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ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION

INTERNATIONAL TRADE AND INVESTMENT LAW

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INTERNATIONAL TRADE AND INVESTMENT LAW

CONTENTS

I. INTRODUCTION

A. Background

1. International Trade Law and International Investment Law have historically been treated as separate branches within international law and were addressed independently in Asian-African Legal Consultative Organization's (AALCO) work program. However, due to their growing interconnection and convergences, the Fifty-Seventh Annual Session of AALCO, held from 8–12 October 2018 in Tokyo, Japan, considered both subjects together in a single general meeting and combined them into one agenda item. This approach encouraged the identification of shared concerns and potential synergies. Since then, "International Trade and Investment Law" has been addressed in a unified Secretariat report and discussed as an agenda item at the Annual Session.

2. To support discussions at the Sixty-Third Annual Session, it is useful to provide a brief overview of AALCO's on-going involvement with these topics, which has been recurring items at the Annual Sessions since 2018.

3. The subject "WTO as a Framework Agreement and Code of Conduct for World Trade" was first introduced to AALCO's agenda at its Thirty-Fourth Annual Session in Doha, Qatar, in 1995—the same year the Uruguay Round negotiations concluded, resulting in the creation of the World Trade Organization (WTO). Since then, this topic has been regularly featured, with discussions covering a range of issues, including the promotion of multilateral trade, adoption of international instruments, and the strengthening of the binding dispute resolution system. The AALCO Secretariat was also tasked with monitoring WTO developments, especially the Dispute Settlement Body (DSB), the Appellate Body, and their reports.

4. AALCO's inter-session work has focused on capacity-building through seminars and conferences, as well as analysis of legal developments by the Secretariat, which were published as Special Studies. For example, in 1998, a two-day seminar on the WTO Dispute Settlement Mechanism and related topics was held in New Delhi, India, in partnership with the Government of India.

5. At the Forty-Second Annual Session in Seoul, Republic of Korea (2003), the Secretariat published a Special Study on "Special and Differential Treatment under WTO Agreements." In February 2010, the Centre for Research and Training (CRT) of the Secretariat held a five-day "Basic Course on the World Trade Organization (WTO)." Building on this, a further training workshop was organized with the Institute for Training and Technical Cooperation (ITTC) and the WTO from 28 March to 1 April 2011 at AALCO Headquarters in New Delhi, covering topics such as the Principles of International Trade Law and WTO, General Agreement on Trade in Services (GATS), and Trade-Related Aspects of Intellectual Property Rights (TRIPS).

6. Additionally, from 14–16 November 2017, AALCO and the Institute of Malaysian and International Studies (IKMAS) jointly organized a WTO training program in Bangi, Malaysia. This served as preparatory training for participants from Member States, AALCO Regional Arbitration Centres, and certain Non-Member States ahead of the 11th WTO Ministerial Conference held in Buenos Aires, Argentina, from 10–13 December 2017.

7. Within Economic and Trade Law Matters, International Investment Law and Agreements were first considered as part of Regional Cooperation within the New International Economic Order (NIEO). At the Twenty-First Annual Session (1980) in Jakarta, Indonesia, a report was presented on Bilateral Investment Treaties (BITs), investment guarantees, and petroleum exports. The Secretariat was then directed to draft Model Investment Agreements based on existing BITs. After review by an Expert Group, the agreements—with three options—were adopted and presented to the AALCO Member States at the Twenty-Fourth Annual Session in Kathmandu, Nepal, in 1985.

8. Interest in International Investment Agreements (IIAs) was renewed when they were discussed under the agenda item "Report on the Work of UNCITRAL and other International Organizations in the field of International Trade Law." At the Fifty-Fourth Annual Session in Beijing, People's Republic of China (2015), issues such as transparency in arbitration, costs and duration, lack of expertise, and restrictive host nation policies were prominent, especially regarding Investor-State Dispute Settlement (ISDS).

9. More recently, the legitimacy and reform of investment arbitration have been discussed under the agenda item "International Trade and Investment Law" at the Fifty-Seventh Annual Session in Tokyo, Japan (2018) and the Fifty-Eighth Annual Session in Dar es Salaam, the United Republic of Tanzania (2019). A seminar on "Reform of the International Investment Regime and Investor State Dispute Settlement (ISDS)", co-hosted by the African Institute of International Law (AIIL) and AALCO, took place in Arusha, the United Republic of Tanzania, from 19–21 November 2018. Participants included AALCO Member States, UN Commission on International Trade Law (UNCITRAL), and other organizations, and the seminar addressed both substantive and procedural reforms to ISDS.

10. Continuing its focus on UNCITRAL's work, particularly ISDS reform, AALCO hosted a public lecture by Ms. Anna Joubin-Bret, Secretary of UNCITRAL, on 20 March 2019 at its Permanent Headquarters in New Delhi. She outlined UNCITRAL's work program, highlighted key issues before Working Group III, and discussed reform proposals from various institutions and stakeholders. The lecture drew a diverse audience, including diplomats, legal professionals, academics, and students.

11. Further the agenda item was included as a non-deliberated item at the Fifty-Ninth Annual Session in Hong Kong SAR, China, in 2021, accompanied by a Secretariat report on recent developments. At the Sixtieth Annual Session in New Delhi (26–28 September 2022), discussions focused on reforming IIAs and the ISDS mechanism, in line with on-going work at UNCITRAL and UN Trade and Development (UNCTAD). Member States shared their experiences with implementing reform proposals and expressed support for continued engagement and collaboration with UNCITRAL and UNCTAD.

12. On 14 September 2023, the AALCO Secretariat welcomed representatives from the UNCITRAL Secretariat and the UNCITRAL Regional Centre for Asia and the Pacific in New Delhi. Ms. Anna Joubin-Bret, Secretary, UNCITRAL delivered a public lecture reviewing UNCITRAL's recent work, including dispute settlement, judicial sale of ships, and cross-border insolvency, as well as Working Group III's ISDS reform efforts. She emphasized the strong cooperation between AALCO and UNCITRAL and expressed support for future joint initiatives.

13. In relation to the private law aspects of the agenda item, AALCO has been engaging with the work of the Hague Conference on Private International Law (HCCH) and the International Organization for the Unification of International Private Law (UNIDROIT). While AALCO has been providing an update on the legal developments on instruments under deliberations in the two organizations, it has also entered into cooperation agreements with them to further collaborate on issues of common interest. While AALCO and HCCH entered into a cooperation agreement on 1 September 2016, more recently the UNIDROIT and AALCO cemented their cooperation through the signing of a Memorandum of Understanding (MoU) on 16 February 2024.

14. The Secretariats of AALCO and the HCCH through joint efforts organized a webinar in 2022 on the Apostille Convention of 1961, which witnessed enthusiastic participation and was followed up with a report of proceedings. Recently on 30 January 2025 the Secretary-General of AALCO and legal staff at the AALCO Secretariat participated in the Seminar on "The 2019 Hague Judgments Convention and UNIDROIT Principles on Digital Assets and Private Law" organized by the Ministry of External Affairs of the Republic of India where representatives of the Secretariats of the HCCH and the UNIDROIT made detailed presentations on the two key instruments.

B. Deliberations at the Sixty-Second Annual Session of AALCO [Bangkok, the Kingdom of Thailand, 9-13 September 2024]

15. The **Secretary-General of AALCO, H.E. Dr. Kamalinne Pinitpuvadol** delivered an introductory statement on the agenda item "International Trade and Investment Law," highlighting its significance as the consolidation of two traditionally separate fields with shared synergies. He recalled that historically, aspects of trade and investment law were addressed separately within AALCO's work program, but since the Fifty-Seventh Annual Session in Tokyo (2018), deliberations have been streamlined under a single agenda item. The document AALCO/62/BANGKOK/SD/S13 was presented, summarizing key developments in the past year, including discussions from the 13th WTO Ministerial Conference (MC 13), reports from UNCITRAL, UNIDROIT, and HCCH, and insights from the UNCTAD World Investment

Report (2024) on investment agreements and trends in Investor State Dispute Settlement. The Secretary-General encouraged delegates to engage in discussions on the identified issues.

16. The **Delegate of the Kingdom of Thailand** highlighted key developments in international trade and investment law, focusing on the 13th WTO Ministerial Conference (MC13) and the fifty-seventh session of UNCITRAL. Regarding MC13, the Kingdom of Thailand welcomed the decision to grant countries graduating from Least Developed Country (LDC) status a three-year transition period to facilitate their integration into the multilateral trading system. However, concerns were raised over unresolved issues, particularly in fisheries subsidies, agricultural disciplines, and WTO dispute settlement reform. The Kingdom of Thailand emphasized the need for AALCO Member States to collaborate on these issues and called for efforts to revive the Appellate Body to strengthen the rules-based multilateral trading system.

17. Regarding the fifty-seventh session of UNCITRAL, the Kingdom of Thailand acknowledged progress on the Draft Model Law On Warehouse Receipts, the Draft Model Clauses On Specialized Express Dispute Resolution, and the Draft Provisions On Automated Contracting, which aim to support modern trade and investment practices. It was also noted that advancements in ISDS reform, specifically the adoption in principle of a draft statute for an advisory centre on international investment dispute resolution, intended to assist LDCs and developing countries in managing ISDS cases. Regarding broader ISDS reform, the Kingdom of Thailand expressed support for the proposal by H.E. Ambassador Vilawan Mangklatanakul, Member, International Law Commission (ILC) to include substantive provisions of investment treaties, such as fair and equitable treatment and indirect expropriation, in the ILC's long-term programme of work, complementing procedural reforms undertaken by UNCITRAL Working Group III.

18. The Kingdom of Thailand invited AALCO Member States to a preparatory meeting in Bangkok from December 2–4 to advance the establishment of the Advisory Centre, following its endorsement at UNCITRAL's fifty-seventh session. Expressing confidence in Bangkok's infrastructure its strategic location, the Kingdom of Thailand sought support to host the centre.

The statement laid emphasis on the rapid evolution of international trade and investment law due to advancements in digitalization and artificial intelligence, urging AALCO Member States to work together in shaping legal frameworks that reflect their specific needs and circumstances.

19. The **Delegate of the Sultanate of Oman** emphasized the significance of international trade and investment law for both developed and developing countries, recognizing its role in economic growth and the challenges it faces globally. It was highlighted that the establishment of a multilateral regulatory framework for investment remains crucial in reassuring both capital-exporting and importing countries, though its formulation presents practical challenges. The critical role of the WTO in this regard was underscored, while noting that foreign investment flows are significantly influenced by a country's WTO accession, necessitating careful assessment of its implications. The Delegate further highlighted Oman's stable economy, strategic location, and strong regulatory framework, noting that its deep ports facilitate trade across the Indian Ocean, Asia, the Middle East, and Africa. Additionally, it was informed that Oman offered investment incentives in special economic and free zones, including Duqm and Sohar, allowing 100% foreign ownership and granting residency for up to ten years under the Foreign Capital Investment Law. Building on these strengths, the Sultanate of Oman reaffirmed its commitment to fostering a competitive trade and investment environment, backed by well-planned strategies and recent legislative reforms, such as the Foreign Capital Investment Law, Public-Private Partnership Law, Privatization Law, Commercial Companies Law, and Bankruptcy Law, all aimed at solidifying its position as a leading investment destination in the region.

20. The **Delegate of the Islamic Republic of Iran** addressed key developments in international trade law, particularly within UNCITRAL Working Group III and the fifty-seventh session of UNCITRAL. Regarding ISDS reform, it was noted that the Provisions on Mediation and Guidelines on Investment Mediation help resolve disputes while maintaining business relationships, and appreciation was expressed for the Code of Conduct for Arbitrators in International Investment Dispute Resolution, recognizing its role in ensuring procedural efficiency. However, concern was raised over the Code of Conduct for Judges, stating that its

adoption would be premature, as it remains tied to the establishment of an independent mechanism still under discussion.

21. With respect to access to credit, the Delegate welcomed the Guide on Access to Credit for Micro, Small, and Medium-Sized Enterprises (MSMEs) for its best practices in easing credit barriers, particularly in developing countries. The new Note on Early Dismissal and Preliminary Determination, added to the UNCITRAL Notes on Organizing Arbitral Proceedings, was acknowledged as an important step in reducing procedural delays. The Delegate also reviewed UNCITRAL's colloquium on climate change and carbon credits and supported further study in collaboration with UNIDROIT and other organizations. It was emphasized that any work in this area should adhere to the Principle of Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC), ensuring fairness in obligations across states. The adverse effects of unilateral coercive measures (UCMs) on international trade and climate change were highlighted as an issue requiring attention. It was stated that businesses in sanctions-affected territories lack access to technology, equipment, and funding, which hampers their ability to meet climate-related requirements, leaving them at a disadvantage and necessitating differentiated legal treatment. Furthermore, the Delegate expressed interest in UNCITRAL's exploratory work on the digital economy, supporting efforts to integrate emerging technologies into dispute resolution and reaffirming the Islamic Republic of Iran's commitment to utilizing UNCITRAL's legal frameworks to enhance the efficiency of its national legal system.

22. **The Delegate of Malaysia** responded to the issues highlighted in the Secretariat's report, focusing on key developments within the World Trade Organization (WTO), UNCITRAL, and UNCTAD.

23. Regarding the Investment Facilitation for Development (IFD) Initiative, Malaysia noted that, despite its endorsement at the 13th WTO Ministerial Conference (MC13), it has yet to be formally integrated into WTO's official documents and legal texts. As a founding participant in the Joint Statement Initiative since its inception in 2017, Malaysia stressed the need for prompt inclusion of the IFD into the WTO Agreement. Malaysia also expressed support for WTO reform, stressing the importance of restoring its credibility and effectiveness, and welcomed the

formalization of the WTO Dispute Settlement Reform process, with Ambassador Usha Dwarka-Canabady of Mauritius appointed as Facilitator. Additionally, Malaysia reaffirmed its active participation in reform discussions, supporting efforts to ensure the WTO has a fully functioning dispute settlement mechanism.

24. Malaysia expressed support for the work of UNCITRAL and participated in its fifty-seventh session in New York, where it noted the adoption of Model Clauses on Specialized Express Dispute Resolution (SPEDR) and Dispute Resolution in the Digital Economy. Under Working Group III, Malaysia commended efforts to establish an Advisory Centre to provide legal assistance and capacity-building for least developed and developing countries facing investment disputes and expressed optimism about its smooth operationalization. Malaysia also noted UNCITRAL's Draft Toolkit on Prevention and Mitigation of International Investment Disputes, urging Member States to contribute relevant information to ensure its continued development.

25. Malaysia commended UNCTAD's World Investment Report, which monitors global and regional foreign direct investment (FDI) trends. It was noted that many investment agreements lack sustainable development provisions due to challenges in enforcement and the need to attract capital-intensive investments. It was advised that such concerns are typically addressed under specialized treaties, and should continue to be managed within their respective implementation frameworks.

26. Regarding investment facilitation policies, Malaysia highlighted measures to streamline investment, including a visa service for strategic investors and fast-track "green" lanes to ease investment processes. These efforts reflect Malaysia's commitment to strengthening its investment agreements, while ensuring a balance between attracting investors and maintaining regulatory control.

27. Malaysia reaffirmed its active participation in international trade and investment law, noting its decision to seek re-election as a UNCITRAL member, demonstrating its continued engagement in dynamic discussions and meaningful outcomes for the global trade system.

28. **The Delegate of Japan**, commenting on the 13th WTO Ministerial Conference (MC13), noted that its outcome was disappointing, failing to deliver anticipated results. It was emphasized that the WTO requires urgent action to regain credibility. Japan stressed the need to demonstrate that the WTO's rule-making function remains intact, urging members to address unfinished issues from MC13, especially regarding fisheries subsidies negotiations; Japan highlighted the importance of maintaining momentum toward an early conclusion and urged countries to ratify the Agreement on Fisheries Subsidies adopted at MC12. Additionally, dispute settlement reform was reaffirmed as a priority, with Japan committed to restoring a fully functioning dispute settlement system by 2024. Japan pledged continued efforts ahead of MC14 and beyond to uphold a rules-based, open multilateral trading system.

29. Japan commended UNCITRAL's progress at its fifty-seventh session, particularly the adoption of two model laws and other legal instruments, and reaffirmed its active participation across all Working Groups. Regarding Investor-State Dispute Settlement (ISDS) reform, Japan recognized on-going efforts in Working Group III to develop a comprehensive and improved ISDS mechanism. Japan also noted the adoption in principle of the Statute of the Advisory Centre on International Investment Dispute Resolution, acknowledging its role in enhancing fairness and legitimacy in ISDS, and expressed its commitment to contributing to discussions on its operationalization. Japan also emphasized the need for cost-effective and efficient dispute resolution in Working Group III, reaffirming that the ISDS framework must balance investor protection with the State's right to regulate.

30. With regard to UNCTAD, Japan highlighted its role in developing the international investment agreements regime through various initiatives and capacity-building efforts. This can be exemplified by the utilization of UNCTAD's expertise in the efforts of the WTO Investment Facilitation for Development, which facilitates technical assistance for developing countries and LDCs. Japan hoped that this agreement would contribute to attracting investment and achieving the Sustainable Development Goals in these countries. Additionally, Japan emphasized the need to balance investment promotion with States' regulatory rights and reaffirmed its commitment to strengthening the legal framework to enhance investor predictability and promote investment activities.

31. Japan welcomed recent progress by HCCH and UNIDROIT, recognizing their contributions to maintaining a robust cross-border legal framework alongside UNCITRAL. The collaboration between UNIDROIT and UNCITRAL on the Model Law on Warehouse Receipts and the Legal Nature of Voluntary Carbon Credits was commended as a strong example of institutional cooperation. Emphasizing their relevance to digital assets, investment contracts, and private law systems in AALCO Member States, Japan encouraged greater participation in these institutions and reaffirmed its commitment to advancing international trade and investment law.

32. **The Delegate of the People's Republic of China** responded to the issues highlighted in the Secretariat's report, emphasizing UNCITRAL's ISDS reform efforts, particularly the work of Working Group III in addressing shortcomings in the current mechanism. It was noted that discussions have progressed to substantive negotiations, with preliminary agreements reached on key issues such as a Code of Conduct for arbitrators, an Advisory Centre, and mediation rules, while several issues remain unresolved. The People's Republic of China supported strengthening multilateral ISDS rules to reinforce confidence in dispute resolution and uphold the rule of law, advocating for the establishment of an appellate mechanism as a central feature of the reform, along with a multilateral instrument to extend its application. Hong Kong's unique position in international trade and investment under the "one country, two systems" framework was emphasized while highlighting its common law legal system and the presence of world-class dispute resolution institutions, including the AALCO-Hong Kong Regional Arbitration Centre. Hong Kong was also highlighted as a key player in ISDS reform, with the capability and commitment to support AALCO Member States in international trade and investment law. In relation to capacity-building, the China-AALCO Exchange and Research Programme (CAERP), which has conducted seven training sessions was recalled, while emphasizing international trade and investment law as a core focus. The People's Republic of China called upon Asian and African countries to strengthen cooperation in these areas and reaffirmed its commitment to on-going engagement through CAERP and other initiatives.

