

**ADDRESS OF AMB. DR. WAFIK ZAHER KAMIL, SECRETARY-GENERAL AT
THE CHINESE SOCIETY OF INTERNATIONAL LAW, BEIJING, PEOPLE'S
REPUBLIC OF CHINA, 30 AUGUST 2004**

**Hon'ble President and Distinguished Members of the Chinese Society of
International Law, Dear Colleagues**

**It is a great honour for me for having got the opportunity to address this
distinguished galaxy of international law scholars of the Chinese Society of
international law.**

I. INTRODUCTORY REMARKS

**The nature and substance of international law has undergone sea change through
years. The place of individual in international law was almost absent. The basic
premise on which international law was looked at was the regulation of relations
between States. Therefore, relations between individuals and the relations between
the individual and the State were left to the domain of domestic law of the
concerned State. However, the concern for the protection of individual rights has led
to the recognition of the individual in the larger framework of international law.
Thus, the entire corpus of human rights treaties is based on the premise that it is not
just the relations between States but it is also the protection of individual vis-à-vis
her own State. Therefore, the trajectory of development of international law has
been that of, as argued by some, from the State centric to the individual centric.
Similarly, till recently the international law making has been left to the exclusive
domain of States only as it was considered that the State was the sole representative
of its people. However, with the changing circumstances, it has been recognized at
the international level the role-played by the civil societal groups in the public
opinion making and their relevance to the democratic functioning of the
international decision-making. Thus, it led to the participation of non-
governmental and other independent groups in the process of the international law
making. In this process, though States remain the final decision makers, the role
played by these groups is of no less significance. Therefore, the space conceded to**

the non-state actors in the international law making has turned out to be fruitful and contributed to the democratization of the decision making process. To deduce a conclusion from this, non-state actors played a considerable role in the changing process of the nature and substance of international law. In other words, I would underline in this regard the immense significance and relevance of bodies like the Chinese Society of International law. As the experience has shown, bodies like yours play a significant role in developing alternative perspectives on issues of relevance whenever it is considered necessary.

II. AALCO AND NATIONAL SOCIETIES OF INTERNATIONAL LAW: STRENGTHENING COOPERATION WITH THE CHINESE SOCIETY OF INTERNATIONAL LAW

AALCO as a legal body of Asian-African States recognizes and values the contribution of National Societies. With this realization, it had always been the policy of the Organization to enter into mutually beneficial relationships with such Societies in Asian-African countries. Since our headquarters is in India, our relationship with the Indian Society of International Law is on a very firm footing. In the past we had organized Seminars on important topics of international law such as the Law of the Sea, International Criminal Court, International Humanitarian Law etc. Furthermore, our staff members have contributed well-researched articles in their flagship publication-the Indian Journal of International Law.

We can also likely explore the avenues in which the AALCO and the Chinese Society of International Law could cooperate and strengthen their relationship. We can have mutual exchange of publications and jointly organize Seminars and Workshops. AALCO can contribute in terms of resource persons from its Member States for such a Seminar. My address here today could be the stepping stone for establishing such a long-term relationship. We may commence this endeavor by mutual exchange of publications. I am quite confident both the AALCO and your Society will stand benefited from such a active relationship.

Now I would like to take this opportunity to present before this august gathering how the Organization that I lead contributes to the progressive development and codification of international law.

In November 2004, the Asian-African Legal Consultative Organization would complete forty-eight years in the service of its Member States. From a small beginning composed of a membership of seven governments, emerging as an outcome of the historic Bandung Conference, the Organization gradually established itself, over the years, as a major forum for international legal cooperation. Its Work Programme has also been suitably oriented to meet the needs of an expanding membership which now includes forty-seven states from the Asian and African continents. Consistent with the global impact of its activities on major issues of international concern, the Annual Sessions of the Organization have been attended in the past forty-three sessions, apart from the Member States, by an increasing number of Observer delegations and international organizations from all parts of the world.

The AALCO's activities as envisaged in its Statutes are primarily directed towards progressive development of international law, consideration of legal problems referred to it by Member Governments, and follow-up of the work of the International Law Commission and the United Nations. The main objective behind its establishment, however, was the creation of a regional forum to bring about closer cooperation amongst its Member States, which envisaged expansion of its activities in other areas to meet the needs of its Membership.

