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Keynote Speech by Prof. Dr. Kennedy Gastorn, Secretary-General of AALCO

**“AALCO’s Contribution to International Law through Model Legal Instruments:
Recollecting a glorious legacy”**

The Honorable Chief Executive Carrie Lam,

H.E. Mr. Xie Feng, Commissioner of the Ministry of Foreign Affairs of China in the Hong Kong SAR,

Secretary of Justice Teresa Cheng,

Chairman Dr. Anthony Neoh,

President Huang Jin,

Distinguished Guests,

Ladies and gentlemen,

Good morning to everyone! It gives me great pleasure to attend the Colloquium on International Law and present you the AALCO’s contribution to the development of International Law.

I. Introduction

1. AALCO’s outstanding contribution to international law over the years has been recognized and appreciated across the globe. Institutional efforts to disseminate information on this front have been well documented as well. Despite the same, AALCO’s remarkable efforts in drafting model legal instruments and principles for Member States have attracted

comparatively little attention, despite the wide-ranging impact that these efforts have secured. As a consultative organization engaged in the progressive development and codification of international law, AALCO's mandate includes the preparation of soft laws such as model legal instruments. This is defined to include declarations, principles, guidelines, frameworks and model laws on any topic of international law, aimed at helping States get broader clarity for further legislative endeavours.

2. My talk aims to address this aspect of AALCO's work, which forms the core of its consultative endeavours. While AALCO has prepared a number of model legal instruments, my talk would focus on the most significant ones that have played a significant role in advancing the cause of domestic incorporation of international law in Asia and Africa.

3. Over the years, AALCO has also assisted its Member States in securing a better understanding of international law. These efforts, among others, have included a focus on encouraging States to adopt legislations that give effect to the principles of international law. The status and application of international law within the municipal framework of a country stands testimony to its commitment to a world order based on rule of law and global harmony. ***Model legal instruments prepared by AALCO bridge the gap between accepted international law principles and its encapsulation in statutory form facilitating its acceptance and applicability within a country.*** Thus, the gap between content and form that plagues legislative efforts is neutralized by model legal instruments. A template that combines the best of content and form is presented to Member States for domestic adoption. Irrespective of whether these legal instruments are incorporated as laws, they hold the key to harmonizing disparate aspects of a complex international legal issue, primarily as soft law.

4. Starting from 1961, many legal instruments have been prepared by the Secretariat. These instruments have covered a wide gamut of areas, ranging from refugee protection to extradition of fugitives with each one being formulated upon the request of individual Member States¹. AALCO derives the mandate to frame model legal instruments from its Annual Sessions, and is a fundamental aspect of its consultative function, as well as its historically recognized role as an Advisory Organ of Jurists to its Member States².

¹ The Model Legal Instruments prepared by AALCO have also included the Draft guide on legal aspects of Industrial Joint Ventures in Asia and Africa, Model Bilateral Arrangements on Mutual Assistance on Letters Rogatory in criminal matters and the Promotion and Protection of Investments.

² Dr. Nagendra Singh, *Three Decades of Asian-African Co-operation*, Essays on International Law, Thirtieth Anniversary Commemorative Volume, 1987 pp 5-15

II. Model Legal Instruments

a. Articles Containing the Principles Concerning Extradition of Fugitive Offenders, 1961

5. The Articles Containing Principles Concerning Extradition of Fugitive Offenders was the first model legal instrument prepared by AALCO along with the principles concerning the admission and treatment of aliens. These principles were adopted at the Fourth Session of AALCO held in 1961 in Tokyo.

6. While a majority of the Member States were of the view that extradition could be carried out in the absence of a treaty by way of international co-operation, it was accepted that the obligation to extradite arose only if there was an express treaty obligation to that effect. Keeping this reality in mind, AALCO's articles contain the assertion that the contracting parties undertake to surrender fugitive offenders only in the circumstances and under the conditions stipulated in the Treaty/Convention. AALCO had the distinction of being the first intergovernmental organization to lay down principles concerning extradition of fugitive offenders, many of which became accepted principles in extradition law.

