

**AALCO/61/BALI/2023/SD/S10**

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**ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION**



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**ENVIRONMENT AND SUSTAINABLE DEVELOPMENT**

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# ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

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## I. INTRODUCTION

1. The Asian-African Legal Consultative Organization (AALCO) has been actively engaged in matters related to environment and sustainable development since the 1970s. The initiation of this focus can be traced back to the Fifteenth Annual Session in Tokyo, 1974, when the Government of India proposed the examination of international law concerning the human environment. Over the years, the subject has been explored under various titles, including Environmental Law, Environment Protection, Transboundary Movement of Hazardous Wastes, and Preparation for the United Nations Conference on Environment and Development (UNCED), among others. The course of discussions at different Annual Sessions has been shaped by relevant contemporary developments.

2. A landmark in this journey was the adoption of the Statement of General Principles of International Environmental Law at the Thirty-First Annual Session held in Islamabad, Pakistan, in 1992. This statement acknowledged the intrinsic connection between the environment and development recognizing them as a common concern of humanity. It also advocated the principle of common but differentiated responsibility (CBDR) and asserted that the enforcement of environmental standards by developing nations should align with their respective capabilities and obligations (AALCO Annual Session, 1992).

3. Following the UNCED in 1992, AALCO actively encouraged the ratification of the three Rio Conventions: the United Nations Framework Convention on Climate Change, 1992 (UNFCCC), Convention on Biological Diversity, 1992 (CBD), and the United Nations Convention to Combat Desertification, 1994 (UNCCD). After these Conventions came into force, AALCO's deliberations shifted to the legal developments within the Conference of the Parties of these international regimes. The Organization also engaged with the work of the United Nations Environment Programme (UNEP) and the Commission on Sustainable Development (CSD).

4. Special attention to the topic has been given in at least three special meetings, including those on “Effective Means of Implementation, Enforcement and Dispute Settlement” (Accra,

Thirty-Eighth Annual Session, 1999), “Environment and Sustainable Development” (Nairobi, Forty-Fourth Annual Session, 2005), and “Environment and Sustainable Development” (Dar es Salaam, Forty-Ninth Annual Session, 2010).

5. The subject of environment and sustainable development continued to be a focal point in subsequent Annual Sessions, including the Fiftieth in 2011 (Colombo), Fifty-First in 2012 (Abuja), Fifty-Second in 2013 (New Delhi, HQ), Fifty-Third in 2014 (Tehran), Fifty-Fourth in 2015 (Beijing), and the Sixtieth in 2022 (New Delhi, HQ). The discussions at these sessions have evolved to address specific contemporary challenges.

6. The Sixtieth Session in 2022, in particular, concentrated on two main areas: (1) Transboundary Air Pollution with Specific Reference to Sand & Dust Storms (SDS) and Haze Pollution, and (2) Conservation and sustainable use of Marine Biodiversity in Areas Beyond National Jurisdiction (BBNJ). During the Plenary, the Member States expressed appreciation for the comprehensive brief prepared by the Secretariat on these topics, acknowledging their importance and relevance.

7. The discussions also highlighted the significance of Sustainable Development Goal (SDG) 14 in the global context of environmental protection. Emphasis was placed on the serious threats posed by climate change to the protection and conservation of ocean resources. The Member States commended global efforts to prepare an Internationally Legally Binding Instrument on BBNJ, which is now adopted. Some Member States further stressed the need for fairness and equity in the process of developing such an instrument. They emphasised the importance of considering the economic aspirations of developing countries, particularly with reference to aspects such as benefit-sharing, capacity-building, and technology transfer.

## **II. TOPICS FOR FOCUSED DELIBERATION**

8. In the following chapters of the brief, the Secretariat of AALCO raises the following topics for the discussions of the Member States under this item of the Sixty-First Annual Session:

- An International Legally Binding Instrument on Plastic Pollution; and
- International Legal Regime on Climate Change.

9. Part III of the brief delves into the intricacies of negotiations that took place during both the first and second sessions of the Intergovernmental Negotiating Committee (INC). Central to these discussions was the provisional adoption of draft rules of procedure, with rules 37 and 38 being particularly contentious. Amidst the myriad of perspectives, the INC arrived at the decision to draft a "zero draft" text, synthesising insights from both sessions and the options paper provided by the INC- Plastics Secretariat.

10. Part IV of the brief deals with the ongoing global climate change discussions under the aegis of the UNFCCC. The pivotal moment was the agreement reached at COP 27, resulting in the establishment of a "Loss and Damage Fund" for vulnerable countries. There was the acknowledgment of challenges such as unmet financial commitments from the Cancun Agreements and differences in perspectives on the long-term global goals. The anticipation for the forthcoming COP 28 in Dubai is palpable, with high expectations set against the backdrop of grim warnings from global figures about the urgent reality of climate change. Emphasis is placed on principles like common but differentiated responsibility as the international community seeks solutions.

### **III. AN INTERNATIONAL LEGALLY BINDING INSTRUMENT ON PLASTIC POLLUTION**

#### **A. Background**

11. The global issue of plastic pollution is increasingly recognised as a multifaceted threat. How we produce, use, and dispose of plastics pollutes ecosystems, creating risks for human and

animal health, and destabilising the climate.<sup>1</sup> In agriculture, plastic pollution in croplands threatens long-term food security. The oceans are particularly affected, with most leaked plastic residing in the deep-water column, where cost-effective removal is unachievable without environmental harm. Rivers are likely the single biggest carrier of plastic pollution to the ocean. Emissions of plastic waste into aquatic ecosystems are projected to nearly triple by 2040 without meaningful action.<sup>2</sup> Despite growing awareness, efforts to combat plastic pollution remain fragmented and insufficient. National policies and actions often lack the scale, scope, connectivity, and urgency required to make more than a superficial or incremental contribution to tackling global plastic pollution.<sup>3</sup>

12. It is broadly in this context that the United Nations has taken significant steps to address the global challenge of plastic pollution. For several years, plastic pollution has been a major issue raised at the UN Environment Assembly (UNEA). In 2017, UNEA-3 established the Ad-hoc Open-Ended Expert Group on marine litter and microplastics, whose mandate was extended at UNEA-4 and concluded ahead of UNEA-5 in 2021.<sup>4</sup> Following the first Ministerial Conference on Marine Litter and Plastic Pollution in September 2021, Peru and Rwanda presented a draft resolution, supported by over 60 Member States. Japan also proposed an alternative draft resolution in December 2021, and the two were merged before the negotiations at UNEA 5.2. On 2 March 2022, a historic resolution was adopted by 175 countries participating in UNEA-5.2, titled “End Plastic Pollution: Towards an International Legally Binding Instrument.”<sup>5</sup>

13. This landmark resolution mandates the UNEP Executive Director to convene an International Negotiating Committee (INC) to develop and adopt a legally binding instrument on plastic pollution, aiming to complete its work by the end of 2024. The comprehensive approach

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<sup>1</sup> United Nations Environment Programme [UNEP], 'Turning Off the Tap: How the World can End Plastic Pollution and Create a Circular Economy' [2023] xii < <https://www.unep.org/resources/turning-off-tap-end-plastic-pollution-create-circular-economy>>

