauritius (in the region of Rodrigues Island). The statement also contains information about presentations made to the Commission by Pakistan pursuant to paragraph 15.1 bis. of annex III to the rules of procedure of the Commission and by Tonga concerning its submission in respect of the western part of the Lau-Colville Ridge. The statement also addresses *inter alia* the issues of the conditions of service and attendance of the members of the Commission.

## **B THE THIRTY-EIGHTH SESSION OF THE CLCS**

26. Pursuant to the decision adopted at its thirty-fifth session (see CLCS/85, para. 87), as endorsed by the General Assembly in paragraph 85 of its resolution 69/245, the Commission on the Limits of the Continental Shelf held its thirty-eighth session at United Nations Headquarters from 20 July to 4 September 2015. The plenary parts of the session were held from 3 to 7 August and from 24 to 28 August. The other parts of the session were used for the technical examination of submissions at the geographic information systems laboratories of the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs of the Secretariat.



27. Following submissions made by coastal States<sup>9</sup> pursuant to Article 76, paragraph 8, of the United Nations Convention on the Law of the Sea, the Commission considered each submission on its merit and decided as follows:

28. The Commission recognized the attention given by States parties, the General Assembly and the Secretariat to the conditions of service of members of the Commission and took note of the decision regarding the conditions of service of the members of the Commission on the Limits of the Continental Shelf, adopted by the twenty-fifth Meeting of States Parties to the United Nations Convention on the Law of the Sea (SPLOS/286) while recalling relevant paragraphs of the report of the twenty-fifth Meeting of States Parties (SPLOS/287) as well as of General Assembly resolution 69/245.

29. While considering the submission made by Kenya, the Commission recalled the decision taken during the thirty-fifth session to revert to the consideration of that submission at the plenary level at the time when it would be next in line for consideration as queued in the order in which it had been received. In this regard the Commission took note of a communication received since the thirty-fifth session namely, the communication from Somalia dated 7 July 2015. In the light of that communication, the Commission determined that it was in a position to proceed with the establishment of a sub-commission.

30. On the consideration of the submission made by South Africa in respect of the mainland of the territory of the Republic of South Africa, the Chair of the sub-commission, Mr. Haworth, reported on the progress of its work during the inter-sessional period and at the thirty-eighth session, noting that the sub-commission had met from 10-14 August 2015.

31. On the consideration of the joint submission made by the Federated States of Micronesia, Papua New Guinea and Solomon Islands in respect of the Ontong Java Plateau, the sub-commission had then prepared a document outlining its views and requests for further clarifications, which had subsequently been transmitted in writing to the joint delegation.

32. On the consideration of the submission made by Mauritius in respect of the region of Rodrigues Island, prior to the meetings of the sub-commission, the delegation had transmitted additional data and information to the sub-commission in response to the presentation on the results and conclusions of the preliminary analysis, including the test of appurtenance, which had been given by the sub-commission at the thirty-sixth session. The delegation had subsequently confirmed to the sub-commission that it would submit to the Secretary-General a revised executive summary of its submission prior to the thirty-ninth session.

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<sup>9</sup> For a full list of the submissions made to the Commission, see <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/297/39/PDF/N1529739.pdf?OpenElement>

33. The Chair of the Scientific and Technical Advice Committee, Mr. Urabe, reported that no meeting of the Committee had been held during the thirty-eighth session owing to time constraints and that no issues that fell within the purview of the Committee had arisen.

34. The Commission considered again the possibility of devoting time to internal discussions of topics of a scientific and technical nature during a future session. In view of the heavy workload of the present session, it was decided that such internal discussions might be held at future sessions, when the workload so permitted.

35. The Commission adopted the programme of work for its thirty-ninth session, which had originally been scheduled to be held from 12 October to 27 November 2015 (see CLCS/85, para. 87 (c)). Following discussions on the programme of work, the Commission decided to postpone the thirty-ninth session by one week in order to optimize the work of the sub-commissions. Consequently, the thirty-ninth session was held from 19 October to 4 December 2015.

#### **IV. TWENTY-FIRST SESSION OF THE INTERNATIONAL SEABED AUTHORITY<sup>10</sup> (6 – 24 JULY 2015, KINGSTON, JAMAICA)**

36. A number of decisions relating to activities in the international seabed area beyond the limits of national jurisdiction, including the future of the regulatory framework for exploitation of marine minerals there, were taken by the International Seabed Authority as it concluded its twenty-first annual session in Kingston, Jamaica, on 24 July 2015.

37. The Secretary-General of the International Seabed Authority, Nii Allotey Odunton, (Ghana) introduced his annual report to the Assembly on 21 July. The report required under the 1982 United Nations Convention on the Law of the Sea (Article 166, paragraph 4), provides information on the Authority's work between sessions to its members. The full report ISBA/21/A/2, covered administrative and financial matters, status of exploration and exploitation for marine minerals in the Area, workshops along with seminars as well as the development of a regulatory framework for exploitation among other topics.

