



ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION (AALCO)

EXPLANATORY MEMORANDUM

FIFTY-EIGHTH ANNUAL SESSION

**VENUE: JULIUS NYERERE INTERNATIONAL CONFERENCE CENTRE (JNICC)
DAR ES SALAAM, UNITED REPUBLIC OF TANZANIA
21 TO 25 OCTOBER 2019**

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 the 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, 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, Tanzania (2010), the non-deliberated agenda items were being published in a single volume and the same were also placed for consideration of the Member States. During the past several years 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, Islamic Republic of Iran (2014) the Secretariat is not publishing the report on the non-deliberated agenda items.
3. Furthermore, since the Fifty-Fourth Annual Session held in Beijing, People's Republic of China (2015), sub-theme of the respective agenda for substantive matters has been introduced in an effort to have focused discussions among Member States.
4. At the forthcoming Fifty-Eighth Annual Session, to be held at JNICC Dar es Salaam, United Republic of Tanzania from 21 to 25 October 2019, apart from the consideration of items on Organizational matters, the deliberations would focus upon 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) Law of the Sea (BBNJ); (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) Peaceful Settlement of Disputes; (v) International Law in Cyberspace; (vi) International Trade and Investment Law; and (vii) Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties.

5. The registration for the Session would begin on Sunday, 20 October (12:00 noon to 06:00 PM), and continue on Monday, 21 October 2019 before the Inaugural Session.
6. The decisions on matters of substantive character shall 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 on having a resolution on a particular substantive matter, shall do so by proposing the same, as long as there is a consensus.
7. Resolutions shall be adopted on organizational and financial matters.
8. During the session, the following AALCO publications will be launched: (i) Yearbook of AALCO Volume XVI 2018; (ii) AALCO Journal of International Law 2017 & 2018; (iii) Newsletters Vol 11 (2) & Vol 12 (1); and (iv) Special Study on “Violation of International Law in Palestine and Other Occupied Territories by Israel and the Legal Status of Jerusalem”.

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-Seventh Annual Session (Japan) shall preside over the Inaugural Session and the First Meeting of the Delegations of AALCO Member States during the Fifty-Eighth 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 Missions of the concerned States. 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 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 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-third majority of those present and voting in secret ballot.
13. 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.

Admission of New Members

14. 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 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.
15. During this Annual Session, the Republic of Philippines, which has rejoined the Organization, on 27 July 2019 as the 48th Member State, will be ceremoniously welcomed.

Admission of Observers

16. 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; and (iii) observers representing the United Nations, its organs and specialized agencies, other inter-governmental organizations and other international institutions.

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

Election of the President

19. 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

20. 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

21. 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 Fifty-Eighth Annual Session covers the activities of the Organization since its Fifty-Seventh Annual Session, including the substantive, organizational, financial and administrative matters.

Document: AALCO/58/DAR ES SALAAM/2019/ORG 1

Financial Report and Proposed Budget for the Year 2020

22. 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 2020, was presented during the 346th Meeting of the Liaison Officers, held on 13 December 2018. Further, the draft budget was discussed at the 347th Liaison Officers Meeting held on 7th February 2019. The budgetary proposals are now being submitted to Member States at the Fifty-Eighth Annual Session of AALCO for final approval.

Document: AALCO/58/DAR ES SALAAM/2019/ORG 2

Report on the AALCO's Regional Centres for Arbitration

23. A report on the activities of the AALCO's Regional Arbitration Centres located in Kuala Lumpur, Cairo, Lagos, Tehran and Nairobi respectively, is to be submitted for consideration at the Fifty-Eighth Annual Session.

Document: AALCO/58/DAR ES SALAAM/2019/ORG 3

IV. GENERAL DEBATE

24. At this Fifty-Eighth 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 Member States and Observers. It is recommended that general statements could focus on the overarching theme "Multilateralism and the International Legal Order based on International Law". *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

25. *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.**
26. 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 Fifty-Ninth Annual Session

27. 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 Revised 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 seven topics shall be discussed during the Fifty-Eighth Annual Session, namely:

1. International Law Commission

28. For this Annual Session, the Secretariat has prepared the document “Report on Matters relating to the Work of the International Law Commission at its Sixty-Ninth Session.” In accordance with Article 1 (d) of the AALCO’s Statutes, the Organization is mandated to ‘examine subjects that are under consideration by the International Law Commission (ILC or the Commission) and to forward the views of the Organization to the Commission; to consider the reports of the Commission and to make recommendations thereon, wherever necessary to the Member States.’”
29. Pursuant to this mandate, the Report of the Work of the International Law Commission at its Session is taken up for consideration at the AALCO’s Annual Sessions. In keeping with this long-standing practice, the Secretariat document for the Fifty-Eighth Session presents an overview of the ILC’s work during its Seventy-First Session.
30. The brief of the Secretariat for this year would provide a general overview of the progress of the work completed by the Commission at its Seventy-First Session (2019) on topics on its agenda i.e. immunity of State officials from foreign criminal jurisdiction, crimes against humanity, protection of the environment in relation to armed conflict, peremptory norms of general international law (*jus cogens*), succession of States in respect of State responsibility, and general principles of law.
31. Please note that the Seventy-First Session of the Commission was underway at the time of preparing the brief and the documents on the aforesaid topics are available only in part, and shall only be made available in the coming months of 2019. In light of this limitation every effort has been made by the Secretariat to include the latest information on the work of the Commission at its Seventy-First Session (2019), and should any new material come to light all efforts shall be made to place the same before the Member States in the form of additional documents.
32. At the request of the Secretary-General to the ILC, the Special Rapporteurs were asked to directly submit short statements and recommendations on aspects on which AALCO Member States should focus on. Accordingly, the brief on ILC contains statements of the Special Rapporteurs with recommendations on aspects on which AALCO Members might wish to focus.
33. AALCO is also encouraged to give collective views as an Organization on issues raised by the Special Rapporteurs, where appropriate; in addition to their individual Member States’ views.

Document: AALCO/58/DAR ES SALAAM/2019/SD/S1

2. The Law of the Sea

34. It may be recalled that the agenda item “The Law of the Sea” was taken up for consideration by the AALCO at the initiative of the Government of Indonesia in 1970. Since then it has been considered as one of the priority items at successive Annual Sessions of the Organization.
35. Two items are proposed for discussion, namely, (a) the Marine Biodiversity of Areas Beyond National Jurisdiction (BBNJ) and (b) Issues Related to the Freedom of Navigation/Sail in the International Waters and Straits.
36. Regarding, the BBNJ, the pertinence of the suggested theme for the Fifty-Eighth Annual Session, has been highlighted by noting down the spectrum of threats to marine resources and biodiversity from established and emerging human uses in the vast areas of the ocean beyond national jurisdiction (ABNJ). In the light of this, the quest of the international community to negotiate and draft an international legally binding instrument (ILBI) under the UNCLOS on the conservation and sustainable use of BBNJ has been introduced.
37. After discerning the gaps in the UNCLOS to effectively address the theme, the milestones in the progress towards drafting the ILBI have been discussed. The participation of AALCO Member States primarily in the first two sessions of the Intergovernmental Conference has been noted and the emerging views discussed. An attempt has been made to adduce a detailed illustration of the positions taken by the Member States on the following issues:
 - Indeterminacy vis-à-vis the principle applicable to Marine Genetic Resources (MGR’s) of ABNJ;
 - Capacity Building and Technology Transfer;
 - Area based Management Tools (ABMT’s), including Marine Protected Areas (MPA’s) and
 - Environmental Impact Assessments (EIA’s).
38. The draft text of an agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction, released in June 2019 to “facilitate further progress in the negotiations”, has been perused.
39. AALCO Member States are encouraged to discuss the above issues taking into account the pending constitution of the Working Group.
40. AALCO has finalized the Terms of Reference for the establishment of AALCO Open-ended Working Group on BBNJ, pursuant to the decision on the same during the Fifty-Seventh Annual Session as contained in the Secretary-General’s Report and views from the Member States and Liaison Officers.

41. The Secretariat shall shortly nominate the Chairperson, Vice Chairperson and the Rapporteur of the Working Group for approval of Liaison Officers on behalf of the Member States.

**Document: AALCO/58/DAR ES SALAAM/2019/SD/S2
AALCO/58/DAR ES SALAAM/2019/SD/S2A**

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

42. 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 the AALCO’s Twenty-Seventh Session, held in Singapore (1988), at the initiative of the Government of the Islamic Republic of Iran.

43. More recently, in light of the grave violations of international law by the State of Israel in Gaza, the issue was deliberated at the Fifty-Fourth Annual Session held in Beijing, (2015) and AALCO/RES/54/S was passed which changed 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.”

44. The present brief, after summarizing the deliberations on the topic at the Fifty-Seventh Annual Session (2018), focuses on the international affirmation as regards the legal status of Jerusalem in the context of the decision of the United States to shift its embassy in Israel to the city, as well as the recognition by some States of Israeli sovereignty over the Golan Heights.

