



**The Historical Background to the Establishment of AALCO and its functioning by Mrs.
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I. INTRODUCTION

A very Good morning to all.

It is indeed a matter of privilege to make a presentation before this gathering of our learned friends from Saudi Arabia and Volterra Fietta. The topic for this presentation relates to the historical background to the establishment of the Asian-African Legal Consultative Organization and its functioning.

My colleague Mr. Pandiaraj, Senior Legal Officer and I (Mrs. Anuradha Bakshi, Principal Legal Officer) would divide this presentation among us. While I would focus on the establishment of AALCO; its objectives and purposes; structure and how the agenda items are introduced on the work programme of the Organization, my colleague would take you through the journey that the Organization has made in its work programme and how it has contributed towards the various UN Conferences, its relationship with other organizations and he will conclude with a few words about the AALCO publications.

II. A BRIEF HISTORICAL BACKGROUND TO THE ESTABLISHMENT OF AALCO

The period ending the second world was also the beginning of a new era in the world order. The rise of nationalism in the Asian and African countries brought people from these regions together in their struggle against colonialism, for independence and emancipation. The rise of new nation-states in this region along with the establishment of the United Nations and its gradual evolution into a law making forum, made it possible for these newly independent states to articulate their concerns in the language of the law. However, most of these new states were also victims of the traditional prescriptions of international law. Most of international law that prevailed at that point of time was European in origin, Christian in its ethics and imperial in its character. While these rules were created, agreed on and established, most of the Countries from the Asian and African regions were subject to colonial administration (and hence they could not participate in the rule making) or these rules were forced on those independent ones with firm hands backed by the military might of the west.

The newly independent and decolonized states were hence not prepared to fully accept the international law that existed then. Even as all those existing rules were not rejected (for example the concept of sovereignty and sovereign rights and the principle of non-intervention), these countries wished to have their say in the progressive development and the codification of international law. However, even at that point of time, despite the existence of the U.N and its agencies, international law making continued to be an activity furthered by the west and its representatives. Forums that discussed, studied and made international law, were the International Law Commission, the Inter-American Juridical

Committee, The European Committee on International Cooperation and the *Institute de droit international* (The Institute of International Law) and the International Law Association. They functioned by taking up topics of interest to all its members, studying them, collecting the opinions and viewpoints of states and searching for a common ground, a position on which all member states had a consensus on. This process of restating the rules and state practices in existence is the process of *codification of international law*.

In the years after the World War II, the role of international organizations with regard to the codification and progressive development of international law has grown extensively. Apart from the United Nations - the largest global intergovernmental organization - the Asian-African Legal Consultative Organization (AALCO) has also contributed immensely to and played an important and unique role in the growth and development of international law as a regional intergovernmental organization working in the field of international law keeping in view of the particular interests of the countries in Asia and Africa.

With the end of Second World War, the rise of nationalism in Asia and Africa brought the Asians and Africans together to struggle for independence and emancipation.¹ Decolonization process began resulting in many independent states, particularly in Asia and Africa.

These new States having been victims of unequal position and passive objects of the traditional system of international law protested and resented against the traditional prescriptions of international law. They felt that they were forced to accede to a system of

¹ "We, Asians and Africans, were bound to feel that the 20th century was our age. Our awakening focused our sights on the essential antagonism between colonialism and freedom, between imperialism and emancipation." *Asia Africa Towards the First Century*, published by Department of Foreign Affairs, Republic of Indonesia, 2005, p.29.

international law developed without their participation by those who had been their colonial masters. They did not, however, reject all the established prescriptions of international law; rather they wished to contribute to the progressive development and codification of international law with a view to adapting the principles of traditional international law and existing treaties to the requirement of newly independent States. Further, they felt that existing bodies, such as the International Law Commission (ILC) of the United Nations, or other regional and international bodies such as the Inter-American Juridical Committee, the European Committee on Legal Cooperation, the Institute of International Law (*Institut de droit international*), the International Law Association and the Harvard Research Projects engaged in the task of international law formulation, did not adequately represent their concerns and viewpoint.

The newly independent states also became increasingly aware of the importance of regional cooperation and concerted action towards promotion of their viewpoint. Therefore, they decided to make a systematic and concerted effort to examine for themselves the existing rules of international law and express their views through a competent forum so that their views are sufficiently reflected in the matter of progressive development and codification of international law, and its dissemination.