38. The Secretary-General's report states that as the Authority's work had progressed, the scope of its work programme had also increased. New areas of work had been identified. Since the last session in 2014, the State of Palestine had become party to the United Nations Convention on the Law of the Sea and the 1994 Agreement. As at 10 January 2016 there were 167 States parties to the Convention and thus 167 members of the Authority (166 States and the European Union). On the same date, there were 147 parties to the 1994 Agreement.

39. At the twenty-first Session, the Secretary-General made a note on the revised version of the "Developing a Regulatory Framework for Mineral Exploitation in the Area" prepared by the Legal and Technical Commission containing *inter alia* a draft framework for the regulation of

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<sup>10</sup><https://www.isa.org.jm/sessions/21st-session-2015>

mineral exploitation in the Area. It was accompanied by a discussion of high level and strategic issues. The Commission considered significant the advancing of the development of the Authority's rules, regulations and procedures. The draft text incorporated feedback received from stakeholders on the original document issued on 23rd March 2015.

40. The Legal and Technical Session presented a revised draft for the advancement of the development of the Authority's rules, regulations and procedures. The summary of high level issues include information data, activities in the Area, the transition between exploration as well as exploitation phases, risk assessment, evaluation and management, time limits along with costs and confidentiality. Other issues are: effective protection of the environment from harmful effects, adaptive management, "internationally recognized standards" and their significance in exploitation activities, a clear division of duties and responsibilities between sponsoring State(s) and the Authority and with high-grading of mineral deposits.

41. The Assembly strongly encouraged members to make voluntary contributions to the Endowment Fund for Marine Scientific Research in the Area and the Voluntary Trust Fund of the Authority. Furthermore, it appointed KPMG as independent auditor for two more years, i.e. 2015 and 2016.

42. **Status of contracts for exploration:**<sup>11</sup> As a result of growing interest in minerals of the deep seabed, as at 31 August 2015 plans of work for exploration in the Area have been approved by the Authority contributing to a further increase in its workload with respect to contracts administration and supervision. At its twenty-first session, in July 2015 the Authority continued its work on a draft framework for the regulation of the exploitation of the Area for which the Council of the Authority adopted a list of priority deliverables. The Council also adopted a decision relating to the procedures and criteria for the extension of an approved plan of work for exploration. With the first seven contracts approved by the Authority due to expire between March 2016 and March 2017, that decision also expanded on the requirements to be met by contractors at the time of application for extensions, as well as transitional measures pending approval by the Council. At the same session the Assembly adopted a decision regarding the first periodic review of the international regime of the Area pursuant to Article 154 of the Convention, and the terms of reference for that review.<sup>12</sup>

43. The twenty-first session included the report of the Chair of the Legal and Technical Commission, (Christian Reichert), covering such matters as activities of contractors; application for approval of a plan of work for exploration for Polymetallic Nodules by the China Minmetals Corporation and the implementation of the environmental management plan for the Clarion-Clipperton Zone as well as development of other similar plans in the Area.

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<sup>11</sup> A complete list of the contracts, with details of the contractor and the date of entry into force of each contract is provided in annex I to document ISBA/21/LTC/8/Rev.1).

<sup>12</sup>ISBA/21/A/9.

44. The Seabed Council, acting on recommendations of the Legal and Technical Commission, approved the plan of work for exploration for Polymetallic Nodules submitted by China Minmetals Corporation. By its decision (document ISBA/21C/L.3), the Council requested the Secretary-General to issue a contract between the Authority and the Corporation in accordance with the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area.

45. The Secretary-General was requested to consult with the United Nations Joint Staff Pension Fund and other United Nations bodies, as well as an investment counselor, on the steps that might be taken to generate a higher rate of return from the Endowment Fund and to report to the Committee in 2016 on the status and outcomes of those consultations. As per the agreement, he was also required to make recommendations on the investment of the Endowment Fund. The balance of the Voluntary Trust Fund established in 2002 for the participation of members of the Finance Committee and the Legal and Technical Commission from developing countries, as at 30 April 2015, stood at US\$ 225,187.

46. As of 31 May 2015, the capital of the Endowment Fund for Marine Research in the Area stood at US\$3,455,538. A total of US\$480,081 was disbursed from the interest accrued on the capital in the form of awards for projects as at the same date.

47. As of 31 May 2015, a total of 66 scientists or government officials from 36 developing countries had benefited from the Endowment Fund. Mexico and Tonga were the States that had made contributions of US\$7,500 and US\$1,000 respectively to the Fund to date. The Fund was established by the Assembly in 2006 to promote and encourage the conduct of marine scientific research in the Area for the benefit of all States.

48. The Secretary-General mentioned the tenth sensitization seminar that was held in Tshwane, near Pretoria, South Africa from 17-19 March 2015. Hosted by the Department for International Relations and Cooperation and the Council for Geosciences of the Republic of South Africa, the seminar focused on the challenges and opportunities for Africa as regards scientific research, mineral exploration and exploitation in the Area.

