The Establishment of AALCO and its Contributions

S. Pandiaraj[♣]

1. Introduction

This Paper would focus on the contributions of the Asian-African Legal Consultative Organization (AALCO) to the progressive development and codification of international law in some critical areas of international law. The contribution is located within the historical background in which AALCO came into being. The institutional structure of AALCO and its functioning are not dealt with here.

It is well-known that for many centuries international law has been in many respects eurocentric and thus geared to serve only the interests of European States. Essentially, international law failed to serve as an instrument of justice and peace for the rest of the world, particularly the Asian-African States whose interests were not taken into account when it was being developed. This state of affairs produced three consequences.

Firstly, the Asian-African States did not have an opportunity to shape the rules of international law. They were just *objects* and not *subjects* of international law. International law-making was the exclusive preserve of European states[1].

♣ Senior Legal Officer, Asian-African Legal Consultative Organization (AALCO).

[1] See for a compelling and confrontational account of the traditional international law, Mohamad Bedjaoui, *Towards a New International Economic Order* (1979); Anthony Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005).

Secondly and in consequence of that, the rules of international law were framed by the European colonial powers and needless to say that they were European, in character and in application.

Thirdly, this state of affairs also produced something paradoxical. The international affairs of the colonized countries were (at least on occasions) conducted by the colonial powers. For example, India was a founding Member of the League of Nations that was founded at the end of World War I in 1919. But though India was a Member its international affairs was conducted by the British till it attained independence in 1947.

2. Democratization of International Relations and Bandung

The post-war era saw the emergence of newly independent states coming out of the colonial yoke as an equal member of the international community of States. Decolonization, which led to the horizontal expansion of the international community, was one of the most important structural changes that took place in the 1950s and 1960s. This process has been aptly captured in the phenomenon called "Democratization of International Relations" which meant that newly independent States entered for the first time into the family of nations on an equal footing with their Western counterparts. At least in the strict legal sense, they became a master of their own house. Once they became so they started to challenge the traditional aspects of the international law that were not to their liking and wanted to create new international law by writing their own interests into it. It was a period of *Crisis* and *Change*'.

i. Bandung Conference:

As was referred to in the earlier presentations, the Bandung Conference or in other words the first Asian-African Conference was convened in 1955 which saw the participation of 29 formerly colonized, newly independent Asian-African states. The convening of Bandung Conference was significant for four reasons:

Firstly, the Third World as a *political* category traces its origin to Bandung Conference. The tradition of TWAIL began with the attempt of the Newly Independent States to transform the system of European International law into one that reflected the aspirations and interests of the people of the Third World. Of course today, not many Scholars accept that the concept of 'Third World' has continuing relevance. In the post Cold-war era, after the global economic crisis and the emergence of the Groupings such as the BRICS , a lot of people argue that the category has lost its relevance. Though this is a very complex issue, what is certain is that the category was very much alive and intellectually kicking during the Bandung Era (1950s-1970s).

Secondly, it resulted (a year later) in the creation of the AALCO. The founding of AALCO was a Turning Point in organizing the *struggle for justice* of the peoples of the two Continents. Since the creation of AALCO numerous international legal problems have been discussed and common viewpoints developed giving birth to concepts commanding universal recognition and acceptance. It has been a forum where interests of Asian-African States (hitherto neglected) have been identified and options clarified[2].

[2] The Bandung spirit reached its zenith in the 1970s. In this decade Third World Governments using their numerical strength in various organs of UN and particularly in the General Assembly to adopt a

Thirdly, it also had a momentous impact in forging an identity between a group of nations between different Political, Economic and Social structures and systems of government and in its growth as an *independent force* in international affairs. At its core, AALCO was conceived as a Meeting Ground of the Asian-African Legal Minds to address issues of common concern to the Members States.

Lastly, Bandung was the precursor to the creation of Non-Aligned Movement (NAM). True in the factual sense, NAM came into being only in 1961. But the seeds and the spirit of cooperation and brotherhood had been sown way back at Bandung. Another initiative inspired by the Bandung was the formation of the Group-of 77 established at the first UN Conference on Trade and Development held in 1964. The Group of 77 is the largest third world coalition in the United Nations, providing its members with an important platform for the discussion of economic and social matters within the UN system.

3. AALCO and its Contributions to the Corpus of International Law

The objectives of AALCO as envisaged in its Statute were primarily directed towards

- Progressive development of international law
- Consideration of Legal problems referred to it by Member States ; and
- Follow-up of the work of the International Law Commission (ILC)

---

numerous resolutions of considerable significance including the Declaration of New International Economic Order and the Programme of Action adopted at the 6th Special Session of the UNGA held in 1974. Also adopted in 1974 was the Charter of Economic Rights and Duties of States. Both these documents tried to chart out a new basis for the conduct of international economic relations taking into account the interests of the developing world.

