Presentation made by H.E. Prof. Dr. Rahmat MOHAMAD, the Secretary-General of AALCO in Third Plenary Session: National Implementation of International Law, World Congress on International Law (Organized by the Indian Society of International Law), 9 January 2015

Honorable Chair, Co-Chair, Excellences, Ladies and gentlemen, at the outset I wish to congratulate the Convener, Steering Committee and the Indian Society of International Law for organizing this World Congress on International Law. I take this opportunity to profoundly thank all the people involved in the organization of this awe inspiring event.

It is my great pleasure to deliver this address at Third Plenary: National Implementation of International Law. My address will be divided into three parts. The first part will concentrate on the traditional attitude and current reception of International law in domestic legal systems of Asian and African states.

In the second part, I will be dealing with some empirical examples of state practice in the field of regional organizations, national courts and upcoming constitutions. In third part, I will be dealing with Asian African Legal Consultative Organization's (AALCO) role in building capacities of member states in implementation of international law and my concluding remarks.

I

The Asian-African region is now becoming more "international law-friendly" when compared with past resentment.[1] The initial hostility of the post-colonial period towards international law[2] is now giving way to increased participation in international law processes, both in terms of institutional participation and in the development of norms.

The relationship between international and national law has traditionally been characterised from a monist or dualist perspective. While this characterisation remains contested, the approach a country adopts has great significance for the effectiveness and application of international law within the domestic legal system. The relationship between the two systems may also determine the extent to which there is cross-fertilisation of norms generated in both systems. The extent to which international law can compel or induce reform in national law hinges on this relationship. The respect afforded to a legal system is enhanced when it is able to influence normative developments in other legal systems.

Accordingly, two approaches to the reception of international law into the national legal system have been posited. Countries have been characterised as "monist" or "dualist." Monists view international and national law as part of a single legal order. Thus, international law is directly applicable in the national legal orders. There is no need for any domestic implementing legislation; international law is immediately applicable within national legal systems. Indeed, to monists, international law is superior to national law.

[1] *See generally* Tiyanjana Maluwa, *International Law Making in Post-Colonial Africa: The Role of the Organization of African Unity*, 49 NETHERLANDS INT'L. L.REV. 81 (2002); P.F. Gonidec, *Towards a Treatise of African International Law*, 9 A.J.I.C.L. 807 (1997).

[2] Georges M. Abi-Saab, *The Newly Independent States and the Rules of International Law: An Outline*, 8 HOWARD L.J. 95 (1962); Abdillahi Said Osman, *The Attitude of Newly Independent States Towards International Law: The need for Progressive Development*, 48 NORDIC JOURNAL OF INT'L. L. 15 (1979); R.P. Anand, *Attitude of the Asian-African States towards certain Problems of International Law*, 15 I.C.L.Q. 55 (1966).

The dualists, on the other hand, view international and national law as distinct legal orders. For international law to be applicable in the national legal order, it must be received through domestic legislative measures, the effect of which is to transform the international rule into a national one. It is only after such transformation that individuals within the state may benefit from or rely on the international (now national) law. To the dualist, international law could not claim supremacy within the domestic legal system although it was supreme in the international legal system.

The relationship between international law and national law and the aforesaid relevant approaches has important practical implications for both systems and their subjects. It determines the extent to which individuals can rely on international law for the vindication of their rights within the national legal system and this in turn has implications for the effectiveness of international law, which generally lacks effective enforcement mechanisms. As Professor Shaw has noted "…it is precisely because of the inadequate enforcement facilities that lie at the disposal of international law that one must consider the relationship with municipal law as more than of marginal importance."[3]

International and national laws have traditionally addressed relatively different issues, the former concentrating on the relationships among states, and the latter relationships among persons within its jurisdiction. In recent times, however, it cannot be denied that there is gradual convergence of interest, and the ultimate goal of both is to secure the well-being of individuals. Areas where this common goal manifests itself include human rights law, environmental law, and commercial law etc., where there is increasing interaction between the national and

[3] IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 31-48 (6 th ed., 2003); MALCOLM N. SHAW, INTERNATIONAL LAW 120-162 (5 th ed., 2003) [SHAW, INTERNATIONAL LAW];

international laws. Thus, international and national laws share a lot in common and an attempt to compartmentalise or isolate them will be analytically inconsistent and practically inappropriate at present.

