

**ASIAN-AFRICAN PERSPECTIVES
ON INTERNATIONAL LAW IN
THE POST WESTPHALIAN ERA:
SOME REFLECTIONS**

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CONTENTS

<i>Preface</i>	i-vii
1 The Contribution of AALCO towards the Cause of Asian-African Solidarity and the Progressive Development of International Law	1-21
2 Rule of Law at National and International Levels: An Appraisal	23-59
3 Towards Universalization of the Rome Statute of the International Criminal Court: Asian-African Perspectives	61-88
4 Harmonization of <i>Siyar</i> in International Law: An Appraisal	89-112
5 The Blockade of Gaza and its International Legal Implications	113-133
6 Legal Issues Facing Asia and Africa: A Select Inquiry	135-152
Annexure	
I. Final Communiqué of the Asian-African Conference, 24 April 1955, Bandung, Indonesia	153-168
II. Putrajaya Declaration on Revitalizing and Strengthening the Asian-African Legal Consultative Organization	169-171

ABSTRACT

The Peace of Westphalia of 1648 is said to be the genesis of the modern State system endowed with the Doctrine of Sovereignty and Equality of States. The Doctrine empowers the State with absolute control over its territory regardless of its geographical size, economic and political powers of the State. Regardless of globalization taking into effect, with an exception of international organization, the final call for any decision-making as far as issues affecting the States are concerned would be the State itself, as international law only recognizes the State as having the legal personality at the global level.

The post World War II witnessed several significant milestones: firstly, under the auspices of the United Nations, there was a proliferation of treaties and Conventions that were to be ratified by newly independent States within Asia and Africa regions. Secondly, those newly independent States were given the recognition under international law to decide independently their political destiny backed strongly by the ever powerful doctrine of sovereignty and equality of States. For the first time in the history of international law, these States were found to be equal to engage and bestowed deep confidence and trust in the progressive development of international law where they felt that they have the future in their hand. The post World War II had also established the bi-polar world that had

significantly changed the political and legal landscape of the globe. The Asian and African regions once again were also not spared from the then existing international order.

Another significant milestone awaited to be unveiled at the forefront of international law for the Asian and African regions was the first Asian-African Conference or the popularly called Bandung Conference which was held in 1955. Significantly, the Conference has brought new hope and idea that both Asian as well as African Continents can rely on each other support in their endeavour to create the future trajectory of international legal order. The other significant move established out of the Conference was the non-alignment with the ideological conflict between capitalism and communism, hence proposed a third way, an ideology that tries to merge Asian and African nationalism and identities. Finally, the Bandung Conference had given birth to the Asian-African Legal Consultative Committee (AALCC) now AALCO, an inter-governmental organization established in 1956. It is conceived to be a forum for international cooperation in international legal matters. More than five decades of its existence, AALCO remains as a relevant body embracing two continents of Asia and Africa in promoting the progressive development of international law coupled with strong network and collaboration with the United Nations and other related agencies.

The book contains a series of articles devoted to the work of the Asian-African Legal Consultative Organization

(AALCO) in the promotion of progressive development of international law since its inception in 1956. As a forum that has immense significance for Third World solidarity and interests, AALCO has played a remarkable role towards the emergence and concretization of a number of alternative ideas and practices in the field of international law that reflect the particular concerns of the developing world. Examples include, the concepts of “Exclusive Economic Zone” and “Archipelagic States” in relation to the law of the sea; the adoption of the *Bangkok Principles on the Status and Treatment of Refugees* adopted originally in 1966 and subsequently revised in 2001; the Law of Treaties (in particular, Part V on “Invalidity of Treaties”); the Law of Diplomatic Privileges and Immunities; and the Law relating to the Trafficking in Women and Children.

