



## **ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION**

### **ANNOTATED PROVISIONAL AGENDA FOR THE FORTY-FIFTH SESSION**

#### **I. INTRODUCTION**

1. The Provisional Agenda has been prepared following Rule 11(1) of the AALCO's Statutory Rules. Prior to the Forty-First Session of the AALCO held in Abuja from 15-19 July 2002, the Secretariat had been preparing documents-reports on all items on the agenda and all the items were deliberated in the Annual Sessions.

2. However, before the Forty-Second Session held in Seoul, Republic of Korea, from 16-20 June 2003, the Host Government of the 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 matter was raised and it received positive response at AALCO's Legal Advisers Meeting in New York held on 20<sup>th</sup> November 2002 and in the Liaison Officer's 279<sup>th</sup> and 280<sup>th</sup> Meetings held in New Delhi on 19 December 2002 and 5 March 2003 respectively.

3. The Forty-Second Session adopted this innovative approach and there were 9 items, which were deliberated. At the Forty-Third Session, held at Bali, Republic of Indonesia from 21-25 June 2004, 10 items were deliberated while at the Forty-Fourth Session, held at Nairobi, Republic of Kenya from 27 June – 1 July 2005, 9 items were deliberated. However, to keep the Member States well informed, the Secretariat had prepared brief reports on all the items on the agenda and all the non-deliberated items were also reflected in the Report of the Secretary-General on the work of the AALCO. This approach of rationalizing the agenda adopted from Seoul Session (2003) onwards has proved to be quite constructive and successful.

4. This successful practice shall be carried forward at the forthcoming Forty-Fifth Session as well, scheduled to be held at Headquarters in New Delhi, India from 3<sup>rd</sup> April to 8<sup>th</sup> April 2006. Therefore, apart from the consideration of items on Organizational matters, ten substantive items have been proposed for consideration as deliberated items for in-depth discussion.

## **II. ANNOTATED LIST**

### **1. Chairing of the Session**

Rule 3(1) provides that the President of the previous session shall preside until the Member States elect a new President for the Session. Accordingly, Hon'ble Mr. S. Amos Wako, Attorney-General, Republic of Kenya shall preside at the Inaugural and First Meeting of the Delegations of AALCO's Member States.

### **2. Participation of Member States**

Rule 12(1) provides that at the Annual Session of the Organization, the Delegation of each Member State shall be composed of the Leader of Delegation, Alternate Members and Advisers.

### **3. Credentials of Participants**

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 Missions of Member States or Observer delegations or by the concerned Organizations in the UN system, inter-governmental organizations and other international institutions.

### **4. Adoption of Agenda**

Rule 11(3) provides that the provisional agenda shall be placed before the Meeting of the Delegations of Member States for consideration. The Meeting may, at its discretion, delete any item included in the provisional agenda. A new item may be included on 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 be 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-third majority of those present and voting in secret ballot.

Rule 11(4) provides that the provisional agenda upon its approval by the Meeting of the Delegations of Member States shall be adopted as the agenda of the Session.

### **5. Admission of Observers**

The admission of Observers is governed by Rule 18, and will be taken up by the Meeting of Delegations of 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; (iii) observers representing United Nations, its Organs and Agencies and other inter-governmental Organizations.

In addition to these three categories, in accordance with the decision taken at AALCO's Twenty-Second Session in Colombo (1981), Australia and New Zealand enjoy Permanent Observer Status.

Observer delegations have the right to attend all Meetings except those, which are declared closed meetings and attended exclusively by Delegations of Member States.

## **6. Admission of New Members**

Rule 4 provides that the Organization may by a decision supported by a two-third majority of the Participating 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.

## **7. Election of the President**

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 a dignitary of the Member State hosting the Session.

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

Rule 3(2) 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.

## **9. General debate**

It has been the practice that the First and, if necessary, Second General Meetings are open for General Statements by the Hon'ble Ministers and Leaders of the Delegations of Member States and Observers.

