



REPORT ON THE TWO DAY AALCO LEGAL EXPERTS MEETING ON “IDENTIFICATION OF CUSTOMARY INTERNATIONAL LAW” HELD ON 27th AND 28th AUGUST 2015 AT THE NATIONAL UNIVERSITY, MALAYSIA¹

The Asian-African Legal Consultative Organization (AALCO) in association with the National University Malaysia (UKM) and the Institute of Malaysia and International Studies (IKMAS) had organized a two-day Legal Experts Meeting on “Identification of Customary International Law” at Chancellory Building UKM, Malaysia on 27th and 28th August 2015. The meeting had been organized by AALCO in accordance with the mandate that it received at the Fifty-Fourth Annual Session of AALCO held at Beijing, China in April 2015. Representatives from ten Member States of AALCO at various levels, Faculty Members and students from various Universities in Malaysia took part in this meeting. The Secretariat of AALCO was represented by the Secretary-General Prof. Dr. Rahmat Mohamad, the Deputy Secretaries-General, Mr. Feng Qinghu and Mr. Mohsen Baharvand and S. Pandiaraj, the Senior Legal Officer.

At the *Inaugural Session*, Welcome Remarks and Opening Remarks were made by *Associate Professor Dr. Sufian Jusoh* of the Institute of Malaysia and International Studies (IKMAS) and *YBhg.Prof. Datuk Dr. Noor Azlan Ghazali, Vice-Chancellor, National University, Malaysia* respectively. Both of them highlighted the significance of the meeting. In this Session, two Key Note addresses were delivered; one by the *Secretary-General of AALCO Prof. Dr. Rahmat Mohamad* and another by *Mr. Stephen Mathias, UN Assistant Secretary*

¹ The viewpoints reflected in this report belongs to the Informal Expert Group itself and does not bind the member States of AALCO on the issue.

General for Legal Affairs, both of which had indeed set the tone for the two-day meeting. While the address of Prof. Dr. Rahmat Mohamad focused on three aspects, viz., the importance of CIL, AALCO's relationship with ILC and some areas of agreement and concern of the Member States of AALCO in relation to the topic, Mr. Stephen Mathias spoke at length about a number of aspects of CIL including the work of ILC on CIL before the time of Mr. Wood, the role of International Organizations in the formation of international law and on CIL in general.

The *first Working Session* was Chaired by *Dr. Sufian Jusoh*. The Special Rapporteur of ILC on the topic of CIL Mr. Michael Wood was the main speaker at this session. Mr. Wood's address which began with an appreciation of the work of AALCO and its Informal Expert Group on CIL as being most useful, dealt with numerous aspects of the topic, namely the collegial nature of the work of ILC, the possible outcome of the work of ILC, the work of the AALCO Informal Working Group, the concepts of Specially Affected State and Persistent Objector, and others.

He had also made few very interesting observations;

- That the methodology for determining the rules of CIL remained the same across various disciplines of international law;
- That it was wrong on the part of ILC to have excluded the concept of specially affected states from the purview of its work; and
- That international organizations do indeed contribute to the formation of CIL in certain specified circumstances.

This was followed by an interesting Q and A Session where the delegates from many Member States of AALCO made their observations, raised issues of their concern and sought clarification from the Special Rapporteur.

In the *second Working Session* which was Chaired by *Dr. Sufian Jusoh*, an interesting presentation was made by *Mr. Mohsen Baharvand*, the *Deputy Secretary General of AALCO*. He looked at the topic of CIL in general and the draft conclusions of ILC in particular and offered his comments on them. Specifically, he had some concrete suggestions as regards few draft conclusions that had been adopted by the ILC. In particular he was of the view that for a practice to be identified as a constituent element of CIL, it shall not be in conflict with peremptory norms of international law with reference to illegal use of force or threat of use of force as an example.

After the presentation the floor was opened and an Q/A Session followed.

The next day saw the presentation of *Prof. Seinho Yee*, the *Special Rapporteur of AALCO's Informal Expert Group on CIL*. Prof. Yee gave a detailed response to some of the criticisms of Mr. Wood on the work/terminology that the Special Rapporteur had used in his recent reports on the topic. The responses were in relation to the regional/universal nature of CIL, treaties as source of CIL, the rule of persistent objector and the like. In response, Mr. Michael Wood clarified some issues and also expressed his wish that it would be great if AALCO could send its views on CIL before the session of ILC begins in May 2016.

The presentation was followed by the Conclusions and Recommendations about the two day meeting that was delivered by *Dr. Sufian Jusoh* of the Institute of Malaysia and International Studies (IKMAS). While stating that the views/opinions/questions and criticisms presented by the AALCO Informal Expert Group represented the voices of most AALCO Member States, he went on to summarize the concerns that had been raised by the Member States of AALCO on the topic in this meeting. This included:

- There could be ranking of the source of CIL, starting with the state practice followed by *opinio juris* etc;
- Sovereignty of the State, an important concern of AALCO Member States;
- The role of non-State actors in influencing the source of CIL;
- The effect of “persistent objectors” which could form part of the general exceptions;
- The role of international organizations and state practice within the international organizations and the role of international organizations in the law-making, policy-making and state practice which could influence “state practice”;
- The role of treaties and the treatment of treaties vis-à-vis CIL.

He also added that the Informal Expert Group would endeavor to complete the work within the timelines of the ILC and that in order to assist ILC and its Special Rapporteur on the topic CIL Mr. Wood, the Informal Expert Group through the Secretariat of AALCO will continue to have a close engagement with the ILC and the Special Rapporteur.

This was followed by the Closing Remarks of *Prof. Dr. Rahmat Mohamad, the Secretary-General of AALCO*. The Secretary-General stated that in view of the importance of this topic for the Member States of AALCO, and the continuing interest shown by them as revealed in various special meetings of AALCO on CIL including this particular one, AALCO would continue to keep a close tab on the work of ILC on this topic and try to articulate the concerns of its Member States periodically with a view to ensure that the voice of AALCO stands incorporated in the work of ILC on CIL.