<sup>2</sup> United Nations Environment Programme [UNEP], 'From Pollution to Solution: A Global Assessment of maritime litter and Plastic Pollution (Synthesis)' [2021] 3 < <https://wedocs.unep.org/bitstream/handle/20.500.11822/36965/POLSOLSum.pdf>>

<sup>3</sup> *Supra* 1, p. 61

<sup>4</sup> UNEA Resolutions 3/7, 4/6

<sup>5</sup> UNEA Resolution 5/14

of the instrument is to address the full life cycle of plastics, taking into account national circumstances and capabilities.<sup>6</sup>

14. The resolution highlights the urgent need to strengthen global coordination, cooperation, and governance to eliminate plastic pollution in marine and other environments. It emphasizes the importance of sustainable design, reuse, remanufacturing, and recycling of products and materials, and recognizes the wide range of approaches and technologies available to address the full life cycle of plastics.<sup>7</sup> Furthermore, the resolution underlines the importance of international collaboration to facilitate access to technology, capacity-building, scientific and technical cooperation and acknowledges that there is no single approach to tackling plastic pollution. It welcomes efforts made by governments and international organizations through various action plans, initiatives, and instruments, and recognizes the need for complementary actions and a coherent and coordinated long-term global vision. It acknowledges that legal obligations arising from the new international legally binding instrument will require capacity-building and technical and financial assistance for effective implementation by developing countries and countries with economies in transition.<sup>8</sup>

15. The adoption of the UNEA resolution represents a significant milestone in the global effort to combat plastic pollution. It reflects a shared commitment to a comprehensive and coordinated approach, recognizing the complexity of the issue and the need for collective action. The establishment of the INC and the development of a legally binding instrument on plastic pollution mark a critical step towards a sustainable and responsible global response to this pressing environmental challenge.

16. In response to Resolution 5/14, the UNEP Executive Director convened an Ad hoc Open-ended Working Group (OEWG) to prepare for the work of the INC. The meeting was held from 30 May to 1 June 2022 in Dakar, Senegal, in a hybrid format. The outcomes of the OEWG include draft rules of procedure for the work of the INC, marking a significant step in the operationalisation of the resolution's mandate. These draft rules provide a foundational

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<sup>6</sup> Ibid., para. 3

<sup>7</sup> Ibid., Preamble

<sup>8</sup> UNEA Resolution 5/14, paras. 1-2

framework for the INC's activities, ensuring that the process of developing a legally binding instrument on plastic pollution is conducted in an orderly, transparent, and inclusive manner.<sup>9</sup>

## **B. The First Session of the Intergovernmental Negotiating Committee (INC-1)<sup>10</sup>**

17. The first session of the Intergovernmental Negotiating Committee to develop an international legally binding instrument on plastic pollution, including in the marine environment (INC-1), was convened at the Punta del Este Convention and Exhibition Centre, Uruguay, from 28 November to 2 December 2022. This significant meeting witnessed the participation of over 2,300 delegates from 160 countries, reflecting the global commitment to addressing plastic pollution.

18. One of the key agenda items was the formal adoption of the rules of procedure. However, the INC agreed to defer the adoption of the draft rules until its second session, allowing for further consultations on the matter. Pending their adoption, the draft rules would continue to apply to the INC's work on a provisional basis.

19. The INC's deliberations were comprehensive and multifaceted. At the fourth meeting of the session, on 30 November, the INC considered the potential scope, objectives, and broad options for the structure of a legally binding instrument on plastic pollution. This included hearing statements from representatives of regions, groups of countries, individual countries, and non-governmental organizations. The INC also began its consideration of possible core obligations, control measures, and voluntary approaches to the legally binding instrument, as well as potential elements for means of implementation.

20. On 1 December 2022, during its sixth meeting, the INC considered support for monitoring and evaluation of progress in, and effectiveness of, implementation and national reporting. It also explored other aspects of a legally binding instrument, including scientific and

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<sup>9</sup>UNEP/PP/INC.1/INF/2<[https://wedocs.unep.org/bitstream/handle/20.500.11822/41258/OEWG\\_INC\\_Report\\_E.pdf](https://wedocs.unep.org/bitstream/handle/20.500.11822/41258/OEWG_INC_Report_E.pdf)>

<sup>10</sup> Report of the Intergovernmental Negotiating Committee to Develop an International Legally Binding Instrument on Plastic Pollution, including in the Marine Environment, on the Work of its First session, UNEP/PP/INC.1/14.



technical cooperation and coordination, research, and awareness-raising. At the seventh meeting of the session, the INC considered potential elements for stakeholder participation and action.

21. The matter of sequencing and further work was also considered, with the understanding that it was being discussed in an informal group. This was followed by the eighth meeting of the session, on 2 December, where the INC heard a report by the co-facilitators of the informal group. In this meeting, the Chair noted areas of convergence in the development of the future instrument. These included the desire to have a legally binding instrument addressing the full life cycle of plastics, protecting human health and the environment, with special attention to the unique circumstances of those countries most in need. The Chair highlighted that many considered the instrument would be shaped by the core obligations, control measures, and voluntary approaches agreed upon by the INC. Clarity in the objective and scope of the future instrument was emphasized, along with the recognition that National Action Plans would be a critical component in ensuring the success of the future instrument. Some also noted the need for strong monitoring and reporting mechanisms, with all Parties having requisite financial and technical support to enable effective reporting.

22. The INC's deliberations culminated in a request to the Secretariat to prepare a document for consideration at its second session outlining potential options for elements towards an international legally binding instrument. This document was to be based on a comprehensive approach that would address the full life cycle of plastics, as called for in Resolution 5/14. It would include identifying the objective, substantive provisions including core obligations, control measures, and voluntary approaches, implementation measures, and means of implementation. The committee specified that the document could encompass both legally binding and voluntary measures and that it was intended to facilitate the committee's work without prejudging the structure and provisions of the instrument. The Secretariat, in consultation with the Chair, would draw on the views expressed by Members during the first session of the committee as well as their written submissions.

23. In conjunction with INC-1, a multi-stakeholder forum was also convened. This forum aimed to facilitate the exchange of information and gather perspectives from different

stakeholders across the plastics life cycle. It was open to all stakeholders, including governments, the private sector working on different stages of the plastics life cycle, scientists and researchers, the finance sector, civil society groups, including the informal sector, indigenous people, and youth. The forum provided a platform for rich and diverse dialogue, fostering collaboration and understanding among various stakeholders. It allowed for the sharing of insights, challenges, and opportunities related to plastic pollution, and contributed to a more nuanced and holistic understanding of the issue. The engagement of stakeholders from various sectors, including the private sector and civil society, underscored the complexity of the plastic pollution challenge and the need for a multi-dimensional approach.

24. The first session of the INC, along with the multi-stakeholder forum, represents a landmark in the global effort to address plastic pollution. The extensive participation, the depth of discussions, and the commitment to developing a comprehensive and legally binding instrument reflect a shared recognition of the urgency and importance of the issue. The INC's work, guided by the principles of inclusivity, transparency, and collaboration, sets a promising trajectory for the development of an effective international instrument. The outcomes of INC-1, including the decision to prepare a document outlining potential options for the legally binding instrument and the insights gained from the multi-stakeholder forum, lay a solid foundation for the subsequent sessions of the INC.

