



**SIXTIETH ANNUAL SESSION OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION (AALCO), NEW DELHI (HQ), INDIA**

**EXPLANATORY MEMORANDUM**

**VENUE: LE MERIDIEN HOTEL**

**DATE: 26-28 SEPTEMBER 2022**

**I. INTRODUCTION**

1. The Provisional Agenda has been prepared following Rule 11(1) of the Statutory Rules. It may be recalled that until the Forty-First Annual Session of AALCO, held in Abuja, Nigeria (2002), all the substantive items on the Organization's agenda were deliberated in the Annual Sessions and the Secretariat prepared reports on all the agenda items. However, before the Forty-Second Annual Session held in Seoul, the Republic of Korea (2003), the Host Government of that Session proposed to the Secretary-General to divide all the items on the agenda into deliberated and non-deliberated items with a view to allocating more time for the exchange of views and experiences and intensive discussion on the deliberated items apart from discussion on organizational items. This approach was implemented for the first time during the Forty-Second Annual Session, held in Seoul (2003) and is being continuously followed since then.
2. Further, since the Forty-Ninth Annual Session held in Dar es Salaam, the United Republic of Tanzania (2010), the non-deliberated agenda items were being published in a single report and the same was also placed for consideration of the Member States. During the past several years, the Member States have recommended austerity measures to be adopted by the Organization, including cutting down costs on its publications. In compliance with this observation, since the Fifty-Third Annual Session held in Tehran, the Islamic Republic of Iran (2014), the Secretariat has not published the report on the non-deliberated agenda items.
3. Furthermore, since the Fifty-Fourth Annual Session held in Beijing, the People's Republic of China (2015), the sub-theme of the respective agenda for substantive matters has been introduced in an effort to have focused discussions among the Member States.
4. At the forthcoming Sixtieth Annual Session, to be held in **New Delhi (Headquarters), India, from 26 to 28 September 2022** apart from the consideration of items on Organizational matters, it is suggested that the deliberations focus on some of the important substantive items on AALCO's current agenda. These include: (i) Items on the

Agenda of the International Law Commission (ILC); (ii) The Status and Treatment of Refugees; (iii) Violations of International Law in Palestine and Other Occupied Territories by Israel and Other International Legal Issues relating to the Question of Palestine; (iv) Environment and Sustainable Development; and (v) International Trade and Investment Law.

5. The registration for the Session would begin on Sunday, 25 September 2022 from 10:00 AM to 6:00 PM to be continued on Monday, 26 September 2022 from 10:00 AM to 12:00 noon, before the Inaugural Session.
6. The decisions on matters of substantive character will be adopted in the plenary meetings in the form of recommendations to be incorporated in a report for submission to the Member States. However, if a Member State is interested in having a resolution on a particular substantive matter, it may do so by proposing the same, as long as there is a consensus.
7. Resolutions will be adopted on organizational and financial matters.
8. During the session, the following AALCO publications will be launched: (i) Yearbook of AALCO Volume XVIII (Year 2020-2021); (ii) AALCO Journal of International Law; (iii) Summary Report of AAALO Webinar on “Rising Sea Levels and AALCO Member States: Perils and Protection under International Law” and (iv) Newsletter Vol 13.

## **II. PROCEDURAL MATTERS**

### **Chairing of the Session**

9. Rule 3(1) of AALCO’s Statutory Rules provides that the President of the previous Session shall preside until the Member States elect a new President for the current Session. Accordingly, **the President of the Fifty-Ninth Annual Session (Hong Kong (SAR), the People’s Republic of China)** shall preside over the Inaugural Session and the First Meeting of the Delegations of AALCO Member States during the Sixtieth Annual Session.

### **Composition of Delegations and Credentials**

10. Rule 12(1) provides that at the Annual Session of the Organization, the Delegation of each Member State shall be composed of the Head of Delegation (Member), Alternate Members and Advisers.
11. Rule 12(2) provides that the official communication addressed to the Secretary-General shall serve the purpose of credentials for the delegations and observers. The communication shall be authenticated by a competent authority in the Ministry of Foreign Affairs or by the Diplomatic Mission of the concerned Member State. For the same purpose, an official communication from the relevant Organization addressed to the

Secretary-General would serve as credentials for the Organizations in the UN system, inter-governmental organizations and other international institutions.