7. The principle of "double criminality" which is today accepted to be the cornerstone of extradition law was enumerated in Article 2 of the adopted text. The exclusion of political and military crimes from the purview of extradition in the text were principles, which came to be well established in international law. The principle of provisional arrest (Article 23) and delivery of seized articles to the requesting State (Article 25) were some novel provisions in the model legal principle. The Appendix contained a list of extraditable offences, which indicated a broad consensus on extraditable offences.

8. Thus, it can be said with conviction that AALCO's articles were among the first international institutional efforts within the Afro-Asian region to streamline the legal aspects pertaining to extradition, with a specific thrust on simplifying the process of extradition of fugitives within the region³.

b. Principles concerning the Admission and Treatment of Aliens, 1961

9. AALCO in its Fourth Session held in Tokyo in 1961 adopted the principles concerning the admission and treatment of aliens. The principles were well regarded as one of the first

³ Text of the Articles Containing the Principles Concerning Extradition of Fugitive Offenders, 1961

international institutional arrangements seeking to bring together the diversity of Asia and Africa on the subject. Article 3 of the Principles, which laid down that a State shall not refuse to an alien entry into its territory on the ground only of his race, religion, sex or colour, was widely hailed as laying down the broad philosophy pertaining to the admission and treatment of aliens.

10. This principle is today regarded by some to be the cornerstone of administrative and legal measures dealing with the admission and treatment of aliens, despite contrary positions. The right of States to provide Asylum was recognized in Article 6. The obligation to provide adequate compensation in the event of an alien's property being nationalised was provided as an appropriate safeguard in Article 12⁴. In addition to providing States with a model legislative framework on the subject, AALCO's principles covered sufficient ground in providing a soft law framework that proved the basis of future developments in the subject. Subsequent development of the subject in international law owed a great deal to the foundational work of AALCO in 1961.

c. Draft Convention on Diplomatic Immunities and Privileges, 1961

11. AALCO's draft convention was a considerable improvement on the ILC's draft convention on diplomatic immunities and privileges. In addition to an evaluation of the ILC draft convention, AALCO suggested significant formulations of its own basing upon the experience of Latin American States, appropriately modified to the conditions of Asia and Africa. It is with pride that I say that some of these formulations were accepted by the UN Conference on Diplomatic Relations held in Vienna in preference to those of the ILC. Thus, the topic of diplomatic immunities and privileges was one topic, where the work of AALCO was one-step ahead of that of the ILC⁵.

d. Model Articles Embodying Principles Relating to Elimination or Reduction of Dual or Multiple Nationality, 1964

11. The subject of dual nationality, one of the most vexing issues in diplomatic relations was under the consideration of AALCO in the initial years of its existence. AALCO's efforts

⁴ Text of the Principles concerning the Admission and Treatment of Aliens, 1961

⁵ Supra n.1

to eliminate the problems associated with dual nationality arose from a realization of its Member States that all co-ordinated international efforts were needed to deal with this issue.

12. AALCO Member States were of the opinion that it would be desirable to reduce the number of cases of persons possessing dual nationality by means of enacting suitable national legislation or by concluding international conventions. It was, however, felt that unless there was uniformity in nationality laws and unanimity on the fundamental principles of nationality, it would be very difficult to achieve the desired objective by means of a multilateral convention. It was decided that AALCO Secretariat should prepare a report on the subject on the basis of the discussions held during the session and that this report together with the draft agreement submitted by the United Arab Republic should be taken up for consideration during the Third Session. Model articles embodying principles relating to elimination or reduction of dual or multiple nationality prepared by the United Arab Republic were adopted in the Cairo Session in 1964⁶.

13. The articles in retrospect made significant contributions to international law. The principle that every State has the competence to lay down the legal framework for deciding nationality was incorporated in Article 1. In a significant contribution to gender justice and recognition of the rights of women, Article 4 stipulated that on marriage with a national of a different State, a women shall not lose her original nationality. However, it was recognized that a wife would be competent to acquire the nationality of her husband if she so desired.

e. Bangkok Principles on the Status and Treatment of Refugees, 1966

14. While AALCO has made significant contributions to many areas of international law, its contribution to refugee law by way of the Bangkok principles, remains the most significant. The principles were adopted in the Eighth Annual Session in Bangkok in 1966 and further revised at the 45th Session in New Delhi in 2001. The Bangkok Principles are recognized among the most significant contributions to the '*lex specialis*' of international refugee law and continue to be recognized as a pillar guiding contemporary developments in the subject.