For common law countries in the Asian-African region, it is, both from a theoretical and practical perspective.[4] Common law countries, unlike their monist civilian counterparts, often adopt a dualist approach to the relationship between international law and national law especially, as regards treaties.[5] This trend of accepting the supremacy and direct application of international law has been complemented by judicial reliance on unincorporated treaties and decisions of international tribunals in adjudication. It is suggested that this trend represents a re-thinking of the relationship between international and national law and its full implications are yet to be explored.

II

INTERNATIONAL LAW AND NATIONAL LAW: REGIONAL ECONOMIC ARRANGEMENTS

From the perspective of the relationship between international and national law, significant developments are taking place within some regional economic arrangements and national legal systems in the Asian-African region. These developments have been propelled by economic, social, and political considerations. National legal systems have been responding to legal developments in other national legal systems and in international law. There is a growing evidence of this vertical and horizontal interaction between and among these legal systems.

[4] P.F. Gonidec, *The Relationship of International Law and National Law in Africa*, 10 A.J.I.C.L. 244 (1998).
[5] Andre Stemmet, *The Influence of Recent Constitutional Developments in South Africa on the Relationship between International Law and Municipal Law*, 33 INTERNATIONAL LAWYER 47 (1999)

Strong institutions are a prerequisite for successful integration. Indeed, the absence of strong independent institutions to counter-balance political inertia to integration is a major reason for the slow pace of economic integration in the Asian-African region notwithstanding multiple initiatives towards economic integration. I will give some examples of regional integration to illustrate the aforesaid understanding on implementation of international law through regional integration.

The East African Community

The Treaty of the East African Community [EAC Treaty], which entered into force in 2001, establishes a community consisting of Kenya, Uganda, and Tanzania. The objective of the community is to develop policies and programmes aimed at widening and deepening co-operation among the member states in the political, economic, social, and legal fields among others. The EAC Treaty envisages a customs union, a common market and ultimately, a political federation of the states involved. The achievement of these demands the transfer or surrender of some level of sovereignty to the community and its institutions. [6]

Accordingly, the EAC Treaty grants sovereignty to community institutions and organs and elevates community law above national laws. Article 8(4) of the treaty provides, "Community organs, institutions and laws shall take precedence over similar national ones on matters pertaining to the implementation of this Treaty." The treaty also establishes the East African Court of Justice. The decisions of this court "have precedence over decisions of national court on a similar matter." The importance of these provisions partly lies in their recognition of the

[6] http://www.eac.int/documents/EAC%20Treaty.pdf [EAC Treaty]. *See generally* W. Kaahwa, *The Treaty Establishing the New East African Community: An Overview*, 7 AFRICAN YEARBOOK OF INT'L. L. 61 (1999);

importance of the strong institutions for the success of economic integration and the willingness to provide for that.

This initiative by the East African Community represents a great leap towards collective exercise of sovereignty-through an international institution- by the states concerned. It reveals an approach to regional economic governance worth emulating on the continent. Economic integration in Africa will be strengthened under the governance of strong institutions at the community level. The East African Community initiative also represents a significant advance in the status of international law.

The Organisation for the Harmonisation of Business Law in Africa

The objective of the Treaty establishing the Organisation for the Harmonisation of Business Laws in Africa (OHADA) is to harmonise the business laws in the Contracting States. This is to be done through the elaboration and adoption of simple modern common rules adapted to their economies. Currently, OHADA has a membership of sixteen states. Most of them are francophone states with the majority in the West African sub-region. The willingness by these African governments to abandon their disparate national laws and adopt a unified one is a triumph for international law and cooperation on the continent. Unification of law ensures certainty. People transacting across national boundaries will be subject to the same substantive law, thus ensuring equality of legal treatment, and a potential reduction in transaction cost. If law is the cement of society, then it can also be argued that a people living under a unified system of law will feel more connected with one another hence an opportunity for social integration is provided by OHADA.[7]

An examination of the treaty provides yet another evidence of the preparedness of African governments to re-think the relationship between international and national law by relinquishing a measure of sovereignty to promote economic development. Under the treaty, member states have given up some level of national sovereignty in order to establish a single cross-border regime of uniform business laws called Uniform Acts. It cannot be denied that the very existence of the initiative, and the number of Uniform Acts so far agreed upon is impressive. Among the Uniform Acts currently adopted are, Uniform Acts on General Commercial Law, Commercial Companies and Economic Interest Groups, Secured Transactions, Bankruptcy, Debt Collection Procedures, and Accounting Law.