45. In addition as stated above a Special Study on the topic “Palestine and Other Occupied territories by Israel and the legal Status of Jerusalem”, shall also be launched at the Session.

Document: AALCO/58/DAR ES SALAAM/2019/SD/S3

4. International Trade and Investment Law

46. International Trade and Investment Law has been a long- standing topic on the work programme of AALCO, as it deals with a number of matters of concern for the AALCO Member States. Although the two topics are comprised of related issues of International Economic Law, it would be prudent to deal with the topics separately due to the different legal regimes that they are subject to.

47. 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 (1995), held in Doha, Qatar and has been the subject of key deliberations at all subsequent annual sessions.

48. As directed, the Secretariat has since then, monitored all developments relating to the WTO and its agreements particularly the legal aspects of the dispute settlement mechanism. At the Fifty-Fifth Annual Session of AALCO (2016) held in New Delhi, India, the Secretariat was mandated to organize seminars or workshops to facilitate the exchange of views by Member States on issues currently under negotiation within the WTO and capacity building programs. Pursuant to this mandate the Secretariat has regularly organized seminars, and capacity- building programs, most recently exclusively focused on WTO issues at the Institute of Malaysian and International Studies (IKMAS) in 2017.
49. The topic International Investment Law has been discussed at a number of Annual Sessions under the wider topic of Economic and Trade Law Matters, and was examined within the ambit of Regional Cooperation in the Context of the New International Economic Order (NIEO). As part of the avenues for regional cooperation on economic matters, a report on matters pertaining to bilateral investment treaties, investment guarantees and insurance, and petroleum export was placed before the Trade Law Sub-Committee at the Twenty-First Annual Session in Jakarta, Indonesia. At the session, investment protection and guarantees as well as settlement of investment disputes were discussed laying the groundwork for the Ministerial Meeting held in Kuala Lumpur, Malaysia later that year. The Ministerial Meeting decided to direct the Secretariat to prepare Models of Investment Agreements that contained the salient features of the popular investment agreements prevalent at the time, which was placed before the Trade Law Sub-Committee at the following Annual Session in Colombo, Sri Lanka (1981).
50. More recently, in the light of the renewed interest in reforming the Investment Protection Mechanisms and Bilateral Investment Treaties the AALCO Secretariat has been conducting workshops and capacity building programs. In 2016, the Secretariat organized a seminar titled ‘International Investment and WTO’ at its headquarters while in November 2018, a Seminar on ‘Reviewing Reforms to the International Investment Regime and to the Investor-State Dispute Settlement Mechanism: Perspectives from the Asian-African Regions’ was organized at Arusha, United Republic of Tanzania.
51. The Brief prepared by the Secretariat shall deal with the following sub-topics:-
- (a) WTO Reforms:**
52. The multilateral trading regime institutionalized in WTO was engendered to liberalize trade towards zero tariff. The dispute settlement mechanism of the WTO, often referred to as the “crown jewel” of the system, is presently facing unprecedented crisis. It is now plagued by political divisiveness and malaise; and the threat of return of a power-based world economic order, which allows big players to act unilaterally and use retaliation to get their way, looms large. This has called for deliberation on certain WTO reforms.
53. The state of play of WTO dispute settlement shall be discussed in the brief to decipher the sources of the current impasse. Suggested reforms, which include certain institutional reforms at the Appellate Body level as well as the Panel level, shall be explored, in order

to recommend options- for the kind consideration of the AALCO Member States- that could be adopted to ensure that the system moves forward.

(b) Mediation in Investment Disputes:

54. The topic comprises of a study of the benefits of the application of mediation to investment disputes saving time and costs for both parties to an investment dispute. Although the study recognizes that not all investment disputes are capable of being mediated, the benefits that mediation has provided to disputes dealing with other subject matters can equally yield dividends in this field. The uniqueness of the solutions that mediation offers has been recognized as seminal in maintaining the crucial commercial relationship between the parties, which assumes utmost importance in investment disputes that usually concern long term commitments.
55. The signing of the United Nations Convention on International Settlement Agreements resulting from Mediation, 2019 ('the Singapore Convention') has also provided a regime for the cross-border enforcement of mediated settlements, providing further legal security to private investors looking to recover sums from host governments. The brief shall delve into all aspects of the application of mediation to investment disputes and how the same may be promoted bringing benefits to all stake holders. The major challenges to popularizing resort to mediation in the settlement of investment disputes shall also be addressed.