15. The principles were among the first to be adopted post the Refugee Convention, 1951 and precedes the 1967 Protocol, the 1969 OAU Convention and the 1984 Cartagena Declaration. The Bangkok Principles were factored in while framing the 1967 UN Declaration

⁶ Text of the Model Articles Embodying Principles Relating to Elimination or Reduction of Dual or Multiple Nationality, 1964

on Territorial Asylum incorporating some of its concepts⁷. Broad basing the definition of ‘refugee’ in the Convention, the Bangkok Principles shredded the geographical and temporal limitations associated with the definition, in addition to including ‘colour’ as a ground for fear of persecution. These principles were widely hailed by the international community and advanced the development of international law from a humanitarian perspective⁸.

16. At the Eleventh Session of AALCO, held at Accra in 1970, “the right to return” was elaborated in an addendum. Individuals having fled their countries because of foreign domination, external aggression and occupation had a right to return. This created a corresponding obligation on the concerned governments to facilitate such a right, failing which they were liable to appropriately compensate the refugee.

17. The year 1987 was significant for the Bangkok Principles. In this year, AALCO adopted the second addendum to the original document that incorporated the concept of “burden sharing”. Burden sharing being an acute concern of Asian and African countries found suitable expression in the Principles. This would go on to be accepted internationally and is today one of the bedrock concepts of international refugee law and policy. The Global Compact of Refugees (GCR) has also addressed this issue, the roots of which can be traced to AALCO’s historical efforts to mainstream the marginal voices of two great continents- Asia and Africa.

18. At the Fortieth Session of AALCO held in New Delhi in 2001, the principles were subject to revision. The definition of ‘refugee’ was expanded to make it consistent with the OAU definition. A provision on voluntary repatriation was included to broaden the scope of the principles and the need for greater co-operation with the UNHCR was noted.

f. Recommendation to the Vienna Convention on the Law of Treaties, 1967

19. AALCO was involved in the codification of the law of the treaties since its inception. For countries emerging from the yolk of colonialism, this topic was of special importance, as they desired the need to enter into sovereign agreements with other nations on an equal footing. AALCO was conscious of this reality and worked diligently to ensure the representation of Asian and African voices during the drafting process of the Vienna Convention on the law of

⁷ Xu Jie, *Asian-African Legal Consultative Organization (AALCO) and International Law*, AALCO@50 Some Reflections on International Law, CRT, AALCO (2011) pp 9-94

⁸ William Thomas Worster, *The Evolving Definition of the Refugee in Contemporary International Law*, Berkeley Law Scholarship Repository, 2012

treaties. At the Ninth Session of AALCO in 1967, AALCO considered the report of the Special Rapporteur Dr. Sompong Sucharitkul of Thailand and a set of thirty-five questions regarding the ILC's draft articles on the topic were discussed. These thirty-five questions contained all major concerns of AALCO Member States and along with certain other points were referred to three subcommittees for further deliberation⁹.

20. AALCO eventually prepared an interim report in the form of commentaries on the draft articles which were considered as requiring further study from an Asian-African perspective. The interim report was tabled before the Vienna Conference in 1968. AALCO's Karachi Session held in January 1969 was devoted mainly to the draft articles of the Convention and two sub-committees duly reported on various aspects to the two plenary meetings devoted to a review of the work of the first session. The first session of the United Nations Conference of Plenipotentiaries on the law of treaties was held in 1968 and Mr. B. Sen, the then Secretary-General of AALCO helped the Asian and African countries arrive at a common position on major issues of the ILC's draft articles. Topics like reservation of treaties, supervening impossibility of performance, interpretation, *Pacta Sunt Servanda* and grounds of invalidity of a treaty were subject to a compromise solution keeping in mind the interests of Asia and Africa mainly on account of AALCO's insistence¹⁰.

g. AALCO's suggestion in respect of a National Fisheries Legislation and Model Draft of an Agreement Relating to Foreign Fishing in the Exclusive Economic Zones (EEZ), 1983

21. Exclusive Economic Zones (EEZ) as are well known embody a unique concept in international law. The concept arose from the ashes of a bilateral demarcation of marine jurisdiction that viewed all sea to be either territorial waters or the high seas. This regime was open to all States, be they coastal or landlocked and embodied a concept of freedom. However, in practice only the economically and technologically strong nations were in a position to use the high seas to their advantage. Thus, the so-called freedom of the high seas was in actuality limited in terms of a country's economic and technological capacity. R. P. Anand, a prominent Indian international law academic even referred to the traditional regime of the high seas as

⁹ Supra n. 6

¹⁰ Supra n. 6

“tyrannous”¹¹. The actual practice of States also indicated that Prof. Anand was not off the mark.

