



**ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION (AALCO)**

**EXPLANATORY MEMORANDUM**

**FIFTY-NINTH ANNUAL SESSION**

**HONG KONG SAR, THE PEOPLE'S REPUBLIC OF CHINA**

**29 NOVEMBER- 1 DECEMBER 2021**

**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, 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 (2014) held in Tehran, the Islamic Republic of Iran the Secretariat is not publishing the report on the non-deliberated agenda items. Furthermore, since the Fifty-Fourth Annual Session held in Beijing, the 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.
3. At the forthcoming Fifty-Ninth Annual Session, to be held at Hong Kong SAR, the People's Republic of China from 29 November to 1 December 2021, 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) International Law in Cyberspace; and (iii) Violations of International Law in Palestine and Other Occupied Territories by Israel and Other International Legal Issues relating to the Question of Palestine.

4. Due to the risks posed by the COVID-19 pandemic, taking into consideration of the practices of other international meetings, and in consultation with the Government of the People's Republic of China (Host Government), the 59<sup>th</sup> Annual Session is to be held in hybrid (online and physical) format and its duration is shortened. Therefore, not all topics on AALCO's agenda can be deliberated during this Annual Session. Those topics that cannot be deliberated on at the Session shall be considered for the next session. However, the Secretariat has prepared briefs on those non-deliberated topics too in order to enable Member States to follow latest developments on these areas. These topics are:
  1. Law of the Sea;
  2. Peaceful Settlement of Disputes;
  3. International Trade and Investment Laws; and
  4. Extraterritorial Application of National Legislations: Sanctions against Third Parties.
5. The registration for the Session will begin on 29 November 2021 at 3 PM.
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 in having a resolution on a particular substantive matter, this Member State 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 XVII 2019-2020; (ii) AALCO Journal of International Law; (iii) Newsletter Vol 13; (iv) Special Issue on "International Law and Global Pandemics" and (v) Special Study on Extraterritorial Application of National Legislation.

## **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-Eighth Annual Session (the United



Republic of Tanzania) shall preside over the Inaugural Session and the First Meeting of the Delegations of AALCO Member States during the Fifty-Ninth 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 this 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. This rule applies to all in-person and online participants.

### **Adoption of Agenda**

12. Rule 11(3) provides that the provisional agenda shall be placed before the Meeting of the Delegations of the Member States for consideration. The Meeting may, at its discretion, delete any item included in the provisional agenda. A new item may be included 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 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-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.

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

#### **Admission of Observers**

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

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

#### **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**

#### **I. Election of the next Secretary-General**

20. As the tenure of the current Secretary-General, His Excellency Prof. Dr. Kennedy Gastorn, came to an end in August 2020, the next Secretary-General needs to be elected



during this Annual Session. The provision governing this issue is stipulated in Rule 20 (1) is as follows:

*The Secretary-General*

- (1) *The Organization shall appoint a legal expert or a person who has adequate legal expertise and administrative experience, who is a national of a Participating State, to be Secretary-General, for a term of four years. The person so appointed shall be eligible for re-appointment for only one further term of four years.*

*The appointment of the Secretary-General which shall be based on rotation between the two regional groups, shall be by consensus of the Participating States.*

*In the event that consensus cannot be reached after all efforts have been exhausted, an indicative secret ballot by majority at the meeting of the Heads of Delegations may be used to offer a consensus candidate who will be appointed by the Organization.*

So far, the Secretariat has received two nominations for the post of the Secretary-General— the first from the Royal Thai Government, the candidature of Dr. Kamalinne Pinitpuvadol, which has duly been notified to the Member States. The second nomination was received from the Government of the Syrian Arab Republic of Mr. Ammar Bilal. In accordance with the above-mentioned Rule other Member States could also nominate their candidate till the Annual Session commences if they wish so.

