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ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

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I. INTRODUCTION

1. The Asian-African Legal Consultative Organization (AALCO) has been actively involved in issues related to the environment and sustainable development since the 1970s. This engagement began at the Fifteenth Annual Session in Tokyo in 1974, when the Government of India suggested examining international law concerning the human environment. Over the years, this topic has been scrutinised under various headings, including Environmental Law, Environment Protection, Transboundary Movement of Hazardous Wastes, and Preparation for the United Nations Conference on Environment and Development (UNCED). Relevant contemporary developments have influenced the discussions at different Annual Sessions.

2. A significant milestone in this journey was the adoption of the Statement of General Principles of International Environmental Law at the Thirty-First Annual Session in Islamabad, Pakistan, in 1992. This statement highlighted the intrinsic link between the environment and development, recognising them as a collective concern for humanity. It also promoted the Principle of Common But Differentiated Responsibilities (CBDR), emphasising that the enforcement of environmental standards by developing countries should be in line with their capacities and obligations (AALCO Annual Session, 1992).

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

4. AALCO has given special attention to the topic of environment and sustainable development through at least three dedicated meetings. These include discussions 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 topic of environment and sustainable development has remained a central theme in AALCO's subsequent Annual Sessions. These include the Fiftieth Session in Colombo (2011), the Fifty-First in Abuja (2012), the Fifty-Second in New Delhi (2013), the Fifty-Third in Tehran (2014), the Fifty-Fourth in Beijing (2015), and the Sixtieth Session in New Delhi (2022). As global environmental challenges have evolved, so have the discussions at these sessions, adapting to address the most pressing contemporary issues.

6. The Sixtieth Session in 2022 marked a significant milestone, concentrating on two critical areas of environmental concern: (1) Transboundary Air Pollution, with a specific focus on 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, Member States expressed their appreciation for the comprehensive brief prepared by the Secretariat on these topics, recognising their significance and relevance in the current global environmental landscape. The Sixty-First Annual Session, convened in Bali, Indonesia, in 2023, brought two crucial environmental issues to the forefront: (1) The ongoing negotiations within the Inter-governmental Negotiating Committee (INC) regarding establishing an international legally binding instrument to address plastic pollution, with a particular emphasis on the marine environment; and (2) Global initiatives to combat climate change, discussed against the backdrop of the United Nations Climate Change Conference of 2022.

II. TOPICS FOR FOCUSED DELIBERATION

7. In the subsequent sections of this brief, the Secretariat of AALCO follows up on the developments since the Sixty-First Annual Session and recommends that the Sixty-Second Annual Session concentrate on the following critical topics:

1. An International Legally Binding Instrument on Plastic Pollution
2. International Legal Regime on Climate Change

8. As regards “International Legal Regime on Climate Change”, the Kingdom of Thailand has requested the inclusion of the sub-agenda item “Recent Developments in International Law on Climate Change” under the substantive agenda item invoking subrule (2) of Rule 11 of AALCO Statutory Rule through a note verbale (No.0801/656) dated 26 July 2024 accompanied by an explanatory memorandum (see annex-1). The Kingdom of Thailand suggests that the following issues may be deliberated:

- How AALCO and its Member States can play a leading role in international efforts to combat climate change, including through participation in the requests for advisory opinions before international courts and tribunals.
- The main challenges and shortcomings in implementing international legal frameworks on climate change, including the United Nations Framework Convention on Climate Change (UNFCCC) and its related agreements, namely the Kyoto Protocol and the Paris Agreement.
- The possible nexus between international environmental law and climate change law and other areas of international law, including the protection of persons in the event of disasters, sea-level rise, and international human rights law.
- The impacts of climate change in Asia and Africa, especially with regards to minorities and vulnerable groups.
- Strategies for risk reduction and management in the context of climate change, focusing on enhancing resilience and preparedness in vulnerable communities.
- The application of the principle of Common but Differentiated Responsibilities (CBDR) in international climate law.
- The role of international cooperation in the fight against climate change, including the role of regional initiatives.

III. AN INTERNATIONAL LEGALLY BINDING INSTRUMENT ON PLASTIC POLLUTION

A. Introduction

9. Plastic pollution has emerged as one of the most pressing environmental challenges of our time, with far-reaching consequences for ecosystems, human health, and global economies. Every day, the equivalent of 2,000 garbage trucks full of plastic waste is dumped into the world's oceans, rivers, and lakes.¹ This alarming rate of pollution has led to plastics accounting for 85% of marine litter, with plastic debris found even in the deepest parts of our oceans.² The scale of the problem is staggering, with global plastic production reaching 430 million tonnes annually, two-thirds of which is used for short-term purposes. Without immediate action, plastic pollution is projected to triple by 2060, posing severe threats to biodiversity, climate change mitigation efforts, and human well-being.³

10. The global community's response to this crisis has been the initiation of negotiations for an international legally binding instrument on plastic pollution. This process began with the first session of the Intergovernmental Negotiating Committee (INC-1) in 2022, followed by INC-2 in 2023. These initial meetings laid the groundwork for addressing the entire lifecycle of plastics, from production to disposal.

11. INC-1 focused on establishing the framework for negotiations, defining the scope of the agreement, and identifying key areas of concern.⁴ Participants discussed potential measures to reduce plastic production, improve waste management, and promote circular economy principles. INC-2, held in Paris from May 29 to June 2, 2023, built upon the foundations laid in the first session.⁵ Negotiators delved deeper into specific aspects of the proposed treaty, including

¹ 'Plastic Pollution' (UNEP) (2022) <<https://www.unep.org/plastic-pollution>> accessed 21 July 2024

² Yinuo and Yinuo, 'Fast Facts - What Is Plastic Pollution? - United Nations Sustainable Development' (United Nations Sustainable Development, 25 August 2023) <<https://www.un.org/sustainabledevelopment/blog/2023/08/explainer-what-is-plastic-pollution/>> accessed 21 July 2024

³ 'Plastics and Human Health | Plastics and the Environment Series' (2024) <<https://www.genevaenvironmentnetwork.org/resources/updates/plastics-and-health/>> accessed 21 July 2024

⁴ 'First Session' (UNEP) (2022) <<https://www.unep.org/inc-plastic-pollution/session-1>> accessed 21 July 2024

⁵ 'Second Session' (UNEP) (2023) <<https://www.unep.org/inc-plastic-pollution/session-2>> accessed 21 July 2024

mechanisms for implementation, financing, and technology transfer. However, challenges emerged regarding decision-making processes, with debates on whether to adopt decisions by consensus or consider a two-thirds majority vote.⁶

12. One of the critical issues discussed during INC-2 was the need to balance the interests of nations benefiting from increased plastic production with those bearing a disproportionate burden of pollution. The negotiations also highlighted the importance of addressing the entire plastic lifecycle and the potential implications of transitioning away from fossil fuels on the plastics industry.

13. The outcomes of INC-1 and INC-2 set the stage for subsequent negotiations, with the United Nations committing to deliver a legally binding agreement by the end of 2024. This section of the brief will examine the developments that unfolded during INC-3 and INC-4, providing an update on the progress made towards establishing a comprehensive global framework to combat plastic pollution.

B. Deliberations at the Sixty-First Annual Session of AALCO (16-20 October 2023, Bali, Republic of Indonesia)

14. **Mr. Jun Yamada, Deputy Secretary-General of AALCO**, addressed the critical issue of plastic pollution, emphasising the importance of the Global Plastic Treaty. He highlighted that plastic pollution is a global menace affecting even the most remote areas of the world, necessitating a cohesive international response. He referred to the Secretariat's brief on the topic (Document AALCO/61/BALI/2023/SD/S10), which provided a detailed exploration of the treaty's implications, challenges, and the significant role Afro-Asian nations can play in this global initiative.