The Advisory role of the AALCO was particularly important at the time of its creation for the newly independent States were confronted with a series of problems concerning their-borders, succession to treaty rights, treatment of foreigners and their property- all legacy of the colonial era. It was felt that these countries needed to evolve a *common approach* on these issues and also to be guided by an expert body.

The reason why there is a statutory linkage between the work of the ILC and the AALCO in the progressive development and codification of international law is also easy to understand. This was significant in the context of the objective of the ILC: progressive development and codification of international law. In other words the ILC was embarking upon a programme of re-formulation of the existing rules and practices to suit the needs of the changing character of international society. For this the insights of Asian-African states were deemed critical.

4. AALCO: First Stage of Development [1956-1968]

If one is allowed to generalize, then growth and development of AALCO could be divided (in a broad sense) into three eras. The first era is from its inception in 1956 to 1968. During this era, a number of subjects were referred and considered by AALCO at its Annual Sessions. These include: status and treatment of aliens; issue of diplomatic immunity; enforcement of foreign judgments; law relating to international rivers and others. At the institutional level, it met once a year by rotation in different countries for a period of two weeks. Countries used to be represented at the level of Chief Justices, Ministers of Justice and Attornies-General as it often happens now.

The most important contribution of this era came in relation to the issue of refugees[3].In 1966, AALCO had adopted a set of Principles known as the "***Bangkok Principles on the Status and Treatment of Refugees***" which is still regarded as one of the authoritative formulations in the field of refugee law. They were adopted at AALCO's 8th Session held at Bangkok. Bangkok Principles represent a critique of the UN Refugee Convention 1951 and its eurocentric focus. While acknowledging the existence of refugees the Bangkok Principles insisted that Member States are expected to provide asylum and that they would also uphold the principle of *non-refoulement*. It has three salient features.

i. Salient Features of the Bangkok Principles:

Firstly, the Bangkok Principles represent an exercise in ***Progressive Development*** of international refugee law. The definition of "refugee" contained in the Principles is more comprehensive than the definition in Article 1 of the Refugee Convention and takes into account developments in refugee law in other regions and national jurisdictions (such as the Cartagena Declaration and the 1974 Convention Governing the Specific Aspects of Refugee Problems in Africa). The definition of refugee in the Principles covers persons compelled to leave their place of habitual residence in order to seek refuge in another place outside the country of origin or nationality owing to

- external aggression,
- occupation,
- foreign domination or
- events seriously disturbing public order in either part or the whole of the country.

[3]The topic of refugees was referred by the Arab Republic of Egypt in 1964.

Secondly, also, the possible grounds of persecution include *colour, ethnic origin, and gender* in addition to the five grounds listed in the definition of the UN Refugee Convention.

Thirdly, they were formulated at a time when the international refugee law was still at its infancy. This was before the adoption of the 1967 Protocol Relating to the Status of Refugees; before the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa; and before the 1984 Cartagena Declaration in Central America. In other words, the Bangkok Principles constitute an early example of a ***Regional approach*** *to the* ***refugee problem*** and the first step towards the development of principles for responding to refugee movements in the Asian-African region.

Fourthly, the Bangkok Principles were taken into account in formulating the basis of the ***UN Declaration on Territorial Asylum*** which was adopted by the UN General Assembly in 1967.

ii. Addendum I to the Bangkok Principles

At its Eleventh Session in Accra, Ghana in **1970** an addendum to the Bangkok Principles was adopted which contained an elaboration of the **"right to return"**, of any person who, because of foreign domination, external aggression or occupation, has left his habitual place of residence.

iii. Addendum II to the Bangkok Principles

The need for international burden sharing was given legal expression by the adoption of another addendum to the Bangkok principles entitled: ***"Burden Sharing***

Principles" at the Twenty-Sixth Annual Session held at Bangkok in **1987**. This addendum articulated the belief of the countries of Asia and Africa that the principle of burden sharing should be given a ***global*** as opposed to a ***regional*** interpretation.

C. Revision of Bangkok Principles

At its Fortieth Session held in **2001** at New Delhi, the Bangkok Principles were **revised** and **consolidated.** Most prominent changes made in this exercise include; the expansion of the definition of 'refugee' by incorporating the definition contained in the 1969 OAU Convention; the inclusion of a provision on voluntary repatriation; expansion of the principle of international solidarity and burden sharing; the need to cooperate with the UNHCR, etc.