III. AALCO AND INTERNATIONAL LAW COMMISSION

It is pertinent to mention in this regard the cooperation that AALCO has with the International Law Commission (ILC). We all know that the International Law Commission is the principal body for the progressive development of international law and its codification under the United Nations system. The ILC also carries the

legacy of nearly hundred years of international law making, as it is the successor to the Committee of Experts for the Progressive Codification of International Law under the League of Nations system. Thus, the founders of the AALCO decided that it is imperative for the Organization to have close cooperation with the ILC with a view to influencing the outcome of the ILC work. Accordingly, Article 1 (d) of the present Statute of AALCO mandates it to examine subjects that are under consideration by the International Law Commission and to forward the views of the Organization to the Commission.

As the *raison d' être* of AALCO is to provide a forum for exchange of views among Asian and African States and to arrive at a common minimum consensus on issues of common concern, it becomes necessary to demonstrate these views before the international community. To fulfill this obligation, the Secretary-General of AALCO presents the views of AALCO Member States every year to the ILC during its annual sessions. This activity of AALCO is considered very significant by the Member States as well as ILC for an obvious reason that the Member States get a hearing from the Commission to their views, which otherwise is not generally possible. Similarly, the ILC also, through this process, receives the views from the perspective of a large number of countries from Asia and Africa.

Despite the fact that considerable part of contemporary international law making process is taking place out side the ILC, it remains to be the primary institution for the progressive development and codification of international law. Therefore, the cooperation that we built through the years is of vital importance as it was evidenced in the past, with similar prospects for the promising results in the future.

IV. COOPERATION WITH THE UNITED NATIONS, ITS SPECIALIZED AGENCIES AND OTHER INTERNATIONAL ORGANIZATIONS

AALCO enjoys Observer status with the UN General Assembly since 1980. Every biennium, an “Item” on the Agenda of the General Assembly, related to “Cooperation between the Asian-African Legal Consultative Organization and the

United Nations” is considered by the Assembly. As Secretary-General of AALCO, I make an address before the General Assembly. Further, it is now an established tradition that on the sidelines of the Session, a meeting of Legal Advisers of AALCO Member States is organized. This meeting was further enriched last year as part of it was a joint seminar with ILC on topics like: (i) Responsibility of International Organizations; (ii) Shared Natural Resources; and (iii) Jurisdictional Immunities; which was attended by Ambassador Enrique Candioti, Chairman of ILC; and following Members of ILC Dr. Giorgio Gaja, Amb. Chusei Yamada and Prof. Chee.

As regards the participation of AALCO Member States in the work of the General Assembly, the Secretariat, in order to assist Member States in deliberations in the General Assembly Session, prepares for every Session, Notes and Comments for selected items on the GA agenda, particularly that of the Sixth Committee.

On matters concerning Status and Treatment of Refugees, AALCO and UNHCR have close relations. With its involvement in International Trade Law matters, AALCO initiated its co-operative arrangements with UNCITRAL, UNCTAD, UNIDO and other Inter-governmental Organizations, such as the UNIDROIT and the Hague Conference on Private International Law. It has Cooperative Agreements with the IMO, IAEA, UNIDO, UNEP, UNITAR, Council of Europe, Commonwealth Secretariat, League of Arab States and the African Union (formerly Organization of African Unity).

In my tenure, Co-operation Agreements were signed with the WIPO, IOM, OHCHR, UNHCR, ICRC and the United Nations University (UNU). Furthermore, considerable progress has been made in the negotiations with UNCTAD and UNICEF to conclude such agreements. I intend to initiate such a process with Organization for Islamic Conference, NAM and the ASEAN as well.

Periodic activities in form of Inter-Sessional activities or Special Day Meetings during the Annual Sessions provide life and breath to these Agreements. It has been

my continuous endeavour to organize more and more seminars and workshops with our sister International Organizations.

