Report on the Legal Experts Meeting to Commemorate the 30th Anniversary of the United Nations Convention on the Law of the Sea (UNCLOS), New Delhi *5 March 2013*

While delivering the Welcome Address by ***H.E. Prof. Dr. Rahmat Mohamad***, Secretary-General, AALCO recalled that the creation of AALCO in 1956 coincided with the general awareness of the importance of the changing nature of international law of the sea. Coastal states began to extend their maritime jurisdiction further and further into the oceans at the expense of the ever-receding high seas following President Truman's Proclamation of US jurisdiction over the submarine areas adjacent to the West-Coast, as well as the decision of the International Court of Justice in the Anglo-Norwegian Fisheries Case between United Kingdom and Norway, which recognized the necessity and validity of Norwegian straight base lines and four miles limits of Norwegian territorial sea. In the meantime, Indonesia was poised in 1957 to claim its archipelagic seas. At the First Session of AALCO in New Delhi, Sri Lanka and India took the initiative to refer to AALCO the Question relating to the Regime of High Seas including questions relating to the rights to seabed and subsoil in open sea.

The real momentum on the issue came in August 1967, when Arvid Pardo, Ambassador of Malta to the United Nations proposed an agenda item on the law of the sea for consideration by the United nations General Assembly. The product of a long-drawn process, which started in December 1973 and lasted until December 1982, the birth of the Convention on the Law of the Sea has been described as one of the most ambitious and original negotiating process ever undertaken within the United Nations.

Next was the address by **Chief Guest, Shri. Pinak Ranjan Chakravarthy, Secretary (ER), Ministry of External Affairs, Government of India.** The adoption of the United Nations Convention on Law of the Sea, UNCLOS, was clearly a seminal law making event of the United Nations that codified and provided a universal legal framework for all human activities relating to the oceans. UNCLOS governs all aspects of ocean governance, including entitlements of coastal states in different maritime zones, rights of navigation, maritime security, marine scientific research, marine environment, delimitation of maritime boundaries and settlement of international disputes. With 164 States Parties the Convention is reaching near universality, a testament to the significance of the Convention as an important contribution to the maintenance of peace, justice and progress for all of us who inhabit our planet.

The provisions in the Convention on transit passage through Straits used for International Navigation, as well as archipelagic sea lanes passage, reflect the interests of the international community that rights of navigation remain unimpeded. In the present era of interdependence, the security and economic prosperity of nations is vitally linked to safety and security of sea-lanes of communication. States will need to work together to address common threats to maritime security. Piracy remains a serious concern, which threatens security of these sea-lanes. The security of these lanes is also challenged by other threats such as trafficking in arms, drugs and human beings and linkages with transnational criminal syndicates. India remains committed

to help safeguard the vital sea-lanes of the Indo-Pacific and has cooperated in various regional initiatives to combat piracy and transnational organized crimes.
The Introductory Remarks were given by **Dr. Neeru Chadha, Joint Secretary and the Legal Adviser, Ministry of External Affairs, Government of India.** She began by saying that the Convention, one of the most important instruments adopted in the twentieth century and referred to as the "Constitution of the Oceans and Seas", lays down a comprehensive regime and establishes rules governing all uses of the oceans and their resources. Though the Convention addresses and governs all aspects of ocean space, from delimitation of maritime boundaries, environmental regulations, scientific research, commerce and the settlement of international disputes involving maritime issues, which other experts will allude to during the day, the focus of my remarks is on the diverse threats to the health of the oceans in areas beyond national jurisdiction.

The Agreement on Port State Measures adopted by FAO to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA, or Agreement) provides a set of highly effective tools to be used by port States to combat IUU fishing. The application of the measures set out in the Agreement is expected to contribute to harmonized port State measures, enhanced regional and international cooperation and block the flow of IUU-caught fish into national and international markets. The management and governance of high seas areas presents a formidable challenge for the international community as development of an effective regime for the protection of biodiversity in areas beyond national jurisdiction is seen to be circumscribing some of the traditional high seas freedoms. The challenges of protecting, conserving and ensuring sustainable management of marine biodiversity beyond national jurisdiction are thus enormous.