## **10. Report of the Secretary-General on the Work of the Asian African Legal Consultative Organization**

Following Rule 20(7) of AALCO's Statutory Rules, the Secretary-General presents an annual report to Delegations of the Member States on the work of the Organization. The Report for the Forty-Fifth Session covers the activities of this Organization since its Forty-Fourth Session, including the organizational, financial and

administrative matters. In view of the proposed shifting of the Secretariat to the Permanent Headquarters of the Organization, the Report seeks to make few suggestions for the work programme of the Organization subsequent to the Forty-Fifth Session so as to give a significant push, in order to start from now onwards a new era with a New Dimension. This Report will be considered at the Meeting of the Delegations of the AALCO Member States exclusively. It would be useful if the Member Governments could give their comments and suggestions on AALCO's Work Programme and ways and means to strengthen its role and activities.

**Document:** AALCO/45/HEADQUARTERS SESSION (NEW DELHI) /2006/ ORG 1

**11. The AALCO's Budget for the year 2007**

In accordance with Rule 24(4), the AALCO's Budget for the year 2007, as adopted by the Liaison Officers, shall be submitted to the Meeting of the Delegations of Member States of the AALCO for final approval.

**Document:** AALCO/45/ HEADQUARTERS SESSION (NEW DELHI) /2006/ORG 2

**12. Report on the AALCO's Regional Centres for Arbitration**

A report on the activities of the AALCO's Regional Arbitration Centres located in Cairo, Kuala Lumpur, Lagos and Tehran is to be submitted for consideration at the Forty-Fifth Session. During the Forty-Fifth Session, an Agreement is likely to be signed by the Attorney-General of Kenya and the Secretary-General for establishing a new Arbitration Centre in Kenya.

**Document:** AALCO/45/HEADQUARTERS SESSION (NEW DELHI)/2006/ORG 3

**13. Report on the Center for Research and Training of the AALCO**

A report on the activities of the AALCO's Center for Research and Training is to be submitted for consideration at the Forty-Fifth Session.

**Document:** AALCO/45/ HEADQUARTERS SESSION (NEW DELHI)/ 2006/ORG 4

**14. Review of the Statutory Rules of the Organization.**

The preparation of the draft for revision of Statutory Rules of the Organization is a long process. While the Secretariat has initiated work in this regard, owing to the short time gap between the Forty-Fourth Session and the Forty-Fifth Session, and preparation for the Headquarters Session, this work would be taken up after the Secretariat shifts to its Permanent Headquarters. The Secretary-General is hopeful that the Organization would be able to adopt new Statutory Rules after shifting to the Permanent Headquarters and this would open a new era of AALCO activities.

**15. Venue of the Forty-Sixth Session**

### **III. MATTERS UNDER ARTICLE 1 OF THE STATUTES**

#### **1. Report on Matters relating to the Work of the International Law Commission at its Fifty-seventh Session**

In accordance with Article 1(d) of the AALCO's Statutes, the Secretariat is mandated to monitor and report on the work of the International Law Commission (ILC). In keeping with this long-standing practice, the Secretariat document for the Forty-Fifth Session contains an overview of the ILC's work during its Fifty-Seventh Session.

The Secretariat's report provides an overview of the progress of work achieved by the ILC on topics relating to: Reservations to Treaties, Diplomatic Protection, Unilateral Acts of States, Responsibility of International Organizations, Fragmentation of International Law: Difficulties Arising from the Diversification & Expansion of International Law, Shared Natural Resources, Effects of Armed Conflicts on Treaties and Expulsion of Aliens.

The Secretariat's report seeks to highlight the deliberations and the decisions of the ILC on these topics.

Further, references to the views expressed by the AALCO Member States on the ILC agenda items at the Sixth (Legal) Committee of the General Assembly (60<sup>th</sup> session) have also been incorporated in the Report.