The articles trace the historical development of modern international law beginning with the Peace of Westphalia of 1648, in the light of the concepts and actions taken by European countries in formulations of international law. They also portray the positions of the Asian-African States as regards the development of international law flowing from the Westphalian order and their willingness to accept and recognize it taking into account their interests until the end of First World War and the establishment of the League of Nations. Finally, they go on to ascertain the contribution of the Asian-African countries in the post second world-war era towards the progressive development and codification of international law. The subject matter of these articles is

diverse and they reflect the work programme of AALCO which has, from time to time, dealt with various topics of critical importance to the Asian-African countries. The articles are arranged as follows:

The first article of the book, entitled *The Contribution of AALCO towards the Cause of Asian-African Solidarity and the Progressive Development of International Law*, traces the origin of the Asian-African solidarity at the international level, to the historic Bandung Conference of 1955. AALCO, which was a tangible institutional outcome of the Bandung conference and which has institutionalized Asian-African solidarity, has provided the Asian-African States with an important forum in which to articulate the concerns of its Member States. This article seeks to evaluate the role that AALCO has played over the years in helping forge this solidarity and its consequent outcome towards the progressive development of international law. This goes on to argue that the legacy of Bandung continues to have normative relevance even in the contemporary era in the light of a number of legal challenges faced by the Asian-African States and the potential role that AALCO could play in this regard.

The next article entitled *Rule of Law at National and International Levels: An Appraisal*, after identifying the components of the concept of rule of law at the domestic level, seeks to ascertain whether it can be transplanted at the international level. While seeking to illustrate the normative foundations of the United Nations rule of law activities, it goes on to narrate, albeit briefly, the way the

item on 'rule of law' has been dealt with by the UN General Assembly at its successive Sessions. Then, it highlights the crux of the viewpoints of the Asian-African States on rule of law as obtaining from the deliberations that have taken place at the Sixth Committee. Finally, it offers some insights on some of the salient features of rule of law, which need to be made an integral part the concept, if it is to be legitimate and meaningful to the Asian-African States.

The third article on *Towards Universalization of the Rome Statute of the International Criminal Court: Asian-African Perspectives* has made an attempt to consolidate the different views of the Member States of AALCO with respect to the Rome Statute of the ICC. Further, it examines the issues considered at the Kampala Review Conference based on the deliberations made at the meetings held within AALCO and also in Kampala by the AALCO Member States. In order to achieve the universality of the Rome Statute, the article argues, *inter alia*, that the legal systems of each country should be recognized and sustainable efforts should be taken to resolve the differences revolving around the Rome Statute of the ICC and thereby accommodate the non-States Parties in to the system to attain the universality of the international criminal justice system.

The fourth article on *Harmonization of Siyar in International Law: An Appraisal* affirms that international law, though is subject to terms such as 'international' and 'universal', but this internationalization and universalisation fails to

recognize and engage with other legal systems such as including the Islamic legal tradition. Islamic international law constitutes not only a vital part of the Islamic legal system but also offers a practical option to the current shortcoming in international law. The article elucidates that the richness in *Siyar* could offer positive solutions to the progressive development of international law.

The fifth article on *The Blockade of Gaza and its International Legal Implications* points out an analysis of the incidents that unfolded in the recent crisis in Gaza strengthens the view that the implementation of international law to a certain extent is selective in nature. Israel could commit war crimes in Gaza with impunity despite international community acknowledging that Israel violated basic principles of international humanitarian law. However, the efforts of the international community were a failure and could not stop Israel from committing war crimes. Despite innumerable United Nations Security Council and General Assembly Resolutions and ICJ decisions on this issue, the creation of an independent and sovereign Palestine State, free of all occupation, still remains a distant dream.

The final article on *Legal Issues Facing Asian and Africa: A Select Inquiry* inquires into the major international legal challenges faced by the Asian-African countries in the present day context. As there are number of challenges before the countries, three major areas have been dealt in this article. They are the issues relating to World Trade Organization, Intellectual Property Rights and the

Climate Change. Also issues such as International Terrorism, Piracy and Cybercrime are briefly discussed. To confront the present day legal challenges, the article advocates that the international community should fully understand the real conditions of the States and the public demand of the developing countries, in order to ensure equal opportunities for all and the mutual benefits for all the States. Further, Asian-African countries should come together and forge collective strategies to tackle the legal challenges effectively.

On a broader level, the book attempts to incorporate issues on universality of international law and how much it has been accepted as such by many developing countries. Towards that end, it seeks to find out the contribution of AALCO to the progressive development of international law.

The preparation of the publication is motivated by the need to promote the dissemination of international law and its expertise in Asian-African countries. It is earnestly hoped that the book would not only contribute towards that end, but would also encourage the legal fraternity of the Asian-African States to produce similar studies in the future.