The Bangkok Principles were declaratory and non-binding and were supposed to serve as a source of inspiration for AALCO Member States when they enact domestic laws in the area of refugee law. This means that it is for the Member States to decide whether or not it will apply these principles in concrete circumstances.

5. AALCO: Second Stage of Development [1968 -1980]

Though the work of AALCO received international recognition in the first phase, it was only in its second phase that it contributed a lot and hence one can say that this was the most important phase of AALCO's development[4].

[4] Up to 1971, apart from Seven Original Members only 9 Countries had joined. 26 states had joined AALCO between 1972 to 1980.

The second phase of AALCO's work may be said to have begun in 1968 when it started producing ***studies*** *and* ***analysis*** with a view to assisting its states to prepare for (UN) International Conferences convene to codify and progressively develop international law. Particular mention must be made of the UN Conference on the Law of Treaties (1968) and the Third UN Conference on the Law of the Sea (1970). This was considered necessary since a number of Asian-African Countries which had gained their independence in the sixties had been invited to participate_in the international-law making conferences convened under the aegis of UN. Many of these States were in need of expertise and assistance that would enable them to play a meaningful role.

i. UN Conference on Law of Treaties (1968-69)

It is well-known that the treaty business has always been a tricky business for the developing world. Unequal treaties were a frequent occurrence in 19th century. This is because many of these countries had in the colonial era been subjected to unequal treaties that secured the economic and commercial interests of Western capital exporters. The validity of these treaties forced upon the developing world was accepted by the international law of the 19th century. A typical unequal treaty would include the following provisions; it would mandate the weaker party/a colonized state to;

- Open up *sea ports* to foreign trade;
- Create a system of extra-territorial jurisdiction in which all nationals of the colonial powers were granted *immunity from local jurisdiction;*
- Granting of concession to foreign enterprises in the field of mining, railways and shipping.

One example could be the Treaty of Nanking that was concluded between Britain and China at the conclusion of the Opium Wars in the 1840s.

Upon independence, the developing countries felt that accepting the obligations flowing from unequal treaties would mean violation of the principle of sovereign equality of states. They had also pointed out the logical inconsistency that arose in international law. Article 2 (4) of UN Charter prohibits the threat or use of force in international relations except in self-defense. While aggressive military force was universally acknowledged to be ***illegal***, treaties procured through the use of force were not.

The VCLT was a product of over 15 years of work by the ILC held in two sessions[5]. The VCLT constitutes the legal rules governing the formation, interpretation, conclusion and validity of treaties[6]. The first session of the UN Conference was held in 1968 and it was decided that AALCO should prepare a study on some of the major and most important issues to be followed by a meeting to enable the Asian-African delegations to consolidate their positions in preparation for the final conference. AALCO's Karachi Session held in January 1969 was devoted mainly to the consideration of certain difficult questions arising out of the draft articles of the Convention during the first session. In the end, two fairly large briefs were prepared by the Secretariat and sent to the delegations of Organization's Members for information and assistance in relation to the second session of the Vienna Conference held in April-May 1969.

The Vienna Convention on Law of Treaties (1969) ***invalidates***

- Treaties concluded by *Fraud* (Article 49)
- *Corruption* of a Representative of a State (Article 50); and

5 The subject of law of treaties was included into the agenda of ILC in 1949.

6 VCLT was adopted in 1969 and came into force in 1980.

- Coercion of a State by the threat or use of *force* (Article 52).

Article 52 which has tremendous symbolic and concrete significance, has brought about the disappearance of all unequal treaties of the pre UN-era.

However, it also needs to be highlighted here that Article 52 has not settled the issue in a convincing and concrete manner. The scope of Article 52 hinges on the interpretation of the term "force". At the Conference the Western States had argued that the term should be restricted to the threat or use of military force. On the other hand, many Asian-African States wanted the term 'force' to encompass *economic* and *political coercion* as well. A compromise solution was reached by including a Declaration in the Final Act of the Convention that prohibits Military, Political, Economic coercion in the conclusion of treaties. So the position now is this: Economic and Political Coercion used in concluding a treaty are not made illegal under VCLT. But they are prohibited by a Declaration[7] in the Final Act.

ii. The Third UN Conference on the Law of the Sea (UNCLOS III, 1973-1982)

In the post-war era, the traditional law relating to the high seas which was termed as tyrannous[8], came to be debated fiercely. There were divergent viewpoints adopted by different states on territorial sea, fisheries jurisdiction, continental shelf, and other issues. To bring some order in this confusing situation (and to try to challenge the traditional regime of high seas which was termed as tyrannous), the UN Organized two

[7]Declaration on the Prohibition of Military, Political or Economic Coercion in the Conclusion of Treaties.