### **Adoption of Agenda**

12. Rule 11(3) provides that the provisional agenda shall be placed before the Meeting of the Delegations of the Member States for consideration. The Meeting may, at its discretion, delete any item included in the provisional agenda. A new item may be included at the proposal of one or more delegations, if the Meeting is of the opinion that the matter is one of urgency and there are sufficient reasons on account of which the item could not have been included in the provisional agenda. All decisions in this regard shall be taken by consensus. In the event that consensus cannot be reached after all efforts have been exhausted, a decision may be taken by two-thirds majority of those present and voting in secret ballot. As for those Member States whose Heads of Delegations will participate in virtual mode, it is requested that the Liaison Officer of such Member State participate in the ballot.
13. Rule 11(4) provides that the provisional agenda upon its approval by the Heads of Delegations of the Member States shall be adopted as the agenda of the Session.

### **Admission of New Members**

14. Rule 4 provides that the Organization may by a decision supported by a two-thirds majority of the Member States admit the participation of an Asian or African State, if such a State by written communication addressed to the Secretary-General of the Organization intimates its desire to participate in the Organization and its acceptance of the Statutes and the Rules framed thereunder. Such decision may be taken by means of a resolution adopted in any of its sessions or by circulation if the period between the date of such application for admission and the next Session exceeds two months. In the latter case, the responses of the Participating States should be given within six weeks. If no response is received from any Participating State within the stipulated period, it shall be assumed that the concerned Participating State has no objection to the admission of the applicant State. The result will be communicated by the Secretary-General both to the Participating States and to the applicant State.

**The Secretariat has so far not received any application for new membership.**

### **Admission of Observers**

15. The admission of Observers is governed by Rule 18, and will be taken up by the Meeting of Delegations of the Member States. According to the Organization's present practice, there are three categories of observers, namely: (i) observers representing non-member Asian-African States; (ii) observers representing States other than those in the Asian-African region; and (iii) observers representing the United Nations, its organs and specialized agencies, other inter-governmental organizations and other international institutions.

16. In addition to these three categories, in accordance with the decision taken at AALCO's Twenty-Second Annual Session held in Colombo, the Democratic Socialist Republic of Sri Lanka (1981), Australia and New Zealand enjoy Permanent Observer Status.
17. Observer delegations have the right to attend all meetings, except those which are declared closed meetings and attended exclusively by Delegations of the Member States, and do not have the right to vote.

#### **Election of the President**

18. Rule 3(1) provides that at each Annual Session, the Organization shall elect a President. It has been the practice that the President of the Organization is elected from among the dignitaries of the Member State hosting the Session.

#### **Election of the Vice-President**

19. Rule 3(3) concerning the election of the Vice-President provides that in the election of the President and Vice-President, regional representation will be taken into consideration to the extent possible. In accordance with the established practice, if the President is from the Asian region, the Vice-President may be elected, preferably from a Member State in the African region and vice versa.

### **III. ORGANIZATIONAL MATTERS**

#### **Report of the Secretary-General on the Work of the Asian-African Legal Consultative Organization at the Sixtieth Annual Session of AALCO in 2022**

20. Following Rule 20(7) of the Statutory Rules, the Secretary-General shall present an annual report to the Member States on the work of the Organization. The Report for the Sixtieth Annual Session covers the activities of the Organization since its Fifty-Ninth Annual Session, including the substantive, organizational, financial, and administrative matters.

**Document: AALCO/60/NEW DELHI (HEADQUARTERS)/2022/ORG 1**

#### **Financial Report and Proposed Budget for the Year 2023**

21. In accordance with Rule 24(4) of the Statutory Rules, the budgetary papers setting out the estimated expenditures likely to be incurred under appropriate budget heads and sub-heads for the year 2023 was presented during the 352nd Meeting of the Liaison Officers held on 31 March 2022. Further, the draft budget was revised and discussed at the 353rd Liaison Officers Meeting held on 14 June 2022. The budgetary proposals are now being submitted to the Member States at the Sixtieth Annual Session of AALCO for final approval.