49. The Assembly also elected two new members to the Finance Committee – Madimi Koteswara Rao (India) and Ye Minn Thein (Myanmar) – following the resignations of their compatriots. Their terms will end on 31 December 2016.

With inclusion of the annual report of Secretary-General, ISA pursuant to Art.166 of convention and other proposals and recommendations by Finance Committee, Legal and Technical Commission and the Council, the Twenty-first Session concluded.

## **V. REPORT OF THE CO-CHAIRS OF THE AD HOC WORKING GROUP OF THE WHOLE ON THE REGULAR PROCESS FOR GLOBAL REPORTING AND ASSESSMENT OF THE STATE OF THE MARINE ENVIRONMENT INCLUDING SOCIO-ECONOMIC ASPECTS (JULY 22, 2015)**

50. Ten main themes emerge from the deliberations, which should serve as guidance towards developing a holistic scheme of oceans assessment. The present assessment was prepared on the basis of the outline, in which it was stated that the first global integrated marine assessment will not include any analysis of policies.<sup>13</sup>

### **51. Theme A:**

Notwithstanding many prevailing uncertainties, it is recognized that climate change and related changes in the atmosphere have serious implications for the ocean, including rises in sea level, higher levels of acidity in the ocean, the reduced mixing of ocean water and increasing deoxygenation. There is consensus on the fact that increases in global temperature, in the amount of carbon dioxide in the atmosphere and in the radiation from the sun that reaches the ocean have already had an impact on some aspects of the ocean and will produce further significant incremental changes over time. The basic mechanisms of change are understood but the ability to predict the detail of changes is limited. In many cases, the direction of change is known, but uncertainty remains about the timing and rate of change, as well as its magnitude and spatial pattern.

### **52. Theme B:**

The exploitation of living marine resources has exceeded sustainable levels in many regions. In some jurisdictions, various combinations of management measures, positive incentives and modifications to the governance have led to improvements but these problems continue to persist in others spheres. Overexploitation has also brought about changes to ecosystems (for example, overfishing of herbivorous fish in parts of the Caribbean has led to the smothering of corals by algae). Further, it can make fish stocks less productive by reducing the numbers of spawning fish, with adverse effects often amplified by the removal of the larger, older fish, which produce disproportionately more eggs of higher quality than younger, smaller individuals. pollution, loss of habitat and other forms of disturbance, including climate change are also thwarting reproductive success. All those factors result, more generally, in declining biological resources with important implications for food security and biodiversity.

### **53. Theme C:**

With regard to the issue of food security and food safety fish products are the major source of animal protein for a large chunk of the world's population, particularly in countries which suffer

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<sup>13</sup> A/70/112, available at < <http://cil.nus.edu.sg/wp/wp-content/uploads/2015/12/Ses1-1-new-Summary-of-the-First-Global-Integrated-Marine-Assessment.pdf>>

from issues of systemic hunger. Ending overfishing (including illegal, unreported and unregulated fishing) and rebuilding depleted resources could result in a potential increase of as much as 20 per cent in yield, but this would require addressing the transitional costs of depleted stocks. In some areas, pollution and dead zones are also depressing the production of food from the sea. Fisheries are often a source of livelihood and food for large segments of the impoverished population residing in coastal areas. Rebuilding the resources on which they depend and moving to sustainable exploitation will potentially have important benefits for food security.

#### **54. Theme D:**

The preservation of marine biodiversity is being met with new challenges on a daily basis, particularly near large population centres and in areas, such as the open ocean. Key areas for biodiversity, the so-called biodiversity hotspots, often overlap with the areas critical for the provision of ecosystem services by the ocean, many of those hotspots have become magnets for human uses, in order to take advantage of the economic and social benefits that they offer. This creates enhanced potential for conflicting pressures.

#### **55. Theme E:**

The conflict for ocean spaces has arisen due to both the expansion of longstanding uses of the ocean (such as fishing and shipping) and from newly developing uses (such as hydrocarbon extraction, mining and the generation of renewable energy conducted offshore). In most cases, those various activities are increasing without any clear overarching management system or a thorough evaluation of their cumulative impacts on the ocean environment, thus increasing the potential for conflicting and cumulative pressures.

#### **56. Theme F:**

The current, and growing levels of population and industrial and agricultural production result in increasing inputs of harmful material and excess nutrients into the ocean. Growing concentrations of population can impose, and in many areas are imposing, levels of sewage discharge that are beyond the local carrying capacity and which cause harm to human health. Further, the growing use of plastics that degrade very slowly result in increased quantities of such harmful material reaching the ocean that has had adverse impacts not only on the biodiversity and aesthetic facets of the conjoined ecosystems but also on the socio-economic needs of individuals.

#### **57. Theme G:**

Adverse impacts on marine ecosystems come from the cumulative impacts of a number of human activities. Ecosystems, and their biodiversity, that might be resilient to one form or intensity of impact can be much more severely affected by a combination of impacts. Whenever

biodiversity is altered, the resilience of ecosystems to other damaging factors, including climate change, is often reduced. Thus the cumulative impacts of activities that, in the past, seemed to be sustainable are resulting in major changes to some ecosystems and in a reduction in the ecosystem services that they provide.

