

AALCO – ILC RELATIONSHIP

Presented By:

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I am dealing with the topic “Relationship between the International Law Commission and AALCO”. The Asian-African Legal Consultative Organization (AALCO) was established in 1956 as Asian Legal Consultative Committee. Originally it was envisaged to be a temporary Committee with a life of 5 years. The Term was successively extended till 1981. The Committee was renamed as Asian African Legal Consultative Committee (AALCC) in 1958, which was made a permanent body in 1981. The AALCC renamed as AALCO in 2001 at the 40th Annual Session.

The International Law Commission is the principal body for the progressive development of international law and its codification under the United Nations system. According to Article 1, paragraph 1, of the Statute of the International Law Commission (ILC), it is provided that the -

“Commission shall have for its object the promotion of the progressive development of international law and its codification”.

The founders of the AALCO thought it is imperative for the Organization to have close cooperation with the ILC with a view to providing the work of the ILC inputs from the Asian-African States. Thus, AALCO is required by its Statute to examine subjects that are under consideration by the ILC and thereafter to forward the views of its Member States to the Commission. Fulfilment of this mandate over the years has helped to foster closer relationship between the two bodies. Article 1 (d) of the Statutes of AALCO mandates the AALCO Secretariat to consider the matters relating to the work of the ILC at its annual sessions. Therefore, AALCO has been considering those topics ever since its inception in 1956. It has now become customary that a Representative of ILC addresses

the Annual Session of AALCO and reviews on the progress of work in the ILC, while the Secretary-General of AALCO addresses the ILC Session reporting on the common minimum consensus that emerges from the deliberations on the ILC topics at an Annual Session. Presently 15 Members of the ILC are nationals of AALCO Member States. ILC considers this activity significant as through this process, it receives the views from the perspective of developing countries.

In 2007, the General Assembly invited Member States in association with regional organizations and members of the Commission to convene national or regional meetings dedicated to the work of the Commission. In response to this, AALCO had organised a Seminar to commemorate the Sixtieth anniversary of the ILC. Discussions were held on the:

- (i) Role of the ILC in the Twenty-First Century,
- (ii) Strengthening the Asian-African Solidarity in the ILC, and
- (iii) Ensuring Adequate Reflection of Asian-African concerns in the Work of ILC.

Further, a special debate was organized at AALCO's 49th session in 2010. The topic was "Making AALCO's Participation in the work of ILC More Effective and Meaningful." Among the issues discussed, AALCO members recognized in particular, the importance of responding in a timely manner to the Questionnaires from the ILC on the topics under consideration.

In relation to the role of developing countries in the ILC, let me inform that presently there are 15 Members in the ILC who are nationals of AALCO Member States. Among them, few members of the ILC participate at our Annual Sessions in order to present the views of the Commission to our Member States. AALCO has laid a significant amount of influence on the final outcome of several topics that was discussed at the ILC. The Part V (Grounds for invalidation of a treaty) provisions of the Vienna Convention on the Law of Treaties was adopted in the present form on account of the unanimous position taken

up by AALCO. AALCO's position and suggestions on the Convention on Diplomatic Relations, brought in the Asian and African Perspective to this branch of law.

Joint programmes between AALCO and ILC are also organized. For example, the AALCO-ILC Joint Meetings along the sidelines of the Legal Adviser's Meeting of AALCO Member States in New York in October or November every year. At the AALCO-ILC Joint Meetings, the Special Rapporteurs on the Agenda Items present the abridged version of their reports. This meeting receives wide participation ranging not only from Member States of AALCO but non-Members as well. The presence and active participation of the Legal Advisers of numerous AALCO Member States further enrich the deliberations and provide inputs on how to deal with the new topics under consideration by the Commission. The ensuing deliberations and exchange of views form part of 'state practice' which is relevant as far as formation of customary international law is concerned.

It is essential to note that not only there must be representation but also substantial participation by member States of Asian-African countries. In that relation, the role of Special Rapporteurs of ILC is very significant. Since establishment of the ILC, 11 Members of the ILC belong to Asian-Africa region who have been appointed as Special Rapporteurs on various important topics. The topics include

- Succession of States in respect of matters other than treaties
- Diplomatic Protection
- Representation of States in their relations with international organizations
- Status, Privileges and Immunities of international organizations, their officials, experts etc.
- Expulsion of Aliens
- Jurisdictional Immunities of States and their Property
- International Liability for Injurious Consequences arising out of acts not prohibited by international law (Prevention of Transboundary Damage from hazardous activity)

- International Liability for Injurious Consequences arising out of acts not prohibited by international law (International liability in case of loss from transboundary harm arising out of hazardous activities)
- Draft Code of Crimes against the Peace and Security of mankind (Part II)
- Shared Natural Resources
- Most-favoured Nation clause (Part II)
- Protection of Atmosphere

At the 49th session, a comprehensive Background Paper on this topic was prepared by the Secretariat, which consists of Examination of Questions under Consideration of the ILC by the AALCO, Comments/Observations if regarding the Methodology of examination by AALCO of questions under consideration of the ILC, Present and Former Members of the ILC from the Asian-African States, Special Rapporteurs of the ILC from the Asian-African Region.

AALCO also has established an Eminent Person's Group (EPG) Meeting, which is mandated to serve as 'advisory body' to the Secretary-General of AALCO to advise on Organizational and Substantive matters. It also addresses "Substantive Matters which includes the ILC Matters as well.

In lieu of the growing importance of the work of the ILC, various Inter-Sessional meetings have also been convened by the AALCO Secretariat. In 2012, two important Agenda Items of ILC were discussed. The Speaker was Dr. A. Rohan Perera, former member of the ILC from Sri Lanka. The topics were (i) Immunity of State officials from foreign criminal jurisdiction, and (ii) Protection of Persons in the event of Disasters. Few new topics were also proposed and Prof. Shinya Murase, member of the ILC from Japan briefed on Protection of the Atmosphere, and Fair and Equitable Treatment Standard in International Law.

The Fiftieth Annual Session of AALCO held in 2011 in Colombo, Sri Lanka, mandated the AALCO Secretariat to devote more time for deliberating on the agenda item relating to the work of ILC during its annual sessions. Hence, at the subsequent Annual Sessions

of AALCO, Special Half-Day Meetings were convened to deliberate upon “Selected Agenda Items of International Law Commission”. At the Fifty-First Annual Session (in 2012), a Special Half-Day Meeting was organised, where two important agenda items of ILC were discussed:

- Protection of Persons in the Event of Disasters
- Immunity of State Officials from Foreign Criminal Jurisdiction

Moreover, at the recent 52nd Annual Session of AALCO held in 2013, a Special Half-Day Meeting was organised, where three important agenda items of ILC were discussed. These were:

- Formation and Evidence of Customary International Law
- Protection of Persons in the Event of Disasters
- Immunity of State Officials from Foreign Criminal Jurisdiction

Sir Michael Wood, the Special Rapporteur for the topic on “Formation and Evidence of Customary International Law” was one of the Speakers. The other two speakers were *Mr. Narinder Singh*, Secretary-General of Indian Society of International Law who spoke on “Immunity of State Officials from Foreign Criminal Jurisdiction” and *Dr. A. Rohan Perera*, Former Member of International Law Commission on “Protection of Persons in the Event of Disasters”

In the event of the AALCO-ILC relations, may I reiterate that the AALCO continues to attach great importance to its longstanding relationship with the Commission. It would be earnest endeavour to further strengthen this relationship in the years to come.

I Thank You.