33. **The Delegate of the Republic of Indonesia** commenced his statement with comments on WTO reforms and conveyed that the Republic of Indonesia remained committed to strengthening and enhancing the functions of WTO bodies while ensuring inclusive, transparent,

and open discussions. It was affirmed that the Republic of Indonesia fully supported the commitment made at the MC13 to establish a fully functioning dispute settlement system accessible to all WTO Members by 2024. It was further noted that Indonesia actively engaged in discussions on WTO dispute settlement reform, emphasizing the importance of maintaining a standing body to review appeals, and reiterated the view that the two-tier dispute settlement mechanism was crucial for the stability and predictability of the multilateral trading system.

34. In relation to e-commerce, it was informed that MC13 had extended the moratorium on customs duties for electronic transmissions until 31 March 2026 or until the 14th Ministerial Conference, whichever occurred earlier. It was noted that the moratorium had been in place for 25 years, with its extension renewed 11 times, yet uncertainties remain regarding its scope, definition, and impact. The Republic of Indonesia emphasized the need for collective efforts and joint commitments within the Work Programme on Electronic Commerce (WPEC) negotiations to address these aspects. It was conveyed that Indonesia viewed the moratorium as pertaining only to transmission, not the content or products transmitted electronically. Further, it was recalled that the Republic of Indonesia actively engaged in plurilateral negotiations under the Joint Statement Initiative on Electronic Commerce (JSI E-Commerce), and was open to constructive dialogues with the co-convenors.

35. The Republic of Indonesia underscored the importance of the second phase of negotiations on the Fisheries Subsidies Agreement with the objective of achieving a comprehensive agreement. It was expressed that the agreement should balance discipline on subsidies that contribute to overfishing and overcapacity while ensuring effective special and differential treatment (SDT) for developing and least-developed countries, in line with Sustainable Development Goal (SDG) 14.6 and encouraged that the second phase of negotiations provide sufficient policy space for developing countries. It was asserted that the comprehensive agreement should impose stricter regulations on those historically responsible for global marine stock depletion, particularly heavily subsidized large industrial fishing vessels and distant-water fishing fleets operating in the high seas beyond national jurisdiction.

36. The Delegate of the Republic of Indonesia also commended the HCCH for its on-going efforts to harmonize private international law through multilateral legal instruments that promote legal certainty. Recognizing the importance of international cooperation in resolving cross-border legal issues, Indonesia was preparing to become an HCCH member and fulfilling national legal requirements to apply for membership and accept the HCCH Statute. It is also positively considering accession to the HCCH Service and Evidence Conventions to enhance mutual legal assistance in civil and commercial matters. Furthermore, it was stated that the Republic of Indonesia had entered the initial stages of preparation for acceding to the Service Convention, and was conducting in-depth research and stakeholder consultations to ensure necessary arrangements. By actively pursuing accession while improving Apostille services, it was expressed that the Republic of Indonesia aimed to align its legal practices with international standards, serving national interests and fostering a more interconnected global legal framework.

37. The **Delegate of the Republic of South Africa** emphasized concerns regarding the increasing number of African States referred to international arbitration by investors and the significant costs involved in such proceedings. While arbitration frameworks aim to be flexible and cost-effective, many nations have voiced dissatisfaction with biases favouring investor claimants. In this regard, the potential of Alternative Dispute Resolution (ADR), including mediation and conciliation, as a faster and more affordable means of resolving disputes while preventing escalation was highlighted by the Republic of South Africa. Additionally, it was recalled that the establishment of the African Continental Free Trade Agreement (AfCFTA) in 2023 aimed to address arbitration challenges, with on-going negotiations for an ISDS mechanism. South Africa has actively advocated for ISDS reform, emphasizing the need for structural improvements beyond procedural adjustments. The country commended UNCITRAL for adopting the Statute of the Advisory Centre, which offers affordable legal assistance to developing nations in investment disputes. As a participant in UNCITRAL Working Group III, the Republic of South Africa expressed that it followed discussions on a standing mechanism for resolving international investment disputes with great interest. While supporting its creation, the importance of prioritizing procedural and cross-cutting issues was also stressed upon. Furthermore, the Republic of South Africa encouraged AALCO Member States to collaborate in

ensuring that perspectives from developing economies are effectively mainstreamed within International Trade and Investment Law.

38. The following three organizations took the floor as observers to the Annual Session.

39. The **Delegate of the United Nations Commission on International Trade Law Regional Centre for Asia and the Pacific (UNCITRAL-RCAP)** expressed gratitude for the opportunity to engage with AALCO Member States, emphasizing the role of UNCITRAL in harmonizing and modernizing international trade and investment law since its establishment in 1966. The accessibility of UNCITRAL texts, which provide solutions across business registration, e-commerce, credit access, dispute resolution, and insolvency was highlighted in the statement. AALCO Member States were also invited to participate in UNCITRAL Working Groups, which meet in Vienna and New York, and cover topics such as warehouse receipts, investor-state dispute settlement (ISDS) reform, e-commerce, and digital trade. Particular focus was placed on Working Group III, which seeks to reform ISDS by creating an advisory centre to assist developing countries in handling investment disputes. In this regard it was recalled that the Statute of the Advisory Centre was adopted in principle, with discussions on operationalization scheduled in Bangkok, Thailand, in December 2024.

40. Additionally, it was informed that Working Group VI was developing an instrument on negotiable cargo documents, a project proposed by the People's Republic of China, to create a uniform legal framework for recognizing electronic transport documents across multimodal and unimodal sectors. AALCO Member States were encouraged to provide input, particularly those involved in transport, banking, and insurance industries. UNCITRAL also called for contributions to the Case Law on UNCITRAL Texts (CLOUT) database, inviting Member States to submit abstracts of judicial decisions and arbitral awards to ensure uniform interpretation of international trade law. Initiatives such as free online learning courses on UNCITRAL texts and academic collaborations through initiatives such as UNCITRAL Days, which aim to increase engagement across legal and trade institutions worldwide were also highlighted in the statement. The UNCITRAL-RCAP reaffirmed the UNCITRAL's commitment to economic development

and sustainable growth, urging deeper cooperation between UNCITRAL, AALCO, and Member States to foster international legal harmonization and facilitate cross-border trade and investment.

41. **The Delegate of the Asian Academy of International Law (AAIL)** noted the importance of establishing an Advisory Centre under the UNCITRAL Working Group III within or near developing States, ensuring accessibility and support for investment dispute resolution. It was highlighted that some States have had negative experiences with arbitration and, in some cases, have reverted to national courts, which may deter foreign investment. The Delegate of the AAIL emphasized the need for procedural safeguards to enhance neutrality and efficiency in arbitration, such as time limits for awards, third-party funding regulations, interim measures, and cost management. The use of AALCO Regional Arbitration Centres was also encouraged when drafting Model Bilateral Investment Treaties (BITs).

42. Regarding dispute avoidance, it was observed that differences in legal cultures between investors and host States often contribute to disputes and statement recommended mechanisms such as Dispute Adjudication Boards (DABs) or Dispute Resolution Boards (DRBs) in construction contracts to mitigate conflicts. The importance of proactive strategies for sustainable development in international investment law was also underscored.

43. On ISDS reform, the Delegate of the AAIL apprised Member States that Working Group III would soon discuss the Standing Mechanism for Investment Disputes, raising the question of whether an appellate mechanism should be incorporated. Considerations such as binding versus persuasive appellate decisions, implications for ICSID and non-ICSID arbitrations, limits on appealable matters, and enforceability frameworks were identified as concerns that were to be addressed to ensure effective implementation.

44. **The Delegate of the Hague Conference on Private International Law (HCCH)** at the outset, welcomed the Republic of Indonesia's announcement of its upcoming membership in HCCH, and expressed hope that it would inspire other AALCO Member States to follow suit. It was stated that HCCH's work on digital assets remains exploratory, focusing on jurisdiction and applicable law challenges. It was explained that the HCCH aims to build upon UNIDROIT's

principles and develop a refined framework, potentially presented as *lex specialis*. AALCO Members were invited to engage in this work. The Delegate of the HCCH further apprised Member States of similar HCCH projects, including those on Central Bank Digital Currencies (CBDCs) and Voluntary Carbon Credits (VCCs), emphasizing the need for new private international law rules in these domains.

45. With respect to cross-border trade, the Choice of Court Convention (2005) and Judgments Convention (2019) were highlighted. In that regard it was explained that the former strengthens exclusive jurisdiction agreements, while the latter facilitates global judgment recognition, enhancing judicial dispute resolution. It was underscored that the 2019 Judgments Convention was game changer, as it for the first facilitates the circulation of judgments at a global level.

II. ISSUES FOR FOCUSSED DELIBERATIONS AT THE SIXTY-THIRD ANNUAL SESSION OF AALCO, 2025

46. The present Secretariat brief seeks to provide an overview of key development over the past year, on international trade and investment law that are of particular relevance for Asian and African States. While developments in international trade law have continued with on regional trend, multilateral efforts have fructified on issues closely related to international investment law. As the brief details, much progress has been achieved in both areas of the law in the past year, and the following issues may be considered by Member States in their deliberations on the agenda item.

A. Recent developments in International Trade Law

47. Within the scope of the World Trade Organization (WTO), the current status and future prospects of the Agreement on Fisheries Subsidies is examined, noting its crucial role in environmental sustainability and the ongoing efforts towards its entry into force. Focus is given to the accession processes of new members to the WTO, which underscore the enduring relevance of the multilateral trading system. A key area of emphasis will be the WTO's dispute settlement mechanism, acknowledging the persisting challenges related to the Appellate Body's operational status. Furthermore, the Trade Policy Review Mechanism is reviewed to understand evolving national trade policies.

48. Beyond the multilateral framework, discussions will encompass vital regional cooperation initiatives. This includes assessing the implementation progress and potential of the African Continental Free Trade Area (AfCFTA), monitoring developments in the China-Japan-South Korea Free Trade Agreement (CJK FTA) negotiations, and examining the continued economic integration and stability fostered by ASEAN. Finally, the broader landscape of recent Regional Trade Agreements (RTAs) across the Asian and African regions are considered, recognizing their collective impact on the dynamic global trade architecture.

B. Report on the select work of the United Nations Commission on International Trade Law (UNCITRAL)

49. The fifty-eighth session of the UNCITRAL was held from 7-23 July 2025 in Vienna, during which 3 instruments were adopted, while 3 documents were approved for publication and circulation. The present brief draws the attention of the Member States to the instruments and documents that contribute towards the harmonisation of unification of international trade law in a number of areas, ranging from negotiable cargo documents, to reform of ISD and carbon credits. While the instruments were recommended for adoption to the UN General Assembly, the other documents were adopted by the Commission to aid States in the formulation of legislation and policy on the a number issues addressed.

C. The World Investment Report, 2025 and the recent developments in the work of the United Nations Trade and Development (UNCTAD) in relation to the International Investment Agreements and Disputes Regime

50. The World Investment Report published annually by UNCTAD, is a much awaited publication and covers the entire landscape of investment policy and law. Other than focussing on thematic issues the Report focusses on the vast network of IIAs and ISDS cases tracing trends and presenting important data on the practice of States in framing investment law and policy. The present brief invites the attention of the Member States to the trends and developments in IIAs and ISDS cases, as well as the conclusions drawn in the report from a comprehensive set of statistics for specific time periods.

D. Report on the work of the International Institute for the Unification of Private Law (UNIDROIT)

51. The following brief outlines the progress made by the International Institute for the Unification of Private Law (UNIDROIT) during the period 2024–2025, as discussed during the 104th session (remote) and the 105th session (20–23 May 2025, Rome) of its Governing Council. The brief invites the attention of the Member States to the latest development in the work of UNIDROIT on private law, conducted individually with some joint project. A number

of them addressing key issues concerning international trade and commerce relevant to the Member States.

E. Report on the work of the Hague Conference on Private International Law (HCCH)

52. With respect to developments at the Hague Conference on Private International Law (HCCH), due attention is given to possible new legislative instruments, with particular focus directed towards several emerging and critical legal domains. Matters concerning Parentage and Surrogacy are discussed, acknowledging the complex legal and ethical considerations arising from evolving family structures. Significant focus is also given to developments relating to Jurisdiction, especially as they pertain to cross-border legal challenges in an increasingly interconnected world.

53. A dedicated portion of attention is directed towards the digital realm, encompassing the legal implications and regulatory frameworks surrounding Central Bank Digital Currencies (CBDCs) and Digital Tokens. Broader discussions on the legal architecture necessary to support the thriving Digital Economy are also encompassed.

54. Beyond these, contemporary challenges in commercial law are examined, specifically within Restructuring and Insolvency frameworks, and concerning Intellectual Property. The legal aspects of nascent environmental markets, particularly Voluntary Carbon Markets, are explored to foster their integrity and effective regulation.

55. Finally, due consideration is given to coordination efforts among the HCCH, UNCITRAL, and UNIDROIT as collaborative approaches are understood to be essential for developing harmonious and effective legal instruments in these complex areas, thereby preventing duplication of work.

F. Proposal for the development of a Model Investment Treaty (MIT)

56. The AALCO Secretariat is in receipt of a proposal from the United Republic of Tanzania to explore ways to prepare a Model Investment Treaty (MIT)[1] to act as a guide for AALCO Member States when negotiating and drafting bilateral or multilateral investment agreements.

57. With a view to taking preliminary steps towards the development of an AALCO MIT, the Secretariat considers it expedient to recall AALCO's past practice in this regard, particularly in relation to the preparation of the AALCO Model Agreements on the Promotion and Protection of Investments that were adopted at the Twenty-Fourth Annual Session held in Kathmandu, Nepal (1985). The drafting history of the AALCO Model Agreements on the Promotion and Protection of Investments reveals that due to diverging opinions prevailing at the time on many issues, the Committee (as was the case then) three Models were adopted that differed in their degree and scope of investment protection.

58. However, much time has elapsed since the adoption of the Model Agreements and the recent success achieved at organizations including UNCITRAL, UNCTAD and other multilateral bodies seems to reveal a trend towards a broad developing consensus being forged among both developed and developing States on the need to balance investment protection and State's interests. Reform of both procedural and substance elements of provisions found in the majority of IIAs in force, seems to be need of the hour as recognized by multilateral efforts currently underway in a number of international and regional fora.

59. In light of these observations the AALCO Secretariat seeks to invite the attention of the AALCO Member States to consider including in their deliberations the form and elements of the AALCO MIT. While building upon its past work, the Secretariat invites Member States to express their views on exploring ways means for the preparation and adoption of a new MIT, that is not only tethered to contemporary law and practice but also reflects the consensus on State interests.

[1] Vide email dated 3 May2025 received from the United Republic of Tanzania,

III. GENERAL DISCUSSION AND RECENT DEVELOPMENTS

A. Recent developments in International Trade Law

60. The global trading landscape is marked by a climate of uncertainty, leading to a projected slowdown in global growth to its weakest pace since 2008 outside of outright recessions.[2] Several interconnected factors contribute to this volatility.

61. Geopolitical tensions and rising protectionism are at the forefront which have manifested in increased trade barriers, tariff hikes, and retaliatory actions. This intensified economic statecraft, particularly between major powers, is reshaping global supply chains, pushing businesses towards diversification and regionalization, and leading to significant volatility in financial markets.[3]

62. Policy uncertainty is at historically high levels across various domains, not just trade. This unpredictability in government policies may trigger financial turbulence, especially for developing countries. The on-going stalemate in the WTO's dispute settlement system further undermines the predictability of the multilateral trading system.

63. Supply chain disruptions also remain a significant concern in global trade. While some pandemic-era pressures have eased, new vulnerabilities are emerging from geopolitical conflicts affecting shipping routes, resource access controls, and increasing cyber threats.[4]

64. The escalating impacts of climate change are increasingly influencing trade. Extreme weather events and "slow-onset" impacts like sea-level rise disrupt transport infrastructure and

[2] World Bank Group, "Global Economy Set for Weakest Run Since 2008 Outside of Recessions", <https://www.worldbank.org/en/news/press-release/2025/06/10/global-economic-prospects-june-2025-press-release#:~:text=Global%20Economy%20Set%20for%20Weakest,Procurement%20for%20Projects%20%26%20Programs> accessed on 10 June 2025.
[3] World Economic Forum, "The Global Risks 2025", <https://reports.weforum.org/docs/WEF_Global_Risks_Report_2025.pdf> accessed on 7 June 2025.
[4] Thomson Reuters Tax and Accounting, 2025's supply chain challenge: Confronting complexity and disruption in global trade, <https://tax.thomsonreuters.com/blog/2025s-supply-chain-challenge-confronting-complexity-and-disruption-in-global-trade-tri/> accessed on 3 June 2025.

supply chains, affect agricultural output, and create new trade patterns driven by the global transition to a green economy.[5]

65. Collectively, these factors contribute to a less predictable and more fragmented global trade environment, posing significant challenges for businesses, governments, and multilateral institutions.

66. Despite a challenging global trade climate, Asian and African nations are forging ahead with resilient trade strategies. They are leveraging key regional promise to boost trade, industrialization,[6] and drive regional integration and economic stability.[7] Both Asia and Africa are also embracing digital trade and financial technologies, investing in infrastructure and skills to unlock new avenues for growth and cross-border commerce.[8] These proactive, collaborative efforts underscore their commitment to overcoming global headwinds and securing a prosperous future in world trade.

1. Developments at the World Trade Organization

(a) Updates on the WTO Agreement on Fisheries Subsidies

67. The WTO Agreement on Fisheries Subsidies (Agreement) was adopted at the 12th Ministerial Conference on 17 June 2022. The aim of the Agreement was to prohibit harmful fisheries subsidies - which are a key factor in the depletion of fish stocks across the world - in an effort towards ocean sustainability. The three major provisions of the Agreement are:

[5] The London School of Economics and Political Science, "How does climate change impact on international trade?", <https://www.lse.ac.uk/granthaminstitute/explainers/how-does-climate-change-impact-on-international-trade/#:~:text=Changing%20climatic%20conditions%20and%20the,creating%20risks%20for%20countries%20that> accessed on 12 June 2025.

[6] Wamkele Mene, "Intra-African trade and its potential to accelerate progress toward the SDGs", <https://www.brookings.edu/articles/intra-african-trade-and-its-potential-to-accelerate-progress-toward-the-sdgs> accessed on 12 June 2025.

[7] World Economic Forum, "RCEP: How will this trade agreement shape the future of multilateralism?", <https://www.weforum.org/stories/2025/03/rcep-how-will-this-trade-agreement-shape-multilateralism/> accessed on 12 June 2025.