#### **58. Theme H:**

The distribution of resource based or economic benefits drawn from the oceans is still uneven. This is both due to the inequity in technological capacity as well as the natural terrain. However, the distribution of some benefits is becoming less skewed: for example, the consumption of fish per capita in some developing countries is growing. In many fields, however, including some forms of tourism and the general trade in fish, a telling imbalance remains between the developed and developing parts of the world. Significant differences in capacities to manage sewage, pollution and habitats also create inequities. Gaps in capacity-building hamper less developed countries in taking advantage of what the ocean can offer them, as well as reduce their capability to address the factors that degrade the ocean.

#### **59. Theme I:**

The impact of human activity on ocean spaces has been widespread and sustained. The only way to reverse this damage is through the adopting of a holistic multi-stakeholder and multi-sectoral approach to the issue. This requires taking into account the effects on ecosystems of each of the many pressures, what is being done in other sectors and the way that they interact. The ocean is a complex set of systems that are all interconnected. In all sectors, albeit unevenly, there has been a progressive, continuing development of management: from no regulation to the regulation of specific impacts, to the regulation of sector-wide impacts and finally to regulation taking account of aspects of all relevant sectors. Such a coherent approach requires greater knowledge about the ocean spaces and the resources and minerals contained therein, which can only be bolstered through greater marine scientific research.

#### **60. Theme J:**

A key problem in oceans governance today is the delay in implementing solutions to problems that have been adequately conjectured and diagnosed. In many fields, it has been shown that there are practicable, known measures to address many of the pressures described above. Such pressures are continuously degrading the ocean, thereby causing social and economic problems. Delays in implementing such measures, even if they are only partial lead to greater harm to the parties incurring the economic and environmental loss.

## **VI. SUMMARY OF THE FIRST SESSION OF THE PREPARATORY COMMITTEE ON MARINE BIODIVERSITY OF AREAS BEYOND NATIONAL JURISDICTION (28 MARCH – 8 APRIL 2016)<sup>14</sup>**

61. After an analysis of the various available area-based management tools, the Preparatory Committee ('PrepComm') noted the voluminous number of international developments that impacted the development of a legal framework governing marine biodiversity. The harmonization and 'non-undermining task' of The Working Group therefore became even more important. The most notable examples are the Convention on Biological Diversity (CBD) criteria on ecologically or significant marine areas (EBSAs) and the vulnerable marine ecosystem (VME) criteria. The latter were developed under the FAO International Guidelines for the Management of Deep-Sea Fisheries in the High Seas, as a follow up to General Assembly resolutions on bottom fisheries. One key difference between EBSAs and VMEs is that while the identification of the latter requires specific sectoral conservation and management measures by Regional Fisheries Management Organizations (RFMOs) (including EIAs), the description of areas meeting the EBSA criteria is a scientific and technical exercise, since the CBD was not given the mandate to adopt management measures. Nevertheless, CBD decisions have noted that these areas may require enhanced conservation and management measures, including MPAs and EIAs, which is up to states and competent intergovernmental organizations to undertake.

62. On marine genetic resources, the PrepComm took cognizance of the well-known divergence of views on the applicable regime. On the one hand, the G-77/China argued that the common heritage of mankind applies to marine genetic resources in the Area and in the high seas, with a wealth of legal arguments offered up by the African Group. On the other hand, some developed countries remain skeptical of this interpretation (as the text of UNCLOS specifically subjects mineral resources to the common heritage), or favor the catch-all regime of freedoms of the high seas. Many developed and developing countries alike, however, emphasized equity as the ultimate rationale for this element. According to many, this is certainly one if not the most difficult issue in the negotiations ahead, and it was pointed out in plenary and on the sidelines that bilateral negotiations may be needed to find common ground, particularly to bridge the gap between developed and developing countries. Access to digital genetic information lent a further shade of complexity to the discussions. For some, this is a growing trend in bio-based research and development that may well render obsolete an access and benefit-sharing regime solely focused on physical access to the resource. For others, however, digital information is no longer biodiversity and thereby falls outside of the ILBI scope.

The Asian-African Legal Consultative Organization (AALCO) was also involved in the deliberations of the PrepComm and emphasized the benefit-sharing and capacity building, cautioning against discussing conservation measures in abstract terms.

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<sup>14</sup> Available at < <http://www.iisd.ca/vol25/enb25106e.html>>



## **VII. REPORT OF THE UN SECRETARY-GENERAL ON THE OCEANS AND THE LAW OF THE SEA AT SEVENTIETH SESSION OF THE GENERAL ASSEMBLY<sup>15</sup> (1 SEPTEMBER 2015)**

63. The Secretary-General conveyed that the health, resilience and productivity of the oceans have continued to deteriorate, as is confirmed by the summary of the first global integrated marine assessment of the Regular Process. As States are increasingly looking to the oceans to further develop their economies most areas in the oceans are negatively affected by unsustainable activities taking place at sea or on land compounded by the impacts of climate change and the effects of ocean acidification.