### **C. The Options Document**

25. In response to the earlier-mentioned request from the INC, the Secretariat prepared the document— “Potential options for elements towards an international legally binding instrument, based on a comprehensive approach that addresses the full life cycle of plastics as called for by the United Nations Environment Assembly resolution 5/14”, also called “Options Document” in short.<sup>11</sup> The document outlines potential components that might be incorporated into the international treaty on plastics, which is presently in the negotiation phase. These components are constructed on a holistic approach that encompasses the entire life cycle of plastics.

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<sup>11</sup> UNEP/PP/INC.2/4

26. The options document was set to guide discussions during the second session of the Intergovernmental Negotiating Committee (INC-2). This directive is in line with the mandate set forth in the UN Environment Assembly's resolution on plastic pollution.<sup>12</sup> The document is informed by the perspectives of Member States as articulated during INC-1 and in written submissions. These cover various aspects such as the preamble, definitions, scope, principles, and institutional structures, including governance, subsidiary bodies, scientific collaboration, technical coordination, and Secretariat functions.

27. Released on 13 April 2023, the 37-page document, as described in an accompanying note by the Secretariat, is designed to aid the INC's efforts without predetermining the committee's decisions concerning the structure and provisions of the future instrument. The paper records a total of 67 submissions from States and groups of States, with an additional 176 from stakeholders and stakeholder groups. Furthermore, the INC Chair conducted two webinars involving 46 entities to gather insights to assist Member States in finalising their submissions.

28. The document outlines various possibilities for the treaty's objectives, ranging from the cessation of plastic pollution and safeguarding human health and the environment, to curbing the production, utilisation, and discharge of plastics throughout their life cycle.<sup>13</sup> Options for core obligations<sup>14</sup> encompass control measures and voluntary strategies, and pertain to areas such as:

- Diminishing or phasing out the supply, demand, and usage of primary plastic polymers;
- Restricting, phasing out, or lessening the use of problematic and unnecessary plastic products;
- Banning, phasing out, or minimising the production, consumption, and application of concerning chemicals and polymers;
- Mitigating microplastics;
- Enhancing waste management practices;
- Encouraging design for circularity;
- Advocating for the “reduce, reuse, and repair” of plastic products and packaging;

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<sup>12</sup> UNEP/EA.5/Res.14

<sup>13</sup> Ibid., p. 4

<sup>14</sup> Ibid., p. 4 ff

- Encouraging the employment of safe and sustainable alternatives and substitutes; and
- Eliminating the release and emission of plastics into water, soil, and air.

29. The document also considers addressing existing plastic pollution, facilitating a fair transition (including the inclusive transformation of the informal waste sector), and safeguarding human health from the detrimental effects of plastic pollution as part of the core obligations.

30. The section detailing implementation methods<sup>15</sup> explores potential frameworks for capacity building, technical support, technology transfer, and financial aid, either as independent provisions or as components of a unified mechanism. Potential measures for executing the treaty<sup>16</sup> include national action strategies, national reporting, compliance stipulations, and regular evaluation and monitoring of the instrument's implementation progress and efficacy. Furthermore, the document suggests additional measures that could encompass awareness promotion and education, information sharing, research, collaboration and coordination, and stakeholder involvement. Lastly, the paper includes a compilation of possible annexes<sup>17</sup> to the treaty that might:

- List problematic and unnecessary plastic products, criteria for identifying such products, and potential timelines for banning, phasing out, reducing, or regulating them;
- List polymers and chemicals of concern, criteria for identifying them, and potential timelines for banning, phasing out, reducing, or regulating them;
- Identify sources to restrict the release of intentionally added microplastics;
- Detail circularity criteria and guidance in the design and manufacturing of plastic products and packaging;
- Define criteria for determining the availability of safe alternatives and substitutes;
- Describe categories of policy measures to diminish and, where feasible, eradicate releases of plastics into water, land, and air; and
- List common elements and minimum content for national action plans.

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<sup>15</sup> Ibid., p. 12 ff

<sup>16</sup> Ibid., p. 17 ff

<sup>17</sup> Ibid., p. 25 ff

## D. The Second Session of the Intergovernmental Negotiating Committee (INC-2)<sup>18</sup>

31. The second session of INC (INC-2) took place from 29 May to 2 June 2023 at the United Nations Educational, Scientific and Cultural Organization (UNESCO) Headquarters in Paris, France. During the session, extensive discussions centred on the adoption of the draft rules of procedure.<sup>19</sup> The Chair recalled that, according to a prior decision, these draft rules were being applied provisionally. The primary focus of the discussions was the bracketed text in rule 37.<sup>20</sup> Following a series of consultations, it became evident that further consultations would be needed, particularly concerning this bracketed text. The draft rules would continue to be applied on a provisional basis until they are formally adopted. While there was an emphasis on achieving consensus in decision-making, some representatives voiced concerns about certain provisions, particularly rule 38, paragraph 1.<sup>21</sup>

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<sup>18</sup> Report of the Intergovernmental Negotiating Committee to Develop an International Legally Binding Instrument on Plastic Pollution, Including in the Marine Environment, on the Work of its Second Session, UNEP/PP/INC.2/5.

<sup>19</sup> *Ibid.*, para. 36 ff

<sup>20</sup> **Rule 37- Voting Rights**

1. Each Member shall have one vote [, except as provided for in paragraph 2 of the present rule].

*Original from Minamata*

2. A regional economic integration organization shall, on matters within its competence, exercise its right to vote with a number of votes equal to the number of its member States participating in the Committee. Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote, and vice versa.

*Alt. 1*

A regional economic integration organization shall, on matters within its competence, exercise its right to vote with a number of votes equal to the number of its member States duly accredited and present at the time of the vote [participating in the Committee]. Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote, and vice versa.

*Alt. 2*

A regional economic integration organization shall, on matters within its competence, exercise its right to vote with a number of votes equal to the number of its member States duly accredited and present at the session [participating in the Committee]. Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote, and vice versa.

*Alt. 3 (Package from Minamata + footnote)*

A regional economic integration organization shall, on matters within its competence, exercise its right to vote with a number of votes equal to the number of its member States participating in the Committee. \* Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote, and vice versa.

[\* duly accredited and present at the session]

<sup>21</sup> **Adoption of decisions- Rule 38 (1)**

The Committee shall make every effort to reach agreement on all matters of substance by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, the decision shall, as a last resort, be taken by a two-thirds majority of the representatives of Members who are present and voting.

32. As discussions continued, various views were shared, with some members suggesting the establishment of a contact group to achieve consensus on the rules. Subsequent open-ended consultations were proposed by the Chair, primarily focusing on rules 37 and 38. After a series of discussions and consultations, the committee agreed on an interpretive statement relating to rule 38, paragraph 1. This statement emphasized the differing views among INC members on the rule and highlighted the debates surrounding its provisional application. The statement also underscored the importance of recalling the lack of agreement on this rule if invoked before formal adoption. By the conclusion of the deliberations, the Chair reaffirmed that the draft rules of procedure would continue to be applied provisionally, consistent with the decision taken during the INC's first session.