I wish to add that these co-operation agreements provide very useful basis for organizing joint meetings and seminars on topics of mutual interest with these Organizations. They provide funds for the participation of resource persons and experts, which enrich the deliberations in the AALCO meetings.

V. AALCO'S WORK PROGRAMME AND ITS FUNCTIONING

The Organization's programme of work and the method of functioning focuses its attention and lays greater emphasis towards assisting Asian African countries to prepare themselves on some of the major questions and issues before the United Nations. There were three basic reasons behind this move. In the first place to ensure Organization's involvement in important subjects; secondly a number of Asian African countries needed a certain expertise and assistance to enable them to play a meaningful role in international negotiations; and thirdly, that the Organization should become an effective forum for Asian African cooperation committed to the service of the region as a whole consistent with its origin as an outcome of the Bandung Conference. In pursuance of its mandate, the AALCO is guided by the basic principles of international law, including the Five Principles of Peaceful Co-existence have been widely accepted by the international society, and are playing an increasingly important role in maintaining international peace and security.

The work-programme of the Organization is carried out by the Secretariat comprising an elected Secretary-General, senior officials of Member States on secondment to the Secretariat as either Deputy or Assistant Secretary-General, and the Staff in the professional and administrative categories.

VI. CURRENT WORK PROGRAMME

The role and range of the AALCO's involvement in the progressive development of international law is evident from its current work programme, which has as many

as 16 topics¹ on its agenda. The contribution of AALCO towards the development of the United Nations Convention on the Law of the Sea of 1982, especially pertaining to the Exclusive Economic Zone and the Archipelagic States is well-known. Therefore, I would refrain in my address from highlighting that. However, it would be pertinent to draw attention to some of the recent developments of current interest in selected topics on our work programme and in doing so I will briefly touch upon the manner in which AALCO is dealing with these topics.

(i) An Effective International Legal Instrument Against Corruption

Corruption is a global problem, which poses serious threat to the development of a country. States, especially developing countries, are victims of this problem. Corruption, apart from effecting the public at large, also causes reduced investment, social polarization, lack of respect for the rule of law and human rights, undemocratic practices and diversion of funds intended for development and essential services, effects governments ability to provide basic services to its citizens and to encourage sustainable economic social and political development. As the Asian and African countries are the most affected victims by this menace, and taking into consideration the resolution of the General Assembly to formulate a comprehensive international convention against corruption. I was invited to attend the Global Forums II (The Hague, 2001) III (Seoul, 2003), after attending Global Forum II, I suggested in 2001 the introduction of this topic on AALCO's agenda, a suggestion which was highly appreciated by the Member States. Since then, AALCO has been an active participant in the elaboration process of this Convention till its adoption in 2003.

The current work programme of AALCO focuses on compilation of national legislation in combating corruption in order to establish a network between law enforcement agencies, and assist Member States in implementation of the Convention.

(ii) Establishing Cooperation Against Trafficking in Women and Children

Today trafficking in human beings has become a global business, generating huge profits for traffickers and organized crime syndicates, creating serious problems for governments of countries involved at exposing the victims to exploitation and violation of their fundamental human rights.

The UN Convention Against Trans-national Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000 *inter alia* is intended to combat trafficking in persons and facilitate international cooperation against such trafficking. Since the countries of our region are the worst affected by this problem, solution of which demands close cooperation between States, especially their law enforcement agencies, it was considered timely to include it on the AALCO's agenda in 2001. The AALCO in cooperation with UNICEF, UNHCR Agencies, IOM, and the Government of Indonesia organized a special meeting on this topic at its recently concluded Bali Session and the resolution adopted on the subject thereat *inter alia* underlined the urgent need for broad concerted and coordinated cooperation at the international, regional and all levels, among Member States. The current Work-Programme of AALCO is to develop in cooperation with its Member States a Model Law for the Criminalization of Trafficking in Persons, as well as Protection of Victims of Trafficking, especially women and children who are more vulnerable based on a human rights approach, with a view to developing a concrete plan for a joint effort against trafficking in persons.