64. The Secretary-General stressed on sustainable development of the oceans and seas as States are increasingly looking at the sea to further develop their economies. In order to discuss how to achieve this in a sustainable manner a number of events were held during the reporting period, including the Blue Week in Portugal (June 2015) which the Secretary-General made a reference to.

65. The Secretary-General asked States and international organizations for developing marine science and scientific information in support of decision-making. The Draft 2030 agenda for sustainable development also highlights the importance of increasing scientific knowledge, developing research capacity and transferring marine technology, taking into account the Intergovernmental Oceanographic Commission (IOC) of the United Nations Educational, Scientific and Cultural Organization (UNESCO) Criteria and Guidelines on the Transfer of Marine Technology in order to improve ocean health and to enhance the contribution of marine biodiversity to the development of developing countries, in particular small island developing States as well as least developed countries.<sup>16</sup>

66. The Secretary-General brought attention to conservation and management of living marine resources and highlighted actions required to be taken by the States and international organizations to improve the conservation and management of living marine resources, including through the effective implementation of the Convention, the United Nations Fish Stocks Agreement, and related international instruments. Sustainable development goal 14 also calls for a number of actions to be taken by 2020 in order to restore fish stocks in the shortest time feasible at least to levels that can produce maximum sustainable yield as determined by their biological characteristics.

67. The Secretary-General emphasized the urgency of addressing the effects of climate change and ocean acidification on the marine environment as well as marine biodiversity, and

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<sup>15</sup>Document no. A/70/74/Add.1 Dated 1<sup>st</sup> September 2015.

<sup>16</sup>A/69/L.85, annex, Goal 14.

recommended a number of actions including raising awareness of the adverse impacts of climate change on the oceans.

68. The Secretary-General also addressed the mounting pressure on the marine environment and focused on the conservation along with sustainable use of marine biodiversity. Marine biodiversity underpins a variety of ecosystem goods and services from nutrient cycling to food security, carbon sequestration and recreation.

69. The Secretary-General emphasized that an integrated, interdisciplinary and inter-sectoral approach to oceans and the law of the sea issues, as well as cross-sectoral cooperation and coordination in accordance with the Convention on Law of the Sea 1982. With respect to the 2030 sustainable development agenda the General Assembly, as assisted by its processes on oceans, including the Informal Consultative Process and inclusive of all relevant emphasized on stakeholders could be a key contributor to the systematic follow-up as well as review of goal 14 and other ocean-related goals. Such review would include the progress made in meeting the commitment in goal 14 to enhance the conservation and sustainable use of the oceans with their resources by implementing international law, as reflected in the Convention which provides the legal framework for the conservation and sustainable use of the oceans along with their resources as recalled in paragraph 158 of “The future we want.”

## **VIII. REPORT OF SECRETARY-GENERAL ON LAW OF SEA AND CLIMATE CHANGE**

70. The Secretary-General’s Report covers the main recent developments relevant for oceans and the law of the sea including Contribution by the Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC) on 7 August 2015.

71. The Secretary-General pointed out that oceans play an essential role in the climate system and, already at the current level of global warming, climate change has significant impacts on them. According to the Fifth Assessment Report (AR5) of the Intergovernmental Panel on Climate Change (IPCC), over 90 per cent of the heat accumulating in the atmosphere due to the greenhouse gas effect is stored in oceans leading to their warming and hypoxia, oceans absorb about 28 percent of man-made CO<sub>2</sub> which resulted in their acidification, and oceans accumulated excess water from melting ice sheets which resulted in sea level rise. IPCC also found that additional magnitudes of warming will only increase the risk of severe, pervasive and irreversible impacts including on oceans.

72. The Secretary-General’s report emphasized the Nairobi work programme on impacts, vulnerabilities and adaptation to climate change. As regards adaptation knowledge support, Subsidiary Body of Scientific and technological Advice (SBSTA) requested the Secretariat to prepare a synthesis report based on information submitted by Parties and Nairobi work programme (NWP) (Kenya) partner organizations on methods and tools for, and good practices and lessons learned relating to adaptation planning processes addressing ecosystems, human

settlements, water resources with health along with good practices and lessons learned related to processes and structures for linking national and local adaptation planning.<sup>17</sup>

73. The Secretary-General's report also included loss and damage associated with climate change impacts. The Conference of Parties (COP-19) recognized the need to strengthen international cooperation and expertise in order to understand and reduce loss and damage associated with the adverse effects of climate change including impacts related to extreme weather events and slow onset event.

## **IX. INTERNATIONAL TRIBUNAL FOR LAW OF THE SEA<sup>18</sup> (ITLOS)**

74. On 1 October 2014, the Tribunal elected Judge Vladimir Golitsyn (Russian Federation) as its President and Judge Boualem Bouguetaia (Algeria) as its Vice-President for the triennial period 2014-2017 commencing 1 October 2014. Judge Vicente Marotta Rangel tendered his resignation as a Member of the Tribunal by a letter received by the President of the Tribunal on 18 May 2015. In accordance with Article 5, paragraph 4, of the Statute of the Tribunal, in the case of the resignation of a member of the Tribunal, the place becomes vacant on the receipt of the letter. Mr. Cachapuz de Medeiros (Brazil) sworn in as a new member of the Tribunal on 7 March 2016.