⁶ 'The Beginning of the End for Plastics Pollution?' (UNDP) (2024) <<https://www.undp.org/blog/beginning-end-plastics-pollution>> accessed 21 July 2024

15. **The Delegate of the Republic of India** expressed support for eliminating single-use plastic products pollution, including banning products with low utility and high littering potential. The delegate informed that India has notified guidelines on Extended Producers Responsibility for plastic packaging and banned identified single-use plastic items. The delegate stated that India had piloted a resolution on addressing single-use plastic product pollution at UNEA-4 in 2019, bringing global focus to the issue. The delegate expressed hope that AALCO Member States would participate in the upcoming INC meeting in Nairobi to negotiate the legally binding instrument without compromising developing countries' interests.

16. **The Delegate of the Islamic Republic of Iran** underscored the urgent need to strengthen global coordination, cooperation, and governance to move towards a circular economy through efficient management, reuse and recycling of plastic waste. The delegate emphasised the importance of international cooperation to facilitate unimpeded access for developing nations to adequate finance, environmentally sound technologies, capacity-building, and scientific and technical support. The delegate expressed support for the efforts of UNEP in convening the INC meetings to develop a balanced, legally binding instrument on plastic pollution.

17. **The Delegate of Malaysia** fully supported the efforts and development of the proposed Plastic Treaty as the global instrument to address plastic pollution challenges. The delegate stated it was important to have a comprehensive approach and mechanism to reduce plastic pollution, including in the marine environment. The delegate noted the proposed Plastic Treaty's connection to the Sustainable Development Goals, particularly regarding oceans and marine resources.

18. **The Delegate of the Republic of Indonesia** emphasised Indonesia's strong commitment to addressing plastic pollution, aligning with national policies such as the National Policy and Strategy for Solid Waste Management and the National Plan of Action for Combating Marine Litter. The delegate highlighted the importance of the zero-draft of the international legally binding instrument on plastic pollution, hoping it would serve as a solid basis for negotiations at the upcoming INC-3 in Nairobi. Critical issues identified for negotiation included the definition of plastic pollution, the scope of the full life cycle of plastics, and the means of implementation.

Indonesia stressed the need for a holistic approach, accountability, waste hierarchy, and a circular economy to tackle plastic pollution effectively.

19. **The Delegate of the Republic of the Union of Myanmar** acknowledged the significance of sustainable development and the need to balance economic growth with environmental protection. The delegate emphasised the importance of addressing marine pollution, including plastic waste, to protect coastal and marine ecosystems. Myanmar supported international cooperation and the development of a legally binding instrument on plastic pollution, recognising the need for a collective global effort to mitigate the adverse impacts of plastic waste on the environment and human health.

20. **The Delegate of the Federal Democratic Republic of Nepal** expressed support for the UNEA Resolution on ending plastic pollution and the establishment of an international legally binding instrument. The delegate highlighted Nepal's efforts to ban the production, import, and use of plastic thinner than 40 microns to combat plastic pollution. Nepal emphasised the importance of international cooperation and the principle of Common But Differentiated Responsibilities in addressing plastic pollution, urging the INC to develop a comprehensive instrument within the mandated timeframe.

21. **The Delegate of the Sultanate of Oman** stressed the urgency of addressing plastic pollution, highlighting its detrimental effects on the environment and human health. The delegate supported the development of an international legally binding instrument on plastic pollution and urged all Member States to participate in the negotiations actively. Oman emphasized the need for international cooperation and coordination to tackle plastic pollution and achieve sustainable development goals effectively.

22. **The Delegate of the Kingdom of Bahrain** highlighted the Kingdom's commitment to addressing plastic pollution, highlighting the importance of waste management and reducing the effects of plastic waste. The delegate stressed the necessity of creating opportunities to reuse plastic instead of disposing of it and highlighted the role of community participation in reducing plastic

pollution. Bahrain supports the development of an international legally binding instrument on plastic pollution and calls for enhanced environmental cooperation to mitigate pollution.

23. **The Delegate of Japan** reaffirmed Japan's active role in combating plastic pollution, citing the “Osaka Blue Ocean Vision” and commitments made at the G7 Hiroshima Summit to reduce additional plastic pollution to zero by 2040. The delegate emphasised the need for a comprehensive system promoting plastic circularity throughout its life cycle, including recycling, reuse, and sound waste management. Japan supports the zero draft of the international legally binding instrument but expressed concerns about strict obligations on production volume and chemical prohibitions, advocating for a balanced and effective framework.

24. **The Delegate of the Socialist Republic of Viet Nam** commended the AALCO Secretariat for its comprehensive analysis of the negotiation process for the international legally binding instrument on plastic pollution. The delegate emphasised Vietnam’s commitment to developing a green and circular economy and highlighted the country's proactive stance in addressing plastic pollution. Vietnam supports the development of the legally binding instrument and calls for international cooperation to provide financial and technological support to developing countries.

25. **The Delegate of the People’s Republic of China** emphasised the dual role of plastic as both a fundamental material and a source of pollution, advocating for a balanced approach in the international legally binding instrument. The delegate stressed the importance of focusing on plastic waste management and promoting sustainable production and consumption. China supports Principle of Common But Differentiated Responsibilities (CBDR) and calls for developed countries to provide financial, technological, and capacity-building support to developing countries.

C. The Third Session of the Intergovernmental Negotiating Committee (INC-3)⁷

26. The third session of the Intergovernmental Negotiating Committee (INC-3) to develop an international legally binding instrument (ILBI) on plastic pollution achieved limited success in the global effort to address the plastic pollution crisis. Held from November 13-19, 2023, at the UN Environment Programme (UNEP) headquarters in Nairobi, Kenya, INC-3 brought together over 1,500 participants, including representatives from governments, academia, civil society organizations, private sector entities, UN entities, and international organizations.

27. One of the significant outcomes of INC-3 was the broad support for measures to eliminate toxic chemicals from plastics. Over 130 countries endorsed a proposal by Switzerland and Uruguay to address chemicals and polymers of concern. This proposal aimed to establish national standards towards eliminating harmful substances, with calls for globally harmonized requirements and criteria based on strong scientific evidence and data.

1. Deliberations at INC-3

28. A critical issue discussed during INC-3 was the need to balance the interests of nations benefiting from increased plastic production with those bearing a disproportionate burden of pollution. The negotiations highlighted the importance of addressing the entire plastic lifecycle, including production and waste management. However, there was limited support for measures to reduce overall plastic production, with debates centred on the scope of the treaty and the extent to which it should regulate upstream (production) versus downstream (waste management) measures.

29. INC-3 also saw significant legal and procedural developments. Delegates agreed on a mandate for the preparation of a revised Zero Draft⁸, based on the compilations of submissions by delegations throughout the week. However, delegates were unable to agree on a mandate for intersessional work to be done in preparation for INC-4.

⁷ 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 Third Session, UNEP/PP/INC.3/5

⁸ UNEP/PP/INC.4/3

2. Key Challenges and Contentious Issues

30. The varying interpretations of UNEA resolution 5/14 on the “full lifecycle of plastic” emerged as a key challenge during INC-3. Some countries favoured measures addressing plastic production, while others focused on downstream measures to eliminate plastic waste. The influence of the petrochemical industry and plastic-producing countries posed challenges to reaching consensus on binding targets for reducing plastic production and consumption.

