



## ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION

### ANNOTATED PROVISIONAL AGENDA FOR THE FORTY-EIGHTH SESSION

#### I. INTRODUCTION

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

2. However, before the Forty-Second Session held in Seoul, Republic of Korea, (16-20 June 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 matter received positive response at AALCO's Legal Advisers Meeting in New York, held on 20 November 2002, and in the Liaison Officers' 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<sup>st</sup> to 25<sup>th</sup> June 2004, 10 items were deliberated while at the Forty-Fourth Session, held at Nairobi, Republic of Kenya from 27<sup>th</sup> June to 1<sup>st</sup> July 2005, 9 items were deliberated. Similarly, at the Forty-Fifth Session, held at the Headquarters in New Delhi, India from 3<sup>rd</sup> to 8<sup>th</sup> April 2006, 9 items were deliberated, at the Forty-Sixth Session, held at Cape Town, Republic of South Africa, from 2<sup>nd</sup> to 6<sup>th</sup> July 2007, 8 items were deliberated and at the Forty-Seventh Session, held at New Delhi (HQ), from 29<sup>th</sup> June to 4<sup>th</sup> July 2008. However, to keep the Member States well informed, the Secretariat had prepared 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.

4. This successful practice shall be carried forward at the forthcoming Forty-Eighth Session as well, scheduled to be held at **Putrajaya, Malaysia from 17<sup>th</sup> to 20<sup>th</sup> August 2009**. Therefore, apart from the consideration of items on Organizational matters, seven (7) substantive items have been proposed for consideration as deliberated items for in-depth discussion, including the new item proposed by the Secretary-General entitled "Managing Global Financial Crisis – Sharing of Experiences". At this Session an introductory note shall be placed for the consideration of Member States and if it meets with their approval from next year it

would form a part of AALCO's agenda. Following the successful past practice two-half day Special Meetings would be held on the following topics: (i) Delimitation of Maritime Boundary and Piracy and (ii) Transnational Migration – Trafficking in Persons and Smuggling of Migrants

## **II. ANNOTATED LIST**

### **A. Chairing of the Session**

5. 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, His Excellency Mr. Narinder Singh, Joint Secretary and Legal Adviser, Legal and Treaties Division, Ministry of External Affairs, Government of India, shall preside over the Inaugural Session and the First Meeting of the Delegations of AALCO's Member States.

### **B. Participation of Member States**

6. 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.

### **C. Credentials of Participants**

7. 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.

### **D. Adoption of Agenda**

8. 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.

9. 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.

## **E. Admission of Observers**

10. 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.

11. 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.

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

## **F. Admission of New Members**

13. Rule 4 provides that the Organization may by a decision supported by a two-third 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 there under. Such decision may be taken by means of a resolution adopted in any of its sessions.

## **G. Election of the President**

14. 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.

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

15. 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 African region, the Vice-President may be elected, preferably from a Member State in the Asian region and vice-versa.

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

16. 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-Eighth Session covers the activities of this

Organization since its Forty-Seventh Session, including the organizational, financial and administrative matters.

Document: AALCO/48/PUTRAJAYA /2009/ORG 1

#### **J. The AALCO's Budget for the year 2010**

17. In accordance with Rule 24(4), the AALCO's Budget for the year 2010, as adopted by the Liaison Officers, shall be submitted to the Meeting of the Delegations of Member States of the AALCO for final approval and adoption.

Document: AALCO/48/ PUTRAJAYA/2009/ORG 2

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

18. 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-Eighth Session.

Document: AALCO/48/ PUTRAJAYA/2009/ORG 3

#### **L. Report on the Centre for Research and Training of the AALCO**

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

Document: AALCO/48/ PUTRAJAYA/2009/ORG 4

#### **M. General debate**

20. 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. *Leaders of Delegations are requested to kindly consider limiting their speech to 7 – 10 minutes due to paucity of time.* However, if they wish to give a longer version, the same could be handed over to the Secretariat/Host Committee for reproduction in the Report of the Session.