### **A. Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire (Ivory Coast) in the Atlantic Ocean<sup>19</sup>**

75. International Tribunal for the Law of the Sea, in April 2015, delivered its advisory opinion in the request for an advisory opinion submitted by the Sub-Regional Fisheries Commission and a special chamber of the Tribunal prescribed provisional measures in the Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean.

### **B. Dispute relating to the *Enrica Lexie* Incident ( *ITALY V. INDIA* )<sup>20</sup>**

76. In July 2015, Italy submitted a request to the Tribunal for the prescription of provisional measures under Article 290, paragraph 5 of the Convention in a dispute with India over the incident involving the M/V *Enrica Lexie*. The tribunal ordered on 24 July 2015 to the parties to suspend all court proceedings which might aggravate or extend the dispute submitted to annex VII of Arbitral Tribunal.<sup>21</sup>

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<sup>17</sup>See <[http://unfccc.int/documentation/documents/advanced\\_search/items/6911.php?priref=600008090#beg](http://unfccc.int/documentation/documents/advanced_search/items/6911.php?priref=600008090#beg)>

<sup>18</sup> See. SPLOS/278- Annual Report of the International Tribunal for Law of the Sea for 2014. Available at <https://www.itlos.org/the-tribunal-reports/>.

<sup>19</sup> Case No.23

<sup>20</sup> Case No.24

<sup>21</sup>Case No.24. See. ITLOS/Press 237. Available at <http://www.itlos/en/cases/list-of-cases/>

77. Till date a total of 25 cases<sup>22</sup> have been taken up by the ITLOS including the case instituted on 17 December 2015 where Panama initiated proceedings against Italy in a dispute concerning the arrest and detention of the of M/V NORSTAR. Currently oral proceedings are listed for the case to decide the rules of procedures and other administrative issues.

**X. SIXTEENTH MEETING OF UNITED NATIONS OPEN-ENDED INFORMAL CONSULTATIVE PROCESS ON THE OCEAN AND THE LAW OF SEA<sup>23</sup> (6-10 APRIL 2015, UN HEADQUARTERS, NEW YORK)**

78. The area of focus for the sixteenth meeting consists of a summary of issues and ideas raised during the meeting and, in particular, with regard to: (a) Oceans and sustainable development, (b) integration of the three dimensions of sustainable development, namely I) environmental, II) social and III) economic. The meeting consisted of presentations from the panelists, followed by interactive sessions.

79. The meeting was attended by representatives of 68 States, nine intergovernmental organizations and other bodies and entities, and seven non-governmental organizations<sup>24</sup>.

80. The meeting highlighted the critical importance of recognizing the linkages between and integration of the three dimensions of sustainable development in order to ensure sustained and inclusive economic growth, social development and environmental protection. They stressed the essential role of oceans in sustainable development including poverty eradication, food security and the creation of sustainable livelihoods. They highlighted the contribution of oceans to various industries, such as fishing, aquaculture, shipping along with shipbuilding, oil and gas exploitation, mining, the laying of submarine cables and tourism, as well as the ecosystem services provided by oceans (for example in the production of oxygen), the regulation of the climate system and the provision of genetic resources for use in various sectors.

81. The meeting stressed on the importance of conserving and sustainably using oceans and seas and their resources for protecting marine biodiversity and the marine environment for the achievement of sustainable development.

82. The meeting emphasized on the need to balance the economy and the environment. Several representatives called for the governance of ocean activities to integrate the three dimensions of sustainable development. Attention was drawn to the benefits of integrated maritime policies and of promoting “blue growth” or a “blue economy” for sustained economic development. In that context, the Pacific Islands regional ocean policy, the 2050 Africa’s Integrated Maritime Strategy, the European Union Integrated Maritime Policy and the Eastern Caribbean Regional Ocean Policy were referred to, as was the Antananarivo communiqué of 5 March 2015 of the

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<sup>22</sup> ITLOS/PRESS 241. Available at <http://www.itlos/en/cases/list-of-cases/>

<sup>23</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/108/42/PDF/N1510842.pdf?OpenElement>

<sup>24</sup> A list of participants is available on the website of the Division for Ocean Affairs and the Law of the Sea at [www.un.org/Depts/los/index.htm](http://www.un.org/Depts/los/index.htm)

nineteenth meeting of the Economic Commission for Africa Intergovernmental Committee of Experts. Continuing international cooperation in the General Assembly towards a legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction was highlighted by some representatives as a necessary step for an integrated approach of activities and for the protection of the marine environment.