[7] http://www.ohada.com/traite.php [OHADA Treaty]; Claire Moore Dickerson, *Harmonising Business Laws in Africa: OHADA Case Calls the Tune*, 44 COLUMBIA J. TRANSNAT'L L. 17 (2005)

The African Economic Community

The Treaty establishing the African Economic Community [AEC Treaty] represents another evidence of the preparedness of African governments to re-examine the relationship that exists between international and national law. The treaty envisages an economic community covering the whole of Africa. This will be achieved through defined stages including a free market, a customs union, and a common market. All of these entail the surrender of some level of sovereignty to the community.

The experience of Europe, in terms of the doctrine of direct effect and supremacy of community law, demonstrates that the affirmation of the AEC as a legal system has serious implication for the operation of community law within national legal systems. It will subject the legal systems of the member states to the norms of the community legal system in areas within the competence of the community.

Under the AEC Treaty, community law may apply automatically within national legal systems. While the automatic enforceability of community law within the national legal system of the member states is explicit, that cannot be said of the question of supremacy of community law. In this regard, the approach of the AEC Treaty contrasts sharply with the other regional arrangements, which are very explicit of the question of supremacy.

South Asian Association for Regional Cooperation (SAARC)

The primary objectives of SAARC are to promote the welfare of the peoples of South Asia and to improve their quality of life, to accelerate economic growth, social progress and cultural development in the region, to promote and strengthen collective self-reliance among the

countries of South Asia and to promote active collaboration and mutual assistance in the economic, social, cultural, technical and scientific fields.

South Asian Association for Regional Co-operation in Law (SAARCLAW) was established in Colombo in 1991. Having the status of a Regional Apex Body of SAARC, it is an association of the legal communities of the SAARC countries comprising judges, lawyers, academicians, law teachers, public officers and a host of other law-related persons. It is the product of the desire of the members of the legal community to establish an association within the SAARC region to disseminate information and to promote an understanding of the concerns and developments of the region. The main thrust of its operation since its inception has been to bring together the legal communities within the region for closer co-operation, development of understanding, promotion of exchange of ideas and dissemination of information.

South Asian Preferential Trade Arrangement (SAPTA) was the first experiment in pioneering a Regional Trade Agreement (RTA) within the framework of SAARC. However, SAPTA offered a very limited scope for trade liberalization and admittedly was not an effective building block to integrating trade between the member countries. Yet, it had put in motion a pattern of promoting intra-regional trade through a preferential regime, phase-wise. SAPTA's lessons, in the least led to another improvised regional trade agreement, the South Asian Free Trade Agreement (SAFTA). SAFTA increased the scope of regional trade, offered more tariff cuts and registered a modest increase in intra-regional trade as a result.

Association of Southeast Asian Nations (ASEAN)

The ASEAN Charter created both continuity and change in the region's legal framework and processes. On the one hand, Article52(1) of the ASEAN Charter provides that "[a]ll treaties, conventions, agreements, concords, declarations, protocols and other ASEAN instruments which have been in effect before the entry into force of this Charter shall continue to be valid." To avoid normative conflicts, Charter rights and obligations expressly prevail over inconsistent norms in pre-Charter instruments. A key ASEAN Principle "reaffirms and adheres to the fundamental principles contained in the declarations, agreements, conventions, concords, treaties and other instruments of ASEAN."

Evidently pre-Charter "ASEAN Law" would continue to bind ASEAN Member States unless otherwise provided in the Charter or terminated by future legislation in ASEAN's new institutions. The Charter obligates ASEAN Member States to "take all necessary measures, including the enactment of appropriate domestic legislation, to effectively implement the provisions of this Charter and to comply with all obligations of membership."

Significantly included among the broad compass of Charter provisions that ASEAN Member States are expressly obligated to implement are "the United Nations Charter and international law, including international humanitarian law, subscribed to by ASEAN Member States". It also provides for "multilateral trade rules and ASEAN's rules-based regimes for effective implementation of economic commitments and progressive reduction towards the elimination of all barriers to regional economic integration, in a market-driven economy" as well as "adherence to the rule of law, good governance, the principles of democracy and constitutional government" and "respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice."

Given these broadly worded terms of obligation, Southeast Asian states appear to have expressly accepted a much wider range of international legal norms than their commitments under the pre-Charter ASEAN. A further innovation in the ASEAN Summit is its generously worded and undefined emergency powers. This merges with the Charter Purpose of effective response, "in accordance with the principle of comprehensive security, to all forms of threats, transnational crimes and transboundary challenges." Arguably, this untested residual authority exists in addition to the plenary rule-making powers of the ASEAN Summit.

