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On the Topic of

WORKING OF THE INTERNATIONAL ORGANIZATIONS IN PROMOTING THE RULE OF LAW: ROLE OF AALCO

PRE-FACE TO THE TOPIC

Since the early 1990's organizations that are a result of inter-governmental co-ordination and co-operation, including organizations involving additionally other entities, have become a necessity for the regulation of a host of activities in areas such as the environment, national security, and financial markets, which had previously been the exclusive province of individual State governments. Further, international organizations that act primarily as consultative and advisory bodies have come out as crucial players on the international front. The latter organizations focus on crucial and yet ambivalent areas under international law, and muster a collective opinion of the Member-States on the topics; in order to serve the important purpose of the progressive development and codification of international law. The general purpose of these international organizations is to assist the member governments to provide security, justice, liberty, and development opportunities for their citizens within a rule of law framework, and within the broader conceptual framework of the UN Charter; following its purposes and goals.

International Organizations (IOs) have never been more central to the world politics than they are today. More than 238 IOs at least, are currently working on every imaginable global issue. Besides working on inter-governmental and international issues, IOs today are working extensively on domestic governance issues, overseeing matters that used to be the prerogatives of

States. For example, the European Central Bank, an IO, oversees monetary policies for some of the most powerful States of the world.

In the early post war years, however, the term 'international organizations' was used to refer to only formal IOs, that is, usually the organs or branches of the UN system. That notion definitely does not hold true anymore, with international organizations having within their scope significant variety in terms of their functions, type and size of membership and resources.

Thus, there are two distinct categories of IOs that are structuring and regulating the international law regime today:

a) The United Nations and the other inter-governmental agencies related to it; and

b) Other IOs that are not directly related to the UN.

Therefore, since IOs have increasingly come to acquire a role of such wide far-reaching implications, their accountability and subjection to the rule of law is something that has been on the agenda of the international community for quite some time now. The topic for today's lecture, however, is not just about assessing the accountability of IOs, but additionally and more importantly, to delve into the positive role IOs can play in the promotion of the international rule of law.

I will, therefore, divide the lecture into three main parts:

a) Understanding the nature, role and responsibilities of IOs

b) Assessing the accountability of IOs to the international rule of law

c) Discussing the positive role that IOs can play in today's internationalizing society; including the role of AALCO

I. INTERNATIONAL ORGANIZATIONS: NATURE, ROLE AND RESPONSIBILITIES

INTERNATIONAL ORGANIZATIONS, INTERNATIONAL INSTITUTIONS AND INTERNATIONAL REGIMES

International Organizations essentially are conceived as an integral part of a wide-palette of international institutions. However, 'International institutions' as it is, is not a very well defined term. It is mostly used as an umbrella concept, accommodating different approaches within the framework of international relations or international law disciplines. Nevertheless, on a broad level, there is one defining character they have through which they create social order by shaping behavioral patterns; namely, **their contribution to the production of rules**. They have been defined as 'a general framework where the interaction of international law, as "a system of legal relations which condition social action to serve the common interest", and international politics as the political efforts of States – mainly, but not exclusively – to tackle international challenges and pursue foreign policy priorities, takes place'[1].

International institutions are classified into three broad categories:

a) **Fundamental or Constitutive Institutions**: Institutions of state sovereignty (post-Westphalian era), multilateral diplomacy (inaugurated by the Congress of Vienna in the 19th century), international justice (having its roots in the international arbitration of late 18th century), international organizations (originating from the progressive institutionalization of international co-operation since the mid-19th century) etc., provide examples of fundamental or constitutive institutions.

b) **Specialized or regulatory institutions**: These are functional institutions that specialize and transform fundamental institutions and their normative content into concrete structures and rules for the fulfillment of explicitly stipulated objectives. International organizations mainly fall into this category.

c) **Subordinate institutions**: Bodies of specialized institutions; for example, EU institutions, commissions that function within the framework of international conventions or the UN ad-hoc international tribunals.