83. Several representatives reported that the outcome of the Open Working Group on Sustainable Development Goals should form the basis of the post-2015 development agenda with several emphasizing on the importance of a stand-alone goal on oceans in that agenda as reflected in sustainable development goal 14. Several Representatives highlighted the importance of ensuring the effective implementation of sustainable development goal 14 and of devising a process to that end making reference to continuing consultations on a proposal for triennial meetings specifically to monitor the implementation of and progress towards achieving goal 14.

84. The Meeting drew attention towards the need to build the capacity to exercise the rights and comply with the obligations set out in the United Nations Convention on the Law of the Sea. The need for technical assistance with regard to the establishment of the outer limits of the continental shelf beyond 200 nautical miles as a basis for economic and social development was highlighted.

## **XI. EXPLORATION OF DEEP SEA RESOURCES**

85. The deep seabed has vast reserves of resources to be exploited as an alternative to the other available terrestrial resources. Great technological expertise is needed to utilize explore and identify those resources under the sea. In order to have an economic edge and to reduce the crisis of resources, States and multinational corporations are spreading their ventures in deep seabed exploration and mining. The deep seabed primarily consists of Polymetallic Nodules rich in Cobalt, Manganese, Polymetallic Sulphide and Ferro Manganese–Cobalt rich crusts present in EEZ as well as high seas which have been explored and believed to be commercially beneficial comparative to land based resources.

86. Exploration related to activities along with mining is subject to the regulations and code of conduct prescribed by the International Seabed Authority in compliance with UNCLOS. Approximately 64% of the world's oceans by surface area, 95% by volume is classified as international waters. Consequently the majority of the global seabed and its mineral resources fall under the jurisdiction of the ISA. The seabed beyond the limits of national jurisdiction constitutes international waters and is referred to collectively as the "Area". UNCLOS Part XI defines the Area and its resources as "the common heritage of mankind" and the ISA (referred to in UNCLOS as "the Authority") has the responsibility to oversee and regulate activities in the Area, particularly with regard to administration of its resources.

87. The ISA has established deposit-specific regulations for prospecting and exploration as part of a Mining Code, including specific regulations for Polymetallic Nodules (adopted in 2000 and amended in 2013), for Polymetallic Sulphides (i.e. SMS) (adopted in 2010) and for Cobalt-rich Ferro Manganese crusts (adopted in 2012).<sup>25</sup>

## **XII. COMMENTS AND OBSERVATIONS OF THE AALCO SECRETARIAT**

### **A. MARINE BIOLOGICAL DIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION.**

88. The present legal regime of marine biological diversity is ambiguous and fails to meet the modern challenges posed by economic and environmental considerations, especially climate change. The AALCO Secretariat supports the workings of the Ad Hoc Open-ended Informal Working Group to study issues relating to conservation and sustainable use of marine biodiversity beyond national jurisdiction. It is of the view that filling the gaps with new international or regional instrument(s) must be achieved as soon as possible in order to resolve these issues that plague the “global commons”.

89. The key stumbling block is not an absence of regulation but a lack of a cohesive legal regime. Given the diverse range of sectoral, regional and national actors and stakeholders, the Secretariat recommends a move towards a new legal framework, as was recognized by the Preparatory Committee on Marine Biodiversity Beyond National Jurisdiction. In order to negotiate and enforce this regime, therefore, the Secretariat recommends the active participation of a transnational actor such as the United Nations that is able to lend some weightage to these norms and impose due sanctions on relevant matters.

90. The new treaty regime for the protection of BBNJ cannot be sustained without a dispute resolution mechanism that hears both inter-state complaints and disputes arising between private parties. The International Court of Justice may not be an appropriate forum for hearing such disputes as most of these disputes will require expeditious hearing and a more informal dispute resolution procedure rather than rigid litigation. Further, as many of the cases will involve the analysis and evaluation of sensitive data on the environment, only experts will be able to do justice to many of the cases. The appropriate resolution of disputes in many cases will also require the participation of both parties to the process and this form of participatory approach can be facilitated by third-party dispute resolution mechanisms like the ITLOS rather than the ICJ.

91. The AALCO Secretariat in this regard has kept a close tab on international developments on related issues in order to inform its Member States on current practices and meetings on the issue of MBBNJ, as it forms a core part of the Agenda of the Member States. In this vein it also supports the Report of the Preparatory Committee of the BBNJ Working Group.

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<sup>25</sup>ISA Council (2014) Draft decision of the Council relating to an application for the approval of a plan of work for exploration for Polymetallic Nodules submitted by the Cook Islands Investment Corporation. International Seabed Authority Council. Prepared for: International Seabed Authority, 21 July 2014. 2 pp. 27

92. An outcome resolution of the 54<sup>th</sup> Annual Session of AALCO, Member States mandated a research study on the topic from the perspective of Asian and African States on the subject.

93. AALCO has also closely attempted to contribute to the evolving discourse on the law of the sea. It has successfully organized a Legal Expert Meeting on “Marine Biodiversity Within and beyond national Jurisdiction: Legal Issues and Challenges.” The Conference certainly added more clarity and interest of Asian African understanding towards progressive development the international law on the sea.