33. At the fifth plenary meeting, the Secretariat highlighted and briefed the content of the options document it prepared. The African States, represented by Ghana, emphasized the need for an instrument targeting an end to plastic pollution and safeguarding human health and the environment. They proposed an inclusive, lifecycle-based approach that aligns with the principles of the Rio Declaration on Environment and Development. The instrument should champion sustainable production and consumption of plastics, promote reduced production and use of plastics, and manage plastic waste efficiently. Financial mechanisms, capacity-building, technology transfer, and a robust monitoring system were deemed essential.

34. The Asia-Pacific States, represented by the Philippines, proposed diverse strategies to combat plastic pollution, including recycling, sustainable consumption and production, reducing existing plastic in the environment, and regulating plastic additives. The instrument should be realistic, adaptive to national circumstances, and promote a life-cycle approach. It should be informed by the latest technological and scientific knowledge. The instrument should differentiate between binding and voluntary obligations and be aligned with the Sustainable Development Goals.

35. The representative of the Coordinating Body on the Seas of East Asia (COBSEA), represented by Malaysia, emphasized the need for a global solution, especially considering marine plastic pollution. They advocated for leveraging existing mechanisms to help nations

achieve global goals, reflecting regional frameworks and national priorities. Practical, scalable solutions were emphasized. The EU found the options paper comprehensive and balanced. They stressed that the negotiations should conclude by the end of 2024 and recommended that the zero draft text mandate be agreed upon in Paris for consideration during INC-3. They emphasized the importance of technical intersessional work for the success of the negotiations.

36. The High Ambition Coalition (HAC), represented by Mauritius, called for binding provisions to reduce plastic production and consumption. They proposed restrictions, if not elimination, of harmful plastics and plastics affecting human health and the environment. The instrument should mobilize resources for practical action, promote environmentally sound practices, and prioritize remediation, considering the impact on developing countries. Latin American and Caribbean States, represented by Costa Rica, stressed the importance of a comprehensive approach covering the entire life cycle of plastics. They advocated for sustainable production and consumption patterns, transparent traceability mechanisms, sustainable waste management, and robust financial and technical support mechanisms.

37. Pacific Small Island Developing States, represented by Palau, focused on the marine environment's plastic pollution. They highlighted the need to reduce plastic production, use, and discharge, promoting a safe, circular economy, and considering banning problematic plastics. Small Island Developing States, represented by Samoa, called for immediate action on harmful plastics and the need for regulatory environments that included indigenous peoples and local communities. They emphasized the importance of support provisions for small island developing states.

38. During the sixth plenary meeting, the INC established two contact groups to identify consensus areas and refine potential options. These groups used the annex to document UNEP/PP/INC.2/4 as their primary reference. Contact Group 1, co-facilitated by Gwen Sisor (Palau) and Axel Borchmann (Germany), was tasked to focus on:

- Objectives (Part II, Section A)
- Substantive obligations (Part II, Section B)

39. Contact Group 2, led by Kate Lynch (Australia) and Oliver Boachie (Ghana), was designated to concentrate on:

- Means of implementation (Part II, Section C)
- Implementation measures (Part II, Section D)
- Additional concerns (Part II, Section E)

40. Upon request and the support of multiple representatives, the committee decided to grant contact groups the flexibility to address supplementary issues, provided they finished their primary mandates. The committee also decided on a placeholder for principles in the instrument's zero draft, encouraging written submissions on principles in the intersessional period between the second and third sessions.

41. During the seventh plenary meeting, reports from both contact groups were presented.<sup>22</sup> Several concerns emerged in the subsequent discussions, with representatives seeking clarity and highlighting unaddressed issues in the reports. They also voiced their desires for intersessional work on specific instrument elements. The committee then opted for informal consultations, overseen by Marine Collignon (France) and Maria Angelica Ikeda (Brazil), to determine the next steps. After these consultations, the committee decided to acknowledge the co-facilitators' reports from both contact groups. These reports were included, without any formal edits, as annexes to the main report: Contact Group 1's report in Annex I and Contact Group 2's report in Annex II.

42. Importantly, the Chair, with the support of the Secretariat, was tasked to draft a zero-draft text for the international legally binding instrument as stipulated in the Environment Assembly resolution 5/14. This draft, slated for review in the third session, will reflect opinions voiced during the first and second sessions and could indicate the diversity of perspectives by presenting multiple options. The Secretariat was also tasked to:

- Collect submissions from observers by 15 August 2023 and from members by 15 September 2023, on undiscussed elements from the second session, like the

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<sup>22</sup> See Annex I and Annex 2, Report of the Intergovernmental Negotiating Committee to Develop an International Legally Binding Instrument on Plastic Pollution, Including in the Marine Environment, on the Work of its Second Session, UNEP/PP/INC.2/5



principles and scope of the instrument, and potential areas identified by the contact groups' co-facilitators for intersessional work;

- Display these submissions on the third session's website;
- Draft a synthesis report focusing on the submissions associated with the discussed elements.

43. It was also decided to hold a one-day preparatory meeting in conjunction with the third session. This meeting will also encompass discussions based on the Secretariat's synthesis report. Concluding the session, the Chair urged members to formulate proposals, possibly in collaboration with other parties, to further the intersessional work identified by the two contact groups. Such efforts aim to enhance the committee's endeavours and bolster deliberations in upcoming sessions.

#### **E. Comments and Observations of the AALCO Secretariat**

44. The "zero draft" will be prepared by the INC-Plastics Secretariat in the coming months as a springboard for granular discussions of the final treaty text. This draft is anticipated to encapsulate the diverse viewpoints presented by various nations during INC-1 and INC-2. We note that even though considerable time during INC-2 was dedicated to procedural deliberations, the commitment to proceed signifies a commendable milestone in this global initiative.

45. A pivotal aspect that the Member States should be cognizant of is the “consensus vs. majority vote” debate, which has been central to procedural discussions related to treaty negotiations. These deliberations essentially reflect the broader contemplation among the negotiating States regarding the treaty's measures – whether they should largely adopt a voluntary stance, implemented via national action strategies, or should they be legally binding with universal benchmarks.

46. To underscore the crux of the ongoing plastics treaty negotiations:

- The nature of obligations, discerning between substantive and procedural, is of essence.

- The treaty's *modus operandi*, gravitating towards either a "top-down" directive or a "bottom-up" approach where individual nations define the commitments, is a critical aspect demanding elucidation.

47. In shaping the foundational commitments, the AALCO Secretariat emphasises the significance of a prudent equilibrium between binding and voluntary directives. Such a balance, bearing in mind the theoretical and practical nuances of both control and voluntarism, is pivotal. It is also paramount that these obligations be harmonized to fortify the overarching mission and scope of the treaty. Further, given the intricate challenges posed by plastic pollution, the Secretariat underscores the need for the plastics treaty to embody flexibility, facilitating iterative enhancements. Insights from INC sessions and preliminary feedback from the negotiating States and associated stakeholders have underscored the consensus leaning towards the inclusion of an annex system to ensure adaptability.

48. Post the two INC sessions, it has become evident that the plastics treaty stands to benefit from integrating principles deeply rooted in established treaty conventions, particularly those of environmental multilateral treaties. However, the multifarious challenges associated with plastic pollution call for a specialised, tailor-made structure and content that may not align with existing environmental treaty models. The feedback from INC-2 has reiterated this perspective, underlining the importance of amalgamating traditional treaty elements with custom-made strategies to enhance the efficacy of international legal frameworks.

