Statement of the Asian-African Legal Consultative Organization (AALCO) at the Sixth Committee on the Report of the International Law Commission on the work of its seventy-fifth session

H.E. Dr. Kamalinne Pinitpuvadol
Secretary-General, Asian-African Legal Consultative Organization (AALCO)

Mr./Madam Chair, Distinguished Delegates, Ladies and Gentlemen,

It is my distinct honour to address the Sixth Committee of the United Nations General Assembly on behalf of the Asian-African Legal Consultative Organization (AALCO).

First of all, let me congratulate you and the other members of the Bureau for their election.

Founded in 1956 as a tangible outcome of the renowned Bandung Conference held in 1955, AALCO has consistently worked to promote cooperation and exchanges of views among Asian and African states in the spirit of Bundung : Solidarity, Friendship and Cooperation. It assists 48 Asian and African Member States in the practice of international law and in their efforts to promote the progressive development and codification of international law.

One of the primary functions assigned to the Asian-African Legal Consultative Organization (AALCO) under its Statute is to study the subjects which are under the consideration of the International Law Commission and thereafter forward the views of the Member States on them to the Commission. Fulfilment of this mandate set forth in the Statute has enabled to forge a close relationship between the two organizations.

This year at the Sixty-Second Annual Session held in Bangkok, the Kingdom of Thailand from 9 to 13 September 2024. AALCO Member States delivered statements on items on the agenda of the International Law Commission at its seventy-fifth session. Member States generally applauded the work of the Commission on the complex issues of international law that were currently on the work program, and recognized its important role in international law rule making. While it stated that more Asian and African perspectives should be reflected in the work of the Commission.

Some of the salient issues raised by the AALCO Member States on the topics before the Commission at its seventy-fifth session were as follows:

1. Settlement of disputes to which international organizations are parties

The AALCO Member States expressed their specific comments on the progress of the work of the Commission on the topic of “settlement of disputes to which international organizations are parties.” With respect to the scope of the disputes covered, some Member States observed that disputes should not cover “non-international” disputes of private law nature as its inclusion could take the direction of the study of the topic too far into the area of human rights protection. While some other Member States were of the view that the nature of the disputes be restricted only to legal disputes excluding political differences of opinion and disagreements concerning policy matters that should be dealt with through diplomatic channels.

Further with respect to the definition of the term "international organization", one Member State recommended that consistent with the previous work of the Commission, entities other inter-governmental organizations that do not possess international legal personality should not be included within its scope.

The Member States who touched upon the topic in their statements were generally of the view that the outcome of the topic should take the form of guidelines or conclusions rather than draft articles. One delegation also expressed their support for and highlighted the Special Rapporteur's emphasis on drawing from geographically representative State practice as the primary basis of the study.

As regards the choice of the method of dispute resolution, one Member State expressed that it should be tailored to the specific circumstances of each dispute to ensure effective resolution of disputes, while another Member State expressed their disagreement with the emphasis on judicial modes of dispute settlement maintaining that in practice, negotiation and consultation are used more frequently. One Member State further added that the term "amicably" may be employed in guideline that refers to the modes of dispute settlement mentioned in Article 33 of the UN Charter.

2. Non-legally binding international agreements

Member States recognized the role of non-legally binding international agreements in the formation of soft-law rules of international law.

Some Member States highlighted the practice of the Regional organization as Association of South East Asian Nations (ASEAN) of concluding non-binding instruments and expressed how it demonstrated flexibility, rather than rigid legal obligations, that could be an effective tool in fostering regional trust and collaboration. The Rules of Procedure for Conclusion of Non-Legally Binding Agreements, 2023 adopted by ASEAN was also highlighted in this regard.

As regards, other practice, one Member State referred to its own practice of MOUs, Joint Communiqués and Declarations that have fostered political commitments and intergovernmental collaboration. Another Member State expressed that in its State practice the term "instruments" referred to both legally binding and legally non-binding instruments, and words such as "agree", "conclude", "entry into force" and "shall" are normally avoided to denote the intent of the parties as to the non-legally binding nature of the instrument. Some Member States were in agreement that non-legally binding international agreements may constitute soft law that has a certain normative value and effectiveness.

3. Prevention and repression of piracy and armed robbery at sea

On the topic of "piracy and armed robbery at sea," AALCO Member States have advocated for a comprehensive approach that highlights respect for sovereignty, international cooperation, reliance on UNCLOS as the primary legal framework on piracy, capacity building, and clarity in jurisdictional rules.