#### **N. Venue of the Forty-Ninth Session**

21. The Secretariat has so far not received an invitation from any Member Government to host the AALCO's Forty-Ninth Session. It may be recalled in this regard that sub-rule (1) of Rule 10 of the Statutory Rules of AALCO stipulates that the regular Annual Session of the Organization shall, in accordance with Article 4 of the Revised Statutes of AALCO be held at such time and place, by geographical rotation as may be determined by Member States.

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

#### **A. Report on Matters relating to the Work of the International Law Commission at its Sixtieth Session**

22. 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-Eighth Session contains an overview of the ILC's work during its Sixtieth Session.

23. The Secretariat's report provides an overview of the progress of work achieved by the ILC on topics relating to: Reservation to Treaties; Responsibility of International Organizations; Shared Natural Resources; Effects of Armed Conflicts on Treaties; Expulsion of Aliens; The Obligation to Extradite or Prosecute (*aut dedere aut judicare*); Protection of Persons in the Event of Disasters; Immunity of State Officials from Foreign Criminal Jurisdiction. It also contains a brief report on the half-day commemorative seminar on the sixty years of the International Law Commission organized by the AALCO.

24. 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 select ILC agenda items at the Sixth (Legal) Committee of the General Assembly (63rd Session) have also been incorporated in the Report.

Document: AALCO/48/PUTRAJAYA/2009//SD/S 1

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

25. Under Article 1 (a) of the Statutes, the item, the "Law of the Sea" has been on the AALCO's agenda for over three decades. In 1970s, 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 UN Convention on the Law of the Sea. The AALCO Secretariat has been preparing brief reports on the progress in this regard.

26. The Secretariat Report prepared for the Forty-Eighth Session provides information on the status of the United Nations Convention on the Law of the Sea (UNCLOS) and its implementing Agreements; Twenty-first and Twenty-second Sessions of the Commission on the Limits of the Continental Shelf; an overview of the annual comprehensive report of the Secretary-General on Oceans and the Law of the Sea; ninth meeting of the Consultative Process; eighteenth and special Meeting of States Parties to the UNCLOS' 82; Fourteenth Session of the International Seabed Authority; and the settlement of disputes under UNCLOS by the International Tribunal of the Law of the Sea in the Year 2008 and the consideration of the Oceans and the Law of the Sea issues at the 63<sup>rd</sup> Session of the UN General Assembly.

27. One **Half-Day Special Meeting** would be on the topic of "The Law of the Sea" focusing upon "Maritime Security and Piracy" and "Delimitation of Maritime Boundary". This meeting is being jointly organized by the International Tribunal for the Law of the Sea (ITLOS), the host Government and the AALCO Secretariat.

Document: AALCO/48/PUTRAJAYA/2009//SD/S 2

## **C. 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**

28. 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.

29. At the Forty-Second (Seoul, 2003), Forty-Third (Bali, 2004), Forty-Fourth (Nairobi, 2005), Forty-Fifth (New Delhi, Headquarters, 2006), Forty-Sixth (Cape Town, 2007) and Forty-Seventh (New Delhi (HQ) 2008) 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 Forty-Eighth Session, in order to facilitate discussions at the Session, the Report 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-Seventh Session of AALCO; Israeli atrocities (war crimes) in Gaza; and responses of the International Community;

30. Issues for focused consideration at the Forty-Eighth Session could be: Violations of international law, particularly international humanitarian law and human rights law, committed by the Government of Israel in the Occupied Palestinian Territory (OPT); Establishing peace in the Middle East, with particular reference to the role of international community to pressurize Israel to comply with its international obligations; and highlighting the need for establishing an independent sovereign State of Palestine as a prelude to establishing everlasting peace in the Middle East.

**Document: AALCO/48/PUTRAJAYA/2009/SD/S 4**

#### **D. The International Criminal Court: Recent Developments**

31. Developments pertaining to the International Criminal Court (ICC) has been on the agenda of the Organization, since its Thirty-Fifth Session (Manila, 1996), wherein it was considered in a Special Meeting. In the initial phase of its work-programme on the agenda item, the Secretariat reported on the various developments pertaining to the elaboration of the Statute of the ICC. It represented the Organization at the Rome Conference of Plenipotentiaries for the adoption of the Statute of the ICC in 1998. Subsequent to the adoption of Rome Statute, a Preparatory Commission was established and the Secretariat monitored and reported on the progress of the work in the Commission. After the entry into force of the Rome Statute, the focus of the Secretariat’s work has been on monitoring and reporting on the developments in the various institutions established under the Rome Statute, namely, the Assembly of States Parties (ASP), the ICC, Office of the Prosecutor, the on-going work on the crucial issue of the crime of aggression, and other pertinent developments relating to the ICC.