94. The AALCO Secretariat has taken up the research study on “*Marine Biodiversity Beyond National Jurisdiction: An Asian-African Perspective*” which has categorically explained the present practice and norms of International law on the sea which will help member states resolve the issue of marine biodiversity beyond national jurisdiction which was also discussed as an agenda item in 70<sup>th</sup> General Assembly of United Nations.<sup>26</sup>

## **B. EXPLORATION OF DEEP SEA BED RESOURCES**

95. The deep seabed has vast potential of resources to be exploited as an alternative to the other available terrestrial resources. High technological expertise is required to utilize, explore and identify those resources under the sea. In order to have an economic edge and to reduce the crisis of the resources States and multinational corporations are venturing into hitherto untouched avenues including deep sea bed exploration and mining.

96. AALCO appreciates and supports the efforts of the work of the ISA on regulation and control of deep sea bed exploration and mining work in compliance with UNCLOS. ISA has played a pivotal role in controlling the sea bed development work and has successfully checked on mining and exploration work undertaken by the several States along with multinational-corporations. It has also taken great efforts towards the conservation of marine biodiversity by enforcing stringent standards of mining regulation and thereby ensuring that minimum damage is done to the marine environment.

97. Mining and exploration are of great commercial and strategic interests to States and corporations alike. However, the commercial and strategic benefits need to be weighed against the environmental impacts of these activities in order to ensure sustainable development of our ecosystems. While these issues go into complex legal and political terrain, it is imperative that the international community attempt to collectively resolve these conflicts. The AALCO Secretariat wholeheartedly encourages the participation of Member States in this process.

98. States must also actively endeavour to take legislative measures that enable the crystallization of these international norms at the municipal level. Such legislation needs to echo principles of environmental law including 1) the precautionary approach based on Principle 15 of

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<sup>26</sup> A/RES/70/235

the Rio Declaration, requiring actions where scientific evidence is insufficient but “where there are plausible indications of potential risk”; 2) best environmental practices (i.e., more than just best available technology); 3) technical and financial guarantees by a contractor; 4) requirements to provide recourse for compensation; and 5) the obligation to conduct an environmental impact assessment. Most States may find it necessary to introduce new laws, administrative procedures and resources to provide the requisite rules, regulations and procedures in order to comply with its due diligence obligations in fulfilling the UNCLOS mandate.

99. The AALCO Secretariat will make a concerted attempt to provide detailed international updates and development in field of the exploration of deep sea bed resources. It endeavours to keep a tab on the deliberations of the ISA and engage fruitfully in discourse on that front.



## ANNEX

SECRETARIAT'S DRAFT  
AALCO/RES/DFT/55/S2  
20 MAY 2016

### THE LAW OF THE SEA

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

*Considering* the Secretariat Document No. AALCO/55/HEADQUARTERS (NEW DELHI)/2016/SD/S2, and the AALCO Publication entitled “Marine Biological Diversity Beyond National Jurisdiction: An Asian-African Perspective”,

**Noting** with appreciation the introductory remarks of the Secretary-General,

**Recalling** the United Nations Convention on the Law of the Sea 1982 (UNCLOS), as well as the customary international law relating to the management of the oceans,

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

**Conscious** that AALCO has been regularly following the implementation of the UNCLOS and its implementing agreements as well as other issues regarding the law of the sea,

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

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

*Also taking note of the establishment of and work done by the Preparatory Committee on Marine Biodiversity of Areas Beyond National Jurisdiction,*

**Welcoming** the active role played by the International Tribunal for the Law of the Sea (ITLOS) in the peaceful settlement of disputes with regard to ocean related matters,

1. **Reaffirms** that in accordance with the UNCLOS, the “Area” and its resources are the common heritage of mankind;
2. *Appreciates* the initiative of the Secretariat for bringing out the AALCO Publication “Marine Biological Diversity Beyond National Jurisdiction: An Asian-African Perspective”;

3. **Encourages** AALCO Member States not yet parties to the UNCLOS and its implementing instruments, to consider the possibility to ratify or accede thereto, in compliance with their domestic policies;
4. **Urges** the full and effective participation of its Member States which are parties to the UNCLOS in the work of the International Seabed Authority and other related bodies established by the UNCLOS, and further urges effective contribution of its Member States to the United Nations Informal Consultative Process, and the *Preparatory Committee on Marine Biodiversity on Areas Beyond National Jurisdiction*, so as to ensure and safeguard their legitimate interests;
5. **Directs** the Secretariat to hold Seminars or Workshops, depending on the availability of financial and personnel resources, to discuss the issues and recent developments relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, marine scientific research and exploration of deep sea resources;
6. **Requests** the Secretariat of AALCO to assist in the capacity building of Member States within the field of the law of the sea through varied ways such as joint training programmes with States and inter-governmental organizations, and calls upon Member States to offer all possible support and assistance; and
7. *Decides to place this item on the agenda of an Annual Session of AALCO as and when required.*