31. Another contentious issue was whether to include provisions on primary plastic polymers (PPPs).⁹ Some delegations strongly supported mandatory measures to regulate PPPs, while others opposed their inclusion, asserting it goes beyond the scope of the resolution. This divergence reflects the competing interests of countries benefiting from plastic production and those bearing the burden of plastic pollution.

3. Progress on Specific Treaty Elements

32. Despite these challenges, INC-3 made progress on several specific elements of the proposed treaty:

Fishing gear regulations: Delegates discussed the need for comprehensive regulations on fishing gear throughout its lifecycle, recognizing the significant contribution of abandoned, lost, or otherwise discarded fishing gear (ALDFG) to marine plastic pollution. There was considerable debate on including provisions for chemicals of concern and intentionally added microplastics, with many countries supporting strong controls based on scientific evidence.

Plastic production standards: Discussions on plastic production standards highlighted the need for global harmonization of regulatory approaches. While there was limited support for measures to reduce overall plastic production, delegates recognized the importance of addressing

⁹ See Baztan J and others, 'Primary plastic polymers: Urgently needed upstream reduction' (2024) 2 Cambridge Prisms: Plastics e7 <<https://doi.org/10.1017/plc.2024.8>> accessed 23 July 2024

the design, composition, and performance of plastic products to enhance their safety, durability, reusability, and recyclability. Proposals for extended producer responsibility (EPR) schemes were also considered, with many countries advocating for a globally harmonized system to establish producer responsibility and stimulate secondary markets.

Chemicals and polymers of concern: There was substantial debate on including provisions for chemicals of concern and intentionally added microplastics. Many countries supported establishing lists of chemicals and polymers of concern to be regulated or banned, based on scientific evidence. Some proposed criteria for identifying such substances, as well as initial proposals for chemicals to be included. However, others preferred to delete this provision, arguing it went beyond the mandate of UNEA resolution 5/14.¹⁰

33. Further, stakeholder engagement and transparency were recurring themes throughout INC-3.¹¹ There were calls for action against conflicts of interest in the negotiations, emphasizing the need for a transparent and inclusive process. Delegates discussed the role of civil society and scientists in the negotiation process, recognizing their contributions to providing scientific evidence and advocating for ambitious measures to address plastic pollution. Concerns were also raised about the influence of industry lobbyists on the negotiations. The presence of nearly 200 fossil fuel lobbyists at INC-3, a 37% increase from previous sessions, underscored the need for robust conflict-of-interest policies to ensure that the treaty negotiations are not unduly influenced by vested interests.¹²

¹⁰ UNGA ‘End plastic pollution: towards an international legally binding instrument’ (2 March 2022) UN Doc A/EA.5/RES.14 <<https://digitallibrary.un.org/record/3999257?ln=en>> accessed 21 July 2024

¹¹ See INC-3 ‘Summary Report 26 November – 2 December 2022’ (IISD Earth Negotiations Bulletin) (2023) <<https://enb.iisd.org/plastic-pollution-marine-environment-negotiating-committee-inc1-summary>> accessed 21 July 2024

¹² ‘Fossil Fuel Lobbyists Outnumber National Delegations, Scientists, and Indigenous Peoples at Plastics Treaty Negotiations - Centre for International Environmental Law’ (Centre for International Environmental Law) 14 May 2024) <<https://www.ciel.org/news/fossil-fuel-and-chemical-industry-influence-inc4/>> accessed 21 July 2024

D. The Fourth Session of the Intergovernmental Negotiating Committee (INC-4) ¹³

34. The fourth session of the Intergovernmental Negotiating Committee (INC-4) to develop an international legally binding instrument (ILBI) on plastic pollution, including in the marine environment, took place from April 23-29, 2024 in Ottawa, Canada. Over 2500 participants representing governments, academia, civil society, the private sector and international organizations convened to continue negotiations on the future global plastics treaty, working off of a Revised Draft Text compiled after INC-3.

35. While some areas of convergence emerged, such as on plastic waste management and just transition, sharp divergences persisted on key issues like addressing primary plastic polymers, chemicals and polymers of concern, and linkages to existing processes. Other contentious topics included financing, extended producer responsibility, and critically, the scope of the agreement. At the conclusion of INC-4, delegates agreed to use a compilation of their work from the session as the basis for negotiations at INC-5 in November 2024.

1. Deliberations at INC-4

Delegates worked in five Subgroups throughout the seven-day meeting to negotiate the various elements of the Revised Draft Text. For the first time, countries shared distinct positions on their expectations for the plastics treaty.

36. In the Subgroup discussions, delegates conducted first readings of their assigned sections, validated streamlined texts prepared by the Co-Facilitators, and in some cases began line-by-line negotiations, proposing brackets and new text. The Subgroups reported back to two overarching Contact Groups, which then reported to the INC-4 plenary on the progress made and outcomes of the Subgroup work.

¹³ 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 Fourth Session, UNEP/PP/INC.4/5

2. Key Challenges and Contentious Issues

37. The scope of the future agreement proved to be the most divisive issue at INC-4. Perspectives varied on what the “full lifecycle” of plastics entails and whether plastic production should be addressed. Some pushed for provisions on primary plastic polymers and avoidable plastic products, while others opposed their inclusion, asserting it goes beyond the mandate of the authorizing UNEA resolution.

38. Another major point of contention related to whether the treaty should include mandatory global provisions or voluntary national measures on issues like regulating chemicals and polymers of concern and product design and restrictions. Financing was also hotly debated, with some supporting a new dedicated multilateral fund and others favouring using existing mechanisms like the Global Environment Facility. –Views also diverged on including provisions for extended producer responsibility. Some developing countries raised concerns about restrictions on fishing gear across its lifecycle impacting livelihoods. How to address the significant transboundary nature of plastic pollution and waste trade while respecting national circumstances was an additional challenge.¹⁴

3. Legal and Procedural Developments

39. At INC-4, delegates agreed to establish a legal drafting group composed of legal experts nominated by Member States and two Co-Chairs appointed by the INC. The legal group will begin its work at INC-5 to ensure the legal clarity and coherence of the new plastics instrument.

Regarding the way forward, the Committee decided that the five non-papers with the outcomes from the Subgroups would be compiled by the Secretariat, with standardized formatting and correction of typographical errors but no substantive changes, to serve as the starting point for negotiations at INC-5.

¹⁴ ‘IISD, “4th Session of the Intergovernmental Negotiating Committee to Develop an International Legally Binding Instrument on Plastic Pollution, including in the Marine Environment (INC-4)” (23-29 April 2024) <<https://enb.iisd.org/plastic-pollution-marine-environment-negotiating-committee-inc4-summary>> accessed 23 July 2024.

40. A major procedural discussion centred around establishing intersessional work to help advance negotiations before INC-5. After extensive consultations, delegates agreed to create two expert working groups. One will analyse potential sources and means that could be mobilized for treaty implementation, including options for a financial mechanism. The other will identify and analyse criteria and approaches related to chemicals and products of concern and product design for recycling and reuse. The outcomes will be considered at INC-5 without prejudice to countries' positions.

4. Progress on Specific Treaty Elements

41. While INC-4 highlighted the divergent visions countries have for the plastics treaty, it also allowed for sharing rationales behind positions that could help with finding convergence. Some potential “low-hanging fruit” that emerged include provisions on plastic waste management, national action plans, and just transition elements.