To conclude, it needs to be emphasized that deep seabed research is still largely the domain of select developed countries, therefore it is imperative that there be an increased flow of scientific data and information and transfer of knowledge to developing countries so as to improve their understanding and knowledge of oceans and deep seas and its uses.

The Keynote Address was given by **Mr. B. Sen, the former Secretary-General of the Asian-African Legal Consultative Organization.** AALCO's contribution in the emergence of this Convention could be said to be three-fold; namely, to assist the developing countries of the Asian African region to participate effectively in the negotiations; secondly in helping to build a consensus among the Asian African States on several issues and to bring about an understanding with the Latin American States on several issues and finally in helping in developing of some of the concepts which ultimately found acceptance of the world community.

With the end of Second World War and the establishment of the United Nations, there was again almost a unanimous clamor for re-examination of all aspects of the Law of the Oceans. That was why the International Law Commission was established in 1948 and the law of the sea was taken up as one of its priority items. The Commission examined a whole range of issues and came up with its recommendations by way of preparation of draft articles to serve as preparatory material for negotiations of a multi-lateral treaty in 1956.

Thereafter the United Nations proceeded to convene the first Conference of Plenipotentiaries on the Law of the Sea to work out a unified regime for the Oceans, which met in 1958 for a period

of around 10 weeks. The Conference succeeded in drawing up four Conventions, including one relating to the Territorial Sea and the Contiguous Zone, the regime of the High Seas and the Continental shelf. The Conference, however, failed to resolve the issue of the breadth of the territorial sea due to acute difference of opinion.

Recognizing the urgency of settling the issue of the breadth of the territorial sea left open by the 1958 Conference, the United Nations convened a second Conference which met in early part of 1960. The difficulty in tackling the issue was that on the one hand maritime nations, as well as States with distant water fishing fleets continued to adhere to the traditional three mile limit for the territorial sea in the interest of freedom of navigation; on the other hand the newly independent States in Asia such as Indonesia and Egypt as well as many Latin American countries clamored for a much larger belt for the territorial waters. The failure of the second United Nations Conference gradually gave rise to a chaotic situation with many of the newly independent countries and several Latin American States began to unilaterally proclaim the limits of their territorial waters, varying from 12 miles to 200 miles leading to uncertainties and impediment to navigation, trade and commerce.

The General Assembly of the United National decided in 1969 to convene a third United Nations Conference. It was at this stage that the question arose as to how the newly independent countries of Asia and Africa were going to prepare themselves to participate in the debate and the preparatory work of the Sea Bed Committee. One option for a number of countries was to take guidance from their former colonial rulers which many of them did. But then there were others who wanted to take an independent view and examine for themselves, the issues involved with the resources at their command.

The Asian African Legal Consultative Committee, which had only a membership of 12 countries at that time, was called upon to assist in the process. The ALCC, now renamed AALCO had one great advantage in that it had Japan, a maritime nation and a developed country amongst its most active members. It had countries like India, Indonesia, Egypt, Sri Lanka and a few others, which already had among its personnel those who were highly trained in Western Universities. The collective expertise expressed in the Committee Sessions, sub-Committee meetings and working groups helped in the formulation of ideas and preparatory material. The result of this collective exercise was made available for the common use of the member States and was also made available to any non-member Asian –African country, which requested for it.

This was very widely made use of and as a matter of fact even countries outside the region often referred to the material prepared by us. The Sea Bed Committee, in due course succeeded in preparing a negotiating text in 1975 and revised in 1976, on the basis of various proposals discussed at various forums including AALCC sessions. The negotiating texts were then analyzed by the Committee's Secretariat and at times alternate solutions were suggested which emerged out of various meetings arranged by the AALCC. These were then distributed widely for use of members and non-member countries and as a matter of fact the Committee's sessions were so widely attended by observers from countries outside the Asian African region that the AALCC sessions virtually became a mini negotiating forum for various ideas and proposals.

