



ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION (AALCO)

EXPLANATORY MEMORANDUM

**SIXTY FIRST ANNUAL SESSION,
BALI, REPUBLIC OF INDONESIA**

**VENUE: BALI NUSA DUA CONVENTION CENTER,
NUSA DUA, BALI**

DATE: 16-20 OCTOBER 2023

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), sub-themes for topics categorised as substantive matters have been introduced in an effort to have focused discussions among the Member States.

4. At the forthcoming Sixty-First Annual Session, to be held in **Bali, Republic of Indonesia from 16 to 20 October 2023** 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) Matters related to the Work of the International Law Commission (ILC); (ii) The Law of the Sea (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; (v) International Trade and Investment Law [Reforms related to Investor-State Dispute Settlement (ISDS), within the context of negotiation being currently conducted in UNCITRAL Working Group (WG III)]; (vi) Asset Recovery Expert Forum; (vii) Legal Issues in Outer Space and (viii) International Law of Cyberspace (The Fifth Meeting of the Open-ended Working Group). In addition, side events on the topics of (i) Sharing Best Practices on the implementation of International Humanitarian Law (ii) Business and Investment Forum (iii) Sharing Best Practices on Asset Recovery and (iv) Advancing Cooperation between AALCO and HCCH for promotion of Private International Law are proposed to be convened.
5. The registration for the Session will begin on Sunday, 15 October 2023 from 10:00 AM to 6:00 PM (Bali Time) to be continued on Monday, 16 October 2023 from 8:00 AM to 10:00 AM (Bali Time), 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 XIX (Year 2022); (ii) AALCO Journal of International Law; (iii) Summary Report of AAALO Webinar on Global Compact of Refugees; and (iv) Report on the AALCO Webinar on General Principles of Law and AALCO Member States.

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 Sixtieth Annual Session (Republic of India)**, shall preside over the Inaugural Session and the First Meeting of the Delegations of AALCO Member States during the Sixty-First 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 Heads of 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.
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 the Heads 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 (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 Sixty-First Annual Session of AALCO in 2023

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 Sixty-First Annual Session covers the activities of the Organization since its Sixtieth

Annual Session, including the substantive, organizational, financial, and administrative matters.

Document: AALCO/61/BALI/2023/ORG 1

Financial Report and Proposed Budget for the Year 2024

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 2024 was presented during the 356th Meeting of the Liaison Officers held on 1 December 2022. Further, the draft budget was discussed at the 357th Liaison Officers Meeting held on 15 February 2023 and adopted. The budgetary proposals are now being submitted to the Member States at the Sixty First Annual Session of AALCO for final approval.

Document: AALCO/61/BALI /2023/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 Sixty-First Annual Session.

Document: AALCO/61/BALI/2023/ORG 3

IV. GENERAL DEBATE

23. At this Sixty-First 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 Sixty-Second 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 Sixty-First Annual Session, namely:

Report on the Work of the International Law Commission at its Seventy-Fourth Session

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 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/61/BALI/2023/SD/S1 reports the work of the Commission on the following substantive topics that were placed on the agenda of its Seventy-Fourth Session (2023): Succession of States in respect of State responsibility; General principles of law; Sea-level rise in relation to international law; Settlement of disputes to which international organizations are parties; Prevention and repression of piracy and armed robbery at sea; and Subsidiary means for the determination of rules of international law.

Document: AALCO/61/BALI /2023/SD/S1

The Law of the Sea

30. The agenda item “The Law of the Sea” was taken up for consideration by AALCO at the initiative of the Government of Indonesia in 1970. Since then, it has consistently been considered as one of the crucial components of the agenda at each of the Organization’s Annual Sessions. New concepts such as the Exclusive Economic Zone (EEZ), Archipelago States and Rights of Land Locked States were developed and deliberated upon in AALCO’s Annual Sessions. These concepts were later codified in the UNCLOS. The engagement of AALCO with the subject of the Law of the Sea in recent years has been most intense on the topic of Marine Biodiversity of Areas beyond National Jurisdiction (BBNJ). This year, AALCO would continue to engage with BBNJ in addition to discussing the crucial issue of Illegal, Unreported and Unregulated (IUU) Fishing.
31. Adopted by the Intergovernmental Conference on Marine Biodiversity of Areas beyond National Jurisdiction (BBNJ), the “high seas” treaty represents a landmark agreement aimed at taking stewardship of the ocean on behalf of present and future generations, in line with the UN Convention on the Law of the Sea. The treaty's objective is to implement international regulations to protect life in oceans beyond national jurisdiction through international cooperation. It addresses critical issues such as increasing sea surface temperatures, overexploitation of marine biodiversity, overfishing, coastal pollution, and unsustainable practices beyond national jurisdiction. Comprising 75 articles, the treaty strives to protect, care for, and ensure the responsible use of the marine environment, maintaining the integrity of ocean ecosystems, and conserving the inherent value of marine biological diversity. The brief prepared by the AALCO Secretariat will provide an in-depth analysis of the text of this pivotal treaty, offering further insights into its impact and implementation.
32. The issue of Illegal, Unreported and Unregulated (IUU) Fishing is one of the most challenging problems facing transnational fisheries sustainability today. While the international community has created various normative mechanisms to deal with the problem, the problem of IUU fishing can only be addressed effectively by greater collaboration between countries on new and emerging challenges facing the global community. In this regard, the AALCO Secretariat is of the view that Member States come together on a common platform and explore various legal and policy approaches to unitedly faced the challenges posed by IUU fishing.
33. Since AALCO has engaged with Law of the Sea as a topic for decades, it was felt better to broaden the engagement to the specific area of IUU fishing given its significance for the Afro-Asian region within the broader scope of Law of the Sea. The Secretariat notes that various AALCO Member States have strong domestic legal and policy measures in place to deal with the issue of IUU fishing and efforts are being made to strengthen their