**Document: AALCO/59/HONG KONG/2021/ORG 4**

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

**Document: AALCO/59/HONG KONG/2021/ORG 1**

**Financial Report and Proposed Budget for the Year 2022**

22. Regarding the budget for Year 2022, owing to the ongoing pandemic, the proposal was circulated to the Member States via Note Verbale No. 86/2021/AM/AALCO dated 27 May 2021. As the Secretariat received no objections from the Member States on or before the stipulated deadline for such responses, the proposal was deemed to be approved by the Liaison Officers and is now submitted to Member States at the Fifty-Ninth Annual Session of AALCO for final approval.



**Document: AALCO/59/HONG KONG/2021/ORG 2**

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

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

**Document: AALCO/59/HONG KONG/2021/ORG 3**

**IV. GENERAL DEBATE**

24. At this Fifty-Ninth 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. The general statements of the Member States may focus on the overarching theme— **Upholding International Law for a Community of Shared Future: The Role of Asian and African Countries**. The Member States are also welcome to include their views on items in the agenda of the Organization, which are not deliberated during this Annual Session. *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 both 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 Sixtieth 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 three topics shall be discussed during the Fifty-Ninth Annual Session, namely:

**1. International Law Commission**

28. AALCO is statutorily mandated to examine subject-matters that are under consideration of the United Nations International Law Commission (ILC) and forward its views to the Member States, and thereafter make recommendations to the ILC based on viewpoints and inputs of the Member States on such agenda items. In its quest to fulfil 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 many of the Asian and African Member States of AALCO to make a valuable contribution in the work of the ILC, and has proven the worth of Asian-African views in ILC's work, so that the ILC may be able to fulfil its stature as a globally representative organization.
29. The Asian-African States continue to play an important role in the work of the Sixth Committee of the 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 ILC for a given Annual Session reports on the work of the ILC on the substantive topics that are placed on its agenda at the corresponding session of the ILC, deliberations on the topic at the previous Annual Session of AALCO, summary of the views expressed by the AALCO Member States at the UN General Assembly Sixth Committee, and the comments and observations of the AALCO Secretariat.
30. During the Fifty-Eighth Annual Session of AALCO held in 2019, the substantive topics that were placed on the agenda of the Seventy-First Session of the ILC were discussed. The Members of the ILC also deliberated on other pertinent issues pertaining to the work of the ILC and the UN Sixth Committee. Owing to the ongoing COVID-19 pandemic, the UN General Assembly has taken the decision on 12 August 2020 to postpone the Seventy-Second Session of the ILC to 2021. Subsequently, the General Assembly, in resolution 75/135 of 15 December 2020, decided that the International Law Commission will hold its seventy-second session at the United Nations Office at Geneva in 2021.
31. Accordingly, the Seventy-Second Session (2021) of the Commission was held from 26 April to 4 June and 5 July to 6 August 2021, and the corresponding final report 1 to the UN General Assembly was made available on 10 September 2021 on the official website of the Commission. With a view to updating the Member States on the most recent work of the Commission, and to facilitate deliberations thereupon, the Secretariat considered it appropriate to place the same before the Member States at the Fifty-Ninth Annual Session (2021) of AALCO.



32. The document AALCO/59/HONG KONG/2021/SD/S1 reports on the work of the ILC on the following substantive topics that were placed on the agenda for its Seventy-Second Session (2021): (1) Protection of the atmosphere; (2) Provisional application of treaties; (3) Immunity of State Officials from Foreign Criminal Jurisdiction; (4) Succession of States in respect of State responsibility; (5) General Principles of Law; and (6) Sea-level Rise in relation to International Law.