[8] World Bank Group, "The Digital Economy for Africa Initiative", <https://www.worldbank.org/en/programs/all-africa-digital-transformation/publications > accessed on 11 June 2025.

i. Curbing subsidies to illegal, unreported and unregulated (IUU) fishing,[9]
ii. Prohibiting subsidies to overfished stocks and,[10]
iii. Prohibiting subsidies to fishing on the unregulated high seas.[11]

68. While the Agreement was adopted by consensus, it is required to be formally accepted by depositing 'instruments of acceptance' with the WTO. It will come into force when 111 member-state have deposited their instruments of acceptance. So far (as of 2 June 2025), 101 member-states have done so. Over the past year, several Asian and African Member States have formally accepted the Agreement including AALCO Member States, Burkina Faso, the State of Kuwait, the Islamic Republic of Pakistan and the Kingdom of Bahrain.

(b) Accessions to WTO

69. The China Round Table on WTO Accessions (CRT) is an annual high-level gathering of acceding governments and Members of the WTO interested in accession. The 12th CRT was held at Abu Dhabi, United Arab Emirates (UAE) from 24 February to 25 February 2025, on the theme 'Arab Perspectives on WTO Accessions and the Multilateral Trading System'. This was the first one to be held in the Arab region. The 13th CRT was held at Muscat, Sultanate of Oman on 12 May to 14 May 2025. The theme of the CRT was 'Advancing Arab Economies: From Strategic Accessions to Global Trade Integration'.

70. The CRT is of significance, as the Arab region remains one of the most under-represented regions at the WTO. These CRTs serve as a platform for the perspectives of Arab countries and help them evolve strategies for accession. A number of Asian and African countries are on different stages of the process of accession. Among AALCO Member States, the Republic of Somalia expressed its willingness to engage in the process of accession and the 1st meeting of the Working Party on Somalia's WTO accession was held on 17 February 2025.

[9] World Trade Organization, 'Ministerial Decision of 17 June 2022: Agreement on Fisheries Subsidies' WTO Doc WT/MIN(22)/33, WT/L/1144 (Agreement on Fisheries Subsidies), Art. 3.
[10] Agreement on Fisheries Subsidies, Art 4.
[11] Agreement on Fisheries Subsidies, art 5.

(c) WTO Dispute Settlement Mechanism

71. The Dispute Settlement Mechanism of the WTO is non-functional at the appellate body, as the United States of America (US) has continued to block the appointment of new judges to the Appellate Body since 2019. In its absence, an interim appellate mechanism. The Multi-Party Interim Appeal Arbitration Arrangement (MPIA) has been set up by some WTO Member States. This has been done by making use of Article 25 'Arbitration' of the Dispute Settlement Understanding (DSU), that allows for expeditious arbitration within WTO, the rules and procedures thereof to be decided by the parties.[12]

72. In the absence of the Appellate Body, a number of countries have continued to make use of the MPIA for appealing the decisions of the WTO Panel. For instance, the dispute between China and EU (DS611-China-Enforcement of intellectual property rights) has been forwarded to the MPIA after the WTO Panel report.[13] Further, more countries have also joined the MPIA, including AALCO Member State Malaysia which joined the MPIA on 23 May 2025.[14]

73. At the negotiation front, the mini-ministerial meet of parties to the WTO was organised on 3 June 2025 in Paris on the side-lines of the OECD ministerial meet. Although an informal event, it featured discussions on important issues of the WTO raised by the trade ministers of the parties.

74. In their statement, the Minister of Commerce & Industry of the Republic of India, stated that the restoration of the dispute settlement mechanism remains the first priority for WTO members.[15] The Minister of Foreign Affairs of Brazil also mentioned that the restoration of the functionality of the dispute settlement system as one of the key issues adding that creative

[12] World Trade Organization, Understanding on Rules and Procedures Governing the Settlement of Disputes (adopted 15 April 1994, entered into force 1 January 1995) 1869 UNTS 401, Art 25.
[13] World Trade Organization, *China – Enforcement of Intellectual Property Rights: Recourse to Article 25 of the DSU*, WT/DS611/13 (21 March 2024).
[14] Third World Network, 'Malaysia joins MPIA amid heightened trade turbulence' (*TWN Info Service*, 27 May 2025) <https://www.twn.my/title2/wto.info/2025/ti250528.htm> accessed 12 June 2025.
[15] ET Online, 'America defanged WTO. India wants its fangs back' (The Economic Times, 5 June 2025) <https://economictimes.indiatimes.com/news/economy/policy/america-defanged-wto-india-wants-its-fangsback/articleshow/121653350.cms> accessed 12 June 2025.

solutions should be brought to ensure that a two-tier process is maintained in the interest of legal predictability.[16]

75. The Dispute Settlement Body (DSB) still convenes regular meetings for establishing dispute settlement panels, referring matters to arbitration, adopting reports, and other business. The latest DSB meeting held on 5 June 2025 did not feature discussions on the Appellate Body. However, in the preceding meeting preceding on 23 May 2025 and several meetings before that, the issue of appointments has been raised. On 23 May 2025, the US blocked the proposal for the 87th time.[17]

(d) Trade Policy Review Mechanism

76. Trade Policy Review Mechanism (TPRM) is a scheme to regularly monitor and review the foreign trade policies of WTO Member States, in order to enhance transparency and compliance. The reviews of some AALCO Member States have been concluded recently including, Federal Republic of Nigeria, Brunei Darussalam and Republic of Sierra Leone.

2. Regional Cooperation on Trade

(a) African Continental Free Trade Area (AfCFTA)

77. The AfCFTA was established in 2018 by the African Union, building upon a long history of efforts toward African economic integration.[18] Its roots trace back to the Organization of African Unity (OAU), founded in 1963, which had adopted the Lagos Plan of Action in 1980 to boost intra-African trade. The AfCFTA's primary objective is to enhance socioeconomic

[16] Ministry of Foreign Affairs, 'Address by Minister Mauro Vieira at the Informal WTO Ministerial Meeting - Paris, June 3, 2025' (Governo Federal, 3 June 2025) <https://www.gov.br/mre/en/content-centers/speeches-articles-and-interviews/minister-of-foreign-affairs/speeches/mauro-vieira-2023/address-by-minister-mauro-vieira-at-the-informal-wto-ministerial-meeting-paris-june-3-2025> accessed 12 June 2025.
[17] Third World Network, World Trade Organization, *Appellate Body Appointments*, WT/DSB/W/609/Rev.26 (6 September 2023).
[18] African Union, "The African Continental Free Trade Area", <https://au.int/en/african-continental-free-trade-area> accessed on 12 June 2025.

development, reduce poverty, and strengthen Africa's competitive standing in the global economy, while lessening reliance on Western economies.

78. Key areas of cooperation under the AfCFTA include:

- Tariff Concessions: A 90% tariff liberalisation was agreed and over a 10-year period with a 5-year transition, an additional 7 % for "sensitive products" was to be liberalised among Member States.

- Infrastructure Development which promoting and facilitating the development of integrated regional infrastructure.

- Continental Customs Union for the establishment of a unified customs union across Africa.

- Payment Systems: The implementation of the Pan-African Payment and Settlement System (PAPSS) to streamline cross-border payments in local currencies, thereby facilitating trade.

These cooperative efforts aim to significantly increase intra-African trade and foster deeper economic ties across the continent.

(b) China-Japan-South Korea Free Trade Agreement (CJK FTA) Negotiations

79. The concept of a trilateral FTA among China, Japan, and South Korea initiated in early 2000s, with China proposing the idea in 2002. Joint non-governmental studies on a potential CJK FTA were conducted from 2002 to 2009.[19]

[19] Zhang, M. (2024). The China-Japan-Korea Free Trade Agreement: Politico-Economic Explanations for the Stalled Negotiations. In: China-Japan-South Korea Trilateral Cooperation, The University of Tokyo Studies on Asia, Springer, Singapore, https://doi.org/10.1007/978-981-97-9148-4_4

80. The official launch of CJK FTA negotiations occurred in November 2012, following an announcement by the economic and trade ministers of the three countries. This step was facilitated by a semi-governmental joint study that concluded in 2011, suggesting a "comprehensive and high-level FTA covering trade in goods, services, investment and other policy areas".[20]

81. Historically, the progress in the trilateral cooperation has mostly been driven by a collective response to regional and global crisis.[21] The 2008 global financial crisis, for instance, acted as a significant catalyst for the political decision to launch the CJK FTA negotiations, increasing awareness of mutual economic dependency and highlighting the need to diversify trade destinations away from over-reliance on US and EU markets.[22]

82. However, the talks stalled in 2019 and failed to make major breakthroughs, without full agreement on basic modality, scope of goods, investments, or services covered, or the adoption of specific future road maps.[23] Negotiations proceeded through multiple rounds, reaching 16 rounds by late 2024.[24]

83. Some key areas of Co-operation are as follows:

- Supply chain management and export controls. Strengthening cooperation here aims to create a predictable trade environment and stabilize supply chains.[25]
- Deepening collaboration in digital and green economies.
- Fostering a more favourable environment for cross-border business.
- Strengthening collaboration within regional and multilateral frameworks.

[20] Ibid.
[21] Huaxia, 'Joining hands amid uncertainties -- an opportune time for closer China-Japan-S. Korea cooperation' (Xinhua 2005) <https://english.news.cn/20250605/b7e6b5035a544793bfe075ad80aaf2af/c.html> accessed on 6 June 2025.
[22] Zhang, M. (2024). The China-Japan-Korea Free Trade Agreement: Politico-Economic Explanations for the Stalled Negotiations. In: China-Japan-South Korea Trilateral Cooperation, The University of Tokyo Studies on Asia, Springer, Singapore 51
[23] Ibid 52
[24] Ibid.
[25] Zhong Nan, 'China, Japan, South Korea to bolster trade ties' (Asia News Network 2025) <https://asianews.network/china-japan-south-korea-to-bolster-trade-ties/> accessed on 6 June 2025.

(c) ASEAN

84. Many ASEAN members are heavily affected by recent United States of America (US) tariffs. The bloc has called for deepening regional economic integration and presenting a united front to address global trade uncertainties.[26] ASEAN leaders have rejected retaliation, opting for dialogue with the US and have reaffirmed their belief on multilateralism.[27] They are exploring strategies to enhance economic resilience by diversifying trade partnerships and deepening regional integration. ASEAN is also central to regional frameworks like ASEAN+3 (which includes China, Japan, and South Korea). At the May 2025 annual meeting of the Asian Development Bank in Milan, the ASEAN+3 group agreed to support the implementation of the Regional Comprehensive Economic Partnership (RCEP).[28] Malaysia announced that ASEAN has concluded negotiations on upgrading the ASEAN Trade in Goods Agreement and the enhanced deals are expected to be signed in October 2025.[29]

(d) Recent RTAs in the Asian and African Region

85. Other RTAs in the region that have come into force in 2024 and 2025 are the Eurasian Economic Union (EAEU)-Iran, EU-Kenya, China-Serbia, and China-Ecuador. These RTA stem from the desire to create a favourable environment and conditions for the development of mutual trade and economic relations.

86. Key areas covered in these RTAs are:

i. Sanitary and Phytosanitary (SPS) Measures

ii. Technical Barriers to Trade (TBT)

iii. Intellectual Property

iv. E-Commerce

[26] Sebastian Strangio, 'Ahead of ASEAN Summit' (The Diplomat 2025) <https://thediplomat.com/2025/05/ahead-of-asean-summit-malaysian-fm-calls-for-regional-action-on-us-tariffs/> accessed 6 June 2025.
[27] Vu Lam, 'The tariff war that's accelerating Asia's trade transformation' (The Interpreter 2025) <https://www.lowyinstitute.org/the-interpreter/tariff-war-s-accelerating-asia-s-trade-transformation> accessed on 6 June 2025.
[28] Y. Nohara, 'Asian Finance Chief calls for Unity amid Tarriff Talks' (Bloomber, 5 May 2025) <https://www.bloomberg.com/news/articles/2025-05-05/asian-finance-chiefs-call-for-regional-unity-amid-tariff-talks>
[29] Sebastian Strangio, 'Ahead of ASEAN Summit' (The Diplomat 2025) <https://thediplomat.com/2025/05/ahead-of-asean-summit-malaysian-fm-calls-for-regional-action-on-us-tariffs/> accessed 6 June 2025

v. Health Cooperation

vi. Customs Procedure

vii. Fisheries

viii. Agriculture

ix. Investment promotion towards liberalization and opening markets for Trade in Services

x. Health Cooperation

B. Report on the select work of the United Nations Commission on International Trade Law (UNCITRAL) (Last week of July, 2025)

1. Background

87. The issues concerning law governing international trade were first included in the agenda of the Asian-African Legal Consultative Organization (AALCO) at the Third Session, in 1960 in Colombo, pursuant to a reference made by the Government of India as part of the of its reference on the topic diplomatic immunity.[30] Subsequently at the Fourth Session, in 1961 in Tokyo, the topic "Conflict of Laws relating to Sales and Purchases in Commercial Transactions between States or their Nationals" was considered by the Member States. The topic "International Sale of Goods" thereafter was discussed at the First Session of the United Nations Commission on International Trade Law (UNCITRAL) ("the Commission"), in New York in 1968.

88. Further at the subsequent second session of the Commission in 1969, the representatives of Ghana and India suggested that the then Asian-African Legal Consultative Committee ("AALCC") should revive its consideration of the subject of the International Sale of Goods so as to ascertain the views of Asian and African Member States on the issue.[31] Upon that request, the then AALCC considered it as priority item at the Eleventh Session held in Accra, Ghana in 1970.

[30] AALCC, Report of the Third Session held in Colombo Sri Lanka from 20 January to 4 February 1960 (1960) <https://www.aalco.int/Report%20and%20Resolutions%20of%20the%20Third%20Annual%20Session.pdf> accessed 1 August 2024

[31] AALCC, *Report of the 11th Session held in Accra (Ghana) from 19th to 29th January* (1970) 260 <https://www.aalco.int/11thsession/Part%2014.pdf> accessed 1 August 2024

89. At its Eleventh Session in Accra in 1970, AALCC also established a Standing Sub-Committee on economic and trade law matters to convene as a regular feature of its activities. Further official relations were established between the AALCC with the Commission in the year 1971,[32] which have since resulted in fruitful and effective collaboration between the two Organizations in several areas of under the broad ambit of international trade law. From then onwards, the AALCC regularly considered the issues pertaining to international trade law and the international organizations dealing with such matters, viz., United Nations Conference on Trade and Development (UNCTAD), International Institute for the Unification of Private Law (UNIDROIT) and Hague Conference on Private International Law (HCCH) under agenda item entitled, "Progress Report concerning the Legislative Activities of the United Nations and other Organizations in the field of International Trade Law."[33] At the Forty-Third Session, in Bali in 2004, the title was amended to the "Report on the Work of UNCITRAL and other International Organizations in the Field of International Trade Law" recognizing the key role of UNCITRAL in the harmonization and unification of international trade law.

90. As work related to Investor-State Dispute Settlement or "ISDS" was entrusted to the Commission, first with the Mauritius Convention on Transparency in Investor-State Arbitration, 2019 and the subsequent amendments to the UNCITRAL Arbitration Rules, 1976 and later with the reform of the ISDS, the focus of the deliberations in AALCO over past decade has been Commission's engagement with ISDS reform, as well as some other areas. This report prepared by the AALCO Secretariat is intended to provide an overview of the key instruments adopted by Commission at its fifty-eighth session of the Commission, held in Vienna from 7 to 23 July 2025, where it adopted 3 key instruments, developed within working groups working with their particular mandates..

[32] Ibid 264

[33] AALCC, *Report of the 11th Session held in Seoul (Republic of Korea)) from 16th to 20th June* (2003) <https://www.aalco.int/report42ndAS> accessed 1 August 2024

2. The fifty-eighth session of the UNCITRAL held in Vienna from 7 to 23 July 2025

2.1. Introduction

91. The fifty-eighth session of the Commission was held in Vienna from 7 to 23 July 2025 and was attended by fifty of the sixty member States, as well as thirty-six observer States. The session was also attended by eight intergovernmental organizations including AALCO, as well as thirty non-governmental organizations.[34]

92. The agenda of the fifty-seventh eighth of the UNCITRAL had the following instruments that were put up for consideration and adoption: (1) Consideration of draft convention on negotiable cargo documents (2) Consideration of Toolkit and Background Notes on asset tracing and recovery in insolvency proceedings (3) Consideration of draft toolkit on dispute prevention and mitigation of international investment disputes.[35] Further the Commission had before the following documents for approval for publication: (a) two customizable templates of model organization rules for Limited Liability Enterprises designed to assist States in supporting micro, small, and medium-sized enterprises; (b) the UNCITRAL/UNIDROIT study on the legal nature of verified carbon credits issued by independent carbon standard setters, providing an overview of the global landscape of carbon markets and legal issues related to the trading of verified carbon credits; and (c) a guidance document on legal issues relating to the use of distributed ledger technology (DLT) in trade, which seeks to provide assistance to businesses in assessing legal matters that may arise when procuring DLT or delivering services using DLT.[36]

2.2. **Draft Convention on Negotiable Cargo Documents**

93. It was widely recognized that while bills of lading have been widely used as documents of title in the maritime sector, transport documents issued by rail, road and air carriers (often

[34] UNCITRAL, ' Draft Report of the fifty-eighth session of the UNCITRAL held in Vienna from 7 to 23 July 2025' UN Doc. A/CN.9/LVIII/CRP.1 (21 July 2025)
[35] UNCITRAL, 'Provisional agenda, annotations thereto and scheduling of meetings of the fifty-eighth session' UN Doc. A/CN.9/1192 (13 April 2025) accessed 7 August 20245
[36] Ibid; See also UNCITRAL, 'UNCITRAL makes significant progress towards more efficient and reliable international trade at its 58th session' (UNCITRAL: Press Release) UN Doc. UNIS/L/383 (23 July 2025)

known as “consignment notes”), which were typically non-negotiable, could not serve that function. The convention on negotiable cargo documents intends to create a new type of document of title entitled “negotiable cargo document”, which could perform an analogous function as a maritime bill of lading for the carriage of goods for any mode of transport in a multimodal or unimodal context. The new instrument also provides a legal framework for the recognition and use of negotiable electronic cargo records.[37]

94. The Convention envisages that any transport operator acting as a contractual carrier could issue a negotiable cargo document or negotiable electronic cargo record, irrespective of whether or not that person performs the carriage itself. This may include any maritime/rail/road/air carrier or freight forwarder who concludes a transport contract with the consignor and thus assumes responsibility for the performance of the contract in a multimodal or unimodal context. For the avoidance of doubt, freight forwarders acting merely as agents (not as contractual carriers) cannot issue negotiable cargo documents or negotiable electronic cargo records.[38]

95. At its fifty-fifth session the Commission decided to assign the topic of negotiable multimodal transport documents to Working Group VI, which had considered it over six sessions, from its forty-first session to its forty-sixth session.

96. At its previous fifty-seventh session (24 June– 12 July 2024, New York), the Commission was informed that significant progress had been made on the draft instrument on negotiable cargo documents (NCDs) and that Working Group VI might be in a position to transmit the draft instrument to the Commission for its review and possible adoption at its next session, in 2025.