**Document: AALCO/45/HEADQUARTERS SESSION (NEW DELHI)/2006/SD/S 1**

#### **2. The Law of the Sea**

The item, the "Law of the Sea" has been on the AALCO's agenda for over three decades. In 1970's, the deliberations on this item during the AALCO's Annual Sessions and numerous inter-sessional meetings followed the negotiations at the Third Conference on the Law of the Sea held under the auspices of the United Nations. Since the Convention's entry into force in 1994, the deliberations at the AALCO's annual session have been focused on the institutional developments as envisaged in the 1982 Law of the Sea Convention. The AALCO Secretariat has been preparing brief reports on the progress in this regard.

Accordingly, the Secretariat Report prepared for the Forty-Fifth Session provides an overview of the sixth meeting of the Consultative Process; the consideration of the Oceans and the Law of the Sea issues at the 60<sup>th</sup> Session of the General Assembly; status of the UNCLOS and its implementing Agreements; fifteenth and sixteenth Sessions of the Commission on the Limits of the Continental Shelf; Eleventh Session of the International Seabed Authority; fifteenth Meeting of States Parties to the UNCLOS' 82; and the settlement of disputes under UNCLOS by the International Tribunal for the Law of the Sea in the Year 2005. It also places for consideration the provisions pertaining to amendments in the UNCLOS; delimitation of maritime zones particularly the Exclusive

Economic Zone and the Continental Shelf and finally, it offers some general comments on the agenda item.

**Document: AALCO/45/HEADQUARTERS SESSION (NEW DELHI) /2006/SD/S 2**

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

The problem of refugees and the stateless persons remains one of the central issues that the international community faces today. The plight of refugees has worsened in the post cold war era, which has witnessed large- scale displacement of peoples in various parts of the world on account of civil war, ethnic cleansing, armed conflicts and other calamities.

Though the international refugee protection regime, which primarily revolves around the 1951 Convention on the Status of Refugees and its 1967 Protocol, established as early as 1950's, it is felt by many States to be inadequate to take care of the mass exodus of refugees that the international community has witnessed of late. At the same time the refugee problem has come to be seen in the matrix of state responsibility as well. The international community has not been so successful in identifying the responsibilities of States vis- a- vis refugees and asylum seekers except for the two principles found in the 1951 Convention namely, the principle of *Non-Refoulement* (Article 33) and the prohibition of punishment for illegal entry (Article 31). In other words, the need to identify the precise obligations of the states becomes all the more important since the protection regime is sought to be eroded by some countries.

The item entitled "The Status and Treatment of Refugees" was placed on the agenda of AALCO in 1963 at the reference of the Arab Republic of Egypt. Since then it has been under discussion at its several annual sessions and inter-sessional meetings. AALCO, which has been working in close collaboration with UNHCR, had adopted the "Principles on Status and Treatment of Refugees" at its Bangkok Session in 1966. Though devoid of legal force, these principles reflected the practice followed by the Asian African States in this area. Besides these principles, which were revised in the year 2001 at the New Delhi (Headquarters Session), AALCO has taken two important initiatives in this area, which include the preparation of a Model Legislation on Refugees and the concept of establishment of safety zones for internally displaced persons. The cooperation between AALCO and the UNHCR got a further boost in 2002 when both of them signed an MOU which envisages various measures which include, the preparation of studies and holding of seminars and workshops on areas of mutual interest and concern.

As a follow-up to the seminar organized in 2003 in collaboration with UNHCR, the AALCO proposed an in-depth special study on the topic **"Statelessness: An Overview from the African, Asian and Middle Eastern Perspectives"**. This special study which has the principal aims of analyzing the problems faced by stateless persons will also deal with the legal regime that governs the situation of these persons so as to identify the gaps in the protection. It needs to be reiterated that the forthcoming Forty-

Fifth Session to be held in New Delhi would devote a half-day special meeting in cooperation with the UNHCR to consider the above-mentioned joint study on statelessness.