In order to promote cooperation in the field of international law, an International Legal Conference was held in New Delhi in 1954. At this Conference a proposal for establishment of a consultative organ in the field of international law was made by the then Chief Justice

of Burma (now Myanmar), and the suggestion found appeal at the Bandung Conference of Asian-African States in 1955.²

The Bandung Conference gave a new impetus to the ideas and principles for regional cooperation and emphasized the importance of concerted action on matters of common interests fundamental to the balanced growth of an international society. The need of the hour was the elimination of colonialism and racism, the evolution of the principle of co-existence and progressive development of international law in the context of the emergence of new nations in Asia and Africa. The Charter of the United Nations had envisaged that the principle of justice and international law should be the keystone of the new edifice of the international legal order and it was evident that if that law was to command respect of all nations, developing countries in Asia and Africa must have an adequate say in the formulation of the new law of nations.

A year after the Bandung Conference, the Asian Legal Consultative Committee (ALCC) was established by seven participating States, namely Burma (now Myanmar), Ceylon (now Sri Lanka), India, Indonesia, Iraq, Japan and United Arab Republic (now Arab Republic of Egypt and Syrian Arab Republic) on 15 November 1956. The Committee was meant to serve as an advisory body of legal experts and to facilitate and foster exchange of views and information on legal matters of common concern among the participating countries in Asia.

² "It was therefore not surprising that the proposal of Burma earlier made at an International Legal Conference held in New Delhi in 1954 for establishment of a consultative organ in the field of international law should find its appeal amongst the Colombo Powers which had sponsored the Bandung Conference leading to the establishment of the Asian Legal Consultative Committee in November 1956." And "the Bandung Conference gave a new impetus to the ideas and principles for regional co-operation and emphasized the importance of concerted action on matters of common interest fundamental to the balanced growth of an international society." See, B. Sen, "Evolution and Growth of the Asian-African Legal Consultative Committee as a Forum for International Co-operation", in *Essays on International Law-Twenty-fifth Anniversary Commemorative Volume*, (AALCC, New Delhi, 1981), p.4.

In order to embrace the participation of countries from the African region, the name of the organization was accordingly changed to Asian-African Legal Consultative Committee (AALCC) from the year 1958. So the AALCO is considered to be a tangible outcome of the Asian African Relations Conference, the Bandung Conference of 1955.³

It is of interest to note that initially, the Committee was conceived to be temporary organization for a term of five years, the five-year term was further extended on four occasions until 1981, when at its Colombo Session in Sri Lanka, it was decided to place the Organization on a permanent footing. That decision necessitated revision of the original Statutes and Statutory Rules, the revised versions of which were adopted in 1987 and 1989 respectively.

On 14 September 1997, at a Special Session of AALCC, it was decided to locate the Organization's Permanent Headquarters in New Delhi. Following that decision, the

³ The first Asian-African Conference, also known as the Bandung Conference, was a meeting of Asian and African states, most of which were newly independent, which took place on April 18–24, 1955 in Bandung, Indonesia. The twenty nine countries, which participated at the Conference, represented nearly one fourth of the Earth's land surface and a total population of 1.5 billion people.

The purpose of the conference was to promote the highest aspirations of the peoples of Asia and Africa: economic and cultural cooperation, human rights and national self-determination, and promotion of international peace. Aside from asking the superpowers to suspend their nuclear tests, reduce armaments, and increase economic aid, the conference passed the "Ten Principles of Peace", and emphasized such themes as mutual respect for territorial integrity and sovereignty, nonaggression, noninterference in each other's internal affairs, equality and mutual benefits, and peaceful coexistence.

The conference was an important step toward the crystallization of the Non-Aligned Movement. The significance of the conference was that it signaled the final collapse of colonialism and the emergence of an international force capable of challenging the dominant role of the Western powers in the arena of international politics. It further declared that nations should practise and learn to live together in peace with another, as good neighbors and this would help in the promotion of international peace and security.

To mark the fiftieth anniversary of the Conference, Heads of State and Government of Asian-African countries attended a new Asian-African Summit from 20–24 April 2005 in Bandung and [Jakarta](#). The conference concluded by establishing the New Asian-African Strategic Partnership (NAASP).

Headquarters Agreement was signed between the Government of India and the AALCC on 26 April 2000.⁴

In 2001, at the 40th Annual Session held at the Headquarters in New Delhi, the name of the AALCC was changed to Asian-African Legal Consultative Organization (AALCO). It might seem to be a small nomenclature change, however, it has great symbolic significance reflecting the growing status of the Organization and the place it has secured among the family of international organizations. The Statutes currently in force were revised and adopted in 2004, incidentally in Republic of Indonesia.