One of the proposals which emerged out of the discussions in the AALCC and found wide acceptance among the entire world community was an economic zone beyond the territorial sea. The idea came up during one of the sub Committee meetings of the AALCC which was being held in Geneva at the same time as the UN Seabed Committee. The idea of an economic zone had its origin in the concept of the contiguous zone, which had found acceptance in the Geneva Convention of 1958. In essence, it was really an extension of the concept of the contiguous zone mooted to find a compromise solution between the demands of wider belt of the territorial sea on the one hand and the interest of navigation on the other. The concept of contiguous zone was intended to be widened in the proposal of the economic zone so as to include exploitation of the resources of that zone exclusively for the purpose of coastal States. In the initial stages no one seemed to be clear as to what would be the breadth of the territorial waters, or what kind of jurisdiction the coastal States would exercise within that zone or what rights the other States would enjoy with a view to making the proposal readily acceptable to the maritime nations. At the outset, there was strong resistance, quite understandably, from the maritime nations which strictly adhered to the concept of freedom of oceans but gradually they were reconciled to the acceptance of the idea once they were assured that the freedom of the navigation would not be affected and in fact many of the maritime nations later came to welcome the idea once they realized that they would be benefited by the exclusive utilization of the resources of the sea adjoining their coast. A formula was worked out to provide that the coastal States will have all sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the seabed and the sub-soil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the zone. All States, however, would enjoy freedom of navigation and over-flight as also freedom to lay sub-marine cables and pipelines and other lawful uses of the sea.

Another area where AALCC pioneered the work was the interest of the land locked countries since most of these (14 out of 20?) were found to be located within Asia and Africa. The land locked States which were not given even a hearing during the 1958 Conference, were able to bargain special regimes for themselves which included right of access to the sea and freedom of transit through its neighboring/transit States by all means of transport. The developing countries in Asia and Africa originally showed little interest in working out of the regime for the international seabed area because it seemed that the area would be out of reach for exploitation by them as they would not have the necessary technology or the monetary resources at their command. Another area which was of concern to the developing nations was that of Scientific Research which many countries rightly or wrongly thought was in the interest of their security. But again, many misunderstandings could be removed through the good offices of the AALCC Sessions and finally Conference came to an end in April 1982 with adoption of 4 resolutions.

The Inaugural address was given by **Mr. Stephen Mathias,** Assistant Secretary-General for Legal Affairs, United Nations on the Role of AALCO in the development of Law of the Sea and of UNCLOS. Since the adoption of the Convention in 1982, AALCO has assisted its member States in becoming Parties to the UNCLOS, by providing a forum for discussion of relevant law of the sea issues. The Third United Nations Conference on the Law of the Sea, which began in 1973, provided many of the newly independent African and Asian countries with their first opportunity to shape the development of the law of the sea.

When we talk about International Cooperation in combating Piracy, we see that there has been broader international cooperation in combating piracy off the coast of Somalia, amongst both States within the region and States outside the region. Undoubtedly, the Contact Group on Piracy off the Coast of Somalia has played an important role in this regard. Also important, have been the various Memoranda of Understanding that have allowed suspected pirates to be transferred to States in the region for prosecution and, in some cases, back to Somalia for imprisonment after conviction.

Another important recent development has been the establishment by the General Assembly of the regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects (the "Regular Process"), pursuant to a recommendation of the 2002 World Summit on Sustainable Development. The task of the first cycle of the Regular Process (2010 to 2014) will be to produce the First Global Integrated Marine Assessment of the world's oceans and seas by 2014. To this end, the General Assembly has created an Ad Hoc Working Group of the Whole, to oversee and guide the Regular Process, and a Group of Experts to carry out the assessments within the framework of the Regular Process. The Group of Experts currently includes five members from Africa and four members from Asia.