**Document: AALCO/59/HONG KONG/2021/SD/S1**

## **2. International Law in Cyberspace**

33. The topic ‘International Law in Cyberspace’ was introduced as an agenda item to be deliberated at the Fifty-Third Annual Session of AALCO held in Tehran, Iran, in 2014, on the recommendation of the People’s Republic of China. The agenda item has thereafter been discussed at successive Annual Sessions of AALCO. The Fifty-Fourth Annual Session of AALCO held in Beijing, China, in 2015 decided to establish an Open-ended Working Group (OWWG) on International Law in Cyberspace to further discuss the issues identified. A Special Study on International Law in Cyberspace, prepared by the Secretariat, and dealing with relevant issues on the topic as identified by the Member States, was released at the Fifty-Sixth Annual Session, held in Nairobi, Kenya, in 2017.
34. The AALCO OEWG on International Law in Cyberspace has held four meetings till now, and discussed topics such as State Sovereignty in Cyberspace, Law and Governance of Cyberspace, Peaceful Use of Cyberspace, Legal Implications of Cyber Warfare, Rules of International Cooperation in Combating Cybercrimes, as well as the Development of General Legal Principles on the Application of International Law in Cyberspace. At the Fifty-Sixth Annual Session, held in Nairobi, Kenya, in 2017, the Rapporteur of the OEWG was mandated to prepare a Report laying down a future plan of action for the Working Group, which was presented by the Rapporteur at the third OEWG Meeting, which took place on the side-lines of the Fifty-Seventh Annual Session in Tokyo, Japan in 2018.
35. The Fifty-Seventh Annual Session mandated the Rapporteur prepare a report on the latest developments on international law in cyberspace; and on the special need of the Member States for international cooperation against cybercrime. In pursuance of the said mandate the Rapporteur prepared a questionnaire consisting of 38 questions, divided into four parts, namely: a) domestic law, b) international cooperation, c) capacity building and technical assistance, and d) public-private partnership. The questionnaire was circulated among the Member States, to which responses from 11 Member States were received. The Rapporteur presented his Report on the outcome of the Member States’ Response to the questionnaire at the fourth OEWG that was held from 2-4 September 2019 in Hangzhou, the People’s Republic of China.
36. At the fourth OEWG the Member States deliberated on two new items, namely, a) Data Sovereignty, Trans-border Data Flow, and Data Security; and b) Regulating Online Harmful Content, and continued deliberations on two existing ones, namely: a) Application of the Principle of Non-Interference in Cyberspace; and b) Peaceful Use of



Cyberspace. The fourth OEWG also mandated the Secretary-General of AALCO to prepare a proposal for 'Consensual Basic Principles of International Law Applicable in Cyberspace'. The first draft of the said Proposal of the Secretary-General on Consensual Basic Principles was accordingly drafted by the Rapporteur of the OEWG on International Law in Cyberspace, and circulated to the Member States. Comments were received from five Member States. Based on these comments a revised draft of the principles was finalized on 26 July 2021, and sent out to Member States for their comments. So far comments on the revised draft have been received from eight Member States, namely: Japan, Republic of the Philippines, Malaysia, Sultanate of Oman, Islamic Republic of Pakistan, State of Qatar, Mauritius, and the Republic of India.

37. As the Member States of AALCO continue to submit their responses to the Rapporteur's questionnaire in preparation of his report on 'Special Need of the Member States for International Cooperation against Cybercrimes', and the Secretary-General's draft proposal for 'Consensual Basic Principles of International Law Applicable in Cyberspace' – the Brief prepared by the Secretariat deals with the following topics:

(a) Application of the Principle of Non-Interference in Cyberspace

38. The topic 'Application of the Principle of Non-Interference in Cyberspace' relates to the most fundamental aspect of application of international law to cyberspace, which essentially translates into the existing international legal norm that a State is not subject, within its territorial jurisdiction, to the jurisdiction of a foreign State or to foreign law other than the public international law, and that it is also protected under international law against foreign coercive interference or attack. It is a concept that at first glance seems to naturally extend to the virtual world, as activities therein affect governments and ordinary citizens as much as they do when they take place in the real world. However, owing to the unique characteristics of cyberspace, the extension of this principle into it is not that straight-forward. The Secretariat's brief analyses the legalities associated with the aforesaid extension of this principle into cyberspace, including examining the current efforts at the international forum (especially UN) for such application.

