

**KEYNOTE ADDRESS BY MR. FENG QINGHU,
DEPUTY SECRETARY-GENERAL, AALCO AT THE
FIFTH SOUTH ASIAN CONFERENCE ON
INTERNATIONAL HUMANITARIAN LAW,
(8TH APRIL 2014, NEPAL)**

“SEXUAL VIOLENCE AND ARMED CONFLICT”

His Excellency Mr. Narahari Acharya, Minister for Law, Justice, Constituent Assembly and Parliamentary Affairs, Nepal;

Mr. Bhesh Raj Sharma, Secretary to the Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs, Nepal;

Mr. Dilli Raj Ghimire, Member Secretary, National IHL Committee, Nepal;

Mr. Charles Sabga, Regional Legal Adviser for South Asia and Iran, International Committee of the Red Cross;

Ms. Dragana Kojic, Head of ICRC Delegation, Nepal;

Other Distinguished Dignitaries, Ladies and Gentlemen;

A very Good Morning to you all! It is an honour to be part of the Fifth South Asian Conference on International Humanitarian Law on a relevant topic “Sexual Violence and Armed Conflict”. On behalf of the Secretary-General of the Asian-African Legal Consultative Organization (AALCO) and its Member

States, may I take this opportunity to thank the International Committee of the Red Cross (ICRC), Regional Delegation for South Asia, for extending the invitation to our Organization to address this august gathering.

Distinguished delegates,

I would like to delve into a brief overview about AALCO for those of you who are not familiar with the work of the Organization. The AALCO was established in 1956, which was the tangible institutional outcome of the historic Asian-African Conference, otherwise known as the “Bandung Conference” in 1955. The conference initiated Third World solidarity by bringing together the then newly independent States at the international level. Fresh off their colonial past, the founding nations of the AALCO intended to institutionalize their solidarity through this forum, which would mark the beginning of modern international law that was inclusive and participatory, as well as provide a re-reading of international law from an alternative perspective. AALCO, as an advisory body served as a platform for the increased participation of the Asian-African States in the progressive development of international law through addressing their common legal concerns.

The Organization has come a long way since its establishment in 1956, from its initial small but vibrant group of seven founding countries to a strong coalition of forty-seven countries today. The Basic Purpose of AALCO is to coordinate the viewpoints of the Asian and African States on important issues in international law that are of common concern to these two continents. The Organization gained its status as a permanent body in 1981 and in 2001 was renamed as Asian-African Legal Consultative Organization (AALCO) in recognition of its growing stature. It enjoys the status of an Inter-Governmental Organization among the international legal fraternity and has

been accorder Observer states by the United Nations. Deliberations in the Organization and the resolutions adopted by it greatly assist the Governments of the Member States to put forward an agreed view in the light of Asian-African States on international legal questions. In 2009, the Member States had adopted the historic “Putrajaya Declaration on Revitalizing and Strengthening the Asian-African Legal Consultative Organization”, which reaffirmed that AALCO remains the “main centre for harmonizing the actions of Asian-African States in international legal matters.”

Having said that, May I recall the longstanding relationship between AALCO and the ICRC. AALCO works in close cooperation with United Nations and other International Organizations/Agencies. AALCO attaches great importance to the concerns of its Member States in relation to issues of human rights and international humanitarian law. A formal cooperation was initialized through cooperation agreement between AALCO and the ICRC in December 2002 and later, by signing it in July 2003 in Geneva. The key objective of the Cooperation agreement is promotion and development of international humanitarian law. Closely working with ICRC and recognizing the significant contribution of ICRC in the field of IHL, AALCO has ventured into convening various inter-sessional meeting, special day meetings during AALCO’s annual sessions, and training programmes on IHL for the officials of its Member States.