[1] Antonia Zervaki, *Resetting the Political Cultural Agenda: From Polis to International Organizatio*n, Springer, London, 2014 at 8.

International Organizations fulfill both the systemic as well as the social qualities of all the three categories discussed above. The phenomenon of international organizations constitutes a social institution in terms of the organization of modern international relations. Additionally, international organizations also contribute to the legalization processes at the international level, through establishment of new institutions or enhancement of their regulative functions. Their conceptual contexts, as well as the normative content are evident in the creation of specialized global or regional international organizations[2].

The concept of international organizations also needs to be distinguished from that of '**international regimes**'. International regimes are not explicit arrangements, but conceptual constructions. They cannot be easily qualified as regulative or functional institutions, and basically constitute of the normative and political environment that stems from the existence of specialized or regulatory institutions, mainly international organizations' function and/or international agreements' implementation[3].

INTERNATIONAL ORGANIZATIONS

IOs are not a new phenomenon. Their nature and responsibilities were, however, defined in a proper manner for the first time only under the aegis of the United Nations. The Vienna Convention on the Law of Treaties, 1969 (VCLT), expressly defines in its article 2, paragraph 1 (*i*) international organizations for its purposes as: 'International Organization means an intergovernmental organization'. This definition has been replicated in all major International Treaties which have dealt in any way with the relationship of IOs with other entities. It further refers to international organizations in its article 5, defining the VCLT's application to them as: 'the Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization'. However, the International Law Commission (ILC) struggled further with its definition, when it had to identify and further codify its nature and scope, mainly because IOs have today come to mean a great variety of combinations, as well as with regard to the nature of work performed. The term 'intergovernmental' would mean membership would constitute primarily of States. Since IOs today comprise of both State and Non-state entities, the final definition adopted was '**international organization refers to an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include**

[2] *Id* at 9-10
[3] *Ibid*.

as members, in addition to States, other entities'[4]**.** However, ILC flagged the provision in stating that the above definition is 'considered as appropriate for the purposes of the present draft articles and is not intended as a definition for all purposes'[5].It is now well settled that IOs are quite different from States, and therefore, their roles, responsibilities, as well as their accountability in international law is quite different. Also, under the principle of specialty, unlike States they do not have a general competence but have been established in order to exercise specific functions as stipulated in their constituent instruments.

As per the above definition of IOs given by the ILC, they may not always have to be established by a treaty. In certain cases, for example with regard to the Nordic Council, treaties may be established subsequently, or in certain cases even through other instruments such as 'resolutions adopted' or conference between States[6]. In relation to membership, the presence of States amongst members is essential for IOs. However, the presence of States as members may take the form of participation as members by individual State organs or agencies, like the Arab States Broadcasting Union that has only broadcasting organizations as its members.

With regard to possession of international legal personality, the acquisition of legal personality under international law does not depend on the inclusion in the constituent instrument of a provision such as Article 104 of the United Nations Charter[7]. The acquisition by an international organization of legal personality under international law is appraised in different ways. According to one view, the mere existence for an organization of an obligation under international law implies that the organization possesses legal personality. According to another view, further elements are required. While the International Court of Justice has not identified particular prerequisites, its dicta on the legal personality of international organizations do not appear to set stringent requirements for this purpose. The only requirement for a legal personality to attract international legal responsibility for the State seems to be that the organization in question must have a personality of its 'own', 'different from that of its members'. And this existence of a distinct legal personality does not exclude the possibility of a certain conduct being attributed both to the organization and to one or more of its members or to all its members[8].