97. At the current fifty-eighth session, the Commission had before it the reports of Working Group VI on the work of its forty-fifth and forty-sixth sessions. It also had before it the text of the draft convention on negotiable cargo documents, a compilation of comments submitted by States and relevant international organizations on the draft convention. The Commission was

[37] UNCITRAL, ‘Note by the Secretariat Fact sheet: UNCITRAL project on negotiable cargo documents” UN Doc. A/CN.9/WG.VI/WP.113
[38] Ibid

presented for consideration a note by the secretariat on the interaction between draft convention on negotiable cargo documents and existing international transport law conventions presented to the Working Group VI during its forty-sixth session.[39]

98. At the present session the Commission conducted a detailed paragraph by paragraph review of the draft convention. A number of amendments were suggested to the draft convention relating *inter alia* to the scope of application, definitions, issuance of negotiable cargo documents and rights of negotiable cargo document holders.

99. At its 1243rd meeting, on 11 July 2025, the Commission adopted the Convention and by took the following decision accompanied by a recommendation to the General Assembly:

"*The United Nations Commission on International Trade Law*,

"*Recalling* its mandate under General Assembly resolution 2205 (XXI) of 17 December 1966 to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

"*Conscious* of the important role played by negotiable transport documents in facilitating trade finance and the sale of goods in transit,

"*Convinced* of the desirability of establishing uniform rules for negotiable transport documents covering all modes of transport, including multimodal transport, thereby supporting the growth of door-to-door transportation,

"*Acknowledging* that digital transformation in international trade depends on reliable systems and data, which in turn can enhance operational efficiency and support end-to-end digitalization,
"*Convinced* that certainty as to the legal effect of negotiable cargo documents, as well as the rights, obligations and liability of the holder, will encourage the acceptance of such documents

[39] UNCITRAL, 'Draft Report: Addendum" UN Doc. A/CN.9/LVIII/CRP.1/Add.3

by banks, financial institutions, and other stakeholders, thereby fostering international trade and contributing to economic growth,

"*Also convinced* that a sound legal framework could help reduce the costs of trade along inland routes and will assist both landlocked countries and countries with large overland territories in integrating more effectively into global supply chains,

"*Noting* that the preparation of the draft convention on negotiable cargo documents was the subject of due deliberation in the Commission and that the draft convention benefited from consultations with Governments and interested intergovernmental and international non-governmental organizations,

"*Noting also* that the text of the draft convention was circulated for comment before the fifty-eighth session of the Commission to all Governments invited to attend the meetings of the Commission and its Working Group VI (Negotiable Cargo Documents) as members and observers,

"*Expressing* its appreciation to the International Civil Aviation Organization, the Intergovernmental Organisation for International Carriage by Rail, and the Organisation for Co-operation between Railways for their assistance in the preparation of the draft convention,

"*Having considered* the draft convention and the comments submitted by Governments and international organizations at its fifty- eighth session, in 2025,

"1. *Submits* to the General Assembly the draft convention on negotiable cargo documents, as it appears in annex I to the report of the United Nations Commission on International Trade Law on the work of its fifty-eighth session;

"2. *Recommends* that the General Assembly, taking into account the extensive consideration given to the draft convention by the Commission and its Working Group VI (Negotiable Cargo Documents), consider the draft convention with a view to adopting, at its eightieth session, on

the basis of the draft convention approved by the Commission, a United Nations Convention on Negotiable Cargo Documents;

"3. *Requests* the Secretary-General to publish the Convention, upon adoption, including electronically and in the six official languages of the United Nations, and to disseminate it broadly to Governments and other interested bodies."[40]

2.3. Toolkit and Background Notes on asset tracing and recovery in insolvency proceedings

100. At the Commission recalled that, at its fifty-fourth session, in 2021, it had mandated its Working Group V on Insolvency Law to undertake work on the topic of asset tracing and recovery in insolvency proceedings, and that the Working Group had commenced work on that topic at its fifty-ninth session.[41]

101. The Commission was informed that the Working Group, at its sixty-fifth session had requested the secretariat to circulate a draft toolkit for expedited asset tracing and recovery in insolvency proceedings and draft background notes on asset tracing and recovery in insolvency proceedings, as revised to reflect its deliberations and decisions at that session, for comments from States.

102. Further Commission also took note that the Working Group, at its sixty-sixth session held earlier this year had concluded its work on the topic and had agreed to recommend the draft toolkit and background notes, as contained in document with the amendments set out in the report of that session for consideration, finalization and adoption by the Commission at its fifty-eighth session, in 2025.

[40] UNCITRAL, 'Draft Decision-Convention on negotiable cargo documents' UN Doc. A/CN.9/LVIII/CRP.2 (1 July 2025)
[41] UNCITRAL 'Draft Report: Addenum- Finalization and adoption of the UNCITRAL Toolkit and Background Notes on Asset Tracing and Recovery in Insolvency Proceedings' UN Doc. A/CN.9/LVIII/CRP.1/Add.7 (14 July 2025)

103. Pursuant to that recommendation, the Commission, at its current session, considered the draft toolkit and background notes, as contained in document and amended by the Working Group at its sixty-sixth session. It also had before it the comments received from States on the draft toolkit and background notes that were circulated by the secretariat.

104. As no comments were made at the session regarding the substance of the draft texts, the Commission adopted the draft texts substantively unchanged, under the title "Asset Tracing and Recovery in Insolvency Proceedings: UNCITRAL Toolkit and Background Notes", and with a table of contents for the entire publication added. It was also agreed that the adopted texts would be published in the six official languages of the United Nations, including in electronic form.

105. The Commission emphasized the relevance of the adopted texts for the protection, preservation and maximization of the value of the insolvency estate for the benefit of all creditors and other parties in interest, including the debtor and its employees. It noted that, by complementing and supplementing the UNCITRAL insolvency framework, the adopted texts would support a conducive trade and business environment, promote access to credit and encourage investment. They were also seen as contributing to broader socioeconomic objectives, including the promotion of the rule of law and good governance.

106. It was observed that information contained in the adopted texts could be of practical value to judges, insolvency practitioners and other stakeholders in situations involving asset tracing and recovery. In particular, it was considered that the information provided in those texts might facilitate court-to-court communication and cooperation and expedite asset tracing and recovery across borders, whether within or outside the insolvency context, and in both physical and digital settings. The Commission appreciated that the complexities arising from asset tracing and recovery in the digital environment, due to the ease of movement of digital assets and the instantaneous conclusion of multiple and numerous transactions whose parties might not be (immediately or easily) identifiable, had been duly taken into account in the preparation of the texts by the Working Group. It also appreciated that the relevant Hague conventions were taken into account in preparing the texts.

107. The Commission also considered that policymakers and legislators might find information in the adopted texts useful for assessing the availability, accessibility, effectiveness and efficiency of their domestic legal and institutional frameworks for asset tracing and recovery. The results of such assessments might inform the need to enhance domestic frameworks with new asset tracing and recovery tools or to introduce other changes in response to evolving challenges and opportunities, especially those arising in the digital environment. The Commission expressed confidence that the adopted texts would prove useful in all those contexts.

108. Accordingly, the Commission requested the secretariat to ensure the wide dissemination of the adopted texts in the six official languages of the United Nations, so as to enhance their visibility and accessibility and facilitate their use by all relevant stakeholders. It expressed appreciation to all States, organizations and individual experts whose contributions were crucial for the quality of the adopted toolkit and background notes.

109. The main policy objectives underlying the background notes and the toolkit are protection, preservation and maximization of the value of the insolvency estate for the benefit of creditors and other parties in interest, including the debtor, as well as the promotion of the rule of law, good governance, investment, trade and an enabling business environment.

110. The background notes survey relevant provisions found in various areas of law in a number of jurisdictions, including the law of criminal procedure, the toolkit sets out tools and steps that could expedite asset tracing and recovery procedures both domestically and across borders but avoiding criminal procedure aspects. Both the toolkit and the background notes are non-prescriptive, informing readers about ATR measures used across jurisdictions. Both texts intend to convey that, although differing in name, those measures share many common features across States. The toolkit and the background notes identify these commonalities, helping policymakers, legislators, courts and insolvency practitioners to better understand asset tracing and recovery measures used in other States.[42]

[42] UNCITRAL, 'Asset tracing and recovery in insolvency proceedings: Note by the Secretariat' UN Doc. A/CN.9/WG.V/WP.201 (3 February 2025) 3

111. An enhanced understanding of those measures may produce multiple benefits for domestic and cross-border insolvency cases. In particular, it may assist the domestic asset tracing and recovery framework and practices with new tools. It may also facilitate judicial communication and cooperation and expedite asset tracing and recovery across borders since the courts may grant a similar or equivalent domestic measures more expeditiously. Courts may also stay or decline to commence a local proceeding in appropriate cases, based on the facts and circumstances of the specific case, and to employ other tools to expedite and enhance the effectiveness of asset tracing and recovery in insolvency proceedings.[43]

2.4. Draft toolkit on dispute prevention and mitigation of international investment disputes

112. The Draft toolkit on Prevention and Mitigation of International Investment Disputes (the "Toolkit") aims to set out strategies and measures that have been adopted by States to prevent and mitigate investment disputes involving foreign investors

113. The Commission recalled that at its previous fifty-seventh session, in 2024, it had noted the progress made with regard to a toolkit on prevention and mitigation of international investment disputes. It also recalled that at that session, the secretariat was requested to circulate the draft toolkit for comments and feedback by States, on the basis of which an updated version of the toolkit could be prepared and presented to the Commission for finalization.[44]

114. Further the Commission noted that the work on the toolkit was undertaken by Working Group III during its thirty-ninth, forty-fifth, forty-seventh and forty-eighth session and had also been subject of intensive intersessional consultations.

115. At the current fifty-eighth session, the Commission had before it the Draft UNCITRAL Toolkit on Prevention and Mitigation of International Investment Disputes which had been prepared by the Secretariat reflecting the comments and feedback received from States.

[43] Ibid
[44] UNCITRAL,. 'Draft Report: Addendum' UN Doc. A/CN.9/LVIII/CRP.1/Add.23 (14 July 2025)

116. While considering the toolkit at the outset, the Commission acknowledged the importance of dispute prevention and mitigation and of the toolkit, as well as its value as a practical resource for States and other stakeholders involved in investor-State dispute settlement. The Commission also expressed gratitude to the Secretariat for incorporating the suggestions and comments from State into the draft

117. Regarding the draft under consideration it was noted that it was prepared to be responsive to the evolving practices and experiences of States in preventing and managing investment disputes, and that the relevance of the toolkit was enhanced by integrating concrete examples, practices, and lessons learned from recent dispute prevention efforts.

118. After deliberation the Commission agreed that the following adjustments should be made to the draft toolkit:

- A footnote should be added in the first sentence of paragraph 3 to read: "This does not mean that REIOs are States. However, REIOs may, depending on their structure and the scope of their regulatory authority, engage the strategies or impose the measures listed in the Toolkit.";
- The third sentence in paragraph 12 should read: "However, facilitating access to, and providing such information, may not create any expectation on the part of investors, as investors should conduct due diligence….";
- The last sentence in paragraph 19 should read: "… congressional website, and there are some mechanisms that allow for public participation as well as specific examples of ex ante evaluation of regulatory projects.";
- Noting that the terminology "grievance mechanism" was used broadly to cover feedback mechanisms and as reference was being made to the World Bank practice, the third sentence in paragraph 23 should read: "A grievance mechanism provides investors…";
- A suggestion to add the phrase "or to engage third-party neutrals to narrow or reframe the issue" at the end of paragraph 29 did not receive support;
- The second sentence of paragraph 66 should be deleted.

119. In addition, a number of clarifications and corrections regarding State practices (referred to in the body of the toolkit, the footnotes and chapter F) were provided. The Commission also invited to submit any further corrections or updates to the secretariat by 29 August 2025 so that the secretariat could reflect the corrections in the final version of the toolkit.

120. The Commission further agreed that it would be useful for the toolkit to be updated periodically to reflect new and emerging practices. It was agreed that the secretariat report back to the Commission, when it would be timely to prepare a revised version of the toolkit based on the information gathered. For this purpose, States were requested to provide relevant information to the secretariat as appropriate.

2.5. UNCITRAL/UNIDROIT study on the legal nature of verified carbon credits issued by independent carbon standard setters

121. At the outset the Commission recalled that at its fifty-fourth session, in 2021, it received a proposal to examine (a) how existing UNCITRAL texts could be aligned with climate change mitigation, adaptation and resilience goals, and (b) whether further work could be done by UNCITRAL to facilitate those goals in the implementation of those texts or through the development of new texts. At that session the commission was also apprised that future legislative work could focus the legal uncertainty regarding the legal status of carbon credits traded in voluntary carbon markets.

122. In this regard it was further recalled that, at its previous session it had considered the UNCITRAL/UNIDROIT study on the legal nature of verified carbon credits (VCCs) issued by independent carbon standard setters and requested the secretariat to circulate the Study to all member States of the UN and requesting comments with a view to compiling those comments and submitting them, together with the Study, for consideration at the present fifty-eighth session. The Commission also recalled that it had agreed to hold a further discussion on the findings of the Study, as well as the issues highlighted by States in their comments, and to consider whether to request the secretariat to prepare a revised version of the Study for publication.

123. At the present fifty-eighth session the Commission had before it the Study and a compilation of aforesaid comments of States on the Study. The Commission expressed its appreciation to the two secretariats for the preparation of the Study, acknowledging the amount of effort put into it and noting that it had benefited from inputs from various States and stakeholders. The Commission also welcomed the comments by States and international organizations, which were elaborated upon during the discussions. During the deliberations the value and utility of the Study was recognized, as it identified various legal issues with regard to VCCs and as it could helpfully assist States and other stakeholders in considering and dealing with those issues.[45]

124. Some questions were raised with respect to: (a) the scope of the Study, including the need to cover carbon credit schemes administered by public authorities, as well as approaches and mechanisms under Article 6 of the Paris Agreement; (b) the characterization of the mechanism under Article 6.4 of the Paris Agreement in the Study; (c) whether verified "carbon" credits was the appropriate terminology to be used, as it focused on emissions of CO2 and not other greenhouse gases; (d) whether UNCITRAL was the appropriate forum for such work; (e) whether there might be a risk of fragmentation or overlap with work being done at the UNFCCC; and (f) whether and how the Study should be updated to reflect the comments received.

125. Particularly with respect to the last point, it was suggested that the secretariat could update the Study by reflecting the technical comments while reproducing more general or policy-related comments in an annex to the Study. It was clarified that the secretariat would communicate with States or organizations that had submitted comments on whether they wished to have their comments included in the annex. States and organizations were invited to submit any additional comments on the Study by no later than 29 August 2025 so as to be reflected in the revised version.

126. After the conclusion of discussion, the Commission requested the secretariat to prepare a revised version of the Study, which would reflect the relevant deliberations in the Commission, incorporate the technical comments received and include the policy-related comments in an

[45] UNCITRAL, 'Draft Report: Addendum' UN Doc. A/CN.9/LVIII/CRP.1/Add.12 (14 July 2025)

annex, and to make available the revised version of the Study on the website of the Commission in all official languages of the United Nations, resources permitting. The Commission acknowledged that the publication of the Study on the website would conclude its work on the legal nature of VCCs.

127. The study provides a comparative overview of legal issues related to VCCs to help States assess the options available to them in addressing relevant legal issues, in particular as regards the legal nature of VCC. However, in view of its focus on international trade the study does not seek to analyse regulatory schemes that are administered by public authorities, whether at the domestic or international level, and that involve the issuance of carbon credits or require or permit the use of carbon credits for compliance purposes.[46]

2.6. Draft Model Organization Rules for Limited Liability Enterprises

128. At its fifty-eighth session the Commission had before it the Draft Model Organization Rules for Limited Liability Enterprises prepared by the secretariat pursuant to the Commission's deliberations at its fifty-fourth session (2021). The Commission recalled that at that session the Commission had adopted the UNCITRAL Legislative Guide on Limited Liability Enterprises (LLE) providing a simplified legal form for micro, small and medium-sized enterprises (MSMEs). Further it was recalled that the Commission had also instructed the secretariat to prepare guidance, with the assistance of experts, to support States in developing model rules to assist LLE members particularly those with limited legal resources in drafting organization rules for the internal management of their LLEs in a fair, effective and transparent manner.

129. The Commission also reiterated that given the Legislative Guide's emphasis on contractual freedom in the MSME governance, organization rules are a core feature of the LLE form, allowing entrepreneurs to tailor governance arrangements to their specific needs subject to

[46] UNCITRAL, 'UNCITRAL/UNIDROIT study on the legal nature of verified carbon credits issued by independent carbon standard setters: Note by the Secretariat' UN Doc. A/CN.9/1191 (14 March 2024)

the domestic provisions implementing the mandatory rules of the Guide and other applicable laws.

130. The Commission took note that the guidance prepared by the Secretariat which comprises of two templates, each differing in scope and structure to accommodate the varying needs of entrepreneurs. While both templates were suitable for single-member and multi-member LLEs, one is intended for LLEs managed by all members or designated managers and offers a comprehensive format with selectable options ("check-the-box" approach) for users seeking greater guidance. The other, designed for member-managed LLEs, is more concise, with minimal predefined choices, and targets users more familiar with enterprise governance. Regarding the two template the Commission noted the secretariat's suggestion that, in view of the differences in format and intended use, both templates could be endorsed it.

131. While recalling that the draft templates were derived from the Legislative Guide, the Commission considered those proposed amendments that were consistent with the principles and guidance set forth therein. In this regard it was said that the templates were intended to serve as guidance for States which could further adapt them to better align with their domestic legal frameworks.

132. Regarding the amendments the Commission agreed as follows:

(a) Paragraph 2(h) would read: "events leading to the dissolution of the LLE," as this wording more accurately reflects the guidance provided in paragraph 134 of the Legislative Guide;

(b) Provision 1.2 in both Template One and Template Two should include a footnote clarifying in what circumstances reference to the "precise geographical location" of the LLE might be needed;

(c) Provision 6.3.1 in Template One would be deleted, as the subject matter was addressed in Provision 13;

(d) The phrase "otherwise recorded notice" in Provision 7.3 in both Template One and Template Two would be replaced with "notice otherwise communicated";

(e) The first two options in Provision 8.4 in Template One ("A rotation voting (deciding vote rotates among the members); A dispute resolution)" would be deleted;

(f) The phrase "there shall be either a rotation voting (deciding vote rotates among members) or a dispute resolution" in Provision 8.4 in Template Two would be replaced with a placeholder "[specify which method]".47

133. After considering the text of the two templates, the Commission endorsed both templates prepared by the secretariat and authorized the secretariat to make any further editorial adjustments thereto, as necessary to enhance clarity. In addition, the Commission also directed the secretariat to use the templates as a basis for preparing model rules, and also noted that States could also make them directly accessible to members of the limited liability enterprises when appropriate. The Commission further authorized the secretariat to make the templates available, in the six official languages of the United Nations, electronically on the UNCITRAL website and to publish them

C. The World Investment Report, 2025 and the recent developments in the work of the United Nations Trade and Development (UNCTAD) in relation to the International Investment Agreements and Disputes Regime

134. The World Investment Report, 2025 a much awaited annual publication released by UNCTAD provides key data across the landscape of international investment law and policy in 2024. Over the years the landscape has been characterized by a growing divergence between old and new international investment agreements (IIAs). In this regard the report highlights that new IIAs increasingly emphasize proactive facilitation, cooperation, and promotion of investment, while progressively reducing their reliance on ISDS mechanisms.