42. Delegates made progress on these issues along with transparency and information exchange. However, on most other elements, from objectives and scope to control measures and means of implementation, a wide variety of views and options remain on the table, with many square brackets in the text signalling areas still to be negotiated. INC-4 marked a transition from initial discussions to more detailed negotiations, serving as the first opportunity for countries to clearly articulate their positions and expectations. Although challenging, it moved the process closer to the contours of an eventual agreement. However, the path ahead remains arduous, with major compromises needed to craft a treaty that is both ambitious and practical.

43. The next session, INC-5, is scheduled to take place from November 25 to December 1, 2024, in Busan, South Korea.¹⁵ Delegates will continue to build on the progress made at INC-4, focusing on refining the Zero Draft and addressing unresolved issues. In preparation for INC-5,

¹⁵ ‘Fifth Session’ (UNEP) (2024) <<https://www.unep.org/inc-plastic-pollution/session-5>> accessed 22 July 2024

the Secretariat will compile a single revised draft text by December 31, 2023, standardizing the formatting and correcting typographical errors without making substantive changes. This revised draft will serve as the basis for textual negotiations at INC-5, with the goal of reaching consensus on key elements of the treaty.

44. With only one scheduled INC session remaining, many are questioning whether an agreement can be reached by the end of 2024 as planned. The intersessional work will be vital to help build understanding and propose solutions, but countries are not bound by its outcomes. Finding consensus on the treaty's core objectives, obligations, and control measures will be critical. While the level of ambition remains to be determined, there is still potential and hope that the instrument can meaningfully address plastic pollution and its impacts. INC-4 reinforced that countries must cooperate and make concessions to achieve an effective, equitable plastics treaty and that the hard work is only beginning. The road to Busan and beyond will require flexibility, creativity and a collective vision to end the plastic pollution crisis.

E. Comments and Suggestions by the AALCO Secretariat

45. The progress made during the third and fourth sessions of the Intergovernmental Negotiating Committee (INC-3 and INC-4) towards developing an international legally binding instrument (ILBI) on plastic pollution is commendable. The AALCO Secretariat acknowledges the significant strides taken and offers the following comments and suggestions to further enhance the negotiation process and ensure the treaty's effectiveness.

46. The discussions at INC-3 and INC-4 highlighted the ongoing debate between binding and voluntary measures. The AALCO Secretariat emphasizes the importance of achieving a balanced approach that incorporates both binding commitments and voluntary actions. This balance is crucial to accommodate the diverse capacities and circumstances of Member States while ensuring robust and enforceable measures to combat plastic pollution. The Secretariat recommends that the treaty include clear, legally binding targets complemented by flexible, voluntary guidelines to allow for iterative enhancements and adaptive management.

47. The establishment of *ad hoc* intersessional open-ended expert groups at INC-4 to advance work on chemicals of concern and financial mechanisms is a positive development. The AALCO Secretariat suggests that these groups be provided with clear mandates and sufficient resources to conduct thorough analyses and provide actionable recommendations. Additionally, the Secretariat encourages the inclusion of technical experts from diverse fields, including environmental science, economics, and public health, to ensure that the treaty's provisions are grounded in the best available science and practice.

48. One of the key challenges identified during INC-3 and INC-4 is the varying interpretations of addressing the “full lifecycle of plastics.” The AALCO Secretariat underscores the need for a comprehensive approach that encompasses upstream measures (such as production limits and design standards) and downstream measures (such as waste management and recycling). The Secretariat recommends that the treaty include specific provisions to reduce plastic production, promote sustainable product design, and enhance waste management infrastructure. This holistic approach is essential to effectively mitigate plastic pollution and its environmental and health impacts.

49. The discussions on financial mechanisms at INC-4 revealed differing views on the establishment of a dedicated fund versus utilizing existing financial structures. The Secretariat suggests exploring a hybrid approach that leverages both new and existing financial mechanisms to mobilize resources effectively. Additionally, the Secretariat emphasizes the importance of capacity building and technology transfer, particularly for developing countries. Ensuring access to financial resources, technical assistance, and capacity-building programs is vital for the successful implementation of the treaty's provisions.

50. The increased stakeholder engagement and transparency initiatives at INC-4, including the Plastic Action Zone (PAZ) and partnerships day, were well-received. The AALCO Secretariat encourages continued efforts to enhance inclusivity and transparency in the negotiation process. This includes ensuring meaningful participation from civil society, Indigenous Peoples, and frontline communities affected by plastic pollution. The Secretariat also recommends the adoption

of robust conflict-of-interest policies to prevent undue influence from industry lobbyists and ensure that the treaty negotiations prioritize environmental and public health objectives.

51. As the negotiations progress towards INC-5 and the eventual adoption of the ILBI, the Secretariat urges Member States to maintain a spirit of cooperation and ambition. The Secretariat remains committed to supporting AALCO Member States in their work on the development of a comprehensive, effective, and equitable global framework to combat plastic pollution. By addressing the full lifecycle of plastics, balancing binding and voluntary measures, and ensuring robust financial and technical support, the treaty can achieve its goal of protecting human health and the environment from the pervasive threat of plastic pollution.

IV. INTERNATIONAL LEGAL REGIME ON CLIMATE CHANGE

A. Background

52. The United Nations Framework Convention on Climate Change, 1992 (UNFCCC) and its Kyoto Protocol of 1997, and the Paris Agreement of 2015 (hereinafter referred to as “the UNFCCC Regime”) constitutes the core of international climate change law. The UNFCCC Regime enjoys near universal ratification.¹⁶ 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.”¹⁷ The overarching goal of the Paris Agreement is to hold “the increase in the global average temperature to well below 2°C above pre-industrial levels”¹⁸ and pursue efforts “to limit the temperature increase to 1.5°C above pre-industrial levels”.¹⁹ The Paris Agreement brings all nations together to combat climate change and adapt to its effects. It works on a five-year cycle of increasingly ambitious climate action. Since 2020, countries have been submitting their national climate action plans, known

¹⁶ UNFCCC, Kyoto Protocol and Paris Agreement has been ratified by 198, 192 and 195 Parties respectively. This Information is drawn from Multilateral Treaties Deposited with the Secretary-General: https://treaties.un.org/pages/ParticipationStatus.aspx?clang=_en accessed on 23 July 2024.

¹⁷ Article 2 of the UNFCCC.

¹⁸ Article 2, Paris Agreement, 2015.

¹⁹ Ibid.

as Nationally Determined Contributions (NDCs). Each successive NDC is meant to reflect an increasingly higher degree of ambition compared to the previous version.

53. 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 July 2024, twenty-eight COP meetings, eighteen CMP meetings and five CMA meetings have taken place.

54. The present Report seeks to place for consideration the salient aspects of the deliberations on the topic of climate change at the Sixty-First Annual Session of AALCO; the key decisions adopted by the Dubai Climate Change Conference (30 November- 13 December 2023) and the ongoing momentum for 2024 UN Climate Change Conference scheduled to take place from 11-22 November 2024 at Baku, Azerbaijan. Finally, it provides Secretariat comments and observations.

B. Deliberations at the Sixty-First Annual Session of AALCO (16-20 October 2023, Bali, Republic of Indonesia)²⁰

55. The topic was introduced by Mr. Jun Yamada, Deputy Secretary-General of AALCO. He highlighted that climate change was a significant global environmental challenge. He emphasized upon the importance of international cooperation for combating climate change, underscoring the need to blend mitigation strategies with adaptive solutions. Mr. Yamada stressed that tackling climate change intersects with socio-economic development, technological advancements, and cultural preservation.

