

PUBLIC LECTURE ON “REFLECTING ASIAN-AFRICAN SOLIDARITY IN THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW” BY THE SECRETARY–GENERAL OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION PROF. DR. RAHMAT MOHAMAD AT THE UNIVERSITY OF BANDUNG (THURSDAY, 14th OCTOBER 2010).

Distinguished Guests, Dear Professors, Beloved Students and ladies and Gentlemen,

At the outset, I would like to thank you most sincerely for the invitation extended to AALCO to address this important centre of learning called the University of Bandung.

My lecture will be divided into three parts.

The first part will take you through the past of international law, which I think is critical not only for understanding the complex scenario that gave birth to the Asian-African solidarity in the first place, but also for transforming the present and future of international law.

In the second part, I will be dealing with the Bandung Conference in its historical significance for the Asian-African Solidarity and movement. I will also go on to elaborate, albeit briefly, the background and the work of the Organization that I head, namely, the Asian-African Legal Consultative Organization, in facilitating the Asian-African solidarity and its consequent results in the progressive development of international law.

Lastly, I will point out some of the critical challenges faced by the developing countries in the post cold-war era and the possible role that AALCO could play in taking forward the Asian-African solidarity.

First, let me turn to the past of international law.

International law, at least since the time of Hugo Grotius, and especially since the treaty of Westphalia of 1648, was predominantly European both in character and in application. The principle doctrines which were fashioned during this period were aimed at the spread of the Imperial power of the European States. The doctrines that were created denied legal personality to the Peoples of Asia and Africa and justified their conquest. The major subterfuge that was resorted to was the manipulation of the idea of civilizational standards. The peoples of Asia and Africa were deemed as lacking in the requisite civilizational standard to enjoy personality in international law by states whose industrial progress could not have occurred if not for the inventions that were thrown up by the civilizations of Asia!. If, as pointed out aptly by an outstanding Dutch Jurist B.V.A. Roling, that *law has the inclination to serve primarily the interests of the powerful*, European international law was no exception to this rule. This situation had produced two results:

Firstly, the civilizations that flourished in the Asian and African Countries even before the beginning of written European history were totally disregarded. Accordingly, they found themselves in an *ad hoc* created legal vacuum which reduced them from the status of international personality to the status of candidates competing for such personality!.

Secondly, what this also meant was that, there was no legal way in which Asia or Africa could participate in the formation of international law as the avenues of such law-making through the sources of international law were tightly closed. This was due to the fact that traditional international law did not equally extend to non-European countries, which were labeled “uncivilized” and were passive objects rather than subjects of international law.

With the advent of the decolonization process in the 1950s and 1960s, “the *geography of international law*” had undergone a radical change. International law and international society was removed from the clutches of European powers and the international society became truly universal. Upon attaining political independence, the newly independent Asian-African States had new needs and demands and wanted the international legal

order to take them into account. They challenged the *universal* validity of those principles and doctrines of international law devised by Europeans on the following two grounds;

Firstly, they felt [and rightly so] that the principles and norms of international law that were created during the colonial era were created not only without their *participation*, but also were oblivious to the obvious needs of the third world and certainly against their interests.

Secondly, since colonialism had reduced their legal status to ‘objects’ of international law which deprived them of their legitimate right to participate in the international law making, they were not willing to give their *consent* to those principles of traditional international law which were contrary to their legitimate aspirations.

As we all know, the Law, like a traveler, must prepare itself for tomorrow. International law is no exception. International law must keep pace with developments in the world, otherwise it will suffer atrophy. Hence, the alteration in the sociological structure of the international society needed to be accompanied by an alteration in law. This transformative exercise had produced a crisis that unfolded between the conservative European forces who wanted to preserve the legal status quo and the progressive Asian-African forces, caught as they were in the “*revolution of rising expectations*”, who wanted to transform the language of international law from that of oppression and subjugation to one of emancipation and welfare.

This moment of crisis triggered the historic movement of co-operation. The effort to restructure the traditional vestiges of international law and the historical need to shape a common destiny on the part of the newly independent states necessitated a high-level of Asian-African Solidarity on a number of critical issues- political, economic and social- all of which clearly required the restructuring of the traditional international legal order. The first notable attempt at such a concerted effort was the creation of the Asian-African Legal Consultative Committee, as it then was, as a tangible institutional outcome of the Bandung Conference that was held in 1955 and which was described by the Indonesian

President Sukarno as the “First Intercontinental Conference of Colored Peoples in the History of Mankind”.

The Birth of Asian-African Solidarity

Ladies and Gentlemen, it is indeed my pleasure and duty to brief you on the historic Bandung Conference for, I firmly believe that with Bandung “*Asia and Africa truly came of age*”.