**Document: AALCO/60/NEW DELHI (HEADQUARTERS)/2022/ORG 2**

### **Report on the AALCO's Regional Centres for Arbitration**

22. A report on the activities of the AALCO's Regional Arbitration Centres located in Kuala Lumpur, Cairo, Lagos, Tehran, Nairobi and Hong Kong (SAR) respectively is to be submitted for consideration at the Sixtieth Annual Session.

**Document: AALCO/60/NEW DELHI (HEADQUARTERS)/2022/ORG 3**

#### **IV. GENERAL DEBATE**

23. At this Sixtieth Annual Session, the Second General Meeting is meant for the General Statements to be delivered by the Hon'ble Ministers and Heads of the Delegations of the Member States and Observers. *Heads of Delegations are requested to kindly consider limiting their speech to 10 minutes due to paucity of time, so that the general statements could finish within the stipulated time.* However, if they wish to give a longer statement, the same could be handed over to the Secretariat for reproduction in the Verbatim Record of the Session.

##### **Submission of Statements**

24. *The Delegations wishing to make statements (General statements, and Statements on organizational and substantive matters) are kindly requested to read the statement at a reasonable speed and to hand over three copies of their statement well in advance to the Secretariat.* This would enable the interpreters (Arabic and English) to provide quality interpretation and ensure that the impact of the statements of the delegations is equally clear in all languages. **It would be highly appreciated if soft copies of the statements could also be made available to the Secretariat.**
25. For the accurate and speedy preparation of the Verbatim Record of the Annual Session, it would be highly appreciated if the Arab Member States could provide an English version of their General Statements during the Annual Session.

##### **Venue of the Upcoming Sixty-First Annual Session**

26. According to sub-rule (1) of Rule 10 of the Statutory Rules, the regular Annual Session of the Organization shall, in accordance with Article 4 of the Statutes of AALCO, be held once in a year and such meetings shall, to the extent possible, be held in one of the Member States by geographical rotation. Those Member States interested in hosting the next Annual Session are encouraged to inform the Secretariat at the earliest.

- V. SUBSTANTIVE MATTERS:** The following five topics will be discussed during the Sixtieth Annual Session, namely:

### **Items on the Agenda of the International Law Commission**

27. AALCO is statutorily mandated to examine subject-matters that are under consideration of the United Nations International Law Commission (ILC) and forward the views of the Organization to the ILC. In its quest to fulfill this statutory mandate over the years, AALCO has forged and nurtured a close relationship with the ILC. It has also become customary for AALCO and the ILC to be represented during each other's sessions. AALCO has, therefore, facilitated and continues to facilitate contribution of the Asian and African Member States to the work of the ILC, and has proven the worth of Asian-African views in ILC's work, so that the Commission may be able to fulfill its stature as a globally representative organization.
28. The Asian-African States continue to play an important role in the work of the Sixth Committee of the UN General Assembly, which is central to ILC's work. The countries in the two regions are playing an active role in ensuring that the development of international law reflects their major concerns and legitimate interests. AALCO's document on the ILC for a given Annual Session, which captures deliberations on the topic at the previous Annual Session of AALCO, summary of the views expressed by the AALCO Member States at the Sixth Committee of the UN General Assembly, and the comments and observations of the AALCO Secretariat, reports on the work of the ILC on the substantive topics that are placed on its agenda at the corresponding session of the ILC.
29. The document AALCO/60/NEW DELHI (HEADQUARTERS)/2022/SD/S1 reports the work of the Commission on the following substantive topics that were placed on the agenda of its Seventy-Third Session (2022): (i) Immunity of State officials from foreign criminal jurisdiction, (ii) Protection of the environment in relation to armed conflicts, (iii) Peremptory norms of general international law (*jus cogens*), (iv) Succession of States in respect of State responsibility, (v) General principles of law, and (vi) Sea-level rise in relation to international law.