56. **The Delegate of the Republic of India** emphasized that climate change was the gravest global challenge, impacting livelihoods, food production, and social well-being. The delegate stated that India prioritised climate action despite significant developmental challenges. The

²⁰ The salient aspects of the deliberations at the AALCO's Sixty-First Annual Session is drawn from AALCO, Verbatim Record of Discussions, AALCO/61/BALI/2023/VR, pp. 171-192.

delegate informed that his country has made substantial progress in clean and renewable energy, energy efficiency, afforestation, and biodiversity, meeting its voluntary target of a 21% reduction in emissions intensity by 2020 and is on track for a 35% reduction by 2030. The delegate stressed that for achieving its climate goals his country required financial support, low-carbon technology transfer, and capacity-building as outlined in the UNFCCC and Paris Agreement. The delegate expressed concern over the unmet commitment by certain countries to mobilize USD 100 billion annually for climate finance and called for a consensus on climate finance definition at COP28. The delegate mentioned that during its G-20 Presidency, his country had promised to seek viable solutions for the global climate crisis.

57. **The Delegate of the Islamic Republic of Iran** stated that climate change was an unprecedented challenge of civilization~~at~~, and the well-being of present and future generations of humankind depends on our immediate and urgent response to it. Taking into account the UNFCCC regime as the expression of determination to address decisively the threat posed by climate change, all countries, particularly the developed nations, ought to bridge the significant gap in emission reduction and to provide means of implementation for developing countries to get the world back on track for the 2 degrees Celsius target. The delegate mentioned that it was imperative to notice that UNFCCC and the Paris Agreement needed to be implemented in a manner to reflect equity and the principle of Common But Differentiated Responsibilities and respective capabilities in light of different national circumstances. The delegate advocated for urgent enhancement of measures and support, including finance, capacity building and technology transfer that were necessary to improve the ability of states, particularly developing countries, to respond to adverse climate change effects through multidisciplinary and holistic approaches. These included addressing loss and damage, especially in vulnerable states.

58. **The Delegate of Malaysia** stated that climate change was a pressing global threat demanding urgent action and emphasised upon the need for an equitable approach, considering the principle of Common But Differentiated Responsibilities and respective capabilities. The delegate stated that his country anticipated COP 28 as a crucial opportunity to advance the Paris Agreement goals.

59. **The Delegate of the Republic of Indonesia** viewed the Dubai Climate Change Conference (COP 28) as a critical juncture to address climate challenges, emphasising the importance of the first Global Stocktake, just transition, and climate finance. The Delegate underscored that the principles of equity and common but differentiated responsibilities in implementing the Global Stocktake and called for adequate climate finance to support decarbonization efforts in developing countries without compromising poverty alleviation. The delegate informed that his country was actively involved in mitigation and adaptation work programs and sought to operationalise funding arrangements for loss and damage, advocating for new, additional, and predictable finance delivered through grant-based mechanisms. His country expected that the Transitional Committee would clearly define the operationalisation of loss and damage funding, including the role of international financial institutions, particularly the goal of mobilising USD 100 billion annually for developing countries, and supported setting a new collective quantified goal on climate finance.

60. **The Delegate of the Republic of the Union of Myanmar** emphasised the importance of sustainable development and developing climate change adaptation strategies, particularly focusing on the marine environment and the blue economy to protect coastal communities and ecosystems. He highlighted the critical role of oceans, seas, and coastal areas in sustaining livelihoods and ensuring food security. The delegate mentioned the adverse impacts of climate change, such as rising sea levels and extreme weather events, stressing the need for a balanced and sustainable approach to protect marine resources and support coastal communities while addressing these climate-related challenges.

61. **The Delegate of the Federal Democratic Republic of Nepal** highlighted the severe impacts of climate change on the Himalayan region, emphasising that rising temperatures, receding glaciers, decreasing snowfall, and melting permafrost are leading to increased extreme climate events. The delegate highlighted that these changes were causing significant economic, ecological, and human losses, with around 80% of Nepal's population at risk from climate-induced hazards, making the country highly vulnerable to climate change. In response to these challenges, his country has prioritised climate change issues by implementing various policy, legislative, and programmatic initiatives. The delegate informed that Nepal was committed to reducing carbon emissions to net zero by 2045, as outlined in its Nationally Determined Contributions (NDC). His

country advocated for the principle of Common But Differentiated Responsibilities, equity, and respective capabilities to be central to the climate agenda to ensure climate justice. He also called for mobilising global resources, including finance, technology, and experiences, to address climate change challenges and achieve the Sustainable Development Goals (SDGs).

62. **The Delegate of the Sultanate of Oman** emphasised the significant challenge that climate change posed to achieving SDGs. He informed that his country has established the Environmental Authority to assess vulnerabilities and risks associated with climate change and to intensify efforts in adaptation and mitigation at both national and international levels. His country's commitment to addressing climate change was reflected by being an early signatory to the UNFCCC regime. It had also enacted national legislation to support these commitments. Oman aimed to achieve carbon neutrality by 2050, aligning with the Paris Agreement's goals to limit the rise in global temperature.

63. **The Delegate of the Kingdom of Bahrain** highlighted the severe climate challenges, such as changing weather patterns and rising sea levels, which threatened food production and increased flood risks. It had dedicated national efforts to address these challenges, including assessing the impact of sea level rise on coastal areas and developing long-term plans to protect priority areas while ensuring energy and water security. The delegate emphasized the importance of financial and technological support for developing island countries in tackling climate challenges, adhering to the principle of Common But Differentiated Responsibilities. Additionally, Bahrain had joined major global climate initiatives and supported Saudi Arabia's "Green Middle East Initiative."

64. **The Delegate of Japan** highlighted Japan's commitment to addressing climate change, emphasising the outcomes of COP27, including the Sharm el-Sheikh Implementation Plan and the Mitigation Work Programme that aimed to enhance mitigation measures towards the Paris Agreement's 1.5-degree Celsius goal and address adaptation, loss and damage. The delegate emphasised upon the importance of promoting global reductions in greenhouse gas (GHG) emissions and supporting vulnerable developing countries; the first Global Stocktake and the necessity for all parties to enhance their mitigation ambitions to align with the 1.5°C goal. He stated that Japan believed that the Paris Agreement required all parties to take climate actions based

on their national circumstances and capabilities and that current climate actions should be guided by the Paris Agreement's principles. He emphasised that the emissions situation has significantly changed since the UNFCCC entered into force in 1992 and many non-Annex I countries have substantially increased their emissions, making it essential for all countries to engage actively in climate actions. He closed by stating that it was inappropriate to bring up the CBDR of the UNFCCC, which does not represent the reality of the current emissions situation.

65. **The Delegate of the Socialist Republic of Vietnam** highlighted Vietnam's strong commitment to addressing climate change, noting its significant impact on Vietnam as a developing nation. His country prioritized multilateral processes and the development of a green and circular economy. Vietnam was dedicated to achieving its pledge for net-zero emissions by 2050 and urged all nations to implement their COP commitments, provide financial and technological support, enhance resilience, mitigate losses, and ensure an equitable transition to sustainable energy solutions. He also emphasized the importance of recent requests for climate change-focused Advisory Opinions from international courts and tribunals. These included a request from the UN General Assembly, led by Vanuatu and other small island states, for an International Court of Justice (ICJ) Advisory Opinion, and a parallel ITLOS advisory opinion initiated by the Commission of Small Island States. His country believed that these legal opinions would establish prerequisites for more robust implementation of commitments to reduce greenhouse gas emissions. His country advocated for adherence to the principle of Common But Differentiated Responsibilities, ensuring countries can engage in emissions reduction efforts fairly and appropriately, reflecting their unique conditions and capacities.