SESSION I: DISPUTE SETTLEMENT UNDER UNCLOS

Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO was in the Chair. He also delivered the Introductory Remarks highlighting the contribution of AALCO to the legal regime on the Law of the Sea.

H.E. Mr. Gudmundur Eiriksson, Ambassador of Iceland to India was the first speaker at this session. He was dealing specifically with the recent decision adopted by the ITLOS in its judgment last march in the dispute concerning Bangladesh and Myanmar in the Bay of Bengal. I will be making just some points before setting out my conclusion that that judgment and the scholarly reception and the reception by the parties bode well for the tribunals future and the future.

Well the first and most important point is that this was the first decision by the Tribunal on merits. The Court's first case, the *MV Saiga* case was also on merits but it ended up being decided on a very narrow point of law so I'm not sure that we made much of a contribution to the substance of jurisprudence of the law of the sea by that case and I can reveal here among friends that I would have gone further myself at the expense of not having as large a majority on the case. My second point is, I want to make it quite clear that even though we had not dealt with cases on the merits, we did take the opportunity to make contributions to the substance of the law of the sea, at least to the extent we could.

His third point was that the Bay of Bengal case was a case on delimitation and that said a lot in itself because that is the bread-and-butter of international law and the law of the sea before tribunals for a lot of reasons which I don't have to go into here. This falls upon the two-dozen or

so cases which have been decided either in the ICJ or other tribunals on delimitation. My fourth point is that this is the first case dealing substantively with the continental shelf beyond 200 miles. As you know the question has arisen in two or three other cases and in each of those cases the court said it was either not relevant or chose not to deal with it. This time the Tribunal decided to deal with it. The judgment of the Tribunal dealt extensively with the relationship between dispute settlement and the work of that body. I think the court was very successful in skirting the problems, identifying that if these problems were not addressed head-on a legal lacking would result.

SESSION II: PRESERVATION AND PROTECTION OF MARINE ENVIRONMENT: CURRENT CHALLENGES

Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO was in the Chair.

Dr. Moritaka Hayashi, international lawyer, scholar and author was the first speaker at this session**.** *First*, on the legal status of marine and genetic resources, positions of governments are sharply divided between those who consider that they are regulated by Part VII of UNCLOS relating to the High Seas, and those who contend that they are governed by Part XI relating to "the Area", namely the deep-seabed beyond areas of national jurisdiction. The former view is based essentially on the literal interpretation of UNCLOS provisions. According to this view, marine resources in areas beyond national jurisdiction are living resources, and thus fall under the region of the high seas. Part XI of the regime applies only to resources in the Area, which is explicitly defined in Article 133 as mineral resources and thus excludes living resources. The activities relating to genetic resources are therefore governed by the freedom of the high seas

Against that view, the latter group stresses that the genetic resources in question are located in the Area, and UNCLOS declares the Area itself to be the common heritage of mankind. In support of this view it was argued that General Assembly resolution 2749 of 1970 declared the area as well as its resources, without defining resources, to be the common heritage of mankind, and that is now part of customary international law. In an attempt to get out of this deadlocked debate between the two groups of states, a third approach was suggested to focus on practical measures to enhance the conservation and sustainable use of marine genetic resources, such as options for facilitating access to their collected samples and for sharing the benefits in a fair and equitable manner.

The second key issue is the so-called area-based management tools, particularly marine protected areas. Area-based management tools are considered effective tools in the conservation and sustainable use of marine biodiversity in areas not only under national jurisdiction but also beyond. Among such tools, the focus of recent UN debate has almost exclusively been on MPAs. In the Working Group, speakers highlighted the importance of environment impact assessment, which they considered a significant and integral part of conservation and sustainable use of biodiversity beyond areas of national jurisdiction. Environmental impact assessment was pointed

out to be of particular importance for the implementation of precautionary and ecosystem approaches. Some of them called for further development of effective environmental impact assessment as a tool for improving ocean management. It appears that before completing its mandate, the Working Group has a formidable task of narrowing the views and reaching consensus on the key issues before it.