#### **Document: AALCO/60/NEW DELHI (HEADQUARTERS)/2022/SD/S1**

#### **The Status and Treatment of Refugees**

30. AALCO has constructively engaged with the topic 'The Status and Treatment of Refugees' ever since the topic was introduced in its agenda in 1964 at the behest of the Arab Republic of Egypt. Over the years, AALCO's dedicated efforts to develop this topic have been well recognized by the international community, including the adoption of the "Principles Concerning the Treatment of Refugees" also known as the "Bangkok Principles" in 1966 among others. It may be noted that the topic was last discussed in the Fifty-Sixth Annual Session of AALCO held in Nairobi, the Republic of Kenya in 2017.
31. Given the fact that a significant period of time has elapsed since AALCO last discussed the topic and factoring AALCO's historic engagement with the same, the AALCO Secretariat decided to include the topic for the upcoming Sixtieth Annual Session. In this regard, the brief prepared by the Secretariat seeks to give an overview of the international

legal framework surrounding refugee protection. It is hoped that the brief will provide an opportunity for the Member States to discuss the international legal framework of refugee protection in light of contemporary challenges facing them, especially the recently adopted Global Compact on Refugees (GCR).

**Document: AALCO/60/NEW DELHI (HEADQUARTERS)/2022/SD/S3**

**Violations of International Law in Palestine and other Occupied Territories by Israel and other International Legal Issues Related to the Question of Palestine**

32. At the initiative of the Government of the Islamic Republic of Iran, the item “Deportation of Palestinians in Violation of International Law particularly the Fourth Geneva Convention of 1949 and the Massive Immigration and Settlement of Jews in Occupied Territories” was taken up at AALCO’s Twenty-Seventh Session, held in Singapore (1988).
33. At the Fifty-Fourth Annual Session in Beijing, the People’s Republic of China (2015), AALCO/RES/54/S4 was adopted changing the title of the agenda item to “Violations of International Law in Palestine and Other Occupied Territories by Israel and other International Legal Issues related to the Question of Palestine.”
34. At the Fifty-Ninth Annual Session of AALCO held in Hong Kong (SAR), the People’s Republic of China, the agenda item “Violations of International Law in Palestine and Other Occupied Territories by Israel and other International Legal Issues related to the Question of Palestine” was discussed at the third general meeting on 30 November 2021. In addition to issues relating to the perpetual state of grave violations of International Humanitarian Law and International Human Rights Law committed in the occupied territories, the following issues were discussed (a) the right to access to healthcare of the people living in the occupied territories of Palestine in light of the global COVID-19 pandemic, (b) the decision of the Pre-trial Chamber of the International Criminal Court (ICC) confirming the preliminary investigation into the situation in Palestine and (c) the illegal uses of force and other violations of international human rights and humanitarian law that were perpetrated at the time of Ramadan. The delegations condemned the grave violations of international law and called for the cessation of actions that undermines the two-state solution.
35. The present report identifies the key developments in the occupied territories of Palestine and provides the key findings of international reports on violations of international human rights law and international humanitarian law in the recent past for deliberation at the Sixtieth Annual Session of AALCO.

**Document: AALCO/60/NEW DELHI (HEADQUARTERS)/2022/SD/S4**

**Environment and Sustainable Development**

36. The proposal to peruse the topic of development of international law relating to human environment was placed on the Organization’s agenda by the Government of India at the

Fifteenth Annual Session, which took place in 1974 in Tokyo, Japan. The topic has been deliberated upon at the Fiftieth Annual Session in 2011 (Colombo), Fifty-First Annual Session in 2012 (Abuja), Fifty-Second Annual Session in 2013 (New Delhi (HQ)), Fifty-Third Annual Session in 2014 (Teheran), and Fifty-Fourth Annual Session in 2015 (Beijing) under different names.

37. The interactions between environment and development are complex, and it is important to seek ways and means for achieving sustainability in all human activities aimed at such development. With this understanding, two issues of immense contemporary relevance are proposed for focused deliberation, namely (a) Haze Pollution & Sand and Dust Storms (SDS); and (b) Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction (BBNJ).