International Law and National Courts

(a) Reliance on unincorporated treaties

It is a fundamental principle of the common law that a treaty does not have the force of law within the national legal system unless implemented by domestic legislation.[8] This principle has the doctrine of the separation of executive and legislative powers at its foundation. In recent times however, some national courts in the Asian-African region have demonstrated a willingness to rely on international human rights conventions in adjudication, even when they have not been incorporated into the national legal system.

In Kesavananda Bharati V. State of Kerala Honorable Chief Justice Sikri,., speaking for the Supreme Court of India "while referring to the provisions of the UN Charter on human rights, observed: in view of Art 51 of the directive principles, this Court must interpret the language of the Constitution, if not intractable, which is after all a municipal law, in the light of the United Nations Charter and the solemn declaration subscribed to by India." The doors were therefore

[8] The Parlement Belge (1879) 4 PD 129; A-G of Canada v. A-G of Ontario [1937] A.C. 326 at 347 per Lord Atkin.

thrown wide open for international law to play a part in the development of human rights and personal liberties in this country.

In "Jolly Verghese v. Bank of Cochin", Honorable justice V.R. Krishna Iyer of India, speaking for the court held: "India is now a signatory to this Covenant and Art. 51(c) of the Constitution obligates the States to "foster respect for international law and treaty obligations in the dealings of organized peoples with one another". Even so, until the municipal law is changed to accommodate the Government what binds the court is the former, not the latter.

In 1997, the Supreme Court laid down guidelines in the Vishaka case, pending formal legislation, for dealing with sexual harassment of women at the workplace. An offshoot of a rape case involving a social worker in Rajasthan, the verdict defined sexual harassment, laid down duties of employers in dealing with complaints and stipulated formation of committees to dispose of complaints from victims of harassment. The verdict invoked provisions of international law including the Convention on the Elimination of all forms of Discrimination Against Women.

In *Unity Dow v. Attorney General*,[9] the court's interpretation of the relevant legislation was "strengthened" by the fact that Botswana was a signatory to the OAU Convention on Non-Discrimination even though Botswana had not ratified it, a fact that the judge expressly acknowledged. The court also cited the UN General Assembly Declaration on the Elimination of Discrimination against Women (1967) in reaching its decision. With words which seem to cast doubt on the thinking that unincorporated treaties do not confer rights on individuals, Amissah JA held "*even if it is accepted* that those treaties and conventions do not confer enforceable rights

[9] (1991) 13 HUM. RTS.Q. 614, 623 (High Court Botswana, Misca. 124/90)

on individuals within the state until parliament has legislated its provisions of the law,"[10] [emphasis added] they could be used as aids to construction.

Similarly, in the Ghanaian case of *New Patriotic Party v. Inspector General of Police*,[11] Archer CJ held that the fact that Ghana had not passed specific legislation to give effect to the African Charter on Human and Peoples' Rights did not mean it could not be relied upon. In the Nigerian case of *Abacha v. Fawehinmi*,[12] the Supreme Court accepted that an unincorporated treaty might give rise to a legitimate expectation by citizens that the government, in its act affecting them, would observe the terms of the treaty. The jurisprudence on the doctrine of legitimate expectation shows that it significantly relaxes the rule that an unincorporated treaty cannot confer rights or impose duties in domestic law.

There are no explicit provisions in the constitutions of these countries that allow the courts to rely on international law in adjudication. Thus, it can be argued that this reliance on unincorporated treaties represents an assertion, by the judicial branch, of autonomy from both the legislature and the executive, who are responsible for treaties and their incorporation into national law. Indeed, the language of the Courts -"strengthened," "relied upon," and give rise to "legitimate expectation"- gets stronger with each judgment. The scope of the language is broad and is pregnant with serious implications for the enforcement of international law in national courts.

Reference to decisions of international tribunals

[10] *Id*. at 161.
[11] [1993-94] 2 G.L.R. 459, 466.
[12] [2000] 6 NWLR 228, [2001] AHRLR 172 (NaSC 2000)

Aside from relying on unincorporated treaties, some domestic courts have utilised decisions of international tribunals in adjudication.[13] These tribunals include, the International Court of Justice, International Criminal Court for the Former Yugoslavia, European Court of Justice, European Court of Human Rights and the Inter-American Court of Human Rights. The choices to use decisions of these international tribunals are put to ranges from mere reference to direct application. The jurisprudence the national courts rely on relates to both the existence and interpretation of existing international norms. As Bedjaoui suggests, this technique provides a means by which the "ramparts of State sovereignty is breached, thus enabling the norm or judicial decision to pass from the international legal order into the municipal legal order."[14]

In this respect, it is significant that the international tribunal's jurisprudence may be one in which the state in question has not consented to or in any way participated in its formation. Indeed, decisions of international tribunals are, ordinarily, binding only on the parties to the litigation. Additionally, unlike the relationship between some international tribunals and domestic courts, there is no formal state-treaty mandated relationship between the national courts and the international courts from which they are borrowing.