Dr. Luther Rangreji, Assistant Professor, Faculty of Legal Studies, South Asian University was the next speaker. The topic that he dealt with was "Issues for Developing Countries under the Nagoya Protocol". The topic is within the broader section of the protection of marine environment and preservation and current challenges. He talked about the main elements of the protocol. One is how the scope of the relationship of this protocol with other international instruments and processes has, academically speaking, in some way reduced the strength and effectiveness of this protocol that was intended in the first place.

The next issue was the geographical scope, which relates to the law of the sea. The geographical scope was clearly areas within national jurisdiction. If you have to say areas within national jurisdiction, the Nagoya Protocol will deal with sovereign rights within territorial waters, contiguous zone and exclusive economic zone. These issues are the gist of a number of treaty processes which impacted on how the treaty was being negotiated. The first one was the International Treaty on Plant and Genetic Resources for Food and Agriculture. This clearly deals with only plant genetic resources and the conservation and sustainable use of plant genetic resources. The second one is what is known as Convention for the Protection of New Varieties of Plants. This also deals with the aim to provide a more effective system of plant-related protection, largely a system for plant breeder's rights. The third one was the Law of the Sea Convention. Then we have what is known as the Antarctic Treaty System.

The first advantage, not only for developing countries but for others, is that the protocol creates what is known as legal certainty as regards access and benefit-sharing. A clear advantage for developing countries regards the issue of bio-piracy of genetic resources. The next important advantage or gain for developing countries is, that the Protocol provides wide latitude to have your own national laws.

Genetic Resources and Developing Countries: Access and Benefit Sharing under the Nagoya Protocol was dealt by **Dr. Roy S. Lee**, Professor, Yale University School of Forestry and Environmental Studies. The main instrument is the 1992 Convention on Biological Diversity (CBS) which is designed to achieve three specific objectives: to conserve biodiversity, to sustain the use of the components of biodiversity and to share fairly and equitably the benefits derived from the use of genetic resources. The Convention has received universal acceptance, with 193 States Parties. It addresses all threats to biodiversity and ecosystems through scientific assessments, proposes measures for the development of tools, incentives and processes, and deals with the transfer of technologies and good practices. States Parties are also encouraged to involve the full and active participation of all stakeholders (including indigenous and local

communities, youth, NGOs, women and the business community) in managing genetic resources.

The 2002 Cartagena Protocol on Biosafety is a subsidiary agreement to the Convention. It seeks to protect biological diversity from the potential risks posed by living modified organisms resulting from modern biotechnology. 163 States and the European Union have ratified the Protocol. The third instrument, which will be my focus today, is the 2010 Nagoya Protocol.[1] The purpose of this Protocol is to address the main issues and concerns associated with the access to genetic resources and the sharing of benefits arising from the utilization of genetic resources.

In joining the Protocol and implementing the relevant provisions, your country will be in a position to create a regime of international standards for dealing with access to genetic resources and for sharing benefits resulting there from. This legal framework would spell out conditions of access and modalities of benefit sharing, and respect the value of traditional knowledge associated with genetic resources. Local and indigenous communities may receive benefits through such a framework. The government would be able to issue permits for genetic resources. Such permits would be recognized by and respected in other contracting parties. Such a regime would provide legal certainty and transparency. Both internal and external researchers and users would, I believe, welcome this new prospect. It seems that such a regime would be useful to developing countries known for their genetic resources.

Effective ways and means should be introduced to tackle the implementation difficulties so as to create a credible domestic system to deal with genetic resources. To illustrate those difficulties, only some of the basic issues are discussed here: raising awareness, addressing capacity and enacting implementation policies, laws and regulations.