**A. Haze Pollution & Sand and Dust Storms (SDS)**

38. The issue of Haze Pollution and Sand & Dust Storms (SDS) is one of the most pressing challenges of transboundary pollution being faced today by the international community. Many AALCO Member States are familiar with this environmental hazard and have been at the forefront of tackling this problem through appropriate legal and diplomatic tools. While Haze Pollution and Sand & Dust Storms (SDS) has never featured in AALCO's briefs as a topic of discussion in the past, the Secretariat is of the opinion that the time is apt to broad base AALCO's agenda item of 'Environment and Sustainable Development' to address the grave hazards posed by this problem. The inclusion of this issue is timely because of the renewed challenges being faced and the need to share appropriate legal and policy perspectives by AALCO Member States in light of their experience and practice dealing with the problem of Haze pollution and Sand & Dust Storms.

39. It may also be noted that the United Nations has been at the forefront of addressing this issue and regional efforts notably by the ASEAN have been underway as well. In this regard, the Secretariat is of the view that the issue may be given adequate emphasis by AALCO in the best interest of facilitating deeper engagement and AALCO Member States may be provided an opportunity to express their positions with the aim of effectively dealing with the challenges posed on this front.

40. It is also believed that such a discussion can also possibly create a common position on the need to address the threats posed by transboundary pollution at a more general level and the Afro-Asian region could emerge as a potential regional catalyst in fostering the evolution of global legal principles in this regard. In view of the same, the portion on Haze Pollution and Sand & Dust Storms (SDS) provides an overview of the international legal and policy framework surrounding the issue that could help Member States effectively deliberate on the topic.

**B. Conservation and Sustainable Use of BBNJ**



41. In recent times, AALCO has almost exclusively dealt with the issue of Conservation and Sustainable Use of BBNJ in its briefs on the agenda item Law of the Sea. In view of this exclusive focus, and in order to ensure that the topic is glimpsed through the prism of sustainable development, it is proposed that during the Sixtieth Annual Session the topic better be addressed within the ambit of the agenda item Environment and Sustainable Development.
42. The milestones reached by the international community in its quest to negotiate and draft an international legally binding instrument (ILBI) under the UNCLOS on the conservation and sustainable use of BBNJ have been pored over in the Secretariat brief. The draft text of the BBNJ Treaty, as it stands after the 4<sup>th</sup> Session of the Intergovernmental Conference (IGC) has been perused with an objective to provide an initial analysis of the draft text, focusing on general provisions, institutional arrangements, and the substantive provisions concerning the package deal elements, thereby highlighting key areas of progress or contention, and identifying some possible options for strengthening the text.
43. The participation of AALCO Member States in the four sessions of the IGC has been noted. It has been pointed out that including appropriate provisions in the text of the BBNJ ILBI and implementing them has the potential to make a very significant contribution to meeting several SDG targets, including SDG 14.
44. It is urged that AALCO Member States participate in the upcoming events pertaining to the negotiation of the ILBI with the zeal to formulate an ambitious and robust agreement, regardless of the number of additional sessions that might be needed.

**Document: AALCO/60/NEW DELHI (HEADQUARTERS)/ 2022/SD/S10**

### **International Trade and Investment Law**

45. The legal regimes on WTO Law and International Investment Law, although quite distinctive, share commonalities and exhibit overlaps. The agenda item International Trade and Investment Law has, for quite some time now, featured prominently on the work programme of AALCO.
46. The topic ‘WTO as a Framework Agreement and Code of Conduct for World Trade’ has continuously been on the agenda since the Thirty-Fourth Annual Session of AALCO in 1995. Developments relating to the WTO and its agreements particularly the legal aspects of the dispute settlement mechanism have been monitored and reported by the AALCO Secretariat. Post Fifty-Fifth Annual Session of AALCO (2016), the Secretariat has acted upon the mandate received to organize seminars, workshops and other capacity-building programmes to facilitate the exchange of views by Member States on issues of contemporary relevance to the international trade law regime.