The first Asian-African Conference (popularly referred to as the Bandung Conference), which represented the high point of Afro-Asian movement, brought together the newly independent countries of Asia and Africa to discuss a range of issues. The Conference was a watershed in international relations since it enunciated a vision of a new world order of independence and peace, justice and equitably shared prosperity. The leaders at the Bandung thought they could, as President Sukarno said, “*inject the voice of reason into world affairs*”. Their aim was a progressive revision of the international order that was perceived as unjust and inequitable. It was in this sense that Prof. James Mayall of the University of Cambridge had interpreted the Bandung Movement as a “*Revisionist Alliance*”. Bandung held significance for three reasons;

First, and perhaps the most important normative contribution of the Bandung Conference was to articulate and advance the basic principles of conduct in international relations. These principles, which are known as the Ten Principles of Bandung, represented a rejection of the coercion and dominance that had characterized the colonial /imperial mode of interaction between the West and the Asia-Africa. The spirit of unity of the Asian and African people, opposing imperialism and colonialism, struggle for the defense of national independence and world peace and the promotion of friendship among the peoples as demonstrated at the Conference has come to be known as the "Bandung Spirit".

Secondly, the Third World as a political entity traces its origin to the Bandung Conference. It represented the initial stage of an unfolding Third World Movement of

newly Independent States wanting to transcend their colonial histories by using the State as the means to achieve freedom, self-determination, modernization and development. The hey day of this form of “Third Worldism” was the period between 1955 and 1975, a phase that has been characterized as “Bandung Era”.

Lastly, the Bandung Conference was the direct pre-cursor to the establishment of both the NAM and the Group of 77 as intergovernmental groupings of developing states looking to pool their advocacy potential on economic, security and development issues. The NAM was formally instituted in September 1961 at a conference in Belgrade, Yugoslavia, and is now widely regarded as one of the key Political voices of the Developing world.

Thus began an enduring tradition of friendship, solidarity and cooperation among the countries of Asia and Africa.

Creation of the Asian-African Legal Consultative Organization (AALCO)

The AALCO, which was established in 1956 as a tangible institutional outcome of the Bandung Conference, became a living manifestation of Asian-African solidarity that the Conference had envisaged. From a modest beginning as an advisory body of jurists to its seven founding Asian Governments, it has grown into a full-fledged inter-governmental organization with a present membership of 47 Member States including all major States of Asia and Africa. I am proud to reveal the fact that Indonesia was one of the founding members of AALCO. The AALCO, which has come to occupy an important position in the international legal community, has, over the years, deepened and widened its activities in many directions, in keeping with the increase in its membership and the times. In recognition of the world-wide impact of its work, since 1981 it has been invested with the Permanent Observer status with the United Nations. It has also concluded co-operation agreements with several United Nations agencies and other international organizations.

The AALCO, which has institutionalized the Asian-African solidarity, was established with the objectives of implementing this ‘Bandung Spirit’ and towards that end, to serve as an advisory body to its Member States as well as an essential mechanism for

interregional co-operation and exchange of information and views on matters with an international legal dimension. The progressive development of international law and its codification is the *raison d'etre* of AALCO. The Organization has, in over fifty years of service to the Asian-African states, has played a critical role towards the emergence and concretization of a number of alternative ideas and practices in the field of international law reflecting the concerns of the third world States.

For example, AALCO's work on the topic of *Diplomatic Immunities and Privileges* reflected in the form of some recommendations adopted taking into account the interests of the third world countries, was accepted by the UN Conference on Diplomatic relations held in Vienna in 1961 in preference to those of the International Law Commission.

As regards the formulation of the *Law of Treaties*, AALCO participated actively in the work of the Conference of Plenipotentiaries on the Law of Treaties. Some of the provisions of the treaty, particularly "Chapter V relating to Invalidity of Treaties" could find their place in the final draft, only on account of the support received from the Asian-African delegates expressed during the deliberations held under the auspices of AALCO.

The AALCO, has also played a critical role in the formulation of an acceptable body of modern legal principles to govern the *regime of seas*. While confining itself initially to the role of assisting the Asian-African governments by preparing studies and arranging in-depth discussions on the topic, later in the process, AALCO emerged as a global forum for the dialogue between the developing and developed countries through participation of observers at its annual sessions and inter-sessional meetings. Some of the concepts which found a place in the finally adopted Convention originated in the deliberations of the AALCO, namely the concept of Exclusive Economic Zone, Archipelagic States and the land-locked States.

The examples can be multiplied with regard to many areas of international law. The point is this: it would be no exaggeration to say that AALCO as a forum for the progressive development and articulation of an Asian-African jurisprudence in

international law has not only enriched the corpus of international law, but has also ensured that the law or at least certain areas of it, have come to truly reflect universal values and concerns. International law-making is no longer the exclusive preserve of European States, indeed.

After highlighting the critical role played by AALCO over the years in the progressive development and codification of international law, let me turn to some of the current challenges facing the Asian-African Solidarity in the current post-cold war era of international relations.