SESSION III: ISSUES RELATING TO PIRACY AND MARITIME SECURITY

Mr. Narinder Singh, Secretary-General of Indian Society of International Law (ISIL) is in the Chair:

Mr. Rajiv Walia, Regional Programme Coordinator of the UN Office on Drugs and Crime (UNODC) in New Delhi was the first speaker of the session.

Piracy on the coast of Somalia started in the mid-2000s and it spread not only into the Gulf of Aden, but also the Indian Ocean. There is a report by "Earth Future Foundation" that assesses that piracy cost to international economy annually is USD 7-Billion. This is probably the reason why the contact group for piracy on the coast of Somalia was set-up in 2008, and it is another organization which oversees the global piracy programme. It has been successful and the figures speak for itself. Successful piracy attempts have dropped from 47 in 2010 to 25 in 2011 to 5 in 2012. So obviously there has been a success in the anti-piracy programme. However, the underlying causes of piracy remain and pirate action groups are still active. The objective of the

[1] The full tile is the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization (ABS) to the Convention on Biological Diversity (CBS).

counter-piracy programme is to foster cooperation of the region and beyond the region, holding fair trials and overseeing safe, secure imprisonment of pirates, particularly in Somalia. That is the underlying objective of the counter-piracy program.

He briefly discussed the elements of the anti-piracy program. The first pillar is support police. Support to prosecutors and the Coast Guard; this is the second pillar where broadly we assist the countries in conducting legislative reviews. There is also the third pillar, which is support to the court. Legislative review, better security in courtrooms, judicial training, interpreters, witness expenses and so on. Support to countries is the fourth pillar and there is a fairly large funding available for countries who agree to try pirates. Repatriation of the trials or even before trials if the law of the land does not permit trials is an important area where the UNODC assists countries.

Dr. Sunil Agarwal, National Security Council Secretariat was the next speaker. Accordingly, it is up to each individual State to legislate on the matters related to Privately Contracted Armed Security Personnel. Flag-States can also make regulations for carriage of weapons, albeit a ship has to comply with coastal/port state regulations whose waters it enters. Another provision where you can find the use of privately contracted guards is the SOLAS (International Convention for the Safety of Life at Sea) convention. Subsequently it was developed into the International Ship and Port Facility Security (ISPS) Code. Basically, Ship Security Plan indicates the minimum-security measures to be taken by the ship in responding to a security incident or threat. These measures are prescriptive, and so the carriage or use of firearms for self-defense is not prohibited *per se*.

There are other regulatory statutes at various levels like the Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict. Then we have the International Code of Conduct for Private Security Providers. All these initiatives were taken when piracy was at its peak.

The use of privately contracted security personnel is a risk-management measure to reduce vulnerability of sea-borne trade from piratical attacks in certain hot spots and high risk areas like Kenya and the coast of Somalia, gulf of Aden etc. IMO guidelines aims at promoting safe and lawful conduct at sea, but in no way does it endorse privately contracted armed security personnel as it would amount to deviation from UNCLOS provisions. India's attempts to assert jurisdiction, to try two Italian marines for murder in *MV Enrica Lexie* case, highlight the risks that armed guards and their employers run there are no easy solutions. Flag States need to follow the principles laid down in the *M/V SAIGA* case (1999) for combating maritime piracy. The underlying principle is that Use of Force should be the last resort. There is a need for a Mechanism to coordinate POC (point of contact) of Coastal/Port states and Maritime Security Centre Horn of Africa.

Dato Zulkifli Adnan, Director General of Maritime Affairs Department, Ministry of Foreign Affairs, Malaysia was the next speaker. He began by saying that the safety and security of the Straits is of interest to all of us and criminal activities at sea, such as piracy and armed robbery against ships, could endanger the safety and security of the Straits. Figures on piracy and armed robbery in the Straits before 2005 were extremely high. Here we have the report from the IMO about incidences of piracy throughout the world and also near the Indian continent and the Far East and South-East Asia.