135. However it also states that despite these advancements, an aging web of older treaties, concluded in the 1990s and 2000s, continues to dominate the global investment regime, constraining regulatory flexibility for crucial policy areas such as public health, climate change, and digitalization. The report concludes that the regime's complexities pose significant challenges, especially for developing and least developed countries, as governments seek to

[47] UNCITRAL., 'Draft Report: Addendum' UN Doc. A/CN.9/LVIII/CRP.1/Add.6 (14 July 2025)

balance the attraction of foreign investment while retaining sovereignty to regulate in the public interest.

1. The World Investment Report, 2025 and IIAS

136. In 2024, the landscape of IIAs witnessed an addition of at least 30, consisting of 17 bilateral investment treaties (BITs) and 13 broader economic treaties with investment provisions (TIPs). These additions elevated the total number of IIAs to 3,323, comprised predominantly of 2,843 BITs and 480 TIPs. Furthermore, 22 IIAs entered into force, while four were terminated, resulting in at least 2,625 IIAs in force between parties by the end of 2024.

137. The report notes that in the practice of States the emphasis on TIPs has grown substantially relative to BITs, both in sheer number and the relational coverage they afford, with three TIPs signed in 2024 creating treaty relationships involving 47 States. The data provided in the report indicates that developing economies were actively engaged in all new IIAs concluded in 2024, with the United Arab Emirates leading with nine agreements, followed by India and Türkiye with four each, and China with three. On the other hand, the report states that developed economies concluded 11 agreements, with Australia and the Republic of Korea among the signatories. Regional organizations, such as the European Union (EU) and the European Free Trade Association (EFTA), also played a key role by concluding two agreements, underscoring the growing regionally integrated nature of contemporary investment law and policy.

138. The report notes that the recent slowing of treaty terminations in 2023 and 2024, after a surge linked to coordinated European Union member state actions during 2020–2022, signalled a phase of stabilization in the investment agreement architecture. It further states that out of 4 terminations in 2024, 2 were terminated by mutual consent, while one was through unilateral denunciation, and another was replaced by a new agreement, bringing the total number of terminated IIAs to at least 592 by end of 2024.

139. Notably, the report identifies that in the past decade, most terminated IIAs were not replaced, especially among developed countries, which account for a majority of such non-

replacement terminations. Terminations by consent tended to involve agreements among developed economies, while unilateral denunciations and expirations were more common when developing countries were parties. In this regard the report also recalls that despite terminations, many IIAs include sunset clauses that in some cases allows investor access to ISDS for up to 25 years post-termination. However, the report notes that most consensual terminations in 2024 included provisions neutralizing such sunset clauses to mitigate lingering risks.

140. Regarding the content of investment agreements concluded from 2020 to 2024 the report reveals transformative trends, highlighting a shift away from the traditional focus on investment protection towards a more strategic and wider approach. This new generation of IIAs prominently incorporates provisions on cooperation, facilitation, and promotion of investment, alongside refined protection standards and liberalization commitments, while deliberately reducing reliance on ISDS mechanisms and enhancing sustainable development considerations.

(a) Cooperation

141. The report highlights the prevalence of Cooperation mechanisms that appear in over 80 per cent of IIAs concluded since 2020, introducing institutional frameworks such as investment committees or consultation processes that foster ongoing, substantive engagement between contracting parties. The report states these treaties were increasingly serving as platforms for collaboration on sector-specific priorities such as infrastructure, digitalization, agriculture, the blue economy, and renewable energy. Some of the examples provided in the report included the Indo-Pacific Economic Framework Clean Economy Agreement of 2024 and the EU–Kenya Economic Partnership Agreement (EPA) of 2023, which embed cooperation provisions into their frameworks. Additionally, some IIAs are complemented by memorandums of understanding to target sectors like artificial intelligence, green energy, and minerals, as demonstrated by the Australia–United Arab Emirates Comprehensive Economic Partnership Agreement (CEPA) of 2024.

(b) Facilitation

142. Regarding Facilitation provision the report notes that it has become a central component in nearly three-quarters of signed IIAs since 2020, emphasizing commitments to transparency, regulatory improvements, and streamlined administrative procedures for investor entry and personnel movement. A notable development highlighted in the report was the introduction of provisions encouraging digitalization of investment procedures found in the Angola–EU Sustainable Investment Facilitation Agreement (SIFA) of 2023. However, the report further states that while facilitation provisions generally improved the overall regulatory environment, fewer than 30 per cent directly addressed sustainable investment facilitation, and a smaller subset prescribed concrete, sustainability-focused actions, as found in the African Continental Free Trade Agreement (AfCFTA) Investment Protocol of 2023.

(c) Promotion

143. The report states that Investment promotion, though modest in scope, has doubled in prevalence compared to earlier IIAs. Promotional provisions often align with facilitative efforts or feature as principal aspects of cooperation chapters. The report provides examples of Agreements such as the Sri Lanka–Thailand Free Trade Agreement (FTA) of 2024 and the Chile–United Arab Emirates CEPA of 2024 integrate investment promotion goals, with some treaties explicitly aiming to boost investment flows to specific targets, as in the EFTA–India Trade and Economic Partnership Agreement of 2024.

(d) Protection

144. The reports notes a major trend that refinements in investment protection standards characterize new IIAs by balancing investor rights with States' regulatory freedom. In this regard it highlights that close to half of recent treaties with protection elements adopt more precise formulations of the fair and equitable treatment (FET) standard, replacing it with narrowly defined obligations or omitting it entirely in certain cases. The report cites the Australia–United

Arab Emirates BIT of 2024 and the Chile–European Union Advanced Framework Agreement (AFA) of 2023 as examples that showcase such calibrated approaches.

145. Furthermore, in relation to other treatment standards the report notes that 70 per cent of the treaties entered into since 2020 explicitly carve out generally applicable regulatory measures from expropriation claims and limit non-discrimination clauses to reduce unintended systemic consequences. With respect to the once prevalent Umbrella clauses, which extend treaty protection to non-treaty commitments by States, it notes that they were largely omitted in practice, a significant from earlier practice in old generation treaties.

(e) Liberalization

146. The report notes that in the practice of State, investment liberalization commitments in IIAs have expanded, with 40 per cent of treaties signed since 2020 containing provisions aimed at eliminating investment entry restrictions. As highlighted in the report, these provisions typically offer national and most-favoured-nation treatment for investment admission, often operationalized through a negative-list approach and prohibiting performance requirements as entry conditions. It is also noted in the report that some IIAs also restricted operational performance requirements in post-establishment scenarios. However inspite of these developing trend the report also notes that several States reserved policy space by exempting strategic sectors, including critical minerals, from liberalization, as reflected in the Chile–European Union AFA of 2023. The report notes that such inclusions of flexibilities within liberalization commitments was critical for supporting development priorities without undermining local enterprises or impeding transfer of technology.

(f) ISDS

147. One of the most notable trends highlighted in the report was the diminished reliance on ISDS mechanisms in IIAs signed since 2020. The report states that approximately 45 per cent of them exclude ISDS provisions altogether, with this tendency particularly notable in TIPs, 80 per cent of which omit arbitration.

148. On the other hand the report notes that some BITs, such as the Australia–United Arab Emirates BIT (2024) and Brazil–India BIT (2020) have forgone ISDS altogether. According to the report, this shift stems partly from an increasing share of IIAs' focus on facilitation and cooperation, making ISDS less relevant since it traditionally addresses investment protection issues. Further report also highlights that when ISDS is excluded, alternative dispute resolution approaches like amicable settlement or State–State arbitration are included in IIAs, a feature evident in agreements like Angola–EU SIFA (2023) and the Indo-Pacific Economic Framework Clean Economy Agreement (2024). Moreover, the report notes that where protection and ISDS coexist, facilitation and liberalization provisions are often carved out of scope of ISDS with a view to reinforce these cooperative modalities.

149. The report further notes that the consensus among a wide range of States on reforming investor–State arbitration has also informed these changes, with some treaties opting for State–State dispute resolution or deferring ISDS mechanisms for future negotiation. In this regard the report refers to the MERCOSUR–Singapore FTA (2023) and the New Zealand–United Kingdom FTA (2022) that exemplify a cautious stance. With respect to Modern IIAs that do retain ISDS provisions the report notes that they commonly incorporate procedural improvements to enhance dispute resolution's effectiveness and fairness.

(g) Sustainable development

150. Regarding Sustainable development the report notes that it occupies a rapidly expanding place in IIA design. The most widespread sustainable development elements highlighted in the report were safeguards protecting States' right to regulate, with many IIAs incorporating public policy exceptions concerning environmental protection, health, and labour standards. The examples provided in the report include the Chile–European Union AFA (2023) and the Sri Lanka–Thailand FTA (2024). In this regard the report particularly highlights the AfCFTA Investment Protocol (2023) which tailors exceptions uniquely to each protection standard, reflecting innovative treaty drafting.

151. Additionally, the report notes that two-thirds of IIAs since 2020 contain provisions prohibiting the lowering of standards related to sustainable development reinforcing the commitment to prevent regulatory backsliding. Specific cooperative commitments addressing climate measures, human capital, and social impact assessments were also some elements identified in the report that were being increasingly incorporated, although featuring in less than a third of new treaties.

152. Regarding responsible investment provisions, the report notes that they are included in roughly half of IIAs since 2020, marking a positive step toward more inclusive international investment governance. The report recalls that such provisions commonly emphasize anti-corruption and corporate social responsibility principles, though their binding impact remains limited in ISDS due to their typically soft-law nature. However, the report further that a smaller but growing fraction, about 10 per cent of new IIAs, integrates binding investor obligations covering anti-corruption, governance transparency, environmental protection, labour rights, community interests, and taxation. Examples provided for such practice in the report include the Belarus–Zimbabwe BIT (2021) and the AfCFTA Investment Protocol (2023). The report concludes that the presence of such provisions may contribute to rebalancing investor rights vis-à-vis their responsibilities.

153. The report also notes that encouraging inclusive investment represents another goal which is implemented in new IIAS that are increasingly promoting the economic empowerment of disadvantaged groups, including small and medium-sized enterprises, women, local communities, youth, and persons with disabilities. The report states that these commitments are often implemented in the form of joint promotion and cooperation initiatives or accessibility to financial mechanisms targeting these groups, as seen in the Kenya–United Kingdom EPA (2020) and the Australia–United Arab Emirates CEPA (2024). In this regard the report notes that innovation reflect a growing recognition of investment agreements as vehicles for broader social inclusion.

154. Despite these advances, the reports acknowledges that that vast majority of recent IIAs continue to apply broadly to investors and investments across all sectors without explicitly

conditioning treaty benefits on the sustainable development impact of projects. Nevertheless, a few newly concluded instruments take a new approach by linking investment coverage to criteria such as contribution to sustainable development, exclusion of certain assets or sector-specific proactive cooperation aligned with partner countries' priorities, such as in the modernized Energy Charter Treaty (ECT) (2024), the Indo-Pacific Economic Framework Clean Economy Agreement (2024) and the Australia–Singapore Green Economy Agreement (2022).

155. In this regard the report also acknowledges that development of guiding principles for sustainable development-oriented IIA reform represents a timely step to unify and guide national, bilateral, regional, and multilateral efforts, helping countries effectively navigate the complex contemporary investment regime.

2. The World Investment Report, 2025 and ISDS

156. The report noted evolving patterns in realm of investor–State dispute settlement in 2024. It stated that new ISDS cases initiated dropped to 58 taking the aggregate number of known treaty-based ISDS cases to 1,401, with three-quarters having been initiated between 2010 and 2024, demonstrating a significant build-up in dispute settlement activity in recent years. The report states that these claims were lodged against 135 countries and the European Union as a regional respondent, illustrating the widespread impact of ISDS mechanisms.

157. In relation to new cases since 2020 the report notes that Mexico and the Russian Federation were the most frequently named respondents in these, followed by Honduras and Panama. Further the report also noted that several countries including Angola, Burkina Faso, and Luxembourg faced their first ISDS claims. In relation to developing countries, that hold about one-third of global inward FDI stock, the report states that they were respondents in approximately 55 per cent of new cases, highlighting the disproportionate exposure they face relative to their investment share.

158. Notably, the report highlights that 6 of these were least developed countries, which collectively accounted for less than 1 per cent of inward FDI stock, underscoring significant

vulnerabilities in this group. The report also noted that the investor-claimants predominantly hailed from developed economies, particularly the United Kingdom and Canada, consistent with data that shows their outsized share of outward FDI.

159. Regarding the economic sectors implicated in ISDS disputes in 2024 the report noted a marked increase in cases related to extractive industries and energy supply, which made up more than half of new cases. Numerous claims involved mining of critical minerals vital for global industrial and energy transitions, such as copper, lithium, titanium, and zinc formed part of the cases. According to the report fossil fuel-related cases also remained significant, with 13 filed in 2024, alongside at least 6 disputes concerning renewable energy investments. In this regard the report highlighted that energy-related disputes have particular relevance to sustainable development goals and the global push for energy transitions, as governments adjust regulatory frameworks for climate action.

160. Regards the IIAs, invoked the report observed that the Energy Charter Treaty was the most frequently invoked IIA in 2024 in 9 cases, including several intra EU arbitrations.

161. The report further recalled that BITs based on older treaty models made up the majority of ISDS claims about 75 per cent of the total, while TIP-based cases mostly stemmed from treaties such as the ECT and the North American Free Trade Agreement. The report also recognized that around 85 per cent of ISDS claims in 2024 relied on IIAs signed before 2010, emphasizing the enduring impact of an aged treaty network despite recent reforms.

162. The report stated that decisions in 2024 presented a mixed picture with at least 78 substantive decisions with 39 publicly known outcomes. Of the public decisions addressing jurisdictional objections, the report notes that most of them were dismissed cases for lack of jurisdiction or admissibility. As regards cases that proceeded to the merit stage, the report notes that States were found liable in 11 cases, often with compensation awarded, while 8 investment claims were dismissed. As regards the Annulment proceedings, the report noted that it further affirmed tribunal awards in most cases, with few instances of partial annulment.

163. The report observed that the pattern of breaches alleged in ISDS claims predominantly related to fair and equitable treatment (FET) and indirect expropriation standards, reflecting their centrality in investor protections. The report noted that Tribunals frequently upheld these claims when deciding in favor of investors.

164. Further in the report also highlighted the escalation in the scale of damages, with about 60 per cent of cases involving demands exceeding $100 million with several cases seeking damages above $1 billion, including landmark claims connected to the Yukos dispute and significant coal project refusals in Australia.

165. According to the report analysis of monetary awards revealed that successful claimants were typically awarded around 25 per cent of claimed amounts, with recent averages surpassing $230 million. The report notes that this average had doubled from the previous decade and this trend underscored the increasing stakes and financial exposure associated with ISDS cases. In this the regard the report also added that costs beyond principal damages, including interest and legal fees, further increased the substantial financial implications.

3. Conclusion

166. In conclusion, it must be acknowledged that the World Investment Report 2025 is an essential publication covering the developments in 2024 relating to IIAs and ISDS characterized by progressive shifts towards modern, sustainable, and facilitative reforms. Although these reforms highlighted in the report signal promising directions, the coexistence with an extensive repository of older treaties with their expansive ISDS protections and less protective environmental and social safeguards creates a fragmented regime challenging to manage. Balancing the need to attract foreign investment with preserving sovereign policy space for sustainable development remains an ongoing endeavour for AALCO Member States as well as the international community. Through concerted reform initiatives and enhanced multilateral cooperation, there is cautious optimism that the international investment regime can evolve to better support the needs of Asian and African States of which many of whom striving to achieve economic development in a sustainable manner.

D. Report on the work of the International Institute for the Unification of Private Law (UNIDROIT)

167. The following report outlines the progress made by the International Institute for the Unification of Private Law (UNIDROIT) in 2024–2025, as discussed during the 104th session (remote) and the 105th session (20–23 May 2025, Rome) of its Governing Council as a follow up on the 103rd session (8–19 May 2024, Rome and via videoconference). This agenda item addresses key legislative and non-legislative activities undertaken by UNIDROIT, focusing on the harmonization and modernization of private law to facilitate international trade, investment, and sustainable development. The report covers the following topics: (i) Model Law on the Legal and Regulatory Aspects of Investment-Based Crowdfunding, (ii) Proposal for a Legal Guide on the Insolvency of Insurance Enterprises, (iii) Harmonisation of National Regimes, (iv) Construction and Engineering Law, (v) Regulation of Digital Risks through Civil Liability Law, (vi) Res Judicata in International Commercial Arbitration, (vii) Standard Essential Patents, (viii) Bank Insolvency, (ix) Best Practices for Effective Enforcement, (x) Model Law on Factoring, (xi) Principles of Reinsurance Contracts, (xii) Collaborative Legal Structures for Agricultural Enterprises, (xiii) Legal Nature of Verified Carbon Credits, (xiv) UNIDROIT Principles of International Commercial Contracts and Investment Contracts, (xv) Private Art Collections, and (xvi) International Interests in Mobile Equipment.[48] These initiatives reflect UNIDROIT's commitment to addressing contemporary legal challenges in global commerce.

1. Model Law or a Legal Guide on Legal and Regulatory Aspects of Investment-Based Crowd funding (debt and equity)

168. At the 103rd session held in Rome via Videoconferencing, the UNIDROIT Governing Council considered exploratory work on the legal and regulatory aspects of investment-based crowd-funding as part of its broader agenda on innovative financial mechanisms. The initiative was prioritized in response to the growing prominence of crowdfunding as a tool for small and medium enterprises (SMEs) and startups to access capital, particularly in developing economies.

[48] UNIDROIT, 'Summary Conclusions of 105th session of the Governing Council of UNIDROIT' (June 2025) <https://www.unidroit.org/wp-content/uploads/2025/07/C.D.-105-Misc.-3-Summary-Conclusions-Final.pdf> accessed 8 August 2025

The project was included in the 2023-2025 Work Programme, following a proposal to address the fragmented legal frameworks governing crowd funding across jurisdictions.

169. At the 104th session held remotely in April 2025, the Governing Council reviewed the progress of the Working Group on Investment-Based Crowdfunding, established to develop a model law. The Working Group held two sessions in 2024, focusing on key issues such as investor protection, disclosure requirements, and the legal status of crowd funding platforms. The draft model law aims to provide a flexible framework for regulating equity and debt-based crowd funding, addressing issues like risk mitigation, transparency, and cross-border enforceability. The Secretariat was tasked with consulting stakeholders, including financial regulators and industry representatives, to refine the draft provisions. At the 105th session, the Governing Council reviewed a comprehensive preliminary draft, endorsing its core provisions, which include a tiered regulatory framework based on investment size, mandatory escrow accounts for funds, and blockchain-based record-keeping for transparency. The Governing Council authorized public consultations with member states and stakeholders, like World Bank, in the 2026-2028 Work Programme to refine the instrument, with high priority[49].