(iii) 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

One of the flash points affecting international peace and security lies in the Middle East, intensified since 1967. Over the years, Israel which was established in 1948 as the Occupying Power has continued the use of excessive and indiscriminate force against the civilian population under its occupation committing war crimes, state terrorism and systematic human rights violation against the Palestinian people on a regular basis. In this context, we may refer to the recent Advisory Opinion of the International Court of Justice on the *Legal Consequences of the Construction of a wall by Israel in the Occupied Palestinian Territory*. The Court *inter alia* ruled that Israel was bound to comply with its obligations to respect the right of the Palestinian people to self-determination and its obligations under international humanitarian law and human rights law. Outside the UN forum the AALCO has and will continue to highlight the plight of the Palestinian people and their right to their own homeland and will always condemn Israel's acts of violence and use of force against Palestinians, resulting in injury, loss of life and destruction, coercive migration and deportation in violation of Human Rights and the Fourth Geneva Convention of 1949.

(iv) International Humanitarian Law

The relevance of adhering to principles of international humanitarian law has never been greater than it is today. There are many parts of the world particularly in Asia and Africa which are exposed to armed conflict, in particular with recent advances in technology weapons are becoming more sophisticated causing growing casualties to a large number of innocent civilians. AALCO attaches great significance to these principles and their proper application and with this objective in mind last year during the Seoul session a special meeting in cooperation with the ICRC and the host government was convened. Therefore, it is all the more necessary to have mechanisms that deter atrocities before they occur, as it sends a message that impunity will not be tolerated, and/or address the atrocities if we have not been successful in our effort. A follow-up of Seoul resolution was made at Bali where the

representative of ICRC explained the functioning of the National Committees, which implement international humanitarian law at the national levels.

(v) World Trade Organization

The item of Public International Trade law has been in the agenda of AALCO since 1970. In 1995, when the WTO, which provides framework agreement and code of conduct for the world trade, was established, AALCO felt the need for including this item in its work programme. Since then it has been considering the evolution of the legal and institutional setup and also reporting on the developments in the Doha Development Round of Negotiations.

The main focus of the AALCO activities on WTO is to analyze the developments and progress in the review process of the Understanding on Rules and Procedures Governing the Settlement of Disputes which is considered as cornerstone of the WTO legal system. In this context, to facilitate the AALCO Member States in understanding the underlying issues in the special and differential treatment within the DSU (Dispute Settlement Understanding) and other Agreements afforded to developing and least developed countries, AALCO had also prepared a special study in 2003. Though the review process of the DSU has been initiated in the Special Session of the Dispute Settlement Body, no major progress has been achieved yet and there is only consensus on very minor procedural improvements.

(vi) Expression of Folklore and its International Protection

One of the recently introduced items on the work programme of AALCO is “Folklore and its International protection”. This item was introduced to complement the work of the Intergovernmental Committee established by WIPO with the objective of formulating a legal and policy option for the protection of expressions of folklore and a possible international legal instrument. International protection of folklore is of particular importance to the Asian and African countries, which supports majority of the world's folklore. The absence of a protective legal mechanism has resulted in folklore being commercialized without due respect for

the cultural and economic interests of the communities in which it originates and is often distorted or mutilated for business interests. At the same time, no share of the returns from its exploitation is conceded to the communities who have developed and maintained it. The existing intellectual property rights protection regime is inadequate to address all the issues involved in the protection of folklore.

AALCO strongly feels that there is indeed a need to negotiate a legally binding international instrument to protect folklore. Keeping this in view AALCO has deliberated upon this item at its 43rd Session (2004) and intends to hold a joint seminar of experts with WIPO on folklore matters.

(vii) International Terrorism

Another major challenge before the international community is to tackle the problem of terrorism in its various manifestations. September 11 events have further necessitated the need to address the problem in its totality. It is to be underlined in this regard that the United Nations Ad Hoc Committee has initiated drafting of a comprehensive convention on combating international terrorism on the draft proposal made by one of member countries i.e., India. As the issues involved in addressing terrorism are complex in nature, the progress in the work of the Ad Hoc Committee is rather slow. However, it is expected that a consensus would emerge soon and the countries from Asia and Africa have a significant role to play in this direction.