This conception may reflect a belief in a shared judicial goal of ensuring justice for all irrespective of the source from which the norm that will facilitate this goal emanates, and a desire, on the part of the national courts, to enhance their 'legitimacy' in the eyes of the international community by acting as enforcers of international law and values.

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[13] *See generally* Ann-Marie Slaughter, *A Typology of Transjudicial Communication*, 29 U. RICH. L. REV. 99 (1994-1995) [Slaughter, Transjudicial Communication]. ANN-MARIE SLAUGHTER, A NEW WORLD ORDER, 65-103 (2004).

[14] Mohammed Bedjaoui, *The Reception by National Courts of Decisions of International Tribunals*, in INTERNATIONAL LAW DECISIONS IN NATIONAL COURTS, 23 (Thomas M. Franck and Gregory H. Fox ed., 1996).

International Law and National Constitutions

There is also a trend towards the adoption of "international law-friendly" constitutions, among some the Asian-African countries which have recently adopted new constitutions.[15] Especially in Anglophone Africa, there seems to be a gradual abandonment of the practice of "avoiding the constitutional incorporation of international law altogether."[16] Article 144 of Constitution 1990 of Namibia can be said to represent the first manifestation of these international law friendly constitutions. Article 144 provides that:

> "Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia."

The 1992 Constitution of Cape Verde is more far reaching. Article 11 provides:

> "General or common international law, insofar as it is in force in the international legal order, shall be an integral part of the Capeverdean legal order… Legal acts emanated from the relevant organs of the supranational organizations of which Cape Verde is a member, shall enter directly into force in the domestic legal order, provided that that is so established in the respective constitutive instruments. The rules and principles of general or common international law and of conventional international law, validly approved or ratified, shall prevail after their entry into force in the international and domestic legal orders, over all legislative and domestic normative acts of an infra-constitutional value."

[15] French colonies have traditionally had provision incorporating international law into the domestic law.
[16] A. Cassese, *Modern Constitutions and International Law*, 192(3) RECUEIL DES COURS 341, 405-408 (1985).

The 1993 Interim Constitution and currently article 39(1) and 233 of the 1996 South African Constitution provide yet another evidence of these international law friendly constitutions. It has been noted that, if the general rules of public international law in the Namibia Constitution is interpreted narrowly to exclude customary international law, then, the fact that the South African provision extends to the incorporation of customary international law makes it a first since no similar provision in other Constitutions in the Asian-African region exists. By specifying that customary law is part of the law of the country, it puts to an end the debate over whether customary law is part of the domestic law by virtue of incorporation or transformation.

These provisions in the constitutions of Namibia and South Africa can be said to represent an acknowledgement of the special role international law played in the struggles for independence and against apartheid in these two countries.[17] International law is seen as providing a neutral foundation for development a new legal order distinct from the old that was marked by apartheid. Reaching out to international law also serves as a means of becoming part of the global community after decades of isolation.

The idea of international law-friendly constitutions in the Asian-African region should not be confined to the express inclusion of international law as part of national law. International law continues to influence the structure and workings of many national constitutions. One area this manifests itself is the incorporation of human rights and environmental law provisions into all the emerging constitutions on the continents. Human rights provisions inspired by various international human rights instruments, such as the Universal Declaration of Human Rights, the

[17] Georges Abi-Saab, *Namibia and International Law: An Overview*, 1 AFRICAN YEARBOOK OF INT'L L. 3 (1993).

Covenant of Civil and Political Rights, and the Covenant on Economic, Social and Cultural Rights, are now routinely incorporated into national constitutions in the Asian-African region.

These constitutional provisions put courts on a surer foundation when using international law in domestic adjudication, both as an interpretive device and for the creation or conferment of substantive rights. Indeed, some of the constitutions specifically enjoin the judiciary to have regard to international law in adjudication. These provisions represent a shift, especially in common law countries, from the situation where reliance on international law as an aid to interpretation did not have direct statutory or constitutional foundation but was the result of common law rules.