2. Proposal for a Legal Guide on the Insolvency of Insurance Enterprises

170. The proposal for a Legal Guide on the Insolvency of Insurance Enterprises addresses the unique challenges of managing the failure of insurance companies, which differ from other financial institutions due to their risk-based business models, long-term policyholder obligations, and complex reinsurance arrangements. Building on UNIDROIT's expertise in bank insolvency, the project was proposed by the Secretariat in response to calls from international organizations, including the Italian Institute for the Supervision of Insurance (IVASS), for harmonized guidance on insurance insolvency. It has been included as a high-priority item in the 2026–2028 Work Programme to complement existing international standards, such as those developed by the Financial Stability Board for systemically important insurers.

[49] UNIDROIT, 'Item No. 4 on the Agenda: Proposals for the New York Programme for the triennial period 2026-28' (April 2025) < https://www.unidroit.org/wp-content/uploads/2025/05/C.D.-105-4-rev-Proposals-for-the-New-Work-Programme-for-the-triennial-period-2026-2028-.pdf> accessed 8 August 2025

171. The Working Group held two sessions in 2024, focusing on key issues such as policyholder protection, priority of claims, cross-border coordination, and the role of resolution authorities. The Secretariat conducted a comparative analysis of insurance insolvency regimes in jurisdictions like the EU, Japan, and the USA. At the 104th session, the Governing Council reviewed a preliminary outline of the Legal Guide, which proposed a modular structure covering pre-insolvency interventions, liquidation procedures, and cross-border cooperation. At the 105th session, the Working Group presented a detailed concept paper, outlining 12 core principles for insurance insolvency, including the establishment of policyholder compensation funds and mechanisms for transferring insurance portfolios. The Governing Council endorsed the proposal and authorized the Working Group to develop a full draft Legal Guide, with intersessional consultations planned for 2025 and a preliminary draft expected for review at the 106th session in 2026[50].

3. Harmonization of National Regimes

172. The harmonization of national regimes has been a cornerstone of UNIDROIT's mission to reduce legal barriers to international trade and investment. The initiative spans multiple projects, including crowd funding, insurance insolvency, bank insolvency, factoring, and digital assets, addressing discrepancies in national laws that hinder cross-border transactions. The project draws on UNIDROIT's prior work, such as the Cape Town Convention and the UNIDROIT Principles of International Commercial Contracts (UPICC), and aligns with global efforts, such as those by UNCITRAL and the EU, to promote legal convergence. The Governing Council emphasized the need for consistent legal standards to support global economic integration.

173. At the 104th session, the Governing Council reviewed efforts of Secretariat to harmonize national regimes in areas such as investment-based crowd funding, insolvency frameworks, and digital assets. The Working Group on Crowdfunding proposed model provisions to align national regulations on investor protections and platform operations. Similarly, the Working Group on Insurance Insolvency developed guidelines to standardize approaches to cross-border insolvency

[50] Ibid 2

proceedings, drawing on best practices from jurisdictions with advanced regulatory systems. The Secretariat was tasked with coordinating with UNCITRAL, Hague Conference on Private International Law (HCCH), and other organizations to ensure compatibility with existing international instruments.

174. At the 105th session, the Governing Council endorsed a strategic plan to enhance harmonisation, authorizing the Secretariat to establish a Cross-Project Task Force to identify common principles across UNIDROIT's instruments. The Task Force will focus on aligning definitions, procedural requirements, and enforcement mechanisms, with a progress report due at the 106th session in 2026[51].

4. Proposal on Construction and Engineering Law

175. UNIDROIT's work on construction and engineering law aims to develop uniform rules for contracts in these sectors, addressing the complexities of cross-border infrastructure projects. The project was included in the 2023–2025 Work Programme as a potential area for developing model provisions or a legal guide, recognizing the need for harmonized standards in construction and engineering contracts.

176. The Governing Council reviewed exploratory work conducted by the Secretariat, including consultations with industry experts and international organizations. A Working Group was established to assess the feasibility of drafting model contract clauses or a legal guide, focusing on issues such as risk allocation, dispute resolution, and sustainability considerations in construction projects. In 2024, the Working Group held two sessions, consulting with industry bodies like International Federation of Consulting Engineers (FIDIC) and the World Bank. At the 105th session, the Working Group submitted a detailed proposal for a legal guide, outlining provisions for risk-sharing, dispute boards, and green construction standards. The Council authorized further development, with stakeholder consultations planned for 2025 to include the

[51] Ibid 2

project on international principles on construction and engineering contracts in the 2026-2028 Work Programme[52].

5. Regulation of Digital Risks through Civil Liability Law

177. The regulation of digital risks through civil liability law, including artificial intelligence (AI), cyber security breaches, and digital platforms, responding to the rapid growth of digital economies, was identified as a priority to address emerging challenges in digital economies. The project was included in the 2023–2025 Work Programme to develop principles or guidelines to ensure fair allocation of liability in cross-border digital transactions, building on UNIDROIT's work on digital assets.

178. At the 104th session, a Working Group was established, comprising experts in digital law and tort law. In 2024, the Working Group held three sessions, focusing on liability for AI-driven decisions, data breaches, and platform accountability. At the 105th session, the Working Group presented a set of preliminary principles, including strict liability for high-risk AI systems and mandatory cyber security standards for platforms. The Governing Council authorized further consultations with tech industry stakeholders and international organizations like OECD, with a draft instrument expected in 2026, as a medium priority project[53].

6. Res Judicata in International Commercial Arbitration

179. The issue of res judicata in international commercial arbitration was explored to address inconsistencies in the recognition and enforcement of arbitral awards across jurisdictions. The project aligns with UNIDROIT's work on international commercial arbitration and the UNIDROIT Principles of International Commercial Contracts (UPICC).

180. At the 103rd session, the UNIDROIT Academy established a Task Force, in collaboration with the Rome Tre-UNIDROIT Centre for Transnational Commercial Law and Investment

[52] Ibid 2
[53] Ibid 2

Arbitration, to study res judicata principles. In 2024, the Task Force conducted two workshops with arbitral institutions like International Criminal Court (ICC) and London Court of International Arbitration (LCIA). At the 104th session, the Governing Council reviewed a preliminary report, proposing guidelines for applying res judicata in arbitration. At the 105th session, the Task Force presented draft guidelines, emphasizing the need for consistent criteria to determine issue preclusion and claim preclusion in arbitral awards. Despite recognizing the importance of the proposed project, the project was not placed in the new Work Programme and was put to reconsideration for its inclusion in Work Programme during the triennium[54].

7. Standard Essential Patents

181. The project on standard essential patents (SEPs) addresses the legal and contractual issues surrounding the licensing of patents critical to technological standards, particularly in telecommunications and digital technologies. It was included in the 2023–2025 Work Programme to develop guidance on fair, reasonable, and non-discriminatory (FRAND) licensing terms.

182. At the 104th session, a Working Group was established, comprising experts in Intellectual Property Law and Arbitration. In 2024, the Working Group held two sessions, consulting with standard-setting organizations like European Telecommunications Standards Institute (ETSI) and IEEE. At the 105th session, the Working Group presented a preliminary draft of principles, proposing a framework for FRAND negotiations and arbitration as a dispute resolution mechanism. The Governing Council authorized further consultations with industry stakeholders namely WIPO to conduct additional preliminary research. The project was included in the new Work Programme with low priority[55].

[54] Ibid 2;
[55] Ibid 2

8. Bank Insolvency: Approval of Draft Legislative Guide on Bank Liquidation

183. The Bank Insolvency project, in cooperation with the Bank for International Settlements ' (BIS) Financial Stability Institute (FSI), aims to develop a Legislative Guide on bank liquidation frameworks for non-systemic banks. It was assigned high-priority status in the 2023–2025 Work Programme.

184. At the 104th session, the Governing Council reviewed a near-final draft, incorporating feedback from central banks and deposit insurance corporations. At the 105th session, the Governing Council adopted the Legislative Guide on Bank Liquidation, comprising 10 chapters and 105 recommendations. The Guide provides a modular framework for pre-insolvency interventions, liquidation procedures, and cross-border coordination, emphasizing the protection of retail depositors and the minimization of systemic risk. The Council authorized the Secretariat to undertake final editorial revisions, to prepare the French version of the instrument, preparing the official text for dissemination in 2025[56].

9. Best Practices for Effective Enforcement: Preliminary Endorsement of the Instrument

185. The project on Best Practices for Effective Enforcement (BPEE) building on the ALI/UNIDROIT Principles of Transnational Civil Procedure (2004) focuses on developing guidelines for enforcing judgments and arbitral awards in transnational civil procedure. It was assigned high-priority status in the 2020–2022 and 2023–2025 Work Programmes.

186. At the 104th session, the Governing Council reviewed the draft Best Practices and Comments, focusing on procedural coordination and recognition of foreign judgments. At the 105th session, the Council preliminarily endorsed the instrument, which includes 15 best practices for enforcement, such as expedited recognition procedures and safeguards against abusive litigation. The Council authorized formal consultations to gather stakeholder feedback

[56] UNIDROIT 'Item No. 5 on the agenda: Draft Instruments Bank (a) Insolvency: Approval of Draft Legislative Guide on Bank Liquidation '(April 2025) <https://www.unidroit.org/wp-content/uploads/2025/04/C.D.-105-5-Bank-Insolvency-with-Annexe.pdf> accessed 8 August 2025

and the submission of the draft instrument to the Governing Council for final approval through a remote procedure[57].

10. UNIDROIT Model Law on Factoring – Guide to Enactment: Preliminary Endorsement

187. The Model Law on Factoring (MLF) and its Guide to Enactment provide rules to strengthen legal frameworks for factoring and trade finance. The project was completed in 2023, with translations in multiple languages to support global adoption.

188. The Governing Council, at its 104th session, preliminarily presented the Guide to Enactment for the MLF, which provides legislative guidance for domestic implementation. The Guide was translated into Chinese, with Arabic, Japanese, and Spanish versions in progress. At the 105th session, the Governing Council preliminarily endorsed the Guide, which includes model provisions for registration systems, priority rules, and enforcement mechanisms. The Council encouraged member states to adopt the MLF and authorized promotional activities, including workshops with AALCO Member States in 2025[58].

11. Principles of Reinsurance Contracts: Authorisation to Proceed with Publication

189. The Principles of Reinsurance Contract Law (PRICL), developed in collaboration with the Universities of Zurich, Frankfurt, and Vienna, aim to provide a standardized framework for reinsurance contracts, drawing on international custom and the UPICC.

[57] UNIDROIT 'Item No. 5 on the agenda: Draft Instruments Bank (b) Best Practices for Effective Enforcement: Preliminary Endorsement of the Instrument' (April 2025) <https://www.unidroit.org/wpcontent/uploads/2025/04/C.D.-105-6-Best-Practices-for-Effective-Enforcement.pdf?> accessed 8 August 2025

[58] UNIDROIT 'Item No. 5 on the agenda: Draft Instruments Bank (c) UNIDROIT Model Law on Factoring – Guide to Enactment: Preliminary Endorsement' (April 2025) <https://www.unidroit.org/wp-content/uploads/2025/04/C.D.-105-7-Model-Law-on-Factoring-Guide-to-Enactment-preliminary-endorsement-of-the-instrument.pdf> accessed 8 August 2025; UNIDROIT 'Item No. 9 on the agenda: Implementation status and promotion strategy for UNIDROIT Instruments (a) Model Law on Factoring' (April 2025) <https://www.unidroit.org/wpcontent/uploads/2025/04/C.D.-105-20-Implementation-status-and-promotion-strategy-for-UNIDROIT-Instruments-Model-Law-on-Factoring.pdf> accessed 8 August 2025

190. At the 104th session, the Council reviewed the final draft, addressing issues like utmost good faith and claims handling. At the 105th session, the Governing Council noted the finalisation of the black-letter rules and comments and authorized the publication of the PRICL. The principles cover 10 key areas, including contract formation, duties of disclosure, and dispute resolution, and are designed to be adaptable to civil and common law systems[59].

12. Collaborative Legal Structures for Agricultural Enterprises

191. The project on Collaborative Legal Structures for Agricultural Enterprises (CLSAE) also known as "the future instrument" focuses on legal frameworks for agricultural enterprises in low- and middle-income countries, targeting midstream actors in agrifood supply chains. It was assigned high-priority status in the 2023–2025 Work Programme.

192. The Governing Council noted significant progress by the Working Group, which held three sessions in 2024. The project addresses access to markets, finance, technology, resilience to shocks, and remedies for unfair practices, considering legal forms such as multiparty contracts, cooperatives, and companies. At the 105th session, the Working Group presented a comprehensive draft guidance document, proposing model provisions for cooperative governance, contract farming agreements, and dispute resolution. The Governing Council acknowledged the significant progress made in developing the joint UNIDROIT/FAO/IFAD Legal Guide and authorized further consultations with developing country stakeholders, with a final draft expected in 2026[60].

[59] UNIDROIT 'Item No. 5 on the agenda: Draft Instruments Bank (d) Principles of Reinsurance Contracts: Authorisation to proceed with publication '(April 2025) <https://www.unidroit.org/wpcontent/uploads/2025/04/C.D.-105-8-Principles-of-Reinsurance-Contracts.pdf > accessed 8 August 2025

[60] Ibid 2; UNIDROIT 'Item No. 6 on the agenda: Ongoing Legislative Activities carried over from prior Work Programmes (a) Collaborative Legal Structures for Agricultural Enterprises '(April 2025) <https://www.unidroit.org/wp-content/uploads/2025/04/C.D.-105-9-Collaborative-Legal-Structures-for-Agricultural-Enterprises.pdf> accessed 8 August 2025

13. Legal Nature of Verified Carbon Credits

193. The project on the Legal Nature of Verified Carbon Credits (VCCs) explores the private law aspects of carbon credits to provide clarity on their legal status, ownership, and transferability, facilitating their use in carbon markets.

194. At the 104th session, the Governing Council reviewed a preliminary outline, addressing issues like property rights and insolvency treatment of VCCs. At the 105th session, the Working Group presented a preliminary draft instrument, proposing VCCs as *sui generis* assets with standardized transfer rules. The Governing Council took note of the substantial advancements made since the 103rd session in respect of drafting of principles and commentary, establishment of Consultative Committee and the ongoing efforts authorising further consultations, including with UNCITRAL and the HCCH, with a revised draft expected in 2026[61].

14. UNIDROIT Principles of International Commercial Contracts and Investment Contracts

195. The UNIDROIT Principles of International Commercial Contracts (UPICC) provide a non-binding codification of general contract law, widely used in international arbitration and investment contracts. The project on UPICC and International Investment Contracts (IICs) explores their application to investment agreements, addressing sustainability and regulatory stability.

196. At the 104th session, the Governing Council reviewed a preliminary draft, incorporating provisions for environmental due diligence and fair and equitable treatment. At the 105th session, the Working Group presented a revised draft instrument, proposing 12 principles tailored to IICs, including mechanisms for balancing investor protections with state regulatory

[61] Ibid 2; UNIDROIT 'Item No. 6 on the agenda: Ongoing Legislative Activities carried over from prior Work Programmes (b) Legal Nature of Verified Carbon Credits (April 2025) <https://www.unidroit.org/wp-content/uploads/2025/04/C.D.-105-10-Legal-Nature-of-Verified-Carbon-Credits.pdf> accessed 8 August 2025

powers. The Council appreciated the efforts and authorized to review the progress of the joint UNIDROIT-ICC Institute project on the UPICC and International Investment Contracts[62].

15. Private Art Collections

197. The project on Private Art Collections focuses on the legal treatment of orphan objects and other artworks with unclear provenance aiming to promote ethical stewardship and legal clarity is supported by the Fondation Gandur pour l'Art and the Art-Law Centre.

198. In 2024, the Working Group held its first formal session, consulting with UNESCO and art market stakeholders. At the 104th session, the Governing Council reviewed a scoping paper, identifying issues like restitution and due diligence. At the 105th session, the Working Group presented a draft guidance document, proposing principles for provenance research and dispute resolution[63].

16. International Interests in Mobile Equipment

199. The project focuses on the Cape Town Convention (2001) and its protocols, particularly the Luxembourg Rail Protocol, the Space Protocol and the Protocol on Mining, Agricultural, and Construction Equipment (MAC Protocol, 2019), to facilitate financing of high-value mobile equipment.

200. The Governing Council noted that the MAC Protocol, signed by five states and the EU, is not yet in force. UNIDROIT was designated as the Supervisory Authority for the Registry of interests in mining, agricultural, and construction equipment. At the 104th session, the Council reviewed progress on the Registry's operational framework. At the 105th session, the Governing Council reviewed a detailed report on allocating Supervisory Authority functions, addressing

[62] Ibid 2; UNIDROIT 'Item No. 6 on the agenda: Ongoing Legislative Activities carried over from prior Work Programmes (c) UNIDROIT Principles of International Commercial Contracts and Investment Contracts' (April 2025) <https://www.unidroit.org/wp-content/uploads/2025/04/C.D.-105-11-UPICC-and-IICs-1.pdf> accessed 8 August 2025

[63] Ibid 2; UNIDROIT 'Item No. 6 on the agenda: Ongoing Legislative Activities carried over from prior Work Programmes (d) Private Art Collections '(April 2025) <https://www.unidroit.org/wp-content/uploads/2025/04/C.D.105-12-Private-Art-Collections.pdf> accessed 8 August 2025

technical and legal requirements for the Registry. The Council authorized further discussions with stakeholders, with a follow-up report planned for the 106th session in 2026.[64]

E. Report on the work of the Hague Conference on Private International Law (HCCH)

201. The Council on General Affairs and Policy (hereinafter referred to as the CGAP) of the Hague Conference on Private International Law (hereinafter the HCCH) held its meeting from 4 to 7 March 2025. In total, 491 participants representing 75 HCCH Member States, 4 non-Member States, 4 intergovernmental organizations, 9 international non-governmental organizations, as well as members of the permanent bureau of the HCCH attended the meeting. It was reported that 248 delegates participated in person and 204 delegates participated online.

202. As regards the substantive work of the CGAP it considered the work relating to possible new legislative instruments as well as the post-convention work. As part of the work relating to possible new legislative instruments the following matters were considered (i) Parentage/Surrogacy (ii) Jurisdiction (iii) Central Bank Digital Currencies (CBDCs) (iv) Digital Tokens (v) Digital Economy (vi) Carbon Markets (vii) Restructuring and Insolvency, and (viii) Intellectual Property. Further, the CGAP also followed up on its post-convention work on a number of topics as well as work on its governance, which was open only to members.[65]

1. Work Relating to Possible New Legislative Instruments

(a) Parentage/Surrogacy

203. CGAP welcomed the progress reported by the Working Group (WG) and authorized the Permanent Bureau (PB) to convene one additional in-person meeting in late 2025 to finalize draft provisions and its final report, with the possibility for online participation and any intersessional online work whenever required before the CGAP 2026. Importantly, CGAP reiterated that the

[64] Ibid 2
[65] HCCH, Conclusions and Decisions (C&D), <https://assets.hcch.net/docs/1828feba-831f-4f6f-a95e-6286e0495057.pdf >, accessed on 6 June 2025.