32. The Secretariat Report prepared for the Forty-Eighth Annual Session seeks to highlight the developments that have taken place after the Forty-Seventh Annual Session of the Organization. This Report briefly highlights the Issues for focused consideration during the Forty-Eighth Session; AALCO's Work Programme on the International Criminal Court in the previous years; Report on the Seventh Session of the Assembly of States Parties, Report of the Special Working Group on the Crime of Aggression, Consideration of the item during the Sixty-Third Session of the United Nations General Assembly (2008), Summary Report of the Seminar jointly organized by AALCO and the Government of Japan on "International Criminal Court: Emerging Issues and Future Challenges", held on 18<sup>th</sup> March 2009, in New Delhi and Comments and Observations of the AALCO Secretariat.

33. Focusing on basic principles of criminal law, and in particular thinking about elements of offences, brings to the fore the fundamental structure of the crime of aggression. The definition of the crime of aggression is so far one of the most important unresolved issues under the Rome Statute and is of great significance for developing countries too. The crime of aggression is included in the Rome Statute under the Article 5, i.e., Crimes within the jurisdiction of the Court. Though the Rome Statute is supposed to have jurisdiction over the crime of aggression, it has not been defined yet. Work on elaborating an acceptable definition of the Crime of Aggression is in progress in the Special Working Group on the subject constituted by the Assembly of States Parties. Bearing in mind that the 'Review Conference' would be held in 2010, this Secretariat report has identified some of the issues for focused consideration during the Forty-Eighth Session. They are: Crime of aggression – 2009 Chairman's Paper; Definition of the "crime" and the "act of aggression"; Conditions for the exercise of jurisdiction; Activation of the Court's subject-matter jurisdiction on aggression with respect to Security Council referrals; Future work on Aggression; and Issues before the Review Conference. *In view of the forthcoming Review Conference of the Rome Statute scheduled to be held in 2010 Member States could possibly give their input on the issues to be discussed at the Conference.*

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#### **E. Establishing Co-operation against Trafficking in Women and Children.**

34. The topic "Establishing Trafficking in Women and Children" was included on the agenda of AALCO at its Fortieth Session held in New Delhi, (2001) upon a proposal of the Government of Indonesia. At the Forty-Third Session, (Bali), (2004), a Special Meeting was held on this topic, which resulted in the adoption of a resolution by AALCO Member States. Resolution, 43/SP I vide operative paragraph 9, inter alia, directed the Secretariat to develop, in cooperation with Member States, a Model Law for the criminalization 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 developing 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 per the mandate, the Secretariat had prepared and circulated during the Forty-Fifth Session, a set of draft Preamble and five draft articles of the

proposed 'Model Legislation Against Trafficking in Persons Especially Women and Children'<sup>1</sup>. This endeavour was purely based on the existing international legal documents on combating trafficking in persons especially women and children along with the study of the national legislations of the Member States of AALCO which had sent their domestic legislations. However, the Secretariat is still in the process of finalizing the Model Legislation.

35. The Secretariat report for the Forty-Eighth Session attempts to highlight the basic human rights issue of women. The report encapsulates human rights issues in consonance with recognizing and promoting women's rights as human rights that are the correlative needs to eradicate the institutionalized invisibility of women in global sphere. The States could address their concerns when they take measures to initiate means to implement their existing rights to benefit women's lives, and to develop, expand, and transform the content and meaning of such rights to reflect women's realities and compel women's equality. It deals with basic five human rights that are right to health, right to be free from gender-based violence and discrimination, sexual and reproductive rights, right to education and right to development. The international obligations of the States in terms of protection and promotion of human rights of the trafficked victim, especially women are also briefly summed. Simultaneously, the report chronologically places the developments that have occurred in this field at various international institutional levels, like the Commission on Crime Prevention and Criminal Justice, Commission on Status of Women, United Nations Global Initiative to Fight Human Trafficking, and the Conference of Parties to the UN TOC Convention.