66. **The Delegate of the People's Republic of China** stated that the international climate change law played the primary role of addressing climate change and its adverse effects, with the UNFCCC regime at its core. Based on the CBDR and other principles, the UNFCCC regime was the specialised law that regulates the rights and obligations of States on combating climate change. He emphasised that presently, the fundamental cause of the problem in global climate governance was that developed countries have failed to face up to their historical responsibility for GHG emissions, and have failed to fully fulfil their obligations under the UNFCCC regime to take the lead in emission reduction and provide finance, technology and capacity building to developing

countries. Consequently, substantive progress had not been made so far on the issue of concern to developing countries, including adaptation, finance and technology.

67. The delegate highlighted the UN General Assembly resolution requesting an ICJ advisory opinion on states' obligations to protect the climate system, noting that while not legally binding, it would guide international law's interpretation and application. He also mentioned about his country's plan to host a side event with AALCO on the theme of "International Law in Global Climate Governance: Implementation and Outlook" in the margins of the International Law Week of the 78th session of the UN General Assembly on 26 October 2023 aiming to strengthen coordination among developing countries on climate change legal positions and advocate for a fair and equitable global climate governance system. The participation of developing countries in this side event would strengthen the coordination of their legal positions on climate change, effectively influence the evolution of climate change legal system, and promote the building of a fair, equitable and win-win global climate governance system.

68. **The Delegate of the People's Republic of Bangladesh** highlighted the need for global action on climate change, highlighting its disproportionate impact on vulnerable countries like Bangladesh despite their minimal contributions to global emissions. He stressed upon the need for integration of environmental protection into sustainable development efforts, aligning with UN SDGs. His country called for intensified international cooperation on climate mitigation and adaptation, emphasising the importance of fulfilling financial commitments under agreements like the Paris Agreement. The delegate urged for the establishment of a Loss and Damage Fund to support climate-induced migration and emphasised the critical role of technology transfer from developed to vulnerable countries in achieving low-carbon pathways.

69. **The Delegate of the Republic of Kenya** informed that his country had hosted the Africa Climate Summit in September 2023, where commitments were made across sectors to advance towards Net Zero emissions and enhance climate finance and adaptation efforts. Kenya had pledged to achieve Net Zero emissions by 2050 and launched initiatives like the Financing Locally-led Climate Action Program and a Green Hydrogen strategy.

C. Dubai Climate Change Conference (30 November-13 December 2023, Dubai, United Arab Emirates)

70. The United Arab Emirates (UAE) hosted the Dubai Climate Change Conference from 30 November to 13 December 2023 at Dubai. The Conference included the twenty-eighth meeting of the Conference of the Parties (COP 28) to the UNFCCC, the eighteenth meeting of the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (CMP 18), the fifth session of the Conference of Parties serving as the Meeting of Parties to the Paris Agreement (CMA 5) and the 59th sessions of the Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation.²¹ The COP28 was the largest climate summit in history, with over 100,000 accredited participants. This included approximately 24,500 delegates representing parties to the Convention, 27,000 policy experts, academics and representatives of fossil fuel producers, and 400,000 people granted access to the surrounding “green zone” for activists and businesses. Some of the key outcomes of this meeting is reported below.

71. **The World Climate Action Summit:** The World Climate Action Summit, held with the first part of the high-level segment, took place on 1 December, with the participation of Heads of State and Government. At the joint 3rd meeting of COP 28, CMP 18 and CMA 5, on 1 December, the first part of the joint high-level segment was opened by the President. The second part of the high-level segment was held on 9 December. During the high-level segment, 177 national statements were delivered by 178 persons: 116 by Heads of State and Government, 5 by a Vice-President, 2 by a Deputy Prime Minister and 55 by ministers or representatives of Parties. Of the 177 statements, 3 were delivered on behalf of groups of Parties. Eight Parties requested to have their statements posted on the UNFCCC website in lieu of oral delivery.²²

²¹ This part of the Report is prepared on the basis of UNFCCC Secretariat Press Releases: “COP 28 Agreement Signals “Beginning the End” of the Fossil Fuel Era, 13 December 2023; the “Summary of the 2023 Dubai Climate Change Conference: 30 November - 13 December 2023, *Earth Negotiations Bulletin*, vol. 12, no. 842 dated 18 December 2023, available online at bit.ly/enb_cop28. The Official report is contained in UNFCCC, Report of the Conference of the Parties on its twenty-eighth session, held in Dubai from 30 November to 13 December 2023, UN Doc. FCCC/CP/2023/11 and its Addendums 1 & 2, available online at: <https://unfccc.int/documents?f%5B0%5D=category%3AOfficial%20documents&f%5B1%5D=conference%3A4540>

²² UNFCCC, COP28 Report, Ibid, pp. 21-22

72. **The UAE Consensus:** COP 28 delivered “The UAE Consensus”, which COP 28 President Dr. Sultan Al Jaber has described it as the defining point of reference for global climate ambition and sustainable development.²³ It is considered to be the most ambitious and comprehensive set of negotiated outcomes to come out of the UNFCCC process since COP 21 (Paris, 2015). The UAE Consensus includes a commitment from all parties to transition away from fossil fuels for the first time in COP history. It sets time-bound targets to expand renewable energy with a goal to triple global capacity, end deforestation, and the objective to double energy capacity by 2030. The UAE Consensus also successfully operationalised and began financing a fund to address Loss and Damage for the first time. It also established a Youth Climate Champion for all future COPs. It also called for all industries to leverage their technology, talent and balance sheets to decarbonize, and it established climate finance as a critical success factor to achieve climate objectives.

73. **Outcome of the First Global Stocktake under Paris Agreement:** The Global Stocktake (GST) is a key part of the Paris Agreements ratchet mechanism. It is a collective assessment of efforts and results on all areas of Paris Agreement, i.e., on context and cross-cutting issues, mitigation, adaptation, finance, technology development and transfer, capacity building, loss and damage, and guidance and the way forward. Parties adopted a historic decision on the “Outcome of the first global stocktake”,²⁴ which the Co-chairs (Presidency of COP 28 and the incoming Presidency of COP 29), have described as an “important milestone in the implementation of the Paris Agreement and informs the next round of Nationally Determined Contributions (NDSs), due in early 2025, with a clear direction to travel.”²⁵ The decision calls for intensifying climate action before the end of the decade – with the overarching aim to keep the global temperature limit of 1.5°C within reach. The stocktake recognizes that the science indicates global greenhouse gas emissions need to be cut 43% by 2030, compared to 2019 levels, to limit global warming to 1.5°C. It also notes that the Parties are off track when it comes to meeting their Paris Agreement goals.

²³ “Landmark UAE consensus becomes defining framework for all countries to keep 1.5°C within reach and global implementation, 14 February 2024, accessed online from <https://www.prnewswire.com>.

²⁴ Decision CMA.1/CMA.5, Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its fifth session, held in the United Arab Emirates from 30 November to 13 December 2023, Part two: Action taken by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its fifth session, UN Doc. FCCC/PA/CMA/2023/16/Add.1, pp. 2-21.

²⁵ Multilateral consultation with Chairs of negotiating groups and heads of delegations on Taking stock of the outcomes of COP 28, the UAE consensus and way forward, Co-Chairs’ summary, 21 February 2024, accessed online at: https://unfccc.int/sites/default/files/resource/Co-Chairs_Summary_of_21_Feb_2024_HoDs.pdf.