These constitutional provisions also reflect the extent to which the Asian-African countries are becoming open to and receptive of outside normative influences. In this era of globalisation this is inevitable but what is revealing here is that it is being explicitly acknowledged and fostered.

III

Role of AALCO: Capacity Building

In accordance with the Putrajaya Declaration of Revitalizing and Strengthening the Asian-African Legal Consultative Organization made at the 48th Session in 2009, AALCO Secretariat has worked industriously towards reaffirming the importance and relevance of AALCO in the field of international law and in shaping an effective multilateral system for the benefit of member states.

The constitution of the *Eminent Persons Group* (EPG) comprising of eminent international law practitioners and jurists from Asian and African states, whose core mission is to guide and assist

the Secretary General of AALCO as regards the direction of the organization and ascertaining challenges in the international legal order that AALCO can help resolve.

One of AALCO's principal statutory obligations is to represent the Asian-African perspective in the deliberations of the International Law Commission (ILC) and to ensure that the nations in the region are aware and informed of developments made by ILC and that their opinions and perspectives are heard by the ILC.

AALCO has also embarked on a number of capacity-building programmes with other international organizations such as the UN Office of Legal Affairs (UNOLA), the International Criminal Court (ICC), the World Trade Organization (WTO), and the International Committee of the Red Cross (ICRC) in order to assist Member States in strengthening their regional and national capacities to implement legal obligations.

Simultaneously AALCO has continued its work as a Permanent Observer at the United Nations in New York and in Vienna, with the organization of meetings of Legal Advisors from AALCO member and non-member states on the sidelines of the UN General Assembly sessions to discuss and deliberate on pressing matters of international law.

One of the continuing enterprises by the secretariat is to strengthen and build a strong working relationship with other regional organizations like Association of Southeast Asian Nations (ASEAN), ECONOMIC COOPERATION ORGANIZATION (ECO) and South Asian Association for Regional Cooperation (SAARC).

In an effort to disseminate knowledge both on international law and on the Asian-African perspective, the secretariat has published several books and journals. The AALCO Journal Of

International Law, has earned respect and academic credibility before the international community. The verbatim records of the Annual Session and AALCO Year Book are valuable resources which document state practice of member states on various issues of International Law.

Conclusion

I have tried to provide some empirical evidence of the changing attitudes towards the relationship between international and national law in the Asian-African region. International law is influencing and shaping national legal processes and decision-making in a manner quite unknown in the past. As a result,the concept of sovereignty, which suggested that national legal systems are supreme and immune from outside interference, is being re-assessed. The content of national legal rules also continues to be shaped by international law. Indeed, some have had to be abolished in response to the dictates of international law. This is occurring through the direct incorporation of international laws, such as in the area of human rights, into national constitutions, and indirectly through judicial decision-making, which takes account of international law. The interaction between the two legal orders is also raising questions of domestic power relations and the law-making processes at the international level.

Indeed the empirical examples cited, reveals a shift in the traditional understanding of sovereignty as it relates to the relationship between the international and national legal systems. It represents a significant shift, even if in theory, on the part of countries that were once characterised as "reluctant to incorporate international law directly into their national constitutions and thereby make it an integral part of their municipal law." The efforts at

economic integration in Africa and Asia may also benefit from the integration of community law into domestic legal systems, and the concomitant change in the meaning of sovereignty.[18]

Clearly, this re-examination or evolution of sovereignty is going on both in the legal and political realm. The principle of non-interference in domestic affairs, which was a cardinal principle of the Organisation of African Unity (OAU), has become a vestige of the past upon the coming into force of the Constitutive Act of the African Union. Under article 4(h) of the Constitutive Act member states recognise "the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity."

Additionally, I would like to state that international law should, not be conceived as limited to international human rights law. While it appears the Asian-African academics, judges, legislators and politicians have recognised the importance of international law, a significant amount of the international law discourse and jurisprudence in the Asian-African region have focused on international human rights law.

While this devotion to human rights law is to be encouraged, we appear to have neglected other equally significant areas of international law. Unless we broaden our focus, we risk losing the reformative and developmental benefits that can come from other areas such as international commercial law, international financial law, and private international law. It is only when our engagement with "the international" begins to recognise the unexplored potentials in these areas

[18] *Balance of Power: Redefining Sovereignty in Contemporary International Law*, 40 STANFORD J. INT'L. L. 195-386 (2004); John H. Jackson, *Sovereignty-Modern: A new Approach to an Outdated Concept*, 97 A.J.I.L. 782 (2003).

of law that we can secure the full benefits of international law for individuals in and development of the Asian-African region.