22. It was in this context that AALCO made important suggestions for a National Fisheries Legislation seeking to streamline fishing activities in the EEZ taking into account the interests of the Afro-Asian region. A Model Draft of an Agreement Relating to Foreign Fishing in the Exclusive Economic Zone/Fisheries Waters of a Coastal State and Co-operation in the Conservation and Management of the Fishery Resources Therein was also framed by AALCO.

23. The law articulated the importance of Member States developing their fisheries polices with a view to ensuring the conservation, rational management and optimum utilization of the fishery resources, promoting and accelerating the integrated development of a national fishing industry.

24. Regional and sub-regional co-operation between States was encouraged for the purpose of fisheries management and governments were required to determine the extent of foreign fishing to be permitted. Bilateral or multilateral agreements relating to fishing rights and development of fisheries were supposed to be concluded through negotiations. An elaborate administrative machinery to give effect to various dimensions of fisheries management was elaborated in the model legislation.

25. The model agreement provided for the regulation of foreign fishing offering a template for the effective management of fisheries within bilateral terms.

h. Framework for the establishment of Safety Zones for Displaced Persons in the Country of Origin, 1989

26. AALCO comprehensively articulated the concept of “safety zones” in the country of origin for displaced persons. With IHL and Refugee law having established fundamental rules and principles in this regard, AALCO’s framework sought to build upon the same, making them applicable in light of burden sharing and equitable principles.

27. AALCO’s proposal was aimed at merging structural shortcomings in refugee law and humanitarian law. The failure of international law to evolve clear legal principles for the protection of IDP’s outside the *lex specialis* of International Refugee Law (IRL) posed a threat to the protection of civilians during armed conflicts. AALCO’s historic role in framing the

¹¹ R. P. Anand “*The tyranny of the Freedom of the Seas Doctrine*”, International Studies (New Delhi), Vol 12, 1973 pp 416-429

“Nairobi Principles” in 1989 for the creation of “Safety Zones” during armed conflicts served the twin purposes of bridging the thematic gap between IRL and IHL while laying the basis for a *lex specialis* overhaul of IHL concerning the protection of civilians through the creation of conflict specific “Safety Zones”.

i. Draft Model Legislation on Refugees, 1995

28. In the 1992 Islamabad session, AALCO was mandated to prepare a draft model legislation on refugees. A three year focused effort resulted in a draft model legislation that was presented in the 1995 Doha Session. The draft model legislation comprised a preamble and Thirty-One Sections that codified various aspects of the subject.

29. The draft model legislation was intended to aid Member States in the drafting of municipal legislations in the subject and made valuable contributions in this regard. It provided for the establishment of an executive organ to deal with matters relating to refugee status determination and the rights and duties of refugees in receiving States. It also provides for quasi-judicial review of decisions in matters relating to status and treatment of refugees. The draft model law has effectively supplemented the Bangkok principles and essentially should be read together as a framework providing protection for refugees. It is expected that contemporary issues facing refugee law can be tackled effectively by a closer examination and application of the model law outside Asia and Africa. Along with the “Concept of Establishment of Safety Zones for Internally Displaced Persons”, the draft Model Legislation of refugees formed the most important texts for refugee protection for Third World countries.

j. Draft Model law on Protection of Migrant Workers, 2002

30. In the fortieth Session of AALCO held in New Delhi in 2001, AALCO received the mandate to prepare a model law for the protection of migrant workers. Pursuant to this mandate, AALCO in collaboration with the International Organization of Migration (IOM) prepared a draft model law on the protection of migrant workers. The draft law contains a preamble and 20 articles and is one of the few legislative efforts to safeguard the rights of migrant workers outside the UN framework. The draft law serves as a model to be adopted by Member States, and could be employed for negotiating a bilateral framework protecting the rights of the vulnerable. While the model law remains in a draft form, the Secretariat is keen to further refine

the provision, include new provisions, all of which are expected to bolster the framework for the protection of migrant workers.