[8] See, R.P. Anand, The Tyranny of the Freedom of Seas Doctrine", *International Studies*, vol.12, 1973.

Conferences in 1958 and in 1960 to develop and codify the law in a systematic manner. Four Conventions were concluded in 1958[9]. On the whole, they reasserted the traditional freedoms of the sea and accepted coastal states' sovereign jurisdiction over its continental shelf and exclusive right to exploit its resources up to a depth of 200 meters. But agreements could not be reached about the extent of the territorial sea or fisheries jurisdiction and the agreement on the definition of continental shelf was vague and controversial.

Subsequent to the adoption of the 1958 Conventions, the General Assembly requested that the UN Secretary-General convene a Second United Nations Conference on the Law of the Sea to consider the topics of the breadth of the territorial sea and fishery limits, which had not been agreed upon in the said Conventions. The Conference, held from 17 March to 26 April 1960, was however unable to make any substantive decision on those issues. During the two conferences there was intense tussle between the Western maritime powers and the numerically strong-but-poor newly independent countries. While the former still were reasserting the principle of freedom of the seas, the latter argued that though useful, it was time to modify and change according to the present circumstances. They stated: Agreement among maritime powers alone would not amount to law.

The technological advancements that were not foreseen in the 1960s permitted states to exploit the vast resources of the sea-bed and ocean floor (especially oil and gas) at any

[9] Convention on Territorial Sea and Contiguous Zone; Convention on the High Seas; Convention on Fishing and Conservation of Living Resources of the High Seas; and Convention on Continental Shelf.

depth. This along with the speech made by Arvid Pardo[10]in 1967 necessitated then convening of the Third UNCLOS. In the following years these Conventions were to an important extent overtaken by state practice. It was realized that to have split the law of the sea into four different legal instruments from which states could pick and choose was problematic in not being able to have a holistic legal regime governing the issue.

In 1970 the UN GA decided to convene the Third UN Conference on the Law of the Sea (UNCLOS III[11]). It was upon the reference of Indonesia that the agenda item on law of the sea was taken up. Initially it was conceived as a programme to ***render assistance*** to Asian-African States through the preparation of background materials and providing facilities for in-depth discussion. But later it emerged as a ***global forum*** for a continuing dialogue between the developing countries and industrialized nations. This took place by way of allowing the Western States to be Observers at our Sessions.

The UNCLOS 1982 does not merely consolidate, codify and reaffirm existing international law, it has also incorporated novel concepts into the legal regime governing sea. These include;

---

[10] He informed the UNGA about the inadequacies of the current international law and the freedom of the seas which could and would encourage the appropriation of the vast areas of the sea which were suddenly found to contain untold wealth by those who had the technological competence to exploit them. To avoid that he suggested that sea bed and ocean floor beyond the limits of national jurisdiction to be declared as the "common heritage of mankind". The UNGA accepted this proposal and established a UN seabed Committee to prepare for a third UNCLOS.

[11] UNCLOS III was a unique conference due to the large number of participants, the diversities of their interests, and the duration of the negotiations. It also needs to be underlined here that in the first 2 Conferences (1958 and 1960) a large number of African Countries did not take part for they were under colonial occupation and hence, not subjects of international law.

- Exclusive Economic Zone
- The regime for Archipelagic States; and
- The Common Heritage of Mankind.

UNCLOS tries to strike a careful balance between the

- rights of coastal states and
- the freedoms enjoyed by all states.

The concept of EEZ is regarded as perhaps the single most important contribution of UNCLOS. The credit for formally articulating a proposal on the EEZ is given to Ambassador Frank Njenga of Kenya who sponsored it for the first time at AALCO's Colombo Session held in 1971. A refined version was presented at the 1972 Lagos Session. Finally Kenya submitted ***"Draft Articles on the EEZ"***at the 1972 Geneva Session of the UN Sea Bed Committee[12]. The concept evoked deep interest from most of the world's states, whether coastal or no-coastal, developed or developing. It got the political support from numerous countries that it became almost impossible to be able to conclude an international agreement that did not include a 200 mile limit of national jurisdiction. By the time of the fifth session of UNCLOS in 1976 the concept of EEZ had almost become part of customary law and states such as Mexico, Norway, Canada, Iceland and the European Community had established economic zones or fisheries jurisdiction extending to 200 miles from the coast by adopting national laws[13].