VII. AALCO'S SCHEME FOR SETTLEMENT OF DISPUTES

Way back in 1973, the Organization decided to study important practical problems relating to the subject of International Commercial Arbitration from the point of view of the Asian-African region. This study suggested that efforts should be made by Member States to develop institutional arbitration in the Asian and African regions. Thereafter, the Secretariat formulated principles or model rules for consideration of Member States and undertook a feasibility study for establishing

regional arbitration centers in the Asian-African region. In 1977, the Secretariat presented a Scheme for the establishment of a network of Regional Centres for Arbitration functioning under the auspices of the AALCO in different parts of Asia and Africa so that the flow of arbitration cases to arbitral institutions outside the Afro-Asian region could be minimized. Based upon this the Organization established two Regional Centres for International Commercial Arbitration Centers at Kuala Lumpur (1978) and Cairo (1979).

A third Centre was formally inaugurated in March 1989 in Lagos and regarding the fourth Centre at Tehran an Agreement was concluded between the Government of the Islamic Republic of Iran and AALCO on 3 May 1997.

The AALCO Arbitration Centres offers specialized services to settle trade disputes, through arbitration. It includes also Alternative Dispute Resolution techniques (ADR) such as conciliation, mediation and technical expertise. Apart from this, the Centres also offers advice to parties to international commercial and investment contracts with regards to drafting these contracts, promote arbitration and other ADR techniques in the Afro-Asian region through the organization of international conferences and seminars and organizing training programs for international arbitrators and legal scholars from the Afro-Asian region

VIII. CONCLUDING REMARKS

As I stated in the beginning, AALCO has its genesis in the then prevailing conditions in 1950s wherein the primary concern of the newly independent States was to establish their presence in the family of nations as well as to ensure that colonialism and imperialism comes to an end and the right of the colonial people for self-determination is recognized and respected. The fact that AALCO was the outcome of the Bandung conference reflects the view that the then newly independent States had certain aspirations that were different from the developed world. Many issues that were understood in particular way during that time have undergone

considerable changes from the perspective of international community in general and the developing countries in particular. Despite the fact that the basic structure of the international society remained more or less same, changing notions about certain issues warrant new frameworks to meet the evolving challenges. For instance the concept of right to self-determination was understood as the right against colonialism and there was a broad consensus so far as the national liberation struggles were concerned. However, over a period of time it is realized that independent States also faced with the challenge of demands for self-determination by certain groups of peoples within the independent States. International community also confronted with similar problems, for instance in the field of refugees, international migration, human rights etc. There has been a perceptible change in the views of the developed world about the reception of refugees and migrants from the post war reconstruction period to cold war period to the post cold war era. Once considered as contributory agents for the economic growth of developed countries, refugees and migrants are now being seen as burden and unmanageable by the developed world. Similarly, the artificial generational division that was created between the civil and political rights and the economic, social and cultural rights led to the ascendance in priority of the former over the latter. Thus, the concern of the developed world for the protection of the civil and political rights has been looked at skeptically by the developing countries for whom the immediate concern is the alleviation of poverty and attendant social evils. Similar situation prevails in the field of environment, trade etc. However, the nature of fragmented priorities rooted primarily but not exclusively in the levels of economic development remains the same today as it was fifty years ago. Therefore the challenges before the legal community are gigantic and complex in the present era of manufacturing the unjust ideological justifications for the conflicts as clash of civilizations and their inevitability.

ⁱ Report on Matters Relating to the Work of the International Law Commission at its Fifty-fifth Session; Law of the Sea; The Status and Treatment of Refugees; 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; Legal Protection of Migrant

Workers; Extra-territorial Application of National Legislation: Sanctions Imposed Against Third Parties; Jurisdictional Immunities of States and Their Property; International Terrorism; Establishing Cooperation Against Trafficking in Women and Children; The International Criminal Court: Recent Developments; Environment and Sustainable Development; An Effective International Legal Instrument Against Corruption; Report on the Work of UNCITRAL and Other International Organizations in the Field of International Trade Law; WTO as a Framework Agreement and Code of Conduct for World Trade; Human Rights in Islam; and Expressions of Folklore and its International Protection.