49. The AALCO Secretariat also draws attention to a recurrent theme articulated in the UNEA resolution 5/14 and reflected in INC sessions – the dynamics between treaty regimes in relation to the envisaged plastics treaty. Addressing the challenges of plastic pollution mandates a synchronised blend of regulations across diverse facets, operating at the global, regional, and national levels. This collaborative strategy echoes the recent environmental treaty exercises to cultivate synergies, underscoring the potential of these legal frameworks to collaboratively amplify shared objectives.

50. With UNEA resolution 5/14 delineating the scope of the plastics treaty, the emphasis on the circular economy and the comprehensive plastic lifecycle is pivotal for countering plastic pollution. The Secretariat observes that the intricate relationship between the circular economy, plastic lifecycle, and worldwide anti-pollution strategies has garnered unanimous concurrence during both INC-1 and INC-2 sessions. The plastics treaty, therefore, should integrally assimilate elements of the circular economy, be forward-looking to technological advancements, and address existing lacunae. Comprehensive national oversight and visualization of the entire spectrum of the plastic lifecycle remain quintessential.

51. Finally, the AALCO Secretariat wishes to draw the earnest attention of the AALCO Member States to the request put forth by the INC Plastics Secretariat. The INC has specifically called upon its Secretariat to solicit written contributions on (a) elements that remained untouched at INC-2, notably the principles and the scope of the instrument, and (b) any prospective domains for intersessional endeavours, as collated by the cofacilitators of the two contact groups, all intended to guide the deliberations of the INC-3. It is crucial to note that the Committee has designated 15 September 2023 as the deadline for such submissions from Committee Members. The AALCO Secretariat would like to remind its Member States that this date is fast approaching and sincerely encourage timely submissions in the spirit of cooperation and the shared objective of addressing global plastic pollution.

#### **IV. INTERNATIONAL LEGAL REGIME ON CLIMATE CHANGE**

##### **A. Background**

52. The United Nations Framework Convention on Climate Change (UNFCCC), 1992 and its Kyoto Protocol of 1997 contain the response of the international community to meet the challenges posed by the threat of climate change. The UNFCCC was concluded on 9 May 1992 and opened for signature at the United Nations Conference on Environment and Development (UNCED) in June 1992. It entered into force on 21 March 1994 and having attained ratification by 197 States and one regional economic integration organization it has reached universality. The ultimate objective of the climate change regime is to stabilise greenhouse gas concentrations in

the atmosphere “at a level that would prevent dangerous anthropogenic (human-induced) interference with the climate system”<sup>23</sup>. It states that “such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened, and to enable economic development to proceed in a sustainable manner.”<sup>24</sup>

53. The Kyoto Protocol (KP) was adopted on 11 November 1997. It entered into force on 16 February 2005 and currently, there are 192 parties to it. The KP operationalises the UNFCCC by committing industrialized countries and economies in transition to limit and reduce greenhouse gas (GHG) emissions in accordance with agreed individual targets. It is based on the principles and provisions of the Convention and follows its annex-based structure. It only binds developed countries, under the principle of “common but differentiated responsibility and respective capabilities”. The KP recognizes that they are largely responsible for the current high levels of GHG emissions in the atmosphere. In its Annex B, the Kyoto Protocol sets binding emission reduction targets for 37 industrialized countries and economies in transition and the European Union. Overall, these targets add up to an average 5 percent emission reduction compared to 1990 levels over the five-year period 2008–2012 (the first commitment period). However, the largest contributor to the global greenhouse gas emissions, the United States of America, remains outside the Kyoto Protocol.<sup>25</sup> Doha Amendment to the KP was adopted for a second commitment period, starting in 2013 and lasting until 2020. The amendment entered into force on 31 December 2020.

54. The Paris Agreement was adopted by 196 Parties at the UN Climate Change Conference (COP21) in Paris, France, on 12 December 2015. It entered into force on 4 November 2016. Its overarching goal is to hold “the increase in the global average temperature to well below 2°C above pre-industrial levels”<sup>26</sup> and pursue efforts “to limit the temperature increase to 1.5°C above pre-industrial levels”.<sup>27</sup> However, in recent years, world leaders have stressed the need to

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<sup>23</sup> Article 2 of the UNFCCC.

<sup>24</sup> Ibid.

<sup>25</sup> The status of ratification of these instruments is drawn from the website: < <http://unfccc.int/>> (last accessed on 15 August 2023).

<sup>26</sup> Article 2, Paris Agreement, 2015.

<sup>27</sup> Ibid.

limit global warming to 1.5°C by the end of this century. It is important to note that the UN Intergovernmental Panel on Climate Change (IPCC) Reports indicates that crossing the 1.5°C threshold risks unleashing far more severe climate change impacts, including more frequent and severe droughts, heatwaves, and rainfall. The Paris Agreement is a landmark in the multilateral climate change process because, for the first time, a binding agreement brings all nations together to combat climate change and adapt to its effects. The Paris Agreement works on a five-year cycle of increasingly ambitious climate action. Since 2020, countries have been submitting their national climate action plans, known as nationally determined contributions (NDCs). Each successive NDC is meant to reflect an increasingly higher degree of ambition compared to the previous version.

55. The Conference of Parties (COP) to the UNFCCC and the Meeting of Conference of Parties serving as Meeting of Parties to the Kyoto Protocol (CMP), and the meeting of the Conference of Parties serving as the Meeting of the Parties to the Paris Agreement (CMA) are supreme decision-making bodies of the UNFCCC, KP and PA respectively. Since the entry into force of these legal instruments these bodies have been meeting on an annual basis. Until August 2023, twenty-seven COP meetings, seventeen CMP meetings and four CMA meetings have taken place.

#### **B. Sharm El-Sheikh Climate Change Conference (6-20 November 2022, Sharm El-Sheikh, Arab Republic of Egypt)**

56. The Sharm El-Sheikh Climate Change Conference took place from 6 to 20 November 2022 at Sharm El-Sheikh in Arab Republic of Egypt. The Conference included the twenty-seventh meeting of the Conference of the Parties (COP 27) to the UNFCCC, the seventeenth session of Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (CMP 17) and fourth meeting of the Conference of Parties serving as the Meeting of Parties to the Paris Agreement (CMA 4).<sup>28</sup> Some of the key outcomes of this meeting is reported below.