[4]International Law Commission, 'Draft Articles on the Responsibility of International Organizations', Article 2, 2011.
[5]International Law Commission, 'Draft Articles on the Responsibility of International Organizations with commentaries' at 6, 2011.
[6] For example, the Pan American Institute of Geography and History (PAIGH), and the Organization of the Petroleum Exporting Countries (OPEC).
[7] Article 104 of the UN Charter: 'The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes'.
[8]Institut de Droit International in its 1995 Lisbon resolution , 'The Legal Consequences for Member States of the Non-fulfillment by International Organizations of their Obligations toward Third Parties', *Annuaire de l'Institut de Droit International*, Vol. 66-II (1996), at 445.

ATTRIBUTION OF CONDUCT TO IOs

Rules of a particular international organization are important **for the purposes of attribution of conduct** as the constituent instruments of the organization give functions to organs or agents as well as determine the conduct, decisions, resolutions and other acts of the organization. The ILC in its Draft Articles on the Responsibility of International Organizations (Article 2) gives considerable weight to practice of the Organization. NATO, for example, had noted that 'the fundamental internal rule governing the functioning of the organization — that of consensus decision-making — is to be found neither in the treaties establishing NATO nor in any formal rules and is, rather, the result of the practice of the organization'[9]. Also the rules of an IO, governing its nature and functioning differentiates it from how States are governed under international law; in that whereas a State possesses the totality of international rights and duties recognized by international law, the rights and duties of an entity such as the Organization must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice. It reflects the constrained circumference within which the international role of IOs is limited.

The terms '**agent of the international organization**' used in Art 2 of the Draft Articles on the Responsibility of International Organizations[10] of ILC deserves some attention. It is important to note that IOs do not act only through natural persons, whether officials or not. Thus, the definition of "agent" also covers all the entities through whom the organization acts, especially because of the reason of the question of conduct (international legal wrong) to an IO. When the ICJ had the occasion to interpret the term agent, it did so in the most liberal manner.[11] This has helped in the promotion of ideal of international rule of law as the UN had in the past on many occasions entrusted missions to persons not having the status of United Nations officials; and it is as important to hold the IOs accountable even in such situations.

[9] A/CN.4/637, sect. II.B.26.

[10] International Law Commission, 'Draft Articles on the Responsibility of International Organizations with commentaries' at 12, 2011.

[11] "The Court understands the word 'agent' in the most liberal sense, that is to say, any person who, whether a paid official or not, and whether permanently employed or not, has been charged by an organ of the organization with carrying out, or helping to carry out, one of its functions – in short, any person through whom it acts.", *Reparation for injuries suffered in the service of the United Nations, I.C.J. Reports1949*, p. 177.

LAW MAKING AUTHORITY OF IOs

The term '**treaty**' has been defined in the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986[12], as

'Treaty means an international agreement governed by international law and concluded in written form:

a) between one or more States and one or more international organizations; or

b) between international organizations,

-whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation.'

In general the capacity of IOs to conclude treaties would depend on their relevant rules, and is derived from general international law. Even though the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986 has not yet entered into force, observers accept that even under customary international law IOs can and do conclude treaties, and that the specific sorts of treaties they can conclude depend on their constitution. However, the powers of IOs are not always expressly mentioned in the rules, there are a number of 'implied powers' too that an organization has[13]. In sync with the 'implied powers' argument, the workability of the *ultra-vires* doctrine in relation to treaties of IOs is doubted by many authors[14]. That is, practice may always manipulate out of existence the doctrine of ultra-vires. Hence, even where the outside observer may have doubts about the legality (and therewith validity) of an agreement in terms of the powers of the organization concerned, as long as the members do not agree with the outside observer, any finding of invalidity is bound to fall upon deaf ears, and this in turn renders the doctrine of *ultra vires* a paper tiger.

[12]Has not yet entered into force.

[13]The external relations law of the European Union, to name a well-known example, is based to a large extent on the notion of implied powers. I.MacLeod, I. D. Hendry & Stephen Hyett, *The External Relations of the European Communities* (Oxford, 1996).

[14]Hungdah Chiu, *The Capacity of International Organizations to Conclude Treaties, and the Special Legal Aspects of the Treaties So Concluded*, Chp 13, Springer Netherlands, 1996.