HCCH's engagement with PIL issues arising from parentage/surrogacy should not be construed as either endorsing or opposing the practice itself.

(b) Jurisdiction

204. The CGAP took note of the Report of the Chair of the Working Group (WG) on matters related to jurisdiction in transnational civil or commercial litigation, and the progress made to further develop provisions for a draft Convention. A Seventh Working Group meeting was held in Tokyo (2024), with another planned for late 2025 to specially focus on Article 8(2) of the Draft Convention text. The Permanent Bureau (PB) was requested to launch a written consultation process for practitioner/judge feedback on jurisdiction rules after the 2025 meeting. The CGAP noted that decisions on whether to continue the project and convene a Special Commission (SC) meeting would be taken at its 2026 session. The Secretary-General was authorised to allocate funds for potential 2026 Special Commission meeting to advance the project.

(c) Central Bank Digital Currencies (CBDCs)

205. With respect to the legal implications of CBDCs, CGAP reviewed the reports of the relevant Experts' Group (EG) and mandated it to continue its examination of issues concerning applicable law and jurisdiction in cross-border CBDC use. Two further in-person meetings in March 2025 and late 2025 were authorised, accompanied by intersessional online discussions. The focus would remain on applicable law and jurisdictional challenges in CBDC transactions.

(d) Digital Token

206. A parallel but distinct initiative concerning digital tokens was also endorsed. CGAP noted the conclusions of a prior study on the Private International Law (PIL) aspects of digital tokens and formally established an Experts' Group to pursue the matter further, subject to the availability of resources. The Group will be reporting to CGAP 2026. The PB was mandated to

coordinate with UNCITRAL, UNIDROIT, and other relevant institutions to avoid regulatory fragmentation in international legal instruments.

(e) Digital Economy

207. In the broader context of the digital economy, CGAP tasked the PB with continuing to monitor developments such as digital platforms, artificial intelligence, immersive technologies, automated contracting, and decentralized autonomous organizations (DAOs). The PB was tasked with identifying related PIL issues that may warrant future legislative attention and to engage with other international bodies on these matters. Continued collaboration with international organizations on digital economy legal frameworks was encouraged.

(f) Restructuring & Insolvency

208. The CGAP welcomed the cooperation between the Permanent Bureau and the UNCITRAL Secretariat on matters relating to applicable law in insolvency proceedings. It further encouraged the PB to monitor developments concerning the treatment of digital transactions and assets in cross-border insolvency and restructuring contexts. Focus on handling digital assets in insolvency cases, with monitoring would continue through 2026. This work is to proceed in coordination with UNIDROIT and UNCITRAL if the budget permits.

(g) Intellectual Property

209. In relation to intellectual property (IP), CGAP recognized the PB’s on-going cooperation with the World Intellectual Property Organization (WIPO) on IP/PIL intersections. This focus is especially pertinent in light of the HCCH’s broader work on legal questions arising from the digital economy.

(h) Voluntary Carbon Markets

210. The CGAP launched work on carbon markets, authorising the creation of an Experts' Group to study aspects of carbon credits, particularly applicable law provisions in UNIDROIT Principles on Verified Carbon Credits. The PB was mandated to maintain its cooperation with the secretariats of UNCITRAL, UNIDROIT, and the UNFCCC. CGAP acknowledged and expressed gratitude to several subject-matter experts who contributed voluntarily to the work.

2. Coordination Efforts

211. The Council on General Affairs and Policy (CGAP) reaffirmed the importance of sustained tripartite cooperation among the HCCH, UNCITRAL and UNIDROIT. Recognizing that each of these intergovernmental organisations plays a distinct yet complementary role in the development of international legal frameworks, CGAP emphasized the need for effective coordination to prevent duplication, fragmentation, or inconsistency across normative instruments. In this regard, CGAP supported the continued efforts of the Permanent Bureau (PB) to finalise the Coordination Guidelines that will govern collaborative processes among the three Secretariats. These guidelines are intended to provide clarity on mandates, timelines, and shared objectives, thereby promoting coherent and harmonised legal outcomes, particularly in emerging and cross-cutting areas such as the digital economy, carbon markets, and financial law. The commitment to tripartite cooperation underscores the shared responsibility of these institutions to ensure that their respective legal instruments are mutually reinforcing and responsive to the evolving needs of global legal practice.

F. Proposal for the development of a Model Investment Treaty (MIT)

1. Introduction

212. "Promotion and protection of investments on a reciprocal basis" was first discussed at the Twenty-First Annual Session held at Jakarta, the Republic of Indonesia, from 24 April to 1 May 1980 in the context of regional co-operation in the field of industry among the countries of the

Asian-African region.[66] This was followed by more intensive discussion of the matter at the Ministerial Meeting held in Kuala Lumpur in December 1980 under the auspices of the Government of Malaysia in collaboration with the AALCC. That meeting recognized the need to create stable but flexible relations between the investor and the host government, particularly where the investments were made by one developing country in another.[67]

213. At the meeting, it was generally agreed that the investment climate should be promoted through adequate provisions for protection of investments, repatriation of capital and profits, as well as a procedure for settlement of disputes. The meeting examined the various modalities employed for the protection of investments and agreed on the desirability of the formulation of the draft of a model umbrella investment protection agreement for consideration by member governments.[68]

214. Following the Ministerial Meeting at Kuala Lumpur, a meeting of officials was held that discussed the guidelines for the preparation of a model umbrella investment protection agreement. In this connection, the meeting identified the relevant elements that could be incorporated in the proposed draft. It was agreed that the model agreement should be prepared on broad general terms which could be suitably adjusted to the needs and requirements of every individual Member State. There was a general view that view that model agreements should include certain special provisions which would help to promote investments from developing countries. The meeting requested the Secretary-General to prepare the draft of a model agreement, taking into account the discussions held during the meeting, for consideration of an expert group to be constituted prior to another Ministerial meeting to be held in the future.[69]

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[66] AALCC, 'Summary records of the 4th Meeting held on 29 April 1980 at 11 AM' in *Report of the Twenty-First Session held in Jakarta (Indonesia) from 24th April to 1st May, 1980* (1980)(on file with the Secretariat)

[67] AALCC, *Report of the Twenty Third, Twenty-Fourth and Twenty-Fifth Sessions held in Tokyo (1983), Kathmandu (1985) and Arusha (1986)* 143 <https://www.aalco.int/23rdsession/Report%20of%20the%2023rd% 20to%2025th% 20Annual%20Session.pdf> accessed 6 June 2025

[68] AALCC Secretariat, *Report of the Twentieth, Twenty-First and Twenty-Second Sessions held in Seoul (1979), Jakarta (1980) and Colombo (1981)* 164 <https://www.aalco.int/20thsession/Report%20of%20the%2020th%20t o% 2022nd%20Annual%20Session.pdf> accessed 6 June 2025

[69] AALCC Secretariat, *Report of the Twentieth, Twenty-First and Twenty-Second Sessions held in Seoul (1979), Jakarta (1980) and Colombo (1981)* AALCC Secretariat, *Report of the Twentieth, Twenty-First and Twenty-Second Sessions held in Seoul (1979), Jakarta (1980) and Colombo (1981)* 170 <https://www.aalco.int/20thsession/Report% 20of%20the%2020th%20to%2022nd%20Annual%20Session.pdf> accessed 6 June 2025

2. Draft Model Bilateral Agreement for Promotion and Protection of Foreign Investment

215. Accordingly, a tentative draft of a model bilateral agreement[70] on investment protection intended to be applicable between the countries of the region to serve as a basis for preliminary discussions by an Expert Group was prepared by the Secretariat. This draft was taken up for consideration at the Twenty-Second Annual Session held at Colombo, the Socialist Republic of Sri Lanka from 25 to 30 May 1981, by the Trade Law Sub-Committee. The Sub-Committee raised a number of important issues on the contents of the tentative draft for the purposes of further study.[71]

216. Some of the salient issues raised by the Sub-Committee included the definition of the "investment" provided for in the tentative draft, on which agreed that the notion of approval should not be combined with the concept of investment and instead suggested two models for the definition which listed a number of moveable and immoveable assets that included intangible assets as well.[72] Further, the Sub-Committee also identified concerns with respect to the Most Favoured Nations clause and noted that investment treaties in force between some developing States and industrialized States would hinder the achievement of a non-discriminatory and uniform framework for all developing States.[73]

217. The report of the Trade Law Sub-Committee containing its observations on the tentative draft was thereafter placed before another Ministerial Meeting on Regional Co-operation in Industries held in Istanbul in September 1981 at the invitation of the Government of the Republic of Türkiye. The meeting discussed some of the more important issues identified by the Trade Law Sub-Committee and expressed the view that further comments should be invited from Member States to enable the Secretariat to study the matter further. The Ministerial Meeting was further of the view that there should be an understanding that special treatment and incentives should be offered for investments from developing countries and it would be a matter for each

[70] Ibid 175
[71] AALCC Secretariat, 'Report of the Sub-Committee on International Trade Law Matters' in *Report of the Twenty-Second Session held in Colombo (Sri Lanka) from 25th to 30th May, 1981* (on file with the Secretariat) 119
[72] Ibid 121
[73] Ibid 124

Government to decide as to the modalities through which this should be effected, namely, under their municipal legislations or under bilateral treaties or under joint venture agreements as might be appropriate.[74]

218. Subsequent to the Istanbul Meeting, the Secretary-General had carried out extensive consultations with Member States and experts with a view to preparing a revised study so that the Model Agreement could be of practical value to meet the desired objectives. These consultations revealed considerable divergence in State practice and the attitude of States towards BITs and generally in the matter of treatment of foreign investments.[75] As a result of the overall survey of the positions held by various Governments within the Asian-African region, it became apparent that a uniform approach in the matter of promotion and protection of investments through the formulation of a single draft of a bilateral treaty would not result in an adequate response in practical terms. It was therefore felt that a study on the subject could perhaps contemplate the preparation of models for three different types of bilateral agreements. This approach was considered to be particularly suited in the context that the main purpose of the study, pursuant to the mandate of the Kuala Lumpur Meeting, was to promote the flow of investments between Asian and African countries. It therefore seemed that the primary objective should be aimed at creating a climate in which Governments would be prepared to accept the concept of promotion and protection of investments under bilateral arrangements.[76]

219. It was felt that through the preparation of various alternative drafts, it might be possible to promote such agreements in a manner acceptable to the Governments concerned based on terms and conditions suited to their needs. Furthermore, as identified by the Sub-Committee, having regard to the divergence of State practice as also the commitments already made by some of the Governments in their bilateral agreements with industrialized States particularly in light of

[74] AALCC, *Report of the Twenty Third, Twenty-Fourth and Twenty-Fifth Sessions held in Tokyo (1983), Kathmandu (1985) and Arusha (1986)* 144 <https://www.aalco.int/23rdsession/Report%20of%20the%2023rd% 20to%2025th% 20Annual%20Session.pdf> accessed 6 June 2025

[75] See introductory statement delivered by the Secretary-General, in AALCC, 'Summary records of the Fourth Plenary Meeting held on 19 May 1983 at 10:15 AM' in AALCC Secretariat, *Report of the Twenty-Third Session held in Tokyo (japan) from 16th to 20th May 1983*, 81 (on file with the Secretariat)

[76] AALCC, *Report of the Twenty Third, Twenty-Fourth and Twenty-Fifth Sessions held in Tokyo (1983), Kathmandu (1985) and Arusha (1986)* 145 <https://www.aalco.int/23rdsession/Report%20of%20the%2023rd% 20to%2025th% 20Annual%20Session.pdf> accessed 6 June 2025

the most favoured nations clause it evidently seemed difficult to adopt with a single text which would meet the needs and interests of all Governments.[77]

220. While it was acknowledged that a single model text incorporating a set of provisions which may represent a common standard acceptable to a group of States would be extremely useful when the model agreement is intended for use by a small group of nations having identity of interest and approach on economic issues, it would however be of little use for States with divergent views and differing developmental needs.[78]

3. The AALCO Model Agreements for Promotion and Protection of Foreign Investment

221. Accordingly, a revised study prepared by the Secretariat in November 1982 contained the suggestion that an endeavour be made to prepare the texts of three model agreements, even though much of the material to be used in each of the texts was common. The tentative formulations in regard to the three possible model agreements were included in the study, namely:

222. Model A: A draft based on the existing IIAs between AALCO Member States and Industrialized States with modification in relation to the promotion of investment.

223. Model B: Draft of an agreement that maintained elements of Model A with provisions to restrict protection of investments and contemplating a degree of flexibility with regard to reception and protection of investments.

224. Model C: Draft of an agreement on the pattern of Model A, but applicable to specific classes of investments only as determined by the host State.

[77] Ibid
[78] Ibid; AALCC, 'Models for Bilateral Promotion and Protection of Investment' (1983) 23 International Legal Materials 237; AALCC, 'Promotion and Protection of Investments: Report of the Secretary-General' Doc. No. AALCC/XXIV/1 (available on file with the Secretariat).

225. Model A and Model C differed in only one respect of the scope of application, and provided a way to restrict the obligations in the treaty to only specified sectors of the economy. Model C provided for a definition of investment which was restricted to capital and technology employed in sectors set out in a schedule (to be determined by the Parties) along with a list of assets related thereto, and an addition of an article specifying the prospective application of the treaty only to those investments that were set out in the schedule.[79]

226. On the other hand, Model A and B had key differences on matters of reception of investments, repatriation of capital, and returns, wherein Model B envisaged a restricted scope of the obligations in the treaty only to those investments that have received a letter of authorisation from the Host State. Further, Model B provided for the applicability of the exhaustion of local remedies as a compulsory rule, and as a condition precedent to the commencement of conciliation or arbitration proceedings.[80]

227. For further examination of the study prepared by the Secretariat, a meeting of an open-ended Expert Group was thereafter convened. The Expert Group met at the Headquarters in New Delhi from the 5th to the 7th January 1983. The Meeting was attended by representatives of 24 Member States and the Kuwait Fund for Arab Economic Development.

228. The Expert Group endorsed the Secretary-General's suggestion that the Committee's approach should be towards formulation of alternative models in the matter of promotion and protection of investments rather than pursue a single model approach which had been attempted earlier and found to be impracticable in the light of the difficulties pointed out by the Trade Law Sub-Committee during its meeting in Colombo in May 1981. The Expert Group examined the tentative drafts prepared by the Secretariat. The text of Models 'A' and 'C' was revised by the Expert Group. The text of Model 'B' was also discussed in considerable detail, and the

[79] See Model Agreement for Promotion and Protection of Investment, Model C in AALCC, *Report of the Twenty Third, Twenty-Fourth and Twenty-Fifth Sessions held in Tokyo (1983), Kathmandu (1985) and Arusha (1986)* 182 <https://www.aalco.int/23rdsession/Report%20of%20the%2023rd%20to%2025th%20Annual%20Session.pdf> accessed 6 June 2025

[80] Ibid, 171

Secretariat was requested to revise its draft in the light of the discussions and observations made at the Expert Group Meeting.[81]

229. The matter was thereafter placed on the agenda at the Twenty-Third Annual Session held in Tokyo, Japan, from 16-20 May 1983, where it was decided that the drafts should be further examined by another Expert Group in order to ensure their wider acceptability to the countries of the region.[82] An Expert Group Meeting at the official level was accordingly convened, which met in New Delhi in 1984. The meeting was attended by participants from twenty-three States as well as by the representatives of the Inter-Arab Investment Guarantee Corporation, the World Bank, and the European Communities. The Meeting examined the provisions of the drafts and finalised its recommendations in the form of the three models for submission to governments for observations and comments.[83]

230. The Report of the Expert Group was placed before the Twenty-Fourth Annual Session held at Kathmandu, Nepal, from 7 to 14 February 1985 for further consideration by the Member States. While no comments of a substantive nature were made by any State, the delegation of Kuwait put forward certain suggestions for incorporation in an addendum to be annexed to Model 'A'.[84]

231. On 13 February 1985, after taking note of various observations made in the course of its deliberations, decided to transmit to Member Governments the three Models of bilateral agreements for promotion and protection of investments, as finally adopted together with

[81] AALCC, 'Promotion and Protection of Investments: Report of the Secretary-General' Doc. No. AALCC/XXIV/1 (available on file with the Secretariat).
[82] AALCC, 'Summary records of the Fourth Plenary Meeting held on 19 May 1983 at 10:15 AM' in AALCC Secretariat, *Report of the Twenty-Third Session held in Tokyo (japan) from 16th to 20th May 1983*, 81 (on file with the Secretariat)
[83] AALCC, 'Promotion and Protection of Investments: Report of the Secretary-General' Doc. No. AALCC/XXIV/1 (available on file with the Secretariat).
[84] AALCC. 'Summary records of the First Plenary Meeting held on 6 Feb 1985 held at 2:30 PM' in AALCC Secretariat, Report of the Twenty-Fourth Session held in Kathmandu (Nepal) from 6th to 13th February 1985, 55 (on file with the Secretariat)

explanatory notes with the request that these model bilateral agreements be brought to the notice of the appropriate authorities and government departments of the Member States.[85]

4. Proposal from the United Republic of Tanzania for the development of a Model Investment Treaty

232. Having recalled the background to the AALCO Model Agreements on the Promotion and Protection of Investment, we may consider the proposal of the United Republic of Tanzania for the development of a Model Investment Treaty, a topic which would be revisited more than four decades later. Much of the fundamental development of the investment regime has taken place during this period, and it becomes important to consider the elements of the proposal in light of the developments in law and practice.

233. The proposal by the United Republic of Tanzania for the development of a Model Investment Treaty (MIT) by AALCO Member States is aimed at addressing the complexities and imbalances associated with existing international investment agreements (IIAs). The proposal recognizes that while IIAs have played a critical role in attracting foreign direct investment (FDI), they often fail to account for the developmental and sovereign concerns of emerging economies. It identifies that many AALCO Member States have experienced challenges under current investment regimes, which include arbitration claims leading to financial compensation resulting from state actions such as regulatory changes made in the public interest that were deemed violations of treaty obligations. Based on these outcomes, the proposal recognizes that investment claims have led to substantial financial burdens and undermined public policy autonomy.

234. To address these concerns, the proposal advocates for the development of a Model Investment Treaty that would serve as a foundational and guiding framework for AALCO Member States when negotiating or drafting bilateral or multilateral investment agreements. The proposal states that the treaty would aim to balance the need to protect foreign investors with the

[85] AALCC, 'Report of the Committee of on Models for Bilateral Agreements on Promotion and Protection of Investments' Ibid 78

imperative to preserve national sovereignty and promote sustainable development. This balance is to be achieved by embedding progressive standards and clear legal frameworks into the treaty text, thereby ensuring mutual benefits for both investors and host states.