74. The stocktake calls on Parties to take actions towards achieving, at a global scale, a tripling of renewable energy capacity and doubling energy efficiency improvements by 2030. The list also includes accelerating efforts towards the phase-down of unabated coal power, phasing out inefficient fossil fuel subsidies, and other measures that drive the transition away from fossil fuels in energy systems, in a just, orderly and equitable manner, with developed countries continuing to take the lead. In the short-term, Parties are encouraged to come forward with ambitious, economy-wide emission reduction targets, covering all greenhouse gases, sectors and categories and aligned with the 1.5°C limit in their next round of climate action plans (known as Nationally Determined Contributions) by 2025. The global stocktake is considered the central outcome of COP28 – as it contains every element that was under negotiation and can now be used by countries to develop stronger climate action plans due by 2025.

75. **Operationalising the Loss and Damage Fund:** At COP 28, the Parties reached an agreement on the operationalization of the loss and damage fund and funding arrangements. The decision records that US\$ 792 million has already been pledged to it.²⁶ The COP and CMA, inter alia: approved the Governing Instrument of the fund, as contained in an annex to the decision; decided that the fund will be serviced by a new, dedicated, and independent secretariat, and governed and supervised by a board; decided that arrangements with the fund are to be approved by COP 29 and CMA 6 (November 2024); decided that the board of the fund will be conferred with legal personality and the legal capacity as necessary for discharging its roles and functions, in particular the legal capacity to negotiate, conclude, and enter into a hosting arrangement with the World Bank as interim trustee and host of the fund’s secretariat; invited the World Bank to operationalize the fund as a World Bank-hosted financial intermediary fund for an interim period of four years, starting from the sessions of the COP and CMA at which the board of the fund confirms the conditions referred to in the decision can be met, with the fund to be serviced by a new, dedicated, and independent secretariat hosted by the World Bank. The annexed Governing Instrument of the fund, among others, specifies that the fund’s board will develop and operate a dynamic resource allocation system that will take into account, inter alia: the needs and priorities of particularly vulnerable developing countries; the scale of impacts; safeguards against

²⁶ Decision 5/CMA.5, *ibid.*, pp. 34-51.

overconcentration of support; best available information; cost estimates; and a minimum percentage allocation floor for Least Developed Countries (LDCs) and Small island developing states (SIDS).

76. **Global Goal on Adaptation (GGA):** *Vide* Decision 2/CMA. 5, the negotiators decided to conclude the two-year Glasgow–Sharm el-Sheikh work programme and adopted the framework for the GGA.²⁷ The decision agrees that the purpose of the GGA framework is to guide the achievement of the GGA and the review of overall progress in achieving it with a view to reducing the increasing adverse impacts, risks, and vulnerabilities associated with climate change, as well as to enhance adaptation action and support. The decision further agrees that the GGA framework should guide and strengthen efforts on long-term transformational and incremental adaptation towards reducing vulnerability and enhancing adaptive capacity and resilience; be inclusive in terms of adaptation approaches; and take into account best available science and the worldviews and values of Indigenous Peoples. It urges parties and invites non-party stakeholders to increase ambition and enhance adaptation action and support, in order to accelerate swift action at scale and at all levels, from local to global, in alignment with other global frameworks. The decision recognizes the importance of adaptation finance and the need to accelerate efforts and make it an accessible and simplified process. It urges the developed countries to at least double their collective provision of climate finance for adaptation to developing countries. Further it was decided to launch a two-year work programme on indicators for measuring progress achieved towards the targets.

D. Towards 2024 Baku Climate Change Conference (11-22 November 2024, Baku, Azerbaijan)

77. The annual Climate Change Conference (COP 29, CMP 19 and CMA 6) will meet from 11-22 November 2024 at Baku, Azerbaijan. There was a need to build on the momentum of COP 28 and translate the UAE Consensus and other decisions into tangible action and implementation. The issue of reaching agreement on the new collective quantified goal on climate finance (NCQG) is seen as a priority issue for COP 29. It is expected that the scale and elements of NCQG should

²⁷ Decision 2/CMA. 5, *ibid.*, pp. 22-28.

address and reflect on the needs of developing countries. Furthermore, the delivery of USD 100 billion goal committed by developed country Parties in 2010 in Cancun is still to be achieved. There is seen to be an urgency of significantly scaling up adaptation finance and the need to finalize at COP 29 the modalities of finance related UAE dialogue on implementing the global stocktake outcomes. Furthermore, issues relating to fully operationalizing the loss and damage fund by electing the Board and convening its first meeting is of importance.²⁸

78. Belem in Brazil has confirmed to be the host for COP 30. The launch of “road map to mission 1.5” under the guidance of the Presidencies of COP 28, 29 and 30 (“Troika”). It is hoped that the Troika will serve as giving the desired political momentum to the UNFCCC regime towards higher ambition and concrete implementation at COP 29 and 30.²⁹ It is further hoped that the Troika would inject both pace and stability into the COP process.

E. Comments and Observations of the AALCO Secretariat

79. The issue of climate change poses a serious threat to the survival of humanity, and it effects especially the most vulnerable, peoples and nations. Therefore, the present generation has a responsibility to work towards a sustainable future where those “who come after us can not only survive but thrive.”³⁰ The international legal regime on climate change has made significant progress in recent years, as evidenced by the outcomes of COP 28 in Dubai. The UAE Consensus, which includes a commitment from all parties to transition away from fossil fuels, sets time-bound targets for expanding renewable energy, ending deforestation, and doubling energy capacity by 2030. This marks a crucial step towards aligning global efforts with the Paris Agreement's goal of limiting temperature increase to 1.5°C above pre-industrial levels.

80. The UAE Consensus includes an unprecedented reference to transition away from all fossil fuels in energy systems, in a just orderly and equitable manner to enable the world to reach net

²⁸ Co-Chairs Summary, note 24.

²⁹ Ibid.

³⁰ COP 28: The UAE Consensus, accessed online: <https://cop28.com> UAE consensus

zero emissions by 2050 in keeping with science. It is hoped that the political momentum built at COP 28 would lead to higher ambitions and targets at the forthcoming COP 29 and the parties to the UNFCCC regime will move forward on the issues of climate finance, loss and damage, adaptation, mitigation, just transition, technology, fully operationalizing the instruments under Article 6 of the Paris Agreement and conclude the outstanding work related to Articles 6.2 and 6.4, transparency and engage stakeholders.

81. Further, the operationalisation of the Loss and Damage Fund at COP 28 is a historic outcome, providing much-needed support to vulnerable developing countries facing the devastating impacts of climate change. The Secretariat commends the decision to have the World Bank host the fund and the pledges made by various countries to contribute to its initial capitalization. Moving forward, it is essential to ensure that the fund's board and secretariat maintain independence and integrity, and that resources are allocated equitably, prioritizing the needs of least developed countries and small island developing States.

82. The first Global Stocktake under the Paris Agreement has underscored the urgency of enhancing climate action across mitigation, adaptation, and finance to keep the 1.5°C goal within reach. The Secretariat urges AALCO Member States to submit ambitious, economy-wide emission reduction targets in their next round of Nationally Determined Contributions (NDCs) by 2025, aligned with the 1.5°C limit. Developed countries must also fulfil their obligations under the UNFCCC regime by taking the lead in emission reductions and providing adequate finance, technology transfer, and capacity building to developing countries.