Mindful of the increasing relevance of issues relating to armed conflicts, AALCO has biennially convened Special-Day Meetings jointly with ICRC since 2006 at its Plenary Meetings in conjunction with its Annual Sessions. These topics, I must admit, have been far from contemporary and have been very

instrumental in disseminating IHL and its challenges to the Member States of AALCO, these were:

- (i) Relevance of IHL in Today's Armed Conflicts (Seoul Resolution, 2003 Annual Session)
- (ii) Universal Jurisdiction and its role in the Enforcement of IHL (2006 Annual Session),
- (iii) Contemporary Issues in IHL – which focused on cluster munitions, Ottawa AP Landmine Ban Convention and 1980 CCW Convention, and the Private Military and Security Companies (2008 Annual Session); and
- (iv) New Delhi Resolution on Aspects of IHL was adopted in July 2008 in conjunction with AALCO's Forty-Seventh Annual Session, which requested Member States of AALCO take all necessary measures in order to ensure that the rules of IHL are fully respected, in particular through the adaptation of domestic laws, including military manuals and the dissemination and teaching of IHL.
- (v) International Criminal Court and its Recent Developments (2010 Annual Session)

Distinguished Delegates,

Partnering with ICRC at this event, we have the Government of Nepal. Allow me to applaud the commitment of Nepal which is one of the Member States of AALCO, towards the upliftment of human dignity and restoration of peace. The role of Nepal, in the recent past, has been very pivotal in upholding the human dignity of innocent civilians especially women and children, during peacetime as well as Wartime. AALCO's agenda item also includes "Establishing Cooperation against Trafficking in Women and Children". In furtherance of

protecting the victims of trafficking (considered significant at peacetime), Government of Nepal has come a long way in being vehement in implementing the relevant international legal instruments. The trajectory of progress in this field by many South Asian countries, including Nepal is remarkable.

His Excellency and Distinguished Delegates,

Allow me to venture into the topic of this Conference, which is, “Sexual Violence and Armed Conflicts”. Sexual violence, in armed conflicts, is a multifaceted and complex criminal act. It has been considered as a strategy to weaken the parties in conflict. There is simply no one simple, definitive explanation for sexual violence in warfare.

Historically, women were part of the "spoils" of war to which soldiers were entitled. This notion was deeply embedded in the idea that women are property or commodity available to the victorious warriors, or the concept of Victor's Justice. Sexual violence may also be looked upon as a means of troop mollification. This is particularly the case where women are forced into military sexual slavery. It also signifies the humiliation of the male members of the society who had failed to "protect their women". It was mainly used as a form of punishment, particularly on women who were politically active, or were associated with politically active male members. Another strategy is to use this measure against a society as a means of inflicting terror upon the civilian population at large. Sexual violence can also be part of a genocidal strategy. It can inflict life-threatening bodily and mental harm, and form part of the conditions imposed to bring about the ultimate destruction of an entire group of people.

There are various forms of Sexual Violence(s). It takes many forms in armed conflicts across time and cultures. It ranges from rape, gang rape, mass campaigns of rape as strategy for ethnic cleansing or genocide. There is multiple violation of a 'person' which includes torture, mutilation, cannibalism, forcing family members to commit incest and so on. Regulating sexual violence in armed conflict has been a challenge for the international community because when such crimes are inflicted upon mass population or civilians - it was vaguely considered as a 'grave breach'. However, much has changed since the establishment of the International Criminal Tribunal for Yugoslavia and Rwanda (ICTY) and (ICTR) as they became path breakers in defining sexual violence during armed conflict including rape as 'war crime' and 'crimes against humanity'. Thanks to the UN Security Council resolution 798 of 18 December 1992 which gave reference to the "massive, organized and systematic detention and rape of women, in particular Muslim women, in Bosnia and Herzegovina".

Contextually, there is two generally accepted definition of the term in international law. The Special Rapporteur on Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict, defined sexual violence as 'any violence, physical or psychological, carried out through sexual means or by targeting sexuality', thus including 'both physical and psychological attacks directed at a person's sexual characteristics'. The International Criminal Court's definition provides that, 'rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence' is a crime against humanity.