235. The primary objectives of the Model Investment Treaty identified in the proposal include: enhancing investment protection through a standardized legal framework that ensures predictability and confidence for investors; promoting sustainable development by incorporating clauses that safeguard environmental protection, human rights, and social development goals; and maintaining the balance between sovereignty and international obligations by ensuring that Member States can pursue national policy objectives without breaching treaty commitments. Moreover, the proposal seeks to increase legal certainty by establishing uniform legal norms and definitions, reducing the frequency and severity of investment disputes, and fostering long-term investment relationships by including a provision in the MIT. It also aims to support regional economic integration, particularly through facilitating cross-border investments among Asian and African countries.

5. Key elements of the proposed Model Investment Treaty(MIT)

236. The proposal states that the treaty would contain clear and inclusive definitions of what constitutes an investment and who qualifies as an investor. It would set eligibility criteria that ensure the participation of both public and private entities from Member States, avoiding ambiguity and inconsistency.

237. In terms of Investment Protection Standards, the proposal states that the treaty should include provisions to guard against arbitrary or unlawful expropriation while preserving the host State’s right to regulate in the public interest. It should also incorporate the principles of National Treatment and Most-Favoured-Nation (MFN) treatment to ensure foreign investors receive equitable treatment. The treaty should also feature a transparent and efficient dispute resolution mechanism.

238. While possibly integrating international arbitration systems, the proposal emphasizes the need for State oversight and the exploration of regional dispute resolution mechanisms to bolster local capacity and accessibility in handling disputes. The proposal recognizes the need for provisions relating to Sustainable Development and Human Rights that integrate elements such as corporate social responsibility (CSR), environmental protection, human rights compliance, and the promotion of technology transfer and capacity building. Additionally, it provides that the MIT should contain investors' obligations, mandating lawful conduct, transparency, anti-corruption compliance, and active contributions to community development and CSR initiatives, while also promoting access to judicial review and public participation. The proposal also notes that the MIT should also contain clear and predictable guidelines for treaty withdrawal or termination. It should specify the conditions, required notice periods, and any applicable penalties for early withdrawal, thus enhancing legal certainty and minimizing disruptions.

6. Way forward for the development of the proposed Model Investment Treaty (MIT)

239. To develop this Model Investment Treaty, the proposal prefers a multi-phase and consultative process involving a wide array of stakeholders. These include legal experts in international investment and trade law, government representatives from AALCO Member States, academics, private sector entities such as multinational corporations and business associations, and civil society organizations, including NGOs focused on sustainable development and human rights.

240. The proposal also outlines the potential challenges. It identifies key concerns such as the difficulty of balancing investor protections with state sovereignty, the challenge of harmonizing diverse legal systems across AALCO Member States, and the need to ensure that States have the institutional capacity to implement and enforce treaty provisions effectively.

241. The United Republic of Tanzania's proposal indicates that the development of a Model Investment Treaty is pivotal to reform and modernize the investment legal framework within Asia and Africa. It aims to equip AALCO Member States with a unified, fair, and development-oriented approach in managing foreign investments. The proposal states the belief of the United

Republic of Tanzania that if successfully implemented, the Model Investment Treaty would be a strategic tool for enhancing economic growth while safeguarding the sovereign rights and developmental priorities of host countries.

IV. COMMENTS AND OBSERVATIONS OF THE AALCO SECRETARIAT

242. The scope for multilateral cooperation on matter of international trade law are facing a number of challenges particularly for WTO Members. In spite of these challenges, a number of developments were reported in the brief including accession processes of new members to the WTO, the WTO's dispute settlement mechanism and the Trade Policy Review Mechanism. Further the brief also highlighted regional efforts and at cooperation in matter concerning international trade law.

243. The Secretariat urges AALCO Member States to continue to raise their voice for a rules-based order and expressing their views on the recent international trade law developments. The recent developments highlight a number of areas of common concern for AALCO Member States.

244. Moving on to the work of the UNCITRAL at fifty-eighth session that adopted 3 key instruments on negotiable cargo documents, asset tracing and recovery in insolvency proceedings and prevention and mitigation of international investment disputes. Further the Commission also approved for publication important documents comprising two customizable templates of model organization rules for Limited Liability Enterprises designed to assist States in supporting micro, small, and medium-sized enterprises; the UNCITRAL/UNIDROIT study on the legal nature of verified carbon credits issued by independent carbon standard setters, providing an overview of the global landscape of carbon markets and legal issues related to the trading of verified carbon credits; and a guidance document on legal issues relating to the use of distributed ledger technology (DLT) in trade, which seeks to provide assistance to businesses in assessing legal matters that may arise when procuring DLT or delivering services using DLT. The brief highlights these documents for the Member States to take note of and express views on work carried out by the UNCITRAL Working Groups.

245. While efforts to reform the system of investment disputes have focussed on procedural issues at UNCITRAL, UNCTAD on the other hand has been providing policy guidance and analysis on substantive aspects of IIAs. For a number of years UNCTAD has focussed on

investment law and policy that channels foreign investment towards the achievement of the sustainable development goals. While being cognizant that foreign investment is crucial for the achievement of the sustainable development goals, UNCTAD apprises states about expansionary scope of protection standards that as experience suggest has often curtailed the sovereign right to regulate of States. The World Investment Report 2025 released in June 2025 continues to report on the broad trends in newly signed IIAs and analyses the ISDS cases on a number of parametres. The report is a valuable source of information of investment law and policy and provides key insights particularly relevant for developing States within the AALCO Member States. The Secretariat invites the AALCO Member States to consider the World Investment Report 2025, and express their views on the trends identified and conclusion drawn in the report.

246. Further the brief also provides insights into the work of the UNIDROIT over the course of the previous year discussed at 104th session (remote) and the 105th session (20–23 May 2025, Rome) of its Governing Council. The brief also provides some insights into the ongoing legislative and non-legislative activities undertaken by UNIDROIT, focusing on the harmonization and modernization of private law to facilitate international trade, investment, and sustainable development. The AALCO Secretariat draws the attention of the Member States to the various instruments that are currently under development at UNIDROIT and invites and views and comments on issues that have been addressed in those instruments and other documents.

247. This brief also reports on the session of the CGAP meeting of the HCCH, whose wide array of items under consideration and diverse work program leaves no doubt that over the course more than century the HCCH has spearheaded cooperation in unification and harmonisation of private international law rules between States. The AALCO Secretariat invites the Member States to consider the work of the HCCH on several pressing issues and express and their observations and views on the various instruments under preparation at HCCH.

248. The proposal by the United Republic of Tanzania for the development of a Model Investment Treaty (MIT) under the auspices of AALCO aligns closely with global reform trends in international investment governance. The proposal is aligned with the work of institutions

such as UNCTAD and UNCITRAL, as it echoes the principles laid out in UNCTAD's *Investment Policy Framework for Sustainable Development*,[86] which emphasizes balancing investor protections with States' rights to regulate in the public interest, and reflects UNCITRAL's on-going ISDS reform initiatives under Working Group III[87], which endeavours to promote transparency, fairness, and state control over dispute resolution among other notable objectives.

249. The structure of the proposed MIT draws from the practice of regional and national treaty models, particularly the Pan-African Investment Code (PAIC)[88], the SADC Model BIT Template,[89] and the Indian Model BIT (2016)[90] all of which prioritize sustainable development, corporate accountability, and the sovereign right to regulate.

250. The United Republic of Tanzania's proposal is also a direct response to the well-documented shortcomings of traditional IIAs, including excessive arbitration claims and the regulatory chill effect, issues widely analysed in UNCTAD's *World Investment Reports*[91] as well as some OECD publications[92]. The call for harmonization across diverse legal systems within AALCO mirrors UNCTAD's[93] and UNCITRAL's[94] recommendations for consistent and predictable legal frameworks, while the inclusion of corporate social responsibility (CSR),

[86] UNCTAD, *Investment Policy Framework for Sustainable Development* (UNCTAD 2015) <https://unctad.org/system/files/official-document/diaepcb2015d5_en.pdf> accessed 10 June 2025

[87] United Nations Commission on International Trade Law, *Report of Working Group III (Investor-State Dispute Settlement Reform) on the Work of its Thirty-Fifth Session (New York, 23–27 April 2018)* UN Doc A/CN.9/935 <https://undocs.org/en/A/CN.9/935> accessed 10 June 2025

[88] African Union Commission, *Pan-African Investment Code* (AU Commission 2016) <https://au.int/en/documents/20161104/pan-african-investment-code-pai> accessed 10 June 2025

[89] Southern African Development Community (SADC), *SADC Model Bilateral Investment Treaty Template with Commentary* (SADC Secretariat 2012) <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2875/download> accessed 10 June 2025

[90] Government of India, *Model Text for the Indian Bilateral Investment Treaty* (2016) <https://dea.gov.in/sites/default/files/ModelBIT_Annex_0.pdf> accessed 10 June 2025

[91] UNCTAD, *World Investment Report 2017: Investment and the Digital Economy* (UNCTAD 2017) <https://unctad.org/system/files/official-document/wir2017_en.pdf> accessed 10 June 2025

[92] Organisation for Economic Co-operation and Development, *Investor-State Dispute Settlement: Public Consultation Draft* (OECD 2012) <https://www.oecd.org/investment/internationalinvestmentagreements/50291642.pdf> accessed 10 June 2025

[93] UNCTAD, *Reform Package for the International Investment Regime* (UNCTAD 2018) <https://investmentpolicy.unctad.org/publications/1198/reform-package-for-the-international-investment-regime> accessed 10 June 2025

[94] UNCITRAL, *Possible Reform of Investor-State Dispute Settlement (ISDS): Submission from the Government of South Africa* (2019) UN Doc A/CN.9/WG.III/WP.149 <https://undocs.org/en/A/CN.9/WG.III/WP.149> accessed 10 June 2025

human rights, and environmental sustainability as binding obligations for investors reflects a progressive shift consistent with recent treaty practice and global best practices.[95]

251. Furthermore, the proposal's emphasis on participatory treaty development by engaging legal experts, state officials, private sector actors, and civil society, which is consistent with UNCTAD's inclusive policy-making guidance [96] and best practices recommended by the international research institutions.[97] The focus on building regional dispute resolution capacity also resonates with efforts under the African Continental Free Trade Area (AfCFTA) Investment Protocol[98] and efforts within UNCITRAL[99] to empower developing countries with local and cost-effective alternatives to international arbitration. The proposal is mindful of the practical challenges associated with implementation, particularly across legal systems with varied capacities, reinforcing the need for technical support and institutional strengthening.

252. In light of these observations, the AALCO Secretariat wishes to draw the attention of Member States to the desirability of including, in their deliberations, consideration of the scope, form, and core elements of a prospective AALCO Model Investment Treaty (AALCO-MIT). While mindful of AALCO's previous work in this field, the Secretariat invites Member States to share their views on possible modalities for the preparation and eventual adoption of a new Model Investment Treaty that best reflects and safeguards the shared interests of AALCO Member States, many of whom are presently engaged in the negotiation of new investment agreements. In this connection, Member States may also wish to consider the establishment of an Open-Ended Working Group under the auspices of AALCO, tasked with examining the substantive and procedural aspects of the AALCO-MIT, and with making appropriate recommendations for its development.

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[95] Columbia Center on Sustainable Investment, *Rethinking International Investment Governance: Principles for the 21st Century* (CCSI 2021) <https://ccsi.columbia.edu/sites/default/files/content/docs/Rethinking-Investment-Governance-2021.pdf > accessed 10 June 2025

[96] UNCTAD, *Guidance on Investment Policy Framework for Sustainable Development* (UNCTAD 2019) <https://unctad.org/webflyer/guidance-investment-policy-framework-sustainable-development> accessed 10 June 2025

[97] International Institute for Sustainable Development, *Best Practices in Investment Treaty Negotiation* (IISD 2020) <https://www.iisd.org/publications/report/best-practices-investment-treaty-negotiation> accessed 10 June 2025

[98] African Continental Free Trade Area, *Protocol on Investment* (2023) <https://au.int/sites/default/files/treaties/39861-treaty-Protocol%20on%20Investment%20-%20AfCFTA.pdf> accessed 10 June 2025

[99] UNCITRAL, *Capacity-Building and Technical Assistance Strategy for ISDS Reform* (UNCITRAL 2020) <https://uncitral.un.org/en/technical-assistance/isds> accessed 10 June 2025

ANNEX

PROPOSAL FOR THE DEVELOPMENT OF A MODEL INVESTMENT TREATY BY AALCO MEMBER STATES FROM THE UNITED REPUBLIC OF TANZANIA[100]

1. Introduction

The Asian-African Legal Consultative Organization (AALCO) is a prominent intergovernmental organization that fosters legal cooperation among Asian and African nations. AALCO member states, many of which are emerging markets, face challenges in attracting foreign direct investment (FDI) while simultaneously ensuring that such investments are mutually beneficial and do not infringe on the sovereignty or economic policies of the host states. One key area that requires attention is the formulation of a model investment treaty that can serve as a guiding framework for member states.

Most Member States continue to sign international investment agreements (IIAs) as a way to attract and bolster foreign investments, aiming to spur development in host countries. IIAs serve as a convenient tool for investors to swiftly establish the legal groundwork for their foreign ventures. Concerns over the quality of host country institutions and legal enforcement often trouble investors, hence these agreements guarantee foreign investors specific standards of treatment, enforceable through investor-state dispute settlement (ISDS) at the international level. However, the existing IIAs have been crafted around conventional provisions such as the most favored nation, national treatment, full protection and security, and fair and equitable treatment, which have posed a challenge to Member States in enforcing sustainable development and strategic investments. Through these Agreements, Member States have also faced numerous claims from Investors for financial compensation when government actions or inactions conflict with treaty obligations, regardless of the government's intentions, such as changing laws and policies for the benefit of the public interest. This has led into a string of arbitration cases resulting in substantial payouts to foreign investors, diverting funds that could have been invested elsewhere for social and economic development.

[100] Vide email dated 3 May2025 received from the United Republic of Tanzania,

The objective of this concept note is to propose the development of a **Model Investment Treaty (MIT)** for AALCO member states, one that balances the protection of foreign investments with the need to preserve national sovereignty and sustainable development goals. This model treaty will act as a guide for AALCO members when negotiating and drafting bilateral or multilateral investment agreements.

2. Objectives

The primary objectives of developing a Model Investment Treaty is to enhance investment protection through establishing a standardized framework that ensures foreign investors' rights are protected, thereby attracting FDI to member states; promote sustainable development by ensuring that investment agreements do not undermine the ability of host states to pursue sustainable development goals (SDGs), including environmental protection, social development, and human rights; and creating balance sovereignty and international obligations by developing provisions that enable member states to exercise their sovereign rights without violating international obligations under the investment treaties.

Further to that, the MIT aims at increasing legal certainty by creating a uniform and predictable legal environment for both investors and host states, thus reducing legal disputes and promoting long-term investment relationships. It will also foster regional integration by strengthening cooperation among AALCO member states and promote regional economic integration, especially through cross-border investments within Asia and Africa.

3. Key Components of the Model Investment Treaty

A well-structured MIT will address the following key components:

Scope and Coverage

- **Definition of Investment**: Clear definitions that ensure a broad and inclusive approach while avoiding ambiguity regarding what constitutes an investment.

- **Eligibility**: Clear guidelines on the eligibility of investors, with a focus on ensuring the participation of both public and private sector entities from member states.

Investment Protection Standards

- **Expropriation**: Provisions for protection against arbitrary or unlawful expropriation while ensuring that the host state has the right to regulate in the public interest.
- **National Treatment and Most-Favored-Nation (MFN)**: Ensuring that foreign investors receive the same treatment as domestic investors or the most favorable treatment provided to any other foreign investor.

Dispute Resolution Mechanism

- A transparent and efficient mechanism for dispute resolution, potentially incorporating international arbitration systems, but with provisions that allow the states to maintain control over certain disputes.
- Consideration of regional dispute resolution mechanisms to enhance member states' capacity to handle investment disputes locally.

Sovereign Right to Regulate

- Clear clauses reaffirming the right of member states to regulate in the public interest, including environmental protection, public health, and social policies, without the threat of expropriation claims.
- Including exceptions for regulatory measures in the public interest to ensure they are not considered breaches of the treaty's obligations.

Sustainable Development and Human Rights Considerations

- Incorporating provisions on corporate social responsibility (CSR), environmental sustainability, and respect for human rights, to ensure investments align with international standards.
- Promoting technology transfer and capacity-building to encourage sustainable development in the host state.

Investors Obligations

- Clear obligations on investors to comply with the law while operating their activities in the host state.
- Obligation for Investors to contribute to community development through Cooperate Social Responsibility (CSR)
- Disclosure of relevant information about their investments and operational activities.
- Provisions for transparency in the investment process, including public consultations, access to judicial review, and measures to prevent corruption.

Termination and Withdrawal

- Clear guidelines on the conditions under which a state may withdraw from or terminate the investment treaty, including the notice period and any penalties for early termination.

4. Process for Development

The development of a Model Investment Treaty will require careful consultation with a range of stakeholders, including:

- **Legal Experts**: Professionals with expertise in international investment law, trade law, and dispute resolution.
- **Government Representatives**: Officials from AALCO member states, including trade, economic, and legal departments.
- **Academics and Researchers**: Scholars who specialize in international trade, economics, and investment law.
- **Private Sector Representatives**: Investors, multinational corporations, and business associations, to ensure that the model addresses practical concerns.
- **Civil Society and NGOs**: To ensure that the treaty upholds sustainable development and human rights standards.

The process will involve several phases:

- **Research and Benchmarking**: A comparative study of existing investment treaties, focusing on both traditional models and newer approaches (e.g., regional or sustainable investment treaties).
- **Consultation and Stakeholder Engagement**: Meetings and consultations with various stakeholders to identify key issues and concerns.
- **Drafting and Refinement**: Legal experts will draft the treaty provisions, which will undergo several rounds of review and refinement.
- **Approval and Adoption**: After thorough discussions, the final model treaty will be adopted by AALCO member states.

5. Challenges and Considerations

The development of a Model Investment Treaty will face several challenges:

- **Balancing Investor Protection and State Sovereignty**: Ensuring that the treaty does not overly favor investors at the expense of the host state's ability to regulate.
- **Harmonizing Diverse Legal Systems**: Member states of AALCO have different legal traditions and practices. Balancing these differences to develop a universally accepted model may require significant negotiation.
- **Ensuring Implementation**: While the MIT will provide a framework, it will be critical to ensure that individual states have the capacity to implement the treaty provisions effectively.

6. Conclusion

The development of a Model Investment Treaty for AALCO Member States represents a significant step toward fostering a conducive investment climate while safeguarding the interests of both foreign investors and host countries. It will provide a balanced framework that encourages investment while ensuring that host countries retain the ability to regulate and promote sustainable economic growth. By developing this model, AALCO can lead the way in

shaping a new generation of investment agreements that reflect the unique concerns and priorities of Asia and Africa.