effectiveness. In this backdrop, the issue of IUU fishing deserves greater attention in the work programme of the Organization. It is also believed that a discussion on IUU fishing can also possibly create a common position on the need to address the threats posed by the issue at a more general level and the Afro-Asian region could emerge as a potential regional catalyst in supplementing international efforts currently underway to deal with the problem.

Document: AALCO/61/BALI/2023/SD/S2

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 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).
35. 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.”
36. At the Sixtieth Annual Session of AALCO held in New Delhi (Headquarters), the Republic of India, 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 22 September 2022. In addition to issues relating to grave violations of International Humanitarian Law and International Human Rights Law committed in the occupied territories, issues raised in reports to the UN Human Rights Council during the previous year were discussed. The delegations condemned the grave violations of international law and called for the cessation of all actions that undermine the two-state solution.
37. The present report identifies the key developments in the occupied territories of Palestine on the basis of the findings of international reports on violations of international human rights law and international humanitarian law in the recent past for deliberation at the Sixty-First Annual Session of AALCO. The report also covers developments and provides information in relation to the request for an advisory opinion on legal consequences arising from the policies and practices of Israel in the occupied Palestinian Territory including East Jerusalem.

Document: AALCO/61/BALI/2023/SD/S4

Environment and Sustainable Development

38. The proposal to consider 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. Since then it has been deliberated under heads such as Environmental Law, Transboundary Movement of Hazardous Wastes, Preparation for the United Nations Conference on Environment and Development (UNCED), UNCED: Follow-up and Environment and Sustainable Development (2003 onwards). The topic has been last deliberated upon at the Sixtieth Annual Session (New Delhi, HQ) in 2022.
39. The Secretariat Report on "Environment and Sustainable Development" is divided into two parts. Part A deals with the negotiation process of the international legally binding instrument on plastic pollution while Part B focusses upon the recent developments in the climate change regime.
40. The negotiation process for the international legally binding instrument on plastic pollution, including in the marine environment, represents a concerted global effort to address a pressing environmental challenge. Initiated by the adoption of the United Nations Environment Assembly resolution 5/14 on 2 March 2022, the process has been marked by extensive participation and collaboration. Part A of the brief meticulously reports the deliberations of the first and second sessions of the Intergovernmental Negotiating Committee (INC) constituted to develop and adopt a legally binding instrument on plastic pollution, and covers the Options Paper prepared by the Secretariat, which deals with the treaty's potential scope, objectives, core obligations, control measures, and voluntary approaches for the treaty.
41. Part B of the Secretariat Report focusses upon the recent developments in the United Nations Framework Convention on Climate Change, 1992 and related instruments. It contains an overview of the Sharm El Shaikh Climate Change Conference (UNFCCC COP 27 and Related Meetings 6-22 November 2022, Arab Republic of Egypt); 58th sessions of the UNFCCC Subsidiary Body for Implementation (SBI) and Subsidiary Body for Scientific and Technological Advice (SBSTA) (5-15 June 2023, Bonn, Germany) and finally it identifies the key issues for the upcoming UN Climate Change Conference at Dubai (UNFCCC COP 28 and related meetings, 30 November -12 December 2023, United Arab Emirates). It also places for consideration: The Global Stocktake of the Paris Agreement; and the need to reactivate negotiations for subsequent commitments under the Kyoto Protocol with all industrialized countries taking quantified emission reduction targets.

Document: AALCO/61/BALI/2023/SD/S10

International Trade and Investment Law

42. The legal regimes on World Trade Organization (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, has been an integral part of the work programme of AALCO.

43. 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 the 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.
44. 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.
45. 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.
46. 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. Last year at the Sixtieth Annual Session of AALCO held in New Delhi (Headquarter), the Republic of India deliberation focused on 12th Ministerial Conference of the WTO, the UNCITRAL Working Group III on Investor-State Dispute Settlement Reform, and UNCTAD and recent developments in the International Investment Agreements Regime.

Explanatory Memorandum for the Sixty-First Annual Session of AALCO

47. The report for the Annual Session continues to identify and place in context the issues for deliberation on the latest developments in the World Trade Organizations comprising of issues such as WTO reform, addressing the Appellate Body Impasse, E-commerce, Agriculture and Food Security, Pandemic Response: TRIPS Waiver extension to therapeutics and diagnostics and Fisheries subsidies. The Code of Conduct for judges and arbitrators adopted by UNCITRAL in July earlier this year and the World Investment Report, 2023 released by UNCTAD in the context of the reform of International Investment Law as well as developments in the work of UNIDROIT have also been suggested as issues for focused deliberation.

Document: AALCO/61/BALI/2023/SD/S13