In addition to its physical presence, Malaysia has also upgraded its monitoring capabilities to ensure better surveillance of maritime activities in the Straits. These are the sea-surveillance systems manned by the Maritime Enforcement Agency and the automatic identification system. And there is an upgraded traffic scheme in the Straits of Malacca and Malaysia and other states also conduct patrols in the Straits. Indonesia, Malaysia and Singapore have launched coordinated patrols, which comprise of basically two components; the joint sea-patrol between Malaysia and Indonesia and the eyes-in-the-sky patrol between Singapore and Malaysia. These patrols, which are a comprehensive arrangement for maritime security, have been successful.

Of course, our relationship with the International Maritime Bureau has improved greatly with the decrease of incidents in the Straits of Malacca. In view of the high risk of piracy off the coast of Somalia and the Gulf of Aden and the use of armed security personnel, the IMO had made it explicitly clear that it is up to the Flag State to decide whether armed security personnel should be authorized for ships flying their flag in the Gulf of Aden and other high-risk areas, and if a Flag State decides to promote these activities it is up to that State to determine the conditions under which authorization will be granted.

The Government of Malaysia has been very cautious on the issue of armed guards on board ships in Malaysia's Maritime Zone. The idea of having uncontrolled numbers of people with weapons in the Straits of Malacca conflicts with security and practices on Malaysian soil. Measures inherent to deal with armed mercenaries have cautioned us on the use of armed security personnel. Malaysia does not support the use of private armed security personnel carrying weapons on board and we do have difficulties in accepting the presence of ships with armed guards on board.

Ms. Ticy Thomas, Research Associate at the Centre for Maritime Studies, National University of Singapore was the next speaker. The main reasons for piracy can be geography, inefficient coastal states, changes in shipping technology – because as shipping technology develops, ships become bigger and slower with smaller crews, making it more difficult to secure. Moving onto the costs of piracy, it is very difficult to quantify the costs of piracy. Definitely there are costs in terms of economics, human costs and loss of human life, and its adverse effects on international trade, development and security.

We do have a general framework, and UNCLOS is the general framework, so we cannot expect it to be too prescriptive as to modalities. And, the critical issue here is implementation. Being a framework treaty, UNCLOS regime relies on individual States to take enforcement actions. The piracy off the coast of Somalia proved the difficulties in implementing the UNCLOS regime in the absence of national legislative framework, allowing effective piracy prosecutions. Domestic law of a number of States lacks provisions criminalizing piracy and/ or procedural provisions for effective criminal prosecution of suspected pirates.

India is a party to the UNCLOS and is also legislating treaties. We have got a 2012 piracy bill in the pipeline. But again, if you look at the bill, you'll see that the definition as well as the scope is different from UNCLOS. As of now, the laws applicable in India are the Indian Penal Code and Criminal Procedure Code, which do not specifically define piracy or criminalize acts of piracy. Another important distinction is that while some States like the United States tend to use force, for example in the case of *Mersk Alabama* where force was used to release captives from the kidnappers, you see that India does not resort to the use of force. India has set up an Inter-Ministerial Crisis Management Group for taking decisions in case of hostage situations, negotiations and arbitrations. We have deployed naval ships, but basically this is a national act not a regional cooperative act. We are a member of a tight group, CGPCS – Contact Group of Piracy off the Coast of Somalia – and in 2008 we have initiated the India-Africa forum and since 2011 India has also allowed armed guards on board provided they are ex-Defence personnel.

SESSION IV: UNCLOS AND AALCO

Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO is in the Chair.

Prof. Yogesh Tyagi, Dean, Faculty of Legal Studies, South Asian University, New Delhi was the first speaker of the session who started by saying that in the 20th Century 75,000 treaties were adopted, not all treaties are of the same legal value, in the 20th Century the United Nations Charter was also adopted. It therefore cannot be said that the UN Charter was one of those 75,000 treaties. Likewise it cannot be said that UNCLOS was one of those treaties.