II. A SIGNIFICANT COMPONENT OF INTERNATIONAL RULE OF LAW: ACCOUNTABILITY OF INTERNATIONAL ORGANIZATIONS

The '**Responsibilities of International Organizations**' was identified as a topic deserving special attention in 1963 itself, when it was noted that continuous increase of the scope of activities of international organizations was going to be likely to give new dimensions to the problem of responsibility of international organizations[15]. It was realized that although working within limited mandate, IOs today are as important as States when it comes to exerting influence in international law-making, its execution, or adjudication; thus, when the ILC completed its second reading of the draft articles on responsibility of States for internationally wrongful acts, the General Assembly, in its resolution 56/82 of 12 December 2001, recommended that the Commission take up the subject of responsibility of international organizations, and finally, in 2011 the ILC published the Draft Articles on the Responsibility of International Organizations. The attribution of responsibilities to IOs and their consequent obligations, as per the Drafts are very much akin to the responsibility of States under international law. As per Article 3 of the Draft every internationally wrongful act of an international organization entails the international responsibility of that organization. International responsibilities of IOs arise when two main conditions are fulfilled:

a) Attribution of conduct under international law to an international organization is one of the most essential pre-condition;

b) The other condition being that the same conduct must constitute a breach of an obligation that exists under international law for the international organization.

ATTRIBUTION OF CONDUCT

With regard to attribution of conduct, Article 6 of the Draft Articles says that conduct of an organ or agent of an international organization in the performance of functions of that organ or agent shall be considered an act of that organization under international law, whatever position the organ or agent holds in respect of the organization; and the rules of the organization shall apply in the determination of the functions of its organs and agents. However, characterization of an act as lawful under the internal law cannot justify what constitutes the breach of an obligation under international law. However, again as per the implications of implied powers, functions may be considered as given to an organ or agent even if this could not be said to be based on the rules of the organization.

[15]Abdullah El-Erian, Egyptian Diplomat, first report in Giorgio Gaja, 'First Report on Responsibility of International Organizations', *Document A/CN.4/532* at 107-108.

Secondly, in this regard, the conduct of an organ or agent of an international organization shall be considered an act of that organization under international law if the organ or agent acts in an official capacity and within the overall functions of that organization, even if the conduct exceeds the authority of that organ or agent or contravenes instructions[16]. The intention of this provision is yet again of keeping into account the 'implied powers' that the organs and agents of the IOs have. Lastly, any act, which cannot be strictly contributed, but which the organization in question acknowledges and adopts as its own, whether expressly or impliedly, can be attributed to such organization[17]. This provision mirrors the corresponding provision on the responsibility of States for internationally wrongful acts. Attribution is based on the attitude taken by the organization with regard to a certain conduct. The reference to the "extent" reflects the possibility that acknowledgement and adoption relate only to part of the conduct in question. And practically in many instances it may not be clear whether what is involved by the acknowledgement is attribution of conduct or responsibility[18]. Also, in this regard other complicated questions may arise regarding the competence of the international organization in making that acknowledgement and adoption, and concerning which organ or agent would be competent to do so. Although the existence of a specific rule is highly unlikely, the rules of the organization govern also this issue[19].

BREACH OF INTERNATIONAL OBLIGATION

Next, regarding whether the same conduct must constitute a breach of an obligation that exists under international law for the international organization, there is a breach of an international obligation by an international organization when an act of that international organization is not in conformity with what is required of it by that obligation, regardless of the origin[20] or character of the obligation concerned; and that includes the breach of obligations that the IO owes towards its members under the rules of the organization[21]. And the IO concerned will be held responsible