83. As negotiations continue towards COP 29 in Baku, Azerbaijan, reaching an agreement on the new collective quantified goal on climate finance (NCQG) that reflects the needs and priorities of developing countries should be a top priority. The Secretariat emphasizes the importance of mobilizing global resources, including finance, technology, and experiences, to address climate change challenges and achieve the Sustainable Development Goals.

84. The formation of the COP Presidencies Troika (UAE, Azerbaijan, and Brazil) and the launch of the 'Roadmap to Mission 1.5°C' demonstrate a commitment to raising ambition and

enhancing international cooperation. The Secretariat encourages AALCO Member States to actively engage in the high-level political convenings organized by the Troika to assess barriers to NDC development and discuss the support needed to ensure a just transition aligned with the 1.5°C goal.

85. The international legal regime on climate change is at a critical juncture. The outcomes of COP–28 and the momentum generated by the COP Presidencies Troika provide a unique opportunity to accelerate climate action and ensure a fair, equitable, and effective global climate governance system. The Secretariat urges AALCO Member States to actively engage in the ongoing negotiations, advocate for their common interests, and contribute to the collective effort to address the existential threat posed by climate change.

85. Finally, the Secretariat commends the initiative of the UN General Assembly resolution requesting an ICJ advisory opinion on states’ obligations to protect the climate system. While not legally binding, this opinion could provide valuable guidance on the interpretation and application of international law in the context of climate change.

86. To provide direction and facilitate the ongoing work of the Organization on this topic, the Secretariat has prepared a draft resolution for the consideration and potential adoption by the Member States during the Annual Session. (Annex-2)

Recent Developments in International Law on Climate Change

*Explanatory note for additional sub-agenda item
under agenda item “Environment and Sustainable Development”
proposed by Thailand*

Background

1. Climate change is an urgent global challenge that requires collective international effort. The latest Intergovernmental Panel on Climate Change (IPCC) Report, “Climate Change 2023: Synthesis Report” warns that this decade is critical for climate action, with greenhouse gas emissions increasing and widespread adverse damage affecting people and nations across the globe. As part of this effort to tackle climate change, States are turning to international courts and tribunals to articulate international legal obligations.

2. This year, milestone climate change cases are deliberated on by international courts. In May 2024, the International Tribunal for the Law of the Sea (ITLOS) issued an advisory opinion as requested by the Commission on Small Island States on Climate Change and International Law (COSIS) on Climate Change and International Law, which clarified States’ obligations under the UN Convention on the Law of the Sea. Similarly, Colombia and Chile have requested the Inter-American Court of Human Rights (IACtHR) to clarify States’ legal obligations to tackle climate change within the framework of international human rights law. Finally, the International Court of Justice (ICJ) currently has before it a request for an advisory opinion by the UN General Assembly on *Obligations of States with Respect to Climate Change*.

3. Asia and Africa, two of the most populous and diverse continents, face significant and unique challenges related to climate change. As the IPCC report highlights, major adverse impacts of climate change disproportionately affect communities in Africa and Asia. The discussion on recent developments in international law on climate change is therefore particularly relevant for these regions, as they are highly vulnerable to the impacts of climate change. Furthermore, they can play crucial roles in global climate action. This sub-agenda will therefore offer an opportunity to address the specific interests and needs of Asian and African countries, discuss innovative solutions, and foster a more inclusive and effective global climate response.

4. This topic is in line with the mandate of AALCO and its previous discussion on climate change. The fight against climate change is a common concern for all of humanity, and as such exchanging views, experiences and information on its legal implications is in line with Article 1 (b) of the Statutes of AALCO. It should also be noted that, in its 61st session, one of the two focus areas on the agenda item on

Environment and Sustainable Development is climate change. The discussion on this topic will boost regional cooperation, promote coordination for climate justice for the benefit of Asia and Africa, and amplify the two regions' influence in international negotiations.

Selected issues for discussion

5. The deliberations under this sub-agenda may include, *inter alia*, the following points:

a. How AALCO and its Member States can play a leading role in international efforts to combat climate change, including through participation in the requests for advisory opinions before international courts and tribunals.

b. The main challenges and shortcomings in implementing international legal frameworks on climate change, including the United Nations Framework Convention on Climate Change (UNFCCC) and its related agreements, namely the Kyoto Protocol and the Paris Agreement.

c. The possible nexus between international environmental law and climate change law and other areas of international law, including the protection of persons in the event of disasters, sea-level rise, and international human rights law.

d. The impacts of climate change in Asia and Africa, especially with regards to minorities and vulnerable groups.

e. Strategies for risk reduction and management in the context of climate change, focusing on enhancing resilience and preparedness in vulnerable communities.

f. The application of the principle of Common but Differentiated Responsibilities (CBDR) in international climate law.

g. The role of international cooperation in the fight against climate change, including the role of regional initiatives.

Expected outcomes

6. It is envisaged that the discussion on recent developments in international law on climate change will provide a vital platform for addressing the interests of Asian and African countries. By focusing on unique vulnerabilities, developmental needs, and aspirations for justice and equity, this discussion can contribute to more effective and inclusive global climate action. Strengthening international cooperation, supporting finance and technology transfer, and ensuring the participation of all stakeholders are essential steps towards achieving a resilient and sustainable future.

ANNEX - 2

SECRETARIAT'S DRAFT
AALCO/RES/DFT/62/S10
13 SEPTEMBER 2024

ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

The Asian-African Legal Consultative Organization at its Sixty-Second Annual Session,

Having considered the Secretariat Document No. AALCO/62/BANGKOK/2024/SD/S10,

Noting with appreciation the introductory statement of the Secretariat,

Having followed with great interest the deliberations on the item reflecting the views of the Member States on the agenda item “Environment and Sustainable Development”,

Deeply concerned about the growing threat of plastic pollution and its adverse impacts on the environment, human health, and sustainable development,

Welcoming the progress made during the third and fourth sessions of the Intergovernmental Negotiating Committees (INC-3 and INC-4) towards developing an international legally binding instrument on plastic pollution,

Emphasising the importance of achieving a balanced approach in the proposed treaty that incorporates both binding commitments and voluntary actions, while accommodating the diverse capacities and circumstances of Member States,

Recognising the need for robust financial and technical support, particularly for developing countries, to effectively implement the provisions of the future plastics treaty,

Reaffirming that climate change is one of the greatest challenges of our time, requiring strong political will and global cooperation to combat its adverse effects,

Commending the historic outcomes of the Dubai Climate Change Conference (COP 28), including the UAE Consensus, the operationalization of the Loss and Damage Fund, and the conclusion of the first Global Stocktake under the Paris Agreement,

Emphasising the importance of reaching an agreement on the new collective quantified goal on climate finance (NCQG) at the next Climate Change Conference to be held in Baku (COP 29) that reflects the needs and priorities of developing countries,

1. **Encourages** Member States to actively engage in the ongoing negotiations for an international legally binding instrument on plastic pollution, advocating for a balanced, effective, and equitable global framework;
2. **Directs** the Secretariat to continue following the progress of the Intergovernmental Negotiating Committee (INC) and provide updates to Member States on key developments and opportunities for engagement;
3. **Encourages** Member States to actively participate in the negotiations at COP 29 in Baku, Azerbaijan;
4. **Directs** the Secretariat to continue monitoring the progress in the implementation of the Paris Agreement, the Sustainable Development Goals, and other relevant international environmental agreements; and
5. **Decides** to place this item on the provisional agenda of Annual Session as and when required.