47. Under the wider topic of Economic and Trade Law Matters, International Investment Law and Agreements were first examined under the ambit of Regional Cooperation in the Context of the New International Economic Order. At the Twenty-First Annual Session (1980) held in Jakarta, the Republic of Indonesia a report on matters pertaining to bilateral investment treaties, investment guarantees, and petroleum export was placed before the Trade Law Sub-Committee. At that session, preparations were made for the Ministerial Meeting which was held later that year as a result of which the Secretariat was directed to prepare Model Investment Agreements based on the study of the provisions in existing Bilateral Investment Treaties. After examination by an Expert Group of the divergent agreements and State practice in the area the agreements which had three options were finally adopted and transmitted to the Member States at the Twenty-Fourth Annual Session held in 1985 at Kathmandu, Nepal.
48. Renewed interest was shown in the topic when International Investment Agreements were discussed under the agenda item ‘Report on the Work of UNCITRAL and other International Organizations in the field of International Trade Law.’ While discussion on issues relating to Investor-State Arbitration were underway at the UNCITRAL, issues such as transparency in arbitration, rising costs and duration of arbitration, lack of expertise and shrinking policy of host nations were at the forefront of discussions at the Fifty-Fourth Annual Session of AALCO held in Beijing, the People’s Republic of China in 2015.
49. More recently issues relating to legitimacy and of investment arbitration and its reform have been discussed under the agenda item International Trade and Investment Law at the Fifty-Seventh Annual Session held in Tokyo, Japan in 2018, the Fifty-Eighth Annual Session at Dar es Salaam, the United Republic of Tanzania in 2019 and was placed on the agenda however as a non-deliberated topic at the Fifty-Ninth Annual Session of AALCO held at Hong Kong, the People’s Republic of China in 2021. The present brief continues to identify and place in context the issues for deliberation on the latest developments in International Investment Agreements under the sub-topics mentioned below.
50. Three issues have been identified for focused deliberation during the Sixtieth Annual Session of AALCO, *viz.*, 12<sup>th</sup> Ministerial Conference of the WTO, UNCITRAL Working Group III on Investor-State Dispute Settlement Reform, and the UNCTAD and recent developments in the International Investment Agreements Regime.

**A. 12<sup>th</sup> Ministerial Conference of the WTO**

51. From 12 to 17 June 2022, the WTO held an extended 12<sup>th</sup> Ministerial Conference (MC12) at WTO headquarters in Geneva. The Secretariat brief shall seek to furnish a brief report of the outcome of MC12, highlighting key areas of progress or contention, and identifying some possible avenues for cooperation and further negotiation for AALCO’s Asian-African membership.

52. MC12 was a litmus test for the WTO's relevance when it comes to delivering on a broad range of issues. A partial multilateral agreement on harmful fisheries subsidies was entered into, with lacunae to be filled by MC13. Few substantive rules on export restrictions were agreed on to ease rising food insecurity. A decision permanent solution for public stockholding programmes was deferred to MC13. A partial waiver of patent protection under TRIPS was negotiated to increase vaccine equity, with the waiver not yet extending to therapeutics and diagnostics. The MC12 perceived another extension of the e-commerce moratorium to boost digital trade. Regarding WTO reforms, the MC12 outcome document pointed towards the necessity for reviving the WTO Appellate Body, and reaffirmed that special and differential treatment provisions for developing country members and LDCs constitute an integral part of the WTO and its agreements.

**B. UNCITRAL Working Group III and Investor-State Dispute Settlement Reform**

53. The topic relates to the efforts made in the Working Group III of the UNCITRAL with a view to address concerns with Investor State Dispute Settlement (ISDS) raised by States and offer concrete solutions in the form binding texts while allowing each State the choice of whether to and to what extent it wishes to adopt the solutions so arrived at.

**C. The UNCTAD and recent developments in the International Investment Agreements Regime**

54. While a comprehensive reform of the regime for investor-State dispute settlement (ISDS) has been entrusted to the Working Group III of the UNCITRAL, the UNCTAD has been at the forefront of efforts to reform the regime of international investment agreements (IIAs) and has provided valuable backstopping to this process. Since 2012, the World Investment Report, a key annual publication of the UNCTAD, has focussed its attention on the reform of International Investment Agreements based on recommendations and views expressed by States and other stakeholders. This sub-topic shall focus on the latest trends in International Investment Agreements that have been incorporated with a view to further the reform of International Investment Law evidencing the capacity of developing countries to negotiate and implement investment treaties that can foster sustainable investment.

**Document: AALCO/60/NEW DELHI (HEADQUARTERS)/2022/SD/S13**