[16]International Law Commission, 'Draft Articles on the Responsibility of International Organizations with commentaries', Article 8, 2011.
[17] *Id* at Article 9.
[18] An example of such an uncertain statement is the one made on behalf of the European Community in the oral pleading before a WTO panel in the case *European Communities – Customs Classification of Certain Computer Equipment*. The European Community declared that it was: "ready to assume the entire international responsibility for all measures in the area of tariff concessions, whether the measure complained about has been taken at the EC level or at the level of Member States." (unpublished document), in International Law Commission, 'Draft Articles on the Responsibility of International Organizations with commentaries', 2011 at 30.
[19] *Supra* note 16 at 28-30.
[20] Whether the obligation arises by way of a customary rule of international law, by a treaty or by a general principle applicable within the international legal order.
[21] International Law Commission, 'Draft Articles on the Responsibility of International Organizations with commentaries', Article 10, 2011.

under international law when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act[22].

IOs FUNCTIONING CONTRARY TO THE PRINCIPLES OF THE RULE OF LAW

There is an increasing demand in the international community to establish a firm accountability of IOs, and as has been stated earlier, the efforts of the ILC in this regard reflects this concern. And the the harms caused by the UN and other IOs tend to fall on the populations of fragile rule of law nations. Despite the rhetoric of following the principle of rule of law, it has been seen in practice that many a times practices of various IOs on various occasions end up hurting the same causes they were created to protect. IO charters do not come with express limits on the scope of delegated powers that can be given to subsidiary organs, do not usually evince separation of powers principles that permit one organ to check another, and only rarely provide for methods for authoritative interpretation other than subsequent practice backed by acquiescence or lack of objection. Neither the UN Charter nor other IO constitutions come with bills of rights that protect the "peoples" of their members, or clear limits on the power of charter organs with respect to the remaining, un-delegated, or residual sovereign powers of States.

It is known commonly to all that IOs do satisfy the requirements of even the rules of 'thin' aspects of the Rule of Law. 'Equality before the law', for example, which is the first and foremost tenet of the principle of the Rule of Law, is a quality which is conspicuous by its absence even before the most well-established and globally respected IOs. For example, with regards to the voting procedures of the Security Council or the operation of the boards of the World Bank or the IMF (or how the heads of those respective institutions are selected and by whom). Horizontal equity among States is not a quality uniformly associated even with respect to IOs that aspire to universal membership. Also, a great deal of the law (hard and soft) promulgated by global governance institutions takes the form of exports from countries that are already in compliance with their terms to countries of the Global South who bear the brunt of adapting to new regulatory requirements. There are of course, other pestering issues such as notorious lack of transparency, as well as its remarkably open-ended discretion, which seems immune to legal limits susceptible to judicial demarcation[23].

[22] International Law Commission, 'Draft Articles on the Responsibility of International Organizations with commentaries', Article 13, 2011.
[23] Jose E. Alvarez, 'International Organizations and the Rule of Law', *International Law and Justice Working Papers*, Institute for International Law and Justice, NYU School of Law, 2016 at 1-14.

III. POSITIVE AND PRO-ACTIVE ROLE PLAYED BY IOs TODAY IN THE ESTABLISHMENT OF INTERNATIONAL RULE OF LAW

International Organizations (IOs) today are mostly intergovernmental bodies (though sometimes other entities, besides States are also members of such bodies) that are established by treaties, usually comprising of permanent secretariats, plenary assemblies involving all Member States, executive organs, and a limited participation.

Besides performing their primary and usual regulatory and rule-making functions, many IOs are increasingly becoming a part of the broader movement of institutional reform, which entails a particularly welfarist approach to international law. E.A. Posner writes that one way to implement the welfarist approach to international law is to enter into welfare treaties, in addition and as an alternative to the usual human rights based treaty-proposals[24]. He contends that the purpose of international reform is to enhance global welfare. Therefore, as long as international law is based on the consent of States, it can reflect only their areas of agreement[25].

Amongst many international organizations today who have taken a similar welfarist approach towards international law, the name of AALCO features prominently within the international community.