k. Draft Model law on Trafficking in Women and Children, 2007

31. AALCO at the forty-sixth session at Cape Town in 2007 presented the revised Draft Articles of the Model Legislation Against Trafficking in Persons Especially Women and Children. The law contained a preamble and six draft articles. It was a mechanism to address the problem of trafficking by balancing the need for stronger crime control with the sensitivities of victim protection. The model law has been prepared keeping in mind the need to address the legal issues concerning the protection of victims and are suitable for direct adoption by Member States with appropriate country-specific modifications. The model law was widely discussed by Member States who were unanimous on the need to tackle the problem of trafficking by strengthening the legal edifice surrounding the same.

l. AALCO's Guidelines on Violent Extremism, 2016

32. Tackling the menace of violent extremism is one of the greatest challenges facing the world today. AALCO's work in this area is worthy of recognition and well acknowledged as an effort to deal with the problem from a distinct Asian and African perspective. The Draft Resolution on AALCO Principles and Guidelines to Combat Violent Extremism and its Manifestations originally presented by the AALCO in 2016 is divided into two operative sections. Section I contained eleven Principles of international law identified by the AALCO Secretariat to be relevant to the fight against violent extremism and drawn from various sources of international law, primarily the UN Charter, Friendly Relations Declaration and customary international law. These Principles serve to reflect those important principles that States are encouraged, and in some cases obliged, to observe and respect while combating violent extremism. Section II of the Draft Resolution contained 16 Guidelines that constituted more specific measures identified by the AALCO Secretariat, based on practical needs and challenges, as useful steps for States to take in combating the scourge of violent extremism¹². These principles were noted in the Fifty-Sixth Annual Session held in Nairobi in 2017.

¹² <http://www.aalco.int/Final%20Voilent%20Extremism%202017.pdf>, accessed on 05/07/2019

III. Impact of AALCO's model legal instruments

33. AALCO's model legal instruments have reflected the voice of the Afro-Asian region in international law matters. Member States have accepted the work of AALCO as contributing to the advancement of international law in the region and incorporated many of these principles in their national legislation.

34. AALCO's principles like 'burden sharing' and EEZ are today on the lips of every international lawyer. The role played by AALCO in bringing forth the views of Asian and African countries is well acknowledged by the global community. A large number of States, representing the diversity of Asia and Africa today view Refugee Law and Law of the Sea as global instruments on account of AALCO's pioneering initiatives.

35. A number of renowned international legal scholars have quoted the work of AALCO in their scholarly works over the years. Professor B.S. Chimni's classic work, *International Law and World Order* refers to AALCO's Bangkok Principles¹³. William Thomas Worster, in his article '*The Evolving Definition of the Refugee in Contemporary International Law*' published by the University of Berkeley highlights the importance AALCO's Bangkok Principles as a source of *opinion juris*¹⁴.

36. At the 2018 Tokyo Annual Session, Nepal requested the Secretariat to prepare a model framework pertaining to the Rights of Landlocked States in the context of rising sea levels. This is proof of the widespread acceptance of AALCO's historic efforts in drafting model legal instruments for Member States and more such proposals are expected in the future.

IV. Conclusion

37. The consultative function of AALCO is the most prolific of AALCO's responsibilities. It is to give effect to this function that AALCO has engaged in the task of preparing model legal instruments that can be adopted by Member States either directly or with suitable modifications. The harmonization of international law with adequate uniformity and consistency is also achieved by this purpose. This function is of a continuous nature and Member States constantly vest AALCO with the responsibility of framing legal instruments

¹³ B.S. Chimni, *International Law and World Order, A Critique of Contemporary Approaches*, Cambridge University Press, April 2017

¹⁴ *Supra* n. 6

including guidelines containing the latest international law positions. AALCO looks forward to further building upon its glorious legacy in preparing model legal instruments in the times to come and hopes that the incorporation of international law through suitable legislative instruments grows stronger in the times to come. We would like to contribute to the codification and progressive development of international law factoring in the views of our Member States in upcoming areas of international law and thereby contribute to a stronger international rule of law framework at the global level.