36. Keeping in view the current relevance of one of the transnational organized crimes the other **Half-Day Special Meeting** during the Forty-Eighth Session would be held on the topic **"Transnational Migration – Trafficking in Persons and Smuggling of Migrants"** jointly organized by the AALCO, Government of Malaysia and Asia Regional Trafficking In Persons Project (ARTIP).

Document: AALCO/48/PUTRAJAYA/ 2009/SD/S 8

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

37. At the Thirty-Fourth Session of the AALCO (1995) held at Doha, Qatar, the item "WTO as a Framework Agreement and Code of Conduct for the World Trade" was for the first time introduced in the Agenda of AALCO. Thereafter, this item continued to remain on the agenda of the Organization and was deliberated upon during the subsequent sessions - Thirty-Fifth Session (1996) to Forty-Sixth Session (2007). At these sessions, the Secretariat was directed to monitor the developments related to the WTO, particularly the relevant legal aspects of dispute settlement mechanism. In fulfillment of this mandate, the Secretariat had been preparing reports and presenting it to the Member States for their consideration and deliberation. In furtherance of its work programme, the AALCO in cooperation with the Government of India also convened a two-day seminar on 'Certain Aspects of the functioning of the WTO Dispute Settlement Mechanism and other Allied Matters' at New Delhi (1998). Further, at the Forty-Second Session held in Seoul (2003), the Secretariat

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<sup>1</sup> See AALCO/45/HEADQUARTERS SESSION (NEW DELHI)/2006/SD/S9/ADD. I



presented a Special Study on ‘Special and Differential Treatment under WTO Agreements’.

38. As mandated by the Forty-Seventh Session, the report of the Forty-Eighth Session provides updates on the Doha Development Round of Negotiations with focus on the negotiation on Agriculture, Non-Agriculture Market Access (NAMA) and the various proposals submitted for the Review of the Dispute Settlement Understanding.

**Document: AALCO/48/PUTRAJAYA/ 2009/SD/S 13**

#### **G. MANAGING GLOBAL FINANCIAL CRISIS: SHARING OF EXPERIENCE**

39. The ongoing global financial crisis has given an opportunity to the international community to conduct an analysis of the financial architecture at the international and national level. While many concede that financial liberalization and deregulation have created many opportunities for economic growth, at the same time, both liberalization and non regulatory measures have also burdened the global economy with a great many financial crises over the past 30 years. International response to the growing number of financial crises is normally in the form of a number of international public and private sector bodies setting standards and rules to govern financial markets. The Leaders of the G-20, which met in London on 2 April 2009 emphasized that “A global crisis requires a global solution”. They have identified that major failures in the financial sector and in financial regulation and supervision were fundamental causes of the crisis. In addition, to the efforts at the international level, governments at the national level, have come up with new monetary and regulatory schemes, which include rescue packages to bail out their financial systems. The financial meltdown has affected the livelihoods of a large section of the population in an increasingly inter-connected world.

40. Keeping in view, the impact that the global financial crisis has had on the Member States of AALCO, the Secretary-General would like to propose to the AALCO Member States to include “Managing Global Financial Crisis: Sharing of Experience” as an item on the agenda for the forthcoming Forty-Eighth Annual Session of AALCO. This proposal is in line with Article 1 (b) of the AALCO’s Statutes which provides for exchange of views, experiences and information on matters of common concern having legal implications and to make recommendations thereto if deemed necessary. Accordingly, at the Forty-Eighth Session, AALCO Member States can share their experience on how they have dealt with the financial crisis. These would include policy and regulatory (Legal) framework initiated in the respective countries so as to find the common basis for handling such a crisis. In this regard, the AALCO Secretariat proposes to convene a panel of experts from Asia and Africa who could share their country experiences with regard to the financial and banking regulations. The Secretariat would do the necessary follow up based on the outcome/mandate of the Session.