From the above-mentioned, we can see that the Organization has come a long way since its establishment in 1956, from its initial small, but vibrant group of seven founding countries, the leaders of Non-Aligned Movement, to a strong bond of 47 Asian-African Member States with the addition of Australia and New Zealand as its Permanent Observers today.⁵

III. THE NATURE AND FUNCTIONS OF AALCO

As a regional intergovernmental organization working in the area of international law, AALCO is a forum for consultation on matters of common concern to its Member States and its work is of an advisory nature and consists of providing the governments of Member States with assistance in matters of international law in the light of the particular interests

⁴ Under the Agreement, the Government of India provided a plot of land and a grant to meet the costs of construction of the Headquarters Building and the residence of the Secretary-General. The AALCO Secretariat moved to its Permanent Headquarters Building and started functioning from April 2008.

⁵ Forty-seven countries comprising almost all the major States from Asia and Africa are presently the Members of the Organization. These countries are: Arab Republic of Egypt; Bahrain; Bangladesh; Brunei Darussalam; Botswana; Cameroon; Cyprus; Democratic People's Republic of Korea; Gambia; Ghana; India; Indonesia; Iraq; Islamic Republic of Iran; Japan; Jordan; Kenya; Kuwait; Lebanon; Libya; Malaysia; Mauritius; Mongolia; Myanmar; Nepal; Nigeria; Oman; Pakistan; People's Republic of China; Qatar; Republic of Korea; Saudi Arabia; Senegal; Sierra Leone; Singapore; Somalia; South Africa, Sri Lanka; State of Palestine; Sudan; Syria; Tanzania; Thailand; Turkey; Uganda; United Arab Emirates; and Republic of Yemen.

of the countries in Asia and Africa. One of the basic functions of AALCO is to coordinate the viewpoint of the Asian and African states on important issues of international law.

The Statutes of AALCO revised and adopted in 2004 lays down the Functions and Purposes of the AALCO, as follows:

- (i) 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;
- (ii) To exchange views, experiences and information on matters of common concern having legal implications and to make recommendations thereto if deemed necessary;
- (iii) 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;
- (iv) To examine subjects that are under consideration by the ILC and to forward the views of the organization to the Commission; and
- (v) To undertake, with the consent of/ or at the request of Member States, such activities as may be deemed appropriate for the fulfillment of the functions and purposes of the organization.

IV. THE RELATIONSHIP BETWEEN AALCO AND THE INTERNATIONAL LAW COMMISSION

The International Law Commission was established by the General Assembly of the United Nations in the year 1947.⁶ The object of the commission is to promote and progressively develop international law and to codify the same. The ILC is assigned the function of studying and preparing drafts of conventions in the form of articles together with commentaries to these articles on those topics that are referred to it.

The ILC has two major functions: One, the progressive development of international law, which means the preparation of draft articles on those subjects where there is insufficient state practice and, secondly, *codification of international law*, meaning the more precise formulation and systematization of the rules in those fields where there was already sufficient state practice.

The Codification process begins when the General Assembly refers a topic to the ILC. A Special rapporteur is then appointed from amongst the members of the ILC for each topic. The governments are then requested to furnish the relevant texts and their viewpoints. The special rapporteur studies them and submits reports that contain these draft articles and comments on the same. The draft articles are then subjected to several rounds of 'readings' and discussions before they are finalized. Depending on the subject, the draft articles may then be adopted by the General Assembly in the form of a resolution or a treaty based on the draft articles is negotiated and entered into.

⁶ The ILC was established through General Assembly Resolution 174 (II) of 21 November 1947. This resolution also outlines its functions.

The work of the commission is hence, evidently a highly technical one, which required a considerable amount of skill and resources for preparation. However, most of the newly independent Asian and African Countries was hardly in possession of either of these, individually. Further, most of the members of the commission were principally from the west and hence the agenda or the approach of the commission was hardly reflective of the Asian and African concerns. It was hence felt that there was a need for cooperation amongst these States, to pool in their resources and present a collective voice of their concerns, so that there is better visibility and more strength. AALCC was the product of this vision.

In between its years of evolution from the ALCC to AALCO, the organization has performed the functions of : (i) Acting as an advisory organ of Jurists to its member states; (ii) a body for providing Assistance to Asian African States in preparing for Conference of Plenipotentiaries; (iii) Act as a body that presents the collective voice of the Asian and African States at the International Law Commission.