**Document: AALCO/ 45/ HEADQUARTERS SESSION (NEW DELHI)/ 2006/ SD/S 3**

#### **4. Deportation of Palestinians and other Israeli Practices Among Them the Massive Immigration and Settlement of Jews in All Occupied Territories in Violation of International Law Particularly the Fourth Geneva Convention of 1949**

The item has been on the agenda of the AALCO since its Twenty Seventh Session (Singapore, 1988) following a reference made by the Government of the Islamic Republic of Iran. Since then it has been considered at successive Annual Sessions. At the Thirty Seventh Session (New Delhi, 1998) the scope of the topic was expanded to “Deportation of Palestinians and *other Israeli Practices among them* the Massive Immigration and Settlement of Jews in all Occupied Territories in Violation of International Law particularly the Fourth Geneva Convention of 1949”. At the Thirty Ninth Session (Cairo, 2000) it was decided to enlarge the scope of the item and the Secretariat was directed to monitor the developments in (all) occupied territories from the viewpoint of relevant legal aspects.

At the Forty-Second (Seoul, 2003), Forty-Third (Bali, 2004) and Forty-Fourth (Nairobi, 2005) Sessions the Secretariat reported on legal developments concerning Israeli practices in all occupied territories, including violations of the Fourth Geneva Convention of 1949 and the United Nations resolutions. For the forthcoming Forty- Fifth Session (New Delhi, 2006) the present topic is chosen as one of the substantive items for in-depth consideration. In order to facilitate discussions at the Forty-Fifth Session, the Document prepared by the Secretariat, besides giving detailed background information and highlighting the recent developments, contains a description of Israeli activities that amount to violation of 1949 Geneva Convention and also includes violations of international law by Israel including United Nations Security Council and General Assembly Resolutions. The report contains a summary of the deliberations held at the Forty-Fourth Session of AALCO; Israel’s disengagement from Gaza; ICJ’s Advisory Opinion on Legal Consequences of a Wall in the Occupied Palestinian Territory and related UN General Assembly Resolution; and on recently concluded Palestinian elections.

**Document: AALCO/45/HEADQUARTERS SESSION (NEW DELHI)/2006/SD/S 4**

#### **5. International Terrorism**

The item entitled “International Terrorism” was placed on the agenda of the AALCO’s Fortieth Session held from 20-24 June 2001, in New Delhi (HQ), upon a reference made by the Government of India. It was felt that consideration of this item at AALCO would be useful and relevant in the context of the on-going negotiations in the Ad Hoc Committee of the United Nations on the elaboration of the comprehensive

convention on international terrorism. The Forty-Fourth Session of AALCO (Nairobi, 2005) directed the Secretariat to monitor and report on the progress in the Ad Hoc Committee of negotiations related to the drafting of a comprehensive International Convention to Combat Terrorism.

The Secretariat report for the Forty-Fifth Session seeks to highlight the salient features of the Draft Convention circulated by the Government of India; and covers discussion on the Draft Comprehensive Convention on International Terrorism at the Ninth Session of the Ad Hoc Committee; Report of the Coordinator on the Results of the Informal Consultations on a Draft Comprehensive Convention on International Terrorism; deliberations on the Comprehensive Convention against Terrorism at the Sixth Committee during the 60<sup>th</sup> Session of the General Assembly (2005); and Work of the Counter Terrorism Committee (CTC).