UNDERSTANDING AALCO

Many States of the continents of Asia and Africa shared a similar past of colonization and subjugation. As the decolonization process began after the end of World War II and the creation of the United Nations in 1945, many States in these two continents became independent. Thus during the phase in which the modern international law was taking its present form, the voices of these two continents were largely passive due to their socio-political as well economic conditions, which was a result of the large scale social and political revamping going on in their societies. Many of these States, thus, resented the traditional prescriptions of international law which were retained and started governing them. Some began to view these rules of international law as a form of neo-colonialism; as they felt that they were forced to accede to a system of international law developed without their participation, by those who had been their colonial

[24] E.A. Posner, A.O Sykes, 'Efficient breach of international law: Optimal Remedies, 'Legalized Non-Compliance', and related Issues', 110 Mich. L. Rev. 243, 246-47 (2011).
[25] *Ibid*.

masters. Interestingly enough, however, there was not a feeling of rejection of international law, but rather the will to contribute to the progressive development and codification of it, and to adapt the principles to fulfill the requirements of international law. As these newly independent States realized that the existing international and regional bodies of law-making such as the ILC, the Institute of International Law, or the International Law Association did not adequately represent their concerns and view point, and as they increasingly became aware of the importance of regional co-operation and concerted action; they decided to co-operate and created a competent forum, through which their views are sufficiently reflected in the progressive development and codification of international law, and its dissemination.

Therefore, AALCO was created to provide an equitable platform to countries in the Asian and African continents, wherein they can voice their concerns and opinions regarding important international law issues and the same in the form of a united and unequivocal voice can reach the larger multilateral platforms. AALCO is an attempt to mitigate the gaps or inequalities that continue to exist on the international platform, in order to promote the cause of international rule of law. It is a unique Organization, in being the only legal consultative body of its kind in the family of intergovernmental organizations, that has a rich history of sixty years behind it in addressing the international law concerns of Asian-African States, and promoting the realization of African-Asian perspective in the codification and progressive development of international law.

The seed of the creation of AALCO was planted at the International Legal Conference held in New Delhi in 1954, and it took root at the historic Bandung Conference of Asian-African States in 1955. One year later, the Asian Legal Consultative Committee (ALCC), the forerunner of AALCO, was established on 15 November 1956 by seven participating States. Its name was changed in 1958 to the Asian-African Legal Consultative Committee in order to embrace the participation of African States, and then to the current name in 2001 to reflect its growing role and status. Now AALCO has 46 Member States from Asia and Africa, and enjoys Permanent Observer status with the United Nations, accorded in 1981.

AALCO AS A REGIONAL INTER-GOVERNMENTAL ORGANIZATION: NATURE, FUNCTIONS AND PURPOSES

As a regional intergovernmental organization working in the area of international law, AALCO is principally a forum for consultation on matters of common concerns to its Member States; co-ordinating their view points; and its primary work is of an advisory nature that consists of

providing the governments of the Member States assistance in matters of international law, in the light of their particular interests.

The revised Statutes of AALCO denote that the Functions and Purposes of the AALCO are, *inter alia*, as follows:

a) to consider and deliberate on issues related to international law that may be referred to the Organization by the Member States and to make such recommendations as deemed necessary;

b) to exchange views, experiences and information on matters of common concern having legal implications and to make recommendations thereto if deemed necessary;

c) to communicate, with the consent of the governments of the Member States, the views of the organization on matters of international law referred to it, to the United Nations, other institutions and international organizations; and,

d) to examine subjects that are under consideration by the ILC and to forward the views of the organization to it; and

e) to undertake, with the consent of/or at the request of Member States such activities as may be deemed appropriate for carrying out the functions and purposes of the organization.