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<sup>28</sup> This write-up is based upon the information contained in the following UNFCCC Secretariat Press Releases: “COP 27 Reaches Agreement on “New Loss and Damage Fund” for Vulnerable Countries” 20 November 2022; and the “Summary of the Sharm El-Sheikh Climate Change Conference: 6-20 November 2022, *Earth Negotiations Bulletin*, vol. 12, no. 818 dated 23 November 2023, available online at [enb.iisd.org/sharm-el-sheikh-climate-change-](http://enb.iisd.org/sharm-el-sheikh-climate-change-)

57. Several world leaders made an address. Of the 171 statements, 3 were delivered on behalf of groups of Parties. The World Leaders Summit, held over two days during the first week of the conference, convened six high-level roundtable discussions. The discussions were on the themes, namely, food security, innovative finance, just transition, investing in the future of energy: green hydrogen, climate change and sustainability of vulnerable communities, and water security.<sup>29</sup>

## **1. Sharm El-Sheikh Implementation Plan**

58. Parties adopted two overarching cover decisions, together called the Sharm El-Shaikh Implementation Plan.<sup>30</sup> It includes 16 sections on a wide range of areas of climate action. The decision acknowledges that “climate change is a common concern of humankind and that Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to a clean, healthy and sustainable environment, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity”.<sup>31</sup> It underlines the urgent need to address the interlinked global crisis of climate change and biodiversity loss comprehensively and synergistically. The decision also acknowledges that climate change exacerbates the global energy and food crises, and vice versa, particularly in developing countries.

59. The sections of the Implementation Plan are: Science and urgency, Enhancing ambition and implementation, Energy, Mitigation, Adaptation, Loss and damage, Early warning and systematic observation, Implementation - pathways to just transition, Finance, Technology

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conference-cop27. The Official report is contained in UNFCCC, Report of the Conference of the Parties on its twenty-seventh session, held in Sharm el-Sheikh from 6 to 20 November 2022, UN Doc. FCCC/CP/2022/10 and its Addendums 1, 2 & 3, available online at: <<https://unfccc.int/event/cop-27?item=18%20b>> (accessed on 15 August 2023).

<sup>29</sup> UNFCCC, Report of the Conference of the Parties on its twenty-seventh session, held in Sharm el-Sheikh from 6 to 20 November 2022, Part One: Proceedings, UN Doc. FCCC/CP/2022/10, p. 25.

<sup>30</sup> UNFCCC, Report of the Conference of the Parties on its twenty-seventh session, held in Sharm el-Sheikh from 6 to 20 November 2022, Part Two: Action taken by the Conference of Parties at its twenty-seventh session, UN Doc. FCCC/CP/2022/10/Add. 1, pp.2-10.

<sup>31</sup> Ibid., p.2. Preamble of the Sharm El-Sheikh Implementation Plan.

transfer and deployment, Capacity building, Taking stock, Ocean, Forest, Agriculture, and Enhancing implementation: action by non-Party stakeholders. The CMA adopted a similar decision with some features unique to CMA in respect of science, mitigation, adaptation, implementation pathways to a just transition, finance and transparency.

## **2. Matters Relating to Funding arrangements for responding to Loss and Damage associated with the Adverse Effects of Climate Change, including a Focus on Addressing Loss and Damage**

60. The loss and damage caused by human-induced climate change and its funding arrangements was the subject of considerable focus and intense debate at Sharm-El Sheikh Climate Change Conference. The need for progress on this issue was advocated by many developing countries and civil society organizations. Developing countries, and especially Small Island Developing States (SIDS) and Least Developed Countries (LDCs) urged for a decision and commitment at COP 27 that would establish and operationalize such a fund as soon as possible. Developed countries, on the other hand, preferred using existing financial institutions to funnel funds and some of the developed countries were reluctant to accept text that admitted liability or referred to “compensation.”

61. Finally, a breakthrough Agreement on New “Loss and Damage” Fund for Vulnerable Countries was achieved at COP 27. It was decided to establish new funding arrangements for assisting developing countries that are particularly vulnerable to the adverse effects of climate change in responding to loss and damage, including with a focus on addressing loss and damage by providing and assisting in mobilizing new and additional resources, and that these new arrangements complement and include sources, funds, processes and initiatives under and outside the Convention and the Paris Agreement.<sup>32</sup> It was also decided to establish a transitional committee on the operationalization of the new funding arrangements for responding to loss and damage and the fund, in accordance with the terms of reference contained in the annex, to make recommendations based on, *inter alia*, elements for operationalization, for consideration and adoption by COP 28 and CMA 5. Parties also agreed on the institutional arrangements to

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<sup>32</sup> Ibid., pp. 11-14.

operationalize the Santiago Network for Loss and Damage, to catalyse technical assistance to developing countries that are particularly vulnerable to the adverse effects of climate change. It is important to note that this funding agreement took a decade-long negotiation. At the closing plenary of the Conference, parties agreed that the major achievement of the Conference was the establishment of a dedicated fund for loss and damage.<sup>33</sup>

### **3. Global Goal on Adaptation**

62. The Paris Agreement aims to strengthen the global climate change response by increasing the ability of all to adapt to adverse impacts of climate change and foster climate resilience. It defines a global goal on adaptation is:

- to enhance adaptive capacity and resilience;
- to reduce vulnerability, with a view to contributing to sustainable development; and
- to ensure an adequate adaptation response in the context of the goal of holding average global warming well below 2°C and pursuing efforts to hold it below 1.5°C.

63. At the Sharm Al Shaikh Climate Change Conference, Parties agreed to a long-term, structured effort that will help countries to collectively achieve the global adaptation goal. This framework will also review progress towards its achievement. Given the context-specific nature of adaptation, countries will have to adapt to different climate impacts, this framework will generate information that can help to enable and capture progress. It will be reviewed before the second Global Stocktake in 2028.<sup>34</sup>

### **4. Matters Relating to Finance: Long-term climate finance**

64. The COP process on long-term finance aims to advance the mobilization of climate resources from multiple sources. In 2010, the Cancun Agreements committed developed countries to a goal of USD 100 billion per year by 2020 for developing countries. However, this goal was not met. A key concern, therefore, was how to address the gap and encourage actions to

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<sup>33</sup> Ibid.

<sup>34</sup> Earth Negotiations Bulletin, note 28, p.1.



support developing countries. The COP in its decision noted with deep regret that the USD 100 billion had not been met. It called upon the Standing Committee on Finance to prepare biennial reports on progress towards the USD 100 billion goal for consideration at subsequent COP meetings.<sup>35</sup>

## **5. Matters Relating to the Global Stocktake**

65. In December 2015, parties adopted the Paris Agreement. Under the terms of the Agreement, all countries will submit NDCs and review the aggregate progress on mitigation, adaptation, and means of implementation every five years through a Global Stocktake (GST). The outcome of the GST will inform countries on how to update and enhance their actions. It enables countries and other stakeholders to see where they are collectively making progress toward meeting the goals of the Paris Agreement – and where they are not. It means looking at everything related to where the world stands on climate action and supporting, identifying the gaps, and working together to agree on solutions pathways (to 2030 and beyond).

66. The GST at COP 28 in Dubai to be held later in the year is expected to be a turning point to get on track to limiting warming to 1.5°C. The ambitious goal set out is for “cutting emissions by 43% by 2030, compared to 2010 levels, attaining net-zero by mid-century and delivering a resilient world”.<sup>36</sup>

## **6. Second Periodic Review of the Long-Term Global Goal under the Convention and of Overall Progress towards Achieving it**

67. This agenda item includes scientific inputs and deliberations over the long-term temperature goal of the Convention and assesses progress toward the goal. In the informal consultations, views diverged sharply on references to equity. Several developing countries

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<sup>35</sup> UNFCCC, Report of the Conference of the Parties on its twenty-seventh session, held in Sharm el-Sheikh from 6 to 20 November 2022, Part Two: Action taken by the Conference of Parties at its twenty-seventh session, UN Doc. FCCC/CP/2022/10/Add. 2, pp.2-3.