**Document: AALCO/45/HEADQUARTERS SESSION (NEW DELHI)/2006/SD/S 8**

## **6. Establishing Co-Operation Against Trafficking in Women and Children**

The topic “Establishing Cooperation against Trafficking in Women and Children” was included on the agenda of the AALCO at its Fortieth session held in New Delhi, (June 20<sup>th</sup>-24<sup>th</sup> in 2001) upon a proposal of the Government of Republic of Indonesia. At the Forty-Third session, held in June 2004 in Bali, Indonesia, a Special Meeting was held on this topic with an in-depth and thought provoking presentations and discussions, which resulted in the adoption of a resolution by the AALCO Member States. Resolution, 43/ SP 1 vide operative paragraph 9 *inter alia*, directed the Secretary-General to develop, in cooperation with Member States, a Model Law for the criminalisation of trafficking in persons as well as protection of victims of trafficking, before, during and after criminal proceedings, based on human rights approach with a view to develop a concrete action plan for a joint effort against trafficking in persons, especially women and children.

An outline of the model law was prepared as per the mandate entrusted to the Secretary-General vide the resolution and was presented during the Forty-Fourth Session as an addendum to the report on the item. As an initial step towards fulfilling the mandate towards drafting a Model Law, the Secretariat endeavors to study the national legislations received from the Member States of AALCO in light of the Protocol to Suppress, Punish and Prevent Trafficking in Persons. The Secretariat’s report for the Forty-Fifth session analyses various dimensions of the issue of trafficking in persons, such as causative socio-economic factors of trafficking in persons; the prohibition of trafficking in persons in international law; international obligation to prevent trafficking, protection of victims of trafficking and prosecute traffickers. The report also gives the details as to how this issue has been addressed by various other international organizations too. Also, the report outlines the recent international developments on the topic. The Secretariat would attempt to draft a few provisions of the model legislation to be considered by the Member States of AALCO on trafficking in persons especially women and children, which shall be presented as an addendum to this report.

**Document: AALCO/45/HEADQUARTERS SESSION (NEW DELHI)/2006/SD/S 9**



## **7. An Effective International Legal Instrument Against Corruption**

At the Forty-First Session (2002) held in Abuja, the Secretary-General proposed for inclusion of an item entitled “An Effective International Legal Instrument Against Corruption” in the provisional agenda. This suggestion was in line with the Article 1(a) of the AALCO’s Statutes, which provides for exchange of views and information on matters of common concern having legal implications. The item was discussed at the AALCO’s Forty-first, Forty-second and Forty-third Sessions. At the Forty-fourth Session a Book “Combating Corruption: A Legal Analysis”, was prepared by the Secretariat, which attempts to provide an overview and comparative analysis of the regional and international anti-corruption initiatives, with special emphasis on UN Convention against Corruption. The resolution adopted at the Forty-Fourth Session urged the Member States for ratification and implementation the Convention.

The Secretariat brief for the Forty-Fifth Session provides an overview of the developments in the implementation of the UN Convention against Corruption 2003 by the Member States; National Implementation of the UN Convention Against Corruption: Nature of Obligations; implementation of the anti-corruption provisions in the Convention against Transnational Organized Crime; Report of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice April 2005; and the Secretariat comments. It is suggested that during the deliberations, Member States could focus on the national implementation of the UN Convention Against Corruption which entered into force on 14 December 2005. The AALCO Secretariat is also contemplating the possibility of preparing a special study which provides a detailed analysis of the obligations (mandatory/obligatory) under the Convention.

**Document: AALCO/45/HEADQUARTERS SESSION (NEW DELHI)/2006/SD/S 12**

## **8. WTO as a Framework Agreement and Code of Conduct for World Trade**

At the Thirty-Fourth Session (1995) held at Doha, the Organization considered a Secretariat study on the Marrakech Agreement Establishing the WTO, entitled, “The New GATT Accord: An Overview with Special Reference to World Trade Organization (WTO), Trade Related Intellectual Property Rights (TRIPS)” dealing with the outcome of the Uruguay Round of Multilateral Trade Negotiations. Since then, the Secretariat, during the successive sessions of the Organization, presented briefs, which reflected the developments within the WTO. More particularly, on the WTO’s dispute settlement mechanism and issues relating to implementation of intellectual property rights obligations.