The founding fathers of AALCO had envisaged that one of the important functions of the organization was to “examine subjects that were under the consideration of the international law commission; to consider the reports of the Commission and to make recommendations thereon, wherever necessary to member states”.⁷ Over the years, the “matters relating to the work of the international law commission” has been one of the most important agenda of the work of AALCO. Through these 50 years, AALCO has studied, discussed, commented and made recommendations on a large number of topics considered

⁷ Article 1 (d), Statutes of AALCO, Revised and Adopted at the Bali Session, 2004.

by the ILC. Making a complete account of those is beyond the scope of this paper, owing principally to the constraints of space; however, a brief account is a necessary one.⁸

The establishment of a formal relationship between AALCO and the ILC began with the work of both these organizations on the question of *Diplomatic Immunities and Privileges*. AALCO had begun its work on the subject in 1957, making studies, adopting reports; studying and commenting on the ILC draft Articles and making some formulations drawing on the experiences of member states and the countries from Latin America. The ALCC formulated its own stand on the matter and prepared its own draft articles. These draft articles were officially placed formally before the Conference on Diplomatic Relations and many of those recommendations, particularly those relating to the freedom of communications for diplomatic missions had found its way into the Convention on Diplomatic Relations, 1961. This development then paved the way for the establishment of a formal relation between the ILC and AALCO, with the recognition of the latter as a competent regional organization in the field of international law. This also paved way for ensuring the regular participation of the organization in the Plenipotentiaries Conference convened by the UN in the coming years.

In this context, it may be recalled that at the Forty-Eighth Annual Session held in Malaysia in 2009, the AALCO Member States had adopted the historic "*Putrajaya Declaration on Revitalizing and Strengthening the Asian-African Legal Consultative Organization*". By virtue of this Declaration, Member States had, *inter alia*, reaffirmed their commitment to the

⁸ A full account of the work of AALCO with respect to the topics considered by the ILC can be gathered from: *Background Paper for the Thematic Debate on the Topic "making AALCO's participation in the work of the International Law Commission (ILC) more effective and more meaningful*, Table 1, available at: < <http://www.aalco.int/Thematic%20Debate%20ILC2010.pdf>> last accessed on 7 November 2013.

Organization and recognized its significant contribution towards strengthening Asian-African solidarity, particularly in the progressive development and codification of international law.

They had envisioned revitalizing and strengthening the AALCO so as to ensure that it remains the “main centre for harmonizing the actions of Asian-African States in international legal matters”. The realization of this vision requires that the AALCO should:

Firstly, represent and present the views of Member States in negotiation and codification of international rules;

Secondly, prepare analytical and technical studies for the benefit of Member States to equip them with necessary knowledge while negotiating on international law issues;

Thirdly, engage in capacity-building and training for Member States to understand rights and obligations flowing from international obligations;

Fourthly, provide a forum for exchange of views and experiences which could be consolidated and presented to the law-making process;

Fifthly, render special legal advice and support for member countries including Least Developed Countries who lack expertise in the areas of international law;

Sixthly, provide specific assistance and technical support to requesting Member States for resolving their legal disputes and assisting them in negotiation or international adjudication; and

Lastly, monitoring and report on international legal developments for the benefit of its Member States.

V. STRUCTURE OF THE ORGANIZATION

With close to 50 Member States and a number of topics on its docket, seeking the views of the member states and coordinating with the lawyers and legal departments of these countries is quite a task. In its transition from AALCC to AALCO, the experience of close to four decades has enabled the crystallization of certain practices, events and mechanisms that makes this interaction possible. I will now refer to these mechanisms.

- (i) **Annual Sessions:** The Annual Session is the plenary organ and the highest decision making body on organizational and substantive matters. It meets once annually by rotation and invitation alternatively, in an Asian or African country which is a Member State of the Organization. However, in the absence of an invitation by a member State, the Annual Session maybe convened at the seat of the Organization in New Delhi, India. Participation at the annual sessions has been through high-level Government Departments , which generally includes Chief Justices, Justices, Cabinet Ministers, Attorneys General, Judges and other senior officers of Ministries of Foreign Affairs and Justice. The President and Vice-President of the Organization are elected by consensus from the Heads of Delegations of the participating states at the annual session. They serve in these positions, until the convening of the subsequent Annual Session. In addition, the Annual Session also elects the Secretary-General of the Organization. Besides the participating states, the Organization may at its discretion admit to its annual session observers from non-participating states and from such inter-governmental and non-governmental consultative organizations with which consultative arrangements have been made by the Organization. Such Observers,

however, do not address the meetings or take part in the deliberations of the Organization, unless invited to do so.

The duration of the Annual Session is usually five days; it is now customary to hold in association with an international organization, a special meeting focusing upon a specific theme by inviting subject experts to address the meeting.

(ii) Meetings of Liaison Officers

Liaison Officers nominated by the diplomatic missions of member States located in New Delhi, represent their Governments, during the interval period between the two sessions at the Permanent Headquarters of the Organization. As mandated by the Statutory Rules, Member States nominate officers, preferably one with legal experience, for participation in the Meetings of Liaison Officers. Till date 323 such meetings have taken place and the records of these meetings contain a rich history of the Organizations growth and functioning.