Current Challenges facing the Asian-African States

International order, economically and politically, has undergone profound transformation since the leaders of the South met in 1955 at Bandung. The cold war is over and the United States has emerged as the most powerful State in the international system. Since the end of the Cold War, globalization has become the most outstanding characteristic of international economic affairs and, to a considerable extent, of political affairs as well. The governing institutions of the global economy, which are undemocratic and have become too powerful, are negatively impinging upon the ability of sovereign states to set their own policies. Their policies have a debilitating impact on the welfare of the global poor. The post cold war era has also made us aware of the central importance of multilateralism in the face of the threat and/or actual use of unilateral force on the part of the big powers in international affairs.

In my view, all the changes that have been taking place in the political and legal landscape in the post cold-war era indicate two things: Firstly, it calls for a common strategy on the part of the Asian-African States to deal with the crisis of the international system, since these problems involve and expose the collective vulnerability of the Third World States. This, indeed, requires the revitalizing of the Asian-African solidarity and of the “Bandung Spirit”. Secondly, it also indicates that in any endeavour to create the future trajectory of international legal order, the Asian-African States have a critical role

to play. This is clearly buttressed by a number of recent crises that reiterate the greater need for Asian-African solidarity in the contemporary era. They are as follows:

1. Globalisation, which has failed to spur economic recovery, faster growth, greater employment opportunities and poverty eradication in developing countries, has also exhibited a tendency to accentuate the income and welfare gaps between the rich and the poor, among and within countries and regions. More importantly, it has relocated sovereignty from States to international institutions. Addressing the iniquitous aspects of the globalization process and need to reclaim the sovereign space of the Third World states remains a critical challenge in the present age. This is clearly illustrated in the case of the World Trade Organization which has deeply intruded into the policy-making sphere of the Sovereign States. International trade, which is a manifestation of Globalization, is no longer a matter of trade in goods alone, in that, it has come to incorporate a number of non-trade areas such as, intellectual property, investment, procurement, services and so on. The extension of the boundaries of WTO entail catastrophic consequences for the welfare of the global poor, in that, it prevents the governments of the developing countries to enact policies that are in the best interest of their citizens. How to restore the policy-space of the developing countries remains a challenge of monumental nature for the states of the Third World.

2. The Global Economic Meltdown which has shaken the fabric of the world's financial and economic structure, clearly illustrates the need for the developing countries to formulate adequate remedial responses not only in terms of their policy regimes but also in terms of reforming the global financial and economic architecture. Despite bearing no responsibility for the crisis, the poorer developing countries have fared the worst. The need to take into account the interests and aspirations of the Asian African States in any project that aims at reforming the international financial institutions is absolutely critical since their case and cause do not find reflected within the current scheme. This was amply demonstrated at the 15th Summit of the NAM that took place in July 2009 at the Egyptian town of Sharm El Sheikh, which devoted a lot of attention to the inherent structural problems associated with the global financial crisis. No wonder, the Outcome

Document of the Summit had a particular focus on the role of reforming global governance.

3. The problem of climate change which affects the developing countries disproportionately needs to be resolved on an equitable basis taking into account the historical responsibility of the developed countries of the West. In this regard, it is critical for the Third World to ensure that the actions taken on climate change do not perpetuate the poverty of the developing countries and that they are in tune with ways that promote their sustainable development.

I would like to reiterate here that these are crises that, in large part, are triggered by the policies and actions of those who dominate the world. They affect the developing world more harshly than the developed world. In my opinion, the challenges mentioned above point out two things:

Firstly, the changes and developments that have been taking place in the international legal arena demand from the developing countries close cooperation. The purpose of such cooperation was clearly articulated by the President of the Arab Republic of Egypt and the current Chair of the NAM, in his opening remarks made at the 15th NAM Summit. I quote:

“We call for a new international political, economic and trade order that is more just and balanced, that is above selectivity and double standards, that considers the priorities of developing countries, that institutes democratic interaction between rich and poor nations, and realizes balanced representation in international organizations and international economic decision-making mechanisms”.

I unquote.

Secondly, it also clearly demonstrates the continuing relevance of the category of Third World and its political solidarity as expressed collectively in various groupings of States operating in various international fora. If the founding of the NAM was necessary nearly

five decades ago, its continued relevance today is beyond doubt. It is in this sense that the Outcome Document of the 15th NAM Summit has reiterated the continuing relevance and vitality of the Bandung principles to the contemporary era.

Ladies and Gentlemen, let me come to the last part of my presentation, which pertains to the possible role that AALCO could play in the present international setting.

Role of AALCO in the Future

AALCO could play and is well-poised to play, an important and greater role in the current international legal milieu that has thrown open a number of challenges, including the above mentioned ones, to the international community of States. The potential role that it could play in the contemporary era was clearly realized and articulated by its Member States at the AALCO's Forty-Eighth Annual Session that took place at