<sup>36</sup> UNFCCC Press Release, “Simon Stiell: Global Stocktake “Must be the Turning Point” to Limit Warming to 1.5°C”, 6 June 2023, available online at < <https://unfccc.int/news/simon-stiell-global-stocktake-must-be-the-turning-point-to-limit-warming-to-15degc> > (last accessed on 16 August 2023)

supported references to the principles of the Convention and the Paris Agreement, particularly CBDR. Developed countries disagreed, saying there is not an accepted definition of equity in the Convention, and suggested instead to recognize the different circumstances and opportunities countries have to contribute to achieving the long-term global goal. There was also debate on references to action before 2030 and enhanced efforts under the Convention and Paris Agreement. Two developing country groups rejected these suggestions based on equity. Other developed and developing countries stressed the importance of action in this decade in line with science.<sup>37</sup>

68. In the final decision, the COP *inter alia* reaffirmed the long-term global goal of holding the increase in global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, underscored the need to pursue anticipatory, incremental and transformative adaptation and address the factor underlying increasing vulnerability and risks, including lack of capacity to respond to climate change, and that most adaptation to date has been incremental, with little evidence of transformative adaptation, and tracking progress of adaptation planning remains difficult; and recognises that climate finance has increased since the first periodic review but is still inadequate to address the needs and priorities, reiterates that developed country party provide enhanced support, including through financial resources, technology transfer and capacity building, to assist developing country parties with respect to both mitigation and adaptation, in continuation of their existing obligations under the Convention.<sup>38</sup> .

### **C. Release of “Climate Change 2023: Synthesis Report” of the Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Report.<sup>39</sup>**

69. On 20 March 2023, the IPCC released “Climate Change 2023: Synthesis Report” that summarises the state of knowledge of climate change, its widespread impacts and risks, and

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<sup>37</sup> Earth Negotiations Bulletin, note 28, pp. 10-11.

<sup>38</sup> UNFCCC Report, note 35, pp. 40-42.

<sup>39</sup> IPCC, 2023: Summary for Policymakers. In: *Climate Change 2023: Synthesis Report*. A Report of the Intergovernmental Panel on Climate Change. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, accessed online from: <https://www.ipcc.ch/report/sixth-assessment-report-cycle/> (last accessed on 29 August 2023).

climate change mitigation and adaptation. This report recognizes the interdependence of climate, ecosystems and biodiversity, and human societies; the value of diverse forms of knowledge; and the close linkages between climate change adaptation, mitigation, ecosystem health, human well-being, and sustainable development, and reflects the increasing diversity of actors involved in climate action. Releasing the Report, the IPCC Chair Hoesung Lee stated that: “This Synthesis Report underscores the urgency of taking more ambitious action and shows that, if we act now, we can still secure a liveable sustainable future for all.”<sup>40</sup> The Summary for Policy Makers places for consideration the following key findings:

- Human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850-1900 in 2011-2020. Global greenhouse gas emissions have continued to increase, with unequal historical and ongoing contributions arising from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production across regions, between and within countries, and among individuals.<sup>41</sup>
- Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred. Human-caused climate change is already affecting many weather and climate extremes in every region across the globe. This has led to widespread adverse impacts and related losses and damages to nature and people. Vulnerable communities who have historically contributed the least to current climate change are disproportionately affected.<sup>42</sup>
- Adaptation planning and implementation has progressed across all sectors and regions, with documented benefits and varying effectiveness. Despite progress, adaptation gaps exist, and will continue to grow at current rates of implementation. Hard and soft limits to adaptation have been reached in some ecosystems and regions. Maladaptation is happening in some sectors and regions. Current global financial flows for adaptation are insufficient for, and constrain implementation of, adaptation options, especially in developing countries.<sup>43</sup>

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<sup>40</sup> IPCC, “Urgent climate action can secure a livable future for all”, Press Release 2023/06/PR dated 20 March 2023.

<sup>41</sup> IPCC, Summary for Policy Makers, note 39, p. 4.

<sup>42</sup> Ibid., p.5.

<sup>43</sup> Ibid., p.8.

- Policies and laws addressing mitigation have consistently expanded since Assessment Report 5. Global GHG emissions in 2030 implied by nationally determined contributions (NDCs) announced by October 2021 make it likely that warming will exceed 1.5°C during the 21st century and make it harder to limit warming below 2°C. There are gaps between projected emissions from implemented policies and those from NDCs and finance flows fall short of the levels needed to meet climate goals across all sectors and regions.<sup>44</sup>
- Continued greenhouse gas emissions will lead to increasing global warming, with the best estimate of reaching 1.5°C in the near term in considered scenarios and modelled pathways. Every increment of global warming will intensify multiple and concurrent hazards. Deep, rapid, and sustained reductions in greenhouse gas emissions would lead to a discernible slowdown in global warming within around two decades, and also to discernible changes in atmospheric composition within a few years.<sup>45</sup>
- Some future changes are unavoidable and/or irreversible but can be limited by deep, rapid, and sustained global greenhouse gas emissions reduction. The likelihood of abrupt and/or irreversible changes increases with higher global warming levels. Similarly, the probability of low-likelihood outcomes associated with potentially very large adverse impacts increases with higher global warming levels.<sup>46</sup>
- Adaptation options that are feasible and effective today will become constrained and less effective with increasing global warming. With increasing global warming, losses and damages will increase and additional human and natural systems will reach adaptation limits. Maladaptation can be avoided by flexible, multi-sectoral, inclusive, long-term planning and implementation of adaptation actions, with co-benefits to many sectors and systems.<sup>47</sup>
- All global modelled pathways that limit warming to 1.5°C (>50%) with no or limited overshoot, and those that limit warming to 2°C (>67%), involve rapid and deep and, in most cases, immediate greenhouse gas emissions reductions in all sectors this decade.

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<sup>44</sup> Ibid., p.10.

<sup>45</sup> Ibid., p.12.

<sup>46</sup> Ibid., p. 18.

<sup>47</sup> Ibid., p. 19.

Global net zero CO<sub>2</sub> emissions are reached for these pathway categories, in the early 2050s and around the early 2070s, respectively.<sup>48</sup>

- If warming exceeds a specified level such as 1.5°C, it could gradually be reduced again by achieving and sustaining net negative global CO<sub>2</sub> emissions. This would require additional deployment of carbon dioxide removal, compared to pathways without overshoot, leading to greater feasibility and sustainability concerns. Overshoot entails adverse impacts, some irreversible, and additional risks for human and natural systems, all growing with the magnitude and duration of overshoot.<sup>49</sup>
- Climate change is a threat to human well-being and planetary health. There is a rapidly closing window of opportunity to secure a liveable and sustainable future for all. Climate resilient development integrates adaptation and mitigation to advance sustainable development for all, and is enabled by increased international cooperation including improved access to adequate financial resources, particularly for vulnerable regions, sectors and groups, and inclusive governance and coordinated policies. The choices and actions implemented in this decade will have impacts now and for thousands of years.<sup>50</sup>
- Prioritising equity, climate justice, social justice, inclusion and just transition processes can enable adaptation and ambitious mitigation actions and climate resilient development. Adaptation outcomes are enhanced by increased support to regions and people with the highest vulnerability to climatic hazards. Integrating climate adaptation into social protection programs improves resilience. Many options are available for reducing emission-intensive consumption, including through behavioural and lifestyle changes, with co-benefits for societal well-being.<sup>51</sup>
- Effective climate action is enabled by political commitment, well-aligned multilevel governance, institutional frameworks, laws, policies and strategies and enhanced access to finance and technology. Clear goals, coordination across multiple policy domains, and inclusive governance processes facilitate effective climate action. Regulatory and economic instruments can support deep emissions reductions and climate resilience if

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<sup>48</sup> Ibid., p. 20.