The Secretariat brief for the Forty-Fifth Session provides a report of the Sixth WTO Ministerial Conference 2005, held in Hong Kong, with special emphasis on Negotiation on Agriculture, Non-Agriculture Market Access (NAMA), Trade Related Intellectual Property Rights (TRIPS) and Public Health, Trade Facilitation, Development issues, General Agreement on Trade in Services (GATS) and progress in the review process of the Understanding on Rules and Procedures Governing the Settlement of

Disputes. It is suggested that during the discussion in the AALCO's Forty-Fifth Session, Member States could focus their attention on the strategies for the implementation of the Hong Kong Declaration and the Doha Development Agenda.

**Document: AALCO/45/HEADQUARTERS SESSION (NEW DELHI)/2006/SD/S 14**

## **9. Expressions of Folklore and its International Protection**

Keeping in view the extreme importance of the work undertaken by the WIPO IGC for the Asian and African countries, the Secretary-General of AALCO proposed to the AALCO Member States to include the "Expressions of Folklore and its International Protection" as an item on the Agenda of the Forty-Third Session of AALCO (2004). The Secretariat brief for the Forty-Fourth Session provided the developments at the IGC's Seventh Session held in November 2004 and the discussion during the Session were on developing a policy and legal framework for the protection of Expressions of Folklore, at the international level.

The Secretariat brief for the Forty-Fifth Session provides an overview of the work of the WIPO Intergovernmental Committee since its inception in 2001, focusing its attention on the recently concluded Eighth Session of the Committee and the documents circulated at the Session for the consideration of the Member States. The report also provides a brief overview of the UNESCO Convention for Safeguarding the Intangible Cultural Heritage 2003. It is suggested that the deliberations at the Forty-Fifth session could focus on revised draft Provisions on the Protection of Expressions of Folklore.

**Document: AALCO/45/HEADQUARTERS SESSION (NEW DELHI)/2006/SD/S 15**

## **10. Human Rights in Islam**

The item "Human Rights in Islam" was included in the agenda of the AALCO at the initiative of the Kingdom of Saudi Arabia at its Forty-First Session at Abuja, Nigeria 2002. For the Forty-Second Session held at Seoul, Republic of Korea, 2003, the Secretariat prepared a Preliminary Report highlighting Saudi Arabia's proposal elaborated in their Memorandum. During the Forty-Second Session a brief discussion on the item was held and the resolution adopted at the Session decided to place it on the agenda of the Forty-Third Session of the Organization. During the Forty-Third Session at Bali, Indonesia, 2004, the agenda item 'Human Rights in Islam' was further discussed.

The report for the Forty-Fourth Session analyzed the criminal law jurisprudence of Islam through the prism of human rights. It explored the human rights aspects of various criminal law principles under the Islamic law. It gave a contextual framework of criminal law in general, both national and international. It also discussed the Islamic criminal law through human rights perspective. During the Forty-Fourth Session of the organization held at Nairobi, Kenya 2005, a resolution was adopted that requested the Secretary General to take necessary steps based on the proposal made by Malaysia to convene an Expert Meeting comprising of Member States of AALCO to achieve a concrete study in respect of the issue of human rights in Islam. To this end the Malaysian

Delegation stated that they were prepared to host the meeting of the experts in collaboration with the AALCO Secretariat and the Kingdom of Saudi Arabia, the initiator of the subject matter. The resolution (RES/44/6) adopted urged Member States “to forward to the Secretariat their views and observations, so as to facilitate the preparation of an in-depth study on this item.”

The Secretariat Report for the Forty-Fifth session on this topic analyses the international and national criminal procedural laws from a human rights perspective. It highlights the human rights aspects of various criminal procedural law principles under Islamic law. It makes a comparative analysis of criminal procedural laws of Islam from the human rights perspective.

**Document:** AALCO/45/HEADQUARTERS SESSION (NEW DELHI)/2006/SD/S 16