Therefore, UNCLOS is a special treaty. Under the Vienna Convention there is no distinction between a special treaty and any treaty, all treaties are treaties and they don't have any categorization based on any criteria that we may attach, but the reality is that there are some treaties that are more important than others. "It is the Charter of the Oceans"; the most comprehensive codification of the Law of the Sea, in which all the civilizations participated in the making of law. This factor is extremely important because no treaty can command legitimacy unless all principal forms of civilizations don't participate in the making of that treaty.

The most revolutionary feature of UNCLOS is that it is a treaty that has met a very outstanding demand of the international community that not met earlier as it was met through this treaty and that demand is to have a mechanism for settlement of disputes. So you have a treaty which makes law, a treaty which has the mechanism to implement that law and it also has a mechanism to settle disputes that arise out of the interpretation and application of that law. All three put

together "three-in-one". These three features put together make UNCLOS a special treaty. This treaty prohibits reservations, it has overriding effects, it prevails over other treaties, so in the field of the Law of the Sea it has that kind of supremacy clause, this is the kind of supremacy clause the UN Charter has which prevails over other treaties. So when it comes to the Law of the Sea the overriding effects of the Law of the Sea Convention is articulated in the Convention itself.

The normative seeds of the concept of sustainable development are laid down in the UNCLOS. It says two things, one, optimum utilization of resources at the same time conservation of living resources. So you have freedom of fishing but you don't have freedom of over fishing. When you put both these freedoms together you find the seeds of sustainable development in the Law of the Sea Convention. This was a convention which received ratification from 165 countries in the world. It is not only a treaty, it is a revolutionary treaty. It was a treaty that was open for signature and ratifications by international organizations.

It was also a treaty that for the first time codified a principle into law, that principle was that the development of resources of the ocean to be exploited for peaceful purposes in the interest of mankind as a whole, particularly for the benefit of developing countries. Therefore, it set a trend, not only did it set a trend in terms of negotiations, but also on the confidence of the developing countries that if they could succeed on the Law of the Sea front they could also succeed on other fronts by coming together.

Mr. H.P. Rajan was the last one to speak. He said that United Nations maintains complete transparency and particularly in the context of the Law of the Sea, there were indeed no "secret" deals. The decisions and compromise formula have always been reached through understandings by sovereign States through formal, informal, regional and interest group consultations. It is important to understand the process as a whole as well as the entire chain of events. Indeed, the whole process is somewhat complex and long-drawn, but is usually open-ended, allowing for participation of all interested States. This process facilitates arriving at decisions by consensus, allows flexibility, and helps to accommodate the most critical concerns of States. Maritime issues, and codification of rules governing such issues are predominantly State issues; any codification process would therefore, undoubtedly reflect the interest of concerned States.

To ensure a more in-depth consideration of topical ocean-related issues, in the year 2000, the General Assembly of the United Nations established the United Nations Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS). The purpose of the informal Consultative Process (sometimes also referred to as ICP) is to facilitate the review by the General Assembly of developments in ocean affairs and the law of the sea. The Consultative Process identifies areas where coordination and cooperation at the intergovernmental and inter-agency levels should be enhanced.

One of the United Nations' greatest achievements in the field of progressive development and codification of international law is without any doubt the United Nations Convention on the Law of the Sea. It was adopted after years of intense legal, scientific and diplomatic negotiations. The Third UN Conference on the Law of the Sea ranks in the history of the UN as the longest and most widely attended international conference, and the 1982 United Nations Convention on the

Law of the Sea has become one of the most widely ratified Conventions, currently with 165 States parties, including the E.U.

In the end, vote of thanks was given by Dr. Neeru Chadha. The meeting was thereafter adjourned.