WORK OF AALCO

AALCO's work in harmonizing the actions of the Asian-African States in international legal matters broadly consists of the following:

1) Represent and present the views of Member States in the negotiation and codification of international rules;

2) Preparing analytical and technical studies for the benefit of Member States, in order to equip them with the necessary knowledge to negotiate on international law issues;

3) To engage in capacity-building and training for Member-States, so that they can understand the obligations flowing from international rules applicable to them;

4) Providing a forum for exchange of views and experiences which could be consolidated and expressed to the law-making process;

5) Rendering special legal advice and support for members, including the Least Developed Countries, who lack expertise in the given areas of international law;

6) Providing specific assistance and technical support to the Member States who request for it, in order for them to resolve their legal problems;

7) Monitoring and reporting on international legal developments for the benefit of the Member States.

PROGRESSIVE DEVELOPMENT AND CODIFICATION OF LAW BY AALCO

AALCO's *raison d'être*, specifically, throughout its sixty-year history has been to promote the progressive development and codification of international law based on the special interests and needs of its Member States. It would not be an exaggeration to say that AALCO over the years has, through its persistent efforts in this regard, not just enriched the corpus of international law, but has additionally and perhaps more importantly, ensured that the law, or at least some areas of it truly reflect universal values and concerns, and that international law making is no longer the exclusive preserve of European States[26].

In particular AALCO has made contributions in the progressive development and codification of the following areas of international law:

1. **Diplomatic Law**:

   Involvement of the AALCO in the creation of the *Vienna Convention on Diplomatic Relations*, 1961, is one of the early examples of AALCO's contribution to the development of international law. The topic had been examined by AALCO from 1957 to 1959. During the course examination AALCO created a draft Convention on *Diplomatic*

[26] Rahmat Mohammad, 'The Contribution of AALCO Towards the Cause of Asian-African Solidarity and the Progressive Development of International Law' in *Asian-African Perspectives on International Law in the Post-Westphalian Era: Some Reflections* at 11-12 (CRT, AALCO, New Delhi, India, 2011).

Immunities and Privileges which not only amended the draft articles that had been prepared by the ILC, but also suggested its own formulations, which were influenced by the experiences of Latin America and tailored to the conditions in the newly independent States in Asia and Africa, and circulated the same amongst its Member States. Thereafter, following due deliberations, the draft Convention was presented for consideration before the UN Conference on Diplomatic Relations in Vienna in 1961. Several of the recommendations therein were accepted and found their way into the 1961 *Vienna Convention* finally. In fact, so thorough was the AALCO's work on the topic of Diplomatic Law, that several of its recommendations were also adopted into the *Vienna Convention on Consular Relations*, 1963, and the *Convention on Special Missions*, 1969.

2. **Law of Treaties**:

The next important milestone in the achievements of AALCO in this regard was its involvement in the adoption of the *Vienna Convention on the Law of Treaties*, 1969 (VCLT). This topic was vitally important for the Asian and African States because most of them, as former colonies, were long suffers of unequal treaties. After an exhaustive period of consultation within the AALCO collective comments and recommendations were submitted to the ILC. AALCO's efforts finally were instrumental in paving the way for compromise solutions reached at the UN Conference of Plenipotentiaries, particularly with respect to Part V of the Commission's draft on Invalidity of Treaties, and ultimately led to the adoption of the VCLT.

3. **Law of Seas**:

AALCO's success during the negotiation and drafting of the VCLT paved the way for what may be its biggest success thus far – the 1982 *United Nations Convention on the Law of the Sea* (UNCLOS). Pursuant to a proposal by the Republic of Indonesia soon after the adoption of the UN Resolution on Convening of a Conference on the Law of the Sea in 1970, the AALCO took up the subject with a view to assisting its Member States and other Asian-African States to prepare themselves for the Conference of Plenipotentiaries. New concepts such as Exclusive Economic Zone, Archipelagic States, and Rights of Land-locked States originated and developed in the course of deliberations in the AALCO and from there finally found their rightful places in the 1982 Convention.