(c) Investment Disputes Mechanisms Reform Initiative:

56. Working Group III of the United Nations Commission on International Trade Law (UNCITRAL) had been granted a mandate to propose reforms to the Investment Dispute Settlement Mechanism in 2017. Since then it has deliberated on a number of concerns that States have raised in relation to more than 900 cases of investment claims that have been filed by investors against them alleging a violation of treaty protections. A number of solutions have also been provided to deal with these concerns that have not only been provided by States but also by members of academia, civil society organizations, international organizations and research centres.

AALCO/58/DAR ES SALAAM/2019/SD/S13

5. International Law in Cyberspace

57. The topic 'International law in Cyberspace' was proposed by the People's Republic of China, in accordance with the Statutory Rules of AALCO as an agenda item for the Fifty-Third Annual Session of AALCO held in Tehran, Iran in 2014 and was accepted by Consensus. The agenda item was subsequently deliberated in the Fifty-Fourth Annual Session held in Beijing, China in April 2015.
58. The brief on International Law in Cyberspace prepared for the Fifty-Eighth Annual Session focusses on AALCO's historic engagement with the topic in addition to

highlighting some of the latest developments on the topic at the global level. The issues for deliberations for the upcoming Annual Session have been pointed out, followed by the Secretariat's observations and recommendations.

59. In particular, the attention should also be given to the outcome of the 4th Working Group Meeting and the possible adoption of the Secretary-General's proposed "Consensual Basic Principles of International Law Applicable in Cyberspace" to guide the future work of the Working Group Meeting on International Law in Cyberspace.

Document: AALCO/58/DAR ES SALAAM/2019/SD/S17

6. Peaceful Settlement of Disputes

60. In 2018, the topic 'Peaceful Settlement of Disputes' was proposed by the Government of Japan as a Provisional Agenda of AALCO to be discussed in the Fifty-Seventh Annual Session of AALCO in Tokyo, Japan in accordance with the Statutory Rules of AALCO. Pursuant to the proposal, the Secretariat prepared a brief on the topic, highlighting the major aspects of the subject and giving a broad overview of the same under international law. At the Fifty-Seventh Annual Session, Member States welcomed the brief of the Secretariat and proposed the continuation of deliberations in the next Annual Session.
61. In light of the same, the Secretariat has prepared a brief on the topic 'Peaceful Settlement of Disputes' for the Fifty-Eighth Annual Session that focusses on two specific aspects of the topic. Firstly, the role of the United Nations in the peaceful settlement of disputes and the peaceful settlement of environment disputes. A general discussion on various modes of disputes settlement employed in international law is also part of the brief. The recommendations of the Secretariat have been incorporated in the brief.

Document: AALCO/58/DAR ES SALAAM/2019/SD/S18

7. Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties

62. The item "Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties" was placed on the agenda of the Thirty-Sixth Session (Tehran, 1997) of AALCO following reference made by the Islamic Republic of Iran in accordance with Article 4 (c) of the Statutes and sub-Rule 2 of Rule 11 of the Statutory Rules of the Organization. While certain AALCO Member States and some UN Member States not party to AALCO are still under multi-faceted sanctions, the significance of the issue in the present day is far from clear. As such, the Islamic Republic of Iran, once again, has requested the AALCO Secretariat as per the Statutory Rules¹ of AALCO to place this topic on the provisional agenda of the Fifty-Eighth Annual Session, scheduled to be held in Dar es Salaam, United Republic of Tanzania, from 21 to 25 October 2019. At the same time, the United Republic of Tanzania as the host, intimated her desire to the Secretariat to include the topic on Extraterritorial Application of National Legislation:

¹ Rule 11(2) of the Statutory Rules of AALCO.

Sanctions imposed Against Third parties, and more so in the context of “lifting sanctions against the Republic of Zimbabwe”.

63. The Brief on the topic prepared for discussion at the Fifty-Eighth Annual Session is divided into five parts, namely, (1). Introduction; (2). Overview of the AALCO’s Work on the Exterritorial Application of National Legislation: Sanctions Imposed against Third Parties; (3). AALCO Secretariat’s Special Study on “Unilateral and Secondary Sanctions: An International law Perspective; (4). Recent Developments; and (5). Observations and comments from the Secretariat. The third part is further divided into exterritorial application of national legislation and violation of principles of the United Nations charter and exterritorial application of national legislation and violation of human rights obligations.
64. The recent developments discussed in the brief include latest resolutions and decisions of the Human Rights Council; United Nations General Assembly and the rulings if the International Court of Justice.

Document: AALCO/58/DAR ES SALAAM/2019/SD/S6