---

[12] See, Om Prakash Sharma, "Enforcement Jurisdiction in the Exclusive Economic Zone-The Indian Experience", *Ocean Development and International Law*, vol.24, no.2, 1993, pp. 155-178, p. 155. See for an overview of the role of AALCO in relation to EEZ, V.S. Mani, "Exclusive Economic Zone: AALCO's Tribute to the Modern Law of the Sea", in *Fifty Years of AALCO : Commemorative Essays in International Law* (AALCO Secretariat, New Delhi 2007), pp.41-61.

[13] O.P.Sharma, (1993) p. 156.

Rights of the Coastal States in EEZ

According to Article 57 of the LOS Convention, the Exclusive Economic Zone of an island stretches to a maximum of 200 nautical miles from the baseline of that island. Most importantly, the state has sovereign rights for the purpose of

- exploiting and exploring the natural resources, whether living or non-living, of the sea, seabed and subsoil in that area.
- Rights in regard of construction and use of artificial islands, scientific research and preservation of the environment as well as
- obligations in regard to conservation and utilisation also apply.

In this zone however, other States have the freedom of navigation and over flight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to those freedoms.

In conformity with the trends prevailing then, in 1976 the Indian Parliament enacted the Constitution **40th Amendment Act** that amended Article 297 of the Constitution of India to redefine the offshore limits of India. By virtue of the power conferred by the Constitution 40thAmendment Act, the Parliament enacted in August 1976, the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act 1976 [*Maritimes Zones Act, 1976].* Though this act was passed on August 25, 1976, provisions relating to the contiguous zone and EEZ were brought into force by a notification with effect from Jan 1977. This Act claims for India

- A 12 mile territorial sea;
- A 24 mile contiguous zone

- A 200 mile Exclusive Economic Zone; and
- A Continental Shelf extending up to 200 miles or the outer edge of the continental margin, whichever is greater[14].

6. AALCO: Third Stage of Development [1980s-]

This era saw the decline of the political importance of AALCO triggered as it was by numerous factors. Institutions that represented the aspirations and joint interests of the developing world began losing their importance. This took place due to a number of reasons such as the end of the cold-war with its implications for the Non-Aligned Movement, the emergence of deep divisions amongst the developing states, the emergence of Group of 20 (G-20) and BRICS. The underlying political/policy rationale for the formation of institutions advocating the collective interests of the developing world came to be questioned. Though exploring this subject would entail an in-depth research, one can say that recent events such as the global economic crisis of the 2008 have clearly highlighted the need to reform the international financial and economic architecture, the reformation of which has been an integral component of the collective interests of the developing world. The need for collective and group action of the developing countries remains relevant (at the very least) in relation to the reform of the global economy that presents collective challenges for the developing world. In this pursuit, the role of institutions such as AALCO in strengthening the collective capacity building of developing countries is crucial.

[14]This was in the nature of an Umbrella Legislation. Which means that further Rules and Regulations covering the implementation aspects had to be framed by the Ministries and Departments concerned. No such rules were framed and the Act only remained on paper. See, note 11, p.157.

7. Publications of AALCO

With a view to contribute towards a better knowledge and understanding of international law, which in turn can influence the discourse of the global policy debates, AALCO has been publishing "Quarterly Bulletin" since 1976. In the year 1997 its name and periodicity were changed to "AALCO Bulletin" that was brought out bi-annually, till the year 2001. The Secretariat felt the need to re-structure the format and mode of this publication and after careful discussions and study, a totally overhauled publication in the new title, i.e; 'AALCO Quarterly Bulletin' was launched by beginning once again with Volume 1, Issue No. 1 dated January-March, 2005 and was published until 2011.

Beginning from 2012, the name of the Bulletin was changed to ***AALCO Journal of International Law***, and in an effort to improve further the quality of it so that it does contribute to the Third World legal discourse in an effective manner, an ***"International Advisory Board"*** has been constituted. The primary role of this body, which would consist of a group of well-renowned legal scholars, practitioners and jurists drawn from the Asian and African Continents, would be to exercise oversight and provide guidance as to the many possible ways through which the quality of the Journal could be enhanced.

The newly launched AALCO Journal of International Law features topical and well-researched articles written by renowned legal experts and write-ups on selected current developments. The publication provides appropriate information to scholars and academics who are keen to obtain insights to the Organizations' work in promoting research in international law matters. In this respect, it is requested that the Member

States support this publication by way of encouraging their international law scholars/ Practitioners, law faculty, research scholars to contribute articles for this publication reflecting the international law issues in the Asian and African regions.