First, respect for the **sovereignty and jurisdiction of coastal states** has been considered as fundamental by AALCO Member States emphasizing that these States should primarily

enforce anti-piracy laws in their territorial and exclusive economic zones (EEZs). Anti-piracy efforts must be under the sovereign rights, and universal jurisdiction should not undermine coastal authority.

Second, **international cooperation and capacity-building** are essential, as piracy is a transnational crime. Member States advocated for enhanced coordination, especially since piracy has expanded into territorial waters. They also prioritise cross-border collaboration and regional mechanisms like the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) to effectively combat piracy. Increased international support for building coastal States Capacities is also needed, with regional agreements aimed at fostering cooperation through shared resources and joint operations.

Third, Member States stressed upon **the significance of UNCLOS** as the foundation for anti-piracy efforts, calling for piracy to be primarily addressed within the UNCLOS framework, even if some States have not ratified it. UNCLOS is viewed as customary international law and the "constitution of the Ocean" for its role in regulating maritime activities.

Fourth, Member States called for **clearer definitions and guidelines on piracy**, particularly regarding jurisdiction and the role of private security personnel on merchant ships. Concerns were raised about ambiguities surrounding politically motivated piracy and the legal complexities involving private security personnel, highlighting jurisdictional challenges that arise from their presence.

4. Immunity of State officials from foreign criminal jurisdiction

Moving on to the topic ‘Immunity of State Officials from Foreign Criminal Jurisdictions’, Member States appreciated the work of the Commission on this topic by highlighting the importance of Draft Article 7 to the entire project. Further clarity on procedural safeguards for both kinds of immunities (personal and functional) and the need to focus on State Practice were the key highlights that were emphasised.

It was suggested by one Member State that Draft Article 13, which deals with request for information, could make provisions for confidentiality of such information submitted by States. The need to revisit and examine Draft Article 18 with the original formulation that suspended national proceedings during the invocation of dispute settlement provisions was also noted.

5. Sea-level rise in relation to international law

As regards the topic ‘Sea-level rise in relation to International Law’, Member States noted the importance of Statehood and Protection of Persons in the context of sea-level rise in the larger backdrop of protection of territorial integrity and stability of international relations. The need to maintain stability of existing baselines was generally noted with Member States by highlighting the importance of charts and list of archipelagic baselines submitted to the United Nations.

Statehood in the context of sea-level rise required greater deliberations. It was noted that the ILC project on Sea-level rise should not attempt to propose amendments to UNCLOS; though

sea-level rise has the potential impact on maritime features regulated by the Convention as such an exercise would go beyond the mandate of the Commission.

Some Member States noted that Common but Differentiated Responsibilities (CBDR) should be the basis of protecting persons effected by sea-level rise. The importance of transnational cooperation in protecting persons affected by sea-level rise was noted. Some Member States also noted that the ILC Draft Articles on Protection of Persons in the Event of Disasters might be applied in the context of sea-level rise if we see the phenomenon as a slow-onset disaster.

6. Subsidiary means for the determination of rules of international law

On the topic of "subsidiary means for the determination of rules of international law", Member States discussed the Draft Articles formulated by the Special Rapporteur on the topic of Subsidiary means for the determination of rules of International Law. On the nature of subsidiary means, Member States were of the view that subsidiary means are not sources of international law *per se* but should be regarded only as tools and instruments for determining or ascertaining the existence of a source of law or its content. Member States also noted that the doctrine of *stare decisis* does not exist in international law

One Member State remarked that Judicial decisions could contribute to the formation of a rule of customary international law only if they are consistent with established principles and rules of international law and are widespread. A Member State also noted that in view of the divergent views of courts and tribunals on identical legal issues, there ought to be greater caution in scrutinizing judicial decisions to determine their significance as evidence of general rules of international law.

One Member State observed that the resolutions of international organizations could also fall within the scope of Article 38, paragraph 1 (a). A Member State also stated that "judicial decisions" should be given more weight than "teachings and legal writings" in elucidating a rule of law.

7. Succession of States in respect of State responsibility

As regards the topic of Succession of States in respect of State responsibility, it was discussed by some Member States of AALCO at the Sixty-Second Annual Session of AALCO. Member States were of the view that it is quite challenging to continue the study of this topic because of the scarcity of State practice, the particular political and geographical context of each State and the difficulty of examining the *opinio juris* of States. Member States supported the general view to prepare a summary report with an aim to conclude the work of the Commission on this topic.