At later stages AALCO became almost a negotiating forum with other groups of States. The Latin American group gradually began sharing its views and the Western bloc started consulting AALCO too. Thus, the Asian-African States became a powerful bloc at the negotiation in the Third UN Conference on the Law of the Sea. A reflection of the

success of AALCO's role in the negotiating process can be seen in the fact that as of 2016, 41 of AALCO's 47 Member States have ratified the UNCLOS.

4. **International Criminal Law**:

More recently, AALCO has also been active in matters related to the Rome Statute of the International Criminal Court (ICC). The topic "*International Criminal Court – Recent Developments*" was included in AALCO's work program as one of the agenda items at its Thirty-Fifth Session at Manila in 1996. Since then, the Organization has continuously reported the developments in the ICC at its successive Annual Sessions, and most of the Member States were keenly interested in the deliberations relating to this topic during the Annual Sessions. AALCO's efforts also focused on enhancing awareness of the Rome Statute by organizing several important seminars and meetings.

While the concept of the International Criminal Court has a great deal of support among AALCO Member States, there have also been crucial concerns relating to the Court's *de facto* focus on African nations, as well as the role played by the Security Council's P-5 Members in the functioning of and referral of cases to the Court. AALCO nevertheless has continued to play its part in representing the interests of its Member States by working towards having these concerns publicized and addressed; and thereby helping to create an environment that encourages Member States to become Parties to the Rome Statute in the future.

5. **Refugee Laws**:

Over the years AALCO has drafted important instruments under its own power. An example of this is the *Bangkok Principles on the Status and Treatment of Refugees* in 1966, which were later revised and consolidated at the Fortieth Annual Session of AALCO in 2001. The 1951 UN Refugee Convention has been often criticized for its Euro-centric nature and therefore, AALCO, as per the wishes of its Member States decided to work upon a regional solution, and finally produced a seminal non-Eurocentric work on formulations of refugee law, that has proven to be quite influential in the subsequent development of this area in Asia and Africa.

It is one of the earliest world-wide examples of a regional approach to refugee problems. Some of the salient and noteworthy developments made by the Principles are:

a) An expanded definition of the term "refugee", which has foreshadowed the definition within the 1967 Protocol to the 1951 UN Refugee Convention, by also recognizing "color" as a ground for discrimination; and

b) Creation of the much hyped and much needed "Burden Sharing Principles", which call for solidarity and cooperation in solving the global refugee problems.

CURRENT AND FUTURE ENDEAVOURS

The AALCO secretariat has completed its research and published its work for public viewing, on the topic of 'Marine Biodiversity beyond National Jurisdiction: An Asian-African Perspective'; and is currently working on many areas of international law, including the topics of 'Violent Extremism and its Manifestations' and of 'International Law in Cyberspace'.

CONCLUSION

The crucial place that IOs have come to occupy in the international regulatory regime is something that cannot be shied away from. From being limited to the United Nations and its specialized agencies, to taking up myriad regional and sub-regional forms, to having as its constituents different entities besides the traditional membership of States, IOs are today much varied in their scope and composition. They are negotiating, making rules on, regulating, and even adjudicating upon almost every single aspect of international law.

The problem is that they are not yet that well-regulated under the premises of international law, and further have increasingly come in the line of fire for not following the principles of the Rule of Law in their functioning. In such a situation ensuring their subjection to the principles of rule of law has become more important than ever. It is important to know and understand exactly what functions they have, how they perform it and exactly how those functions are regulated under international law. And more importantly, what are the international obligations they have, and how and in what circumstances those can be conferred upon them.

However, it is also important to realize, given their important position and powers, that they have a huge potential to serve the development and application of international law in a positive

manner. They can, and are acting as important platforms for interaction of many under-developed and developing countries; where the voices of such nations are getting united and represented on the international forum, so that the problem of under-representation as well as misrepresentation is solved, and the cause of international rule of law truly promoted. AALCO is one such platform, which through its work, is making the voices of the Asian and African regions reach the top international platforms, and is further helping its Member States in understanding and fulfilling their obligations under international law.