(b) Data Sovereignty, Trans-border Data Flow, and Data Security

39. The topic 'Data Sovereignty, Trans-border Data Flow, and Data Security' is a timely legal issue to be taken up for deliberations at the current Annual Session, especially in the face of the current pandemic that has plagued the entire globe - as the same has brought back into international focus the potential and possibility of misuse of data ("infodemic"). In recent years, proponents of data globalization have been at loggerheads with the proponents of data localization. Whereas on the one hand data globalization in many instances such as by the use of big data and AI may accelerate global development and empower people through access to information – indiscriminate usage of the same may severely impact privacy rights of individuals as well as security concerns of States.
40. The Secretariat's brief underlines the importance of data sovereignty, as determining jurisdiction has become a very essential in data protection regulation, partly due to the widespread flow of data across borders, and partly to the lack of a single global agreement on data protection (and the consequent fragmentation of regulation), and as



need for harmonized governing principles in the treatment of data crossing national boundaries has become compelling. The brief examines data protection laws at the regional level, such as the Council of Europe Data Protection Convention of 1981, at the UN level, work wherein has been mostly been akin to pro-privacy arguments, as well as under the WTO's General Agreement on Trade in Services (GATS), and Free Trade Agreements (FTAs).

(c) Regulating Online Harmful Content

41. Whereas on the one hand UN Reports are increasingly calling for States and companies to apply international human rights law at all stages of online content regulation, suggesting that they should refrain from imposing disproportionate sanctions on Internet intermediaries, given their significant negative impact on freedom of expression – on the other hand, abuses of freedom of online expression and the absence of an international convention that regulates online harmful content poses a significant challenge, as with the advent of new technologies that govern our daily lives, like AI and Block chain, the threat of online harmful content poses a threat to the entire international community more than ever before. The Secretariat's brief examines the legal nuances of the international regulation of online harmful content.

(d) Peaceful Use of Cyberspace

42. States continue to remain divided over whether or not the international law principles relating to use of force (*jus ad bellum*) and International Humanitarian Law (*jus in bello*) apply to cyberspace, adding to the reality that even if they do apply, such application, would not necessarily follow suit their application in the real world. While it is true that cyber-operations amounting to cyber-attacks cannot and ought not to be allowed to be carried out in a legal vacuum, the application of the said international law principles to cyberspace should be aimed at preventing cyber-war, and not to encourage arms races.
43. The Member States are encouraged to submit their responses to the Secretary-General's draft on the 'Consensual Basic Principles of International Law Applicable in Cyberspace', as drafted by the Rapporteur, and the Rapporteur's Questionnaire for the Report on 'Special Need of the Member States for International Cooperation against Cybercrimes', so that the two documents may continue to be deliberated by Member States at the forthcoming meetings of the OEWG on international law in cyberspace, as decided by Member States, and may emerge as tangible outcomes of the work done at AALCO on the subject.

**Document: AALCO/59/HONG KONG/2021/SD/S17**

**3. 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 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), at the initiative of the Government of the Islamic Republic of Iran.

45. 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.”
46. At the Fifty-Eighth Annual Session of AALCO held at Dar es Salaam, the United Republic of Tanzania, Agenda Item titled “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 October 2019. The violations of international humanitarian and human rights law were highlighted to point out the plight of the people of Palestine who bear the brunt of the occupation in their daily lives. The delegations stressed the need to recognize East Jerusalem as the capital of the sovereign State of Palestine condemning all efforts to alter the *status quo*. The delegations condemned all measures to alter the legal status of *Al Quds Al Sharif*, and affirmed that, pursuant to numerous UN resolutions and international conventions those measures had no legal effect.

**Document: AALCO/59/HONG KONG/2021/SD/S3**

#### **OTHER EVENTS**

47. The Host Country Agreement for the establishment of a Regional Centre for Arbitration in the Hong Kong Special Administrative Region of the People’s Republic of China between the Asian-African Legal Consultative Organization and the Government of the People’s Republic of China will be signed at the 59<sup>th</sup> Annual Session.
48. A Memorandum of Understanding between the Asian-African Legal Consultative Organization and Chinese Institute of International Law, China Foreign Affairs University will be signed at the 59<sup>th</sup> Annual Session.