<sup>49</sup> Ibid., p.23.

<sup>50</sup> Ibid., p.24.

<sup>51</sup> Ibid., p. 31.

scaled up and applied widely. Climate resilient development benefits from drawing on diverse knowledge.<sup>52</sup>

- Finance, technology and international cooperation are critical enablers for accelerated climate action. If climate goals are to be achieved, both adaptation and mitigation financing would need to increase many-fold. There is sufficient global capital to close the global investment gaps but there are barriers to redirect capital to climate action. Enhancing technology innovation systems is key to accelerate the widespread adoption of technologies and practices. Enhancing international cooperation is possible through multiple channels.<sup>53</sup>

#### **D. Towards Dubai Climate Change Conference**

70. The 28<sup>th</sup> Session of the COP (COP 28), the 18<sup>th</sup> CMP to the Kyoto Protocol and the Fifth CMA will convene from 30 November to 12 December 2023 in Dubai, the United Arab Emirates. The President-designate of the Conference Dr. Sultan Al Jaber of the UAE has stated that COP28 plan of action is centred around the following: fast-tracking a just, equitable and orderly energy transition; fixing climate finance; focusing on people, lives and livelihoods; and underpinning everything with full inclusivity. He had emphasized that “Only by rising above our differences and working together can we raise our shared ambition and deliver progress to keep 1.5°C within reach”.<sup>54</sup>

#### **E. Comments and Observations of the AALCO Secretariat**

71. The two great continents of Asia and Africa are the home to most of the world population. Majority of the Asian-African States are developing countries. In view of the serious challenge that the issue of climate change poses to the survival of humanity, and that it effects especially the most vulnerable, people and nations, it is imperative that the Asian-African states continue to play a leading role in the international efforts to combat climate change. AALCO as a

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<sup>52</sup> Ibid., p.32.

<sup>53</sup> Ibid., p. 33.

<sup>54</sup> UNFCCC Press Release, “On an Inclusive COP28 – Joint Statement by the United Arab Emirates and UN Climate Change”, 1 August 2023, available online at <https://unfccc.int/news/on-an-inclusive-cop28-joint-statement-by-the-united-arab-emirates-and-un-climate-change> (last accessed on 16 August 2023).

multilateral forum of Asian-African States serves as a vital forum for exchange of views towards strengthening the international legal regime for combating climate change.

72. The IPCC “Climate Change 2023: Synthesis Report” brings out loudly and clearly that the challenge to combat climate change has become greater due to a continued increase in GHG emissions. The resulting loss and damage targets mostly vulnerable people and ecosystems. Accelerated action is called for in keeping warming to 1.5°C above pre-industrial levels. It requires deep, rapid, and sustained GHG reductions in all sectors. It is important to note that the populations that are the least responsible for the climate crisis are already suffering from its impacts and need immediate help to adapt and recover from loss and damage. This is an issue of equity and climate justice which requires immediate attention from governments and international financial institutions.

73. Recent reports by the World Meteorological Organization (WMO) and the European Commission’s Copernicus Climate Change Service confirm that July 2023 was the hottest month ever recorded in human history. Alarmed by this, the UN Secretary-General António Guterres observed that “The era of global warming has ended; the era of global boiling has arrived”. He further observed that “The air is unbreathable. The heat is unbearable. And the level of fossil-fuel profits and climate inaction is unacceptable. Leaders must lead. No more hesitancy. No more excuses. No more waiting for others to move first. There is simply no more time for that.”<sup>55</sup> Likewise, Ian Fry Special Rapporteur for the promotion and protection of human rights in the context of climate change appointed by the UN Human Rights Council has observed that climate change is now a climate emergency.<sup>56</sup> These statements testify that climate change is real. It has posed a great challenge to global sustainable development and even to the existence of human beings.

74. Against this backdrop, the convening of the “Climate Ambition Summit 2023” by the UN Secretary-General on 20 September 2023, assumes vast significance. The objective of the Ambition Summit is “to accelerate action by governments, business, finance, local authorities

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<sup>55</sup> UN Press Release, Press Conference by Secretary-General António Guterres at United Nations Headquarters, SG/SM/21893 dated 27 July 2023.

<sup>56</sup> Jen Allan (ed.), *State of Global Environmental Governance 2022* (IISD, Manitoba, Canada 2023), p. v.

and civil society.”<sup>57</sup> The Summit is expected to focus upon “three distinct but inter-related acceleration tracks- ambition, credibility and ambition.” It is expected that the outcome of the Ambition Summit will guide the Dubai Climate Change Conference in November-December 2023.

75. The adoption of an overarching decision titled as Sharm-El Sheikh Implementation Plan seeks to strike a balance. However, the way forward lies in making this implementation plan a reality without eroding equity and the principle of common but differentiated responsibilities and respective capabilities. AALCO Member States are urged to deliberate upon the way forward to achieve the goals agreed upon in the Sharm-El Sheikh Implementation Plan.

76. Loss and damage which affect the most vulnerable countries and communities, have been a priority for small island developing countries. The decision to establish a loss and damage finance facility is the key achievement of COP 27. The Transitional Committee is required to work out the details and identify opportunities and gaps so that the Fund can be operationalised at COP 28. However, the failure of the developed countries to deliver on their USD 100 billion climate finance pledge from Copenhagen in 2009 widens the trust deficit between developed and developing countries.

77. It is also important to note that the Like-minded Group of Developing Countries (LDMCs) that include several AALCO Member States are increasingly being put under pressure to further reduce their emissions. Such pressure is in contravention of the principle of common but differentiated responsibilities enshrined in the UNFCCC. Concerns are also mounting amongst developing States with respect to adaptation and finance,

78. The expectation from the forthcoming Climate Change Conference in Dubai is high on both implementation and ambition through the first Global Stocktake. At COP 28 the Parties are required to take immediate and decisive action to ensure that the goals of the Paris Agreement are achieved. The first Global Stocktake to evaluate implementation progress against the goals of

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<sup>57</sup> UN, “Climate Ambition Summit 2023, Information available on <https://www.un.org/en/climatechange/climate-ambition-summit> (last accessed on 29 August 2023).



Paris Agreement commenced at the technical level in 2022. The process will culminate at COP 28 with high expectations as to what this undertaking will deliver. Technology transfer, financing, and capacity-building remain the key challenges. In so far as developing countries are concerned the principle of common but differentiated responsibility and respective capabilities remains the key to the ambitious implementation of the objectives of climate change regime. All the aforesaid issues are vital for AALCO Member States and in the continued momentum to combat climate change Asian-African solidarity is of vital importance.