The nature of offences have transcended not only borders but also crossed gender. The contemporary discourse in sexual violence in armed

conflict encompasses not only women and children, but also male and transgender. Though sexual violence has been historically attributed to violence against women, now it includes violence against men too. The psyche behind inflicting sexual violence against individuals regardless of the actual gender of the perpetrator or victim, is the attribution of the characteristic of masculinity to the perpetrator and femininity to the victim. The idea that male victims have been feminized may stem from the behaviour of perpetrators before, during or after the sexual assault. The reports relating to the assaults against detainees at Abu Ghareb in the course of Iraq War, has been a recent example. However, there have been instances of sexual abuse of men in ancient times that have been reported in conflict situations on Chile, Croatia, and the Democratic Republic of Congo. At this juncture, one could not refrain from mentioning the indictment in the *Tadic* case (ICTY), wherein the Tribunal drew reference to ‘rape’ and ‘other inhuman acts’ as crimes against humanity, which was not restricted to a specific gender. In the indictment and trial of *Ranko Cesic* as well, the Tribunal upheld the findings of the Trial Chamber and stated that rape and other forms of sexual assault according to the tribe were inhuman acts which violated the protected interests of life, physical and moral integrity of persons.

Distinguished Delegates, Ladies and Gentlemen;

Sexual violence is not limited to rape alone. It includes sexual slavery, enforced prostitution, forced pregnancy and enforced sterilization. Another form was inflicting the women victim with forced pregnancy with HIV/AIDS. Within the South Asian context, various human rights Commissions have raised the concerns on degrading and inhuman treatment towards victims here civilian population, be it women or men, and being subjected to various violations. A number of other forms of sexual violence are committed in armed conflict in

addition to rape and enforced sterilization. The violation by the perpetrators in this regard, knows no bounds. The testimonies to these abuses are the indictments and judgments of various cases rendered by the ICTY and ICTR.

The increasing factors that point towards increasing sexual violence in armed conflicts, are based on the abuse of power and dominance position, which rests with feminization, homosexualization, and preventing from procreation. The legal gamut of attributing sexual violence in armed conflicts is wide enough to include not only women but also men. The provisions mentioned under Article 27 of the Fourth Geneva Convention, 1949 and Article 76 (1) of the Additional Protocol I of 1977 were specifically directed on protecting the women from different forms of sexual violence in armed conflict. However, an inclusive reading of Article 4 (2) (e) of Additional Protocol II of 1977 and the provisions of Rome Statute of ICC, emphasizes on prohibiting such inhuman acts. More specifically, prohibits “outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault”. Thus, the legal regime on IHL as well as the jurisprudence evolved out of the indictments of ICTY and ICTR manifests two important paradigm shifts:

firstly, the language giving way to prohibiting such violence during armed conflict alongside protecting the victims of sexual violence

secondly, the inclusiveness of both the genders within the reach of law.

His Excellency,

The conflicts and internal disturbances within the South Asian region has been much talked off due to its geopolitical structure, evidentially requires the issue to be addressed by the international community. AALCO appreciates the efforts of the ICRC in promoting awareness and disseminating International

Humanitarian Law, especially in the South Asian region. In order to address the contemporary challenges faced by the IHL during armed conflicts, AALCO and ICRC are partnering in the forthcoming Two-Day Meeting to be held in AALCO Headquarters, in New Delhi next month. Various issues and challenges would be discussed by distinguished speakers. The meeting expects to draw the attention of AALCO Member States and other diplomatic entities in New Delhi and deliberate on various important topics under IHL. On behalf of AALCO, I take this opportunity to invite each one of you to attend this meeting on 7 and 8 May 2014.

I once again thank the ICRC to convening this Conference; and the Government of Nepal for hosting this event and extending the hospitality. I look forward for fruitful deliberation and wish this meeting a great success. Thank you.