(iii) The Secretariat

The Secretariat is responsible for the day-to-day functioning of the Organization including preparation of technical studies and documentation, provision of advisory services to the Governments of member States and organizing of training programmes. It is located in New Delhi and as per the headquarters Agreement with the Government of India, enjoys diplomatic privileges and immunities.

The Secretariat is headed by an elected Secretary-General who is assisted by International category Officers (Deputy Secretaries general) deputed by Member States, in the rank of Deputy Secretaries-general. Legal and supporting staffs, including officials in professional categories aid the Secretary-General in the discharge of his functions. The Organization also maintains Permanent Observer Missions to the United Nations at New York and Vienna.

(iv) The Centre for research and Training

The Centre for Research and training covers the gamut of the substantive activities of AALCO, including research and dissemination of information on topics of contemporary relevance. In addition the Centre is engaged in (a) capacity building; (b) organizing training programmes, (c) providing internship opportunities and (d) convenes workshops and seminars and arranges discussions or lectures by the international law experts from within and outside the AALCO region. It also maintains the AALCO website which maintains links with the UN and other international organizations.

(v) Regional Arbitration Centres

One of the major achievements of AALCO in its programme in the economic field was the launching of its integrated scheme for settlement of disputes in the economic and commercial transactions in 1978. Pursuant to that scheme it was decided to establish Regional Arbitration Centres under the auspices of AALCO

with the objective to promote and conduct international commercial arbitration in the Asian-African regions.

Four such centres have been established so far, which are located at Cairo, Kuala Lumpur, Lagos and Tehran. A fifth regional arbitration centre will be established in Nairobi to cater to Central and West African Countries. The respective host Government recognizes the Centres independent status and have accorded them the privileges and immunities. Each centre is headed by a Director, appointed by the Host Government in consultation with the Secretary-General. The Directors present their reports on the functioning of the centres at the Annual Session.

VI. IMPORTANT AGENDA ITEMS ON THE WORK OF THE ORGANIZATION

Now I come to the last part of my presentation, the Agenda Items on the work programme of AALCO and how they are introduced.

Since its inception AALCO has worked on a wide range of areas of international law including, law of diplomatic relations, extradition law, treatment of foreign nationals, State immunity and commercial transactions, issues of the law of the Sea, Indian Ocean as a zone of peace etc. The current work programme includes the following topics: (i) Work of the International Law Commission; (ii) Law of the Sea; (iii) Status and Treatment of Refugees; (iv) Deportation of Palestinians and Other Israeli Practices among them the Massive Immigration and Settlement of Jews in all Occupied Territories in Violation of International Law particularly the Fourth Geneva Convention of 1949; (v) Legal Protection of Migrant workers; (vi) Extraterritorial application of national legislation: sanctions imposed against third parties; (vii) International Terrorism; (viii) Establishing cooperation against

trafficking in women and children; (ix) International Criminal Court: Recent Developments; (x) Environment and sustainable development; (xi) An Effective international instrument against corruption; (xii) Work of the UNCITRAL and other international organizations in the field of international trade law; (xiii) WTO as an Agreement and code of conduct for world trade; (xiv) Expressions of folklore and its international protection ; (xv) Human rights in Islam and (xvi) Managing global financial crisis.

It would be interesting to note how these items form part of the agenda. Article 4 (c) of the Statutes constitutes the crux of the functions of AALCO. Under that provision, any Member Government is entitled to refer any item for consideration of AALCO. Upon receipt of such a reference, the Secretariat prepares a background document outlining the scope and related developments in regard to that item. After it is approved by the Heads of Delegations during an annual session, is placed on the agenda of AALCO. The wide range of issues which have been on the agenda of AALCO, following references made by the Member Governments, indicate the utility of AALCO and the confidence it has gained from its member Governments since its existence.

Article 4 (d) of the Statutes is an interesting provision envisaging *suo moto* initiative by the Secretary-General. Keeping in view the stipulated guidelines “to exchange views and information on matters of common concern having legal implications”, the Secretary-General draws attention of the member Governments to important legal issues of common concern and current relevance which need their consideration. In practice such a provision has been very useful and has been implemented in many different ways. Sometimes an expert group meeting or seminar is organized to appraise the member Governments on the importance of the issue. On some occasions a special study or report is prepared by the

Secretariat for consideration by the Member Governments. In fact this provision helps the Secretary-General to keep the AALCO agenda in line with the current developments on international law matters.

With this I come to the end of my presentation and now give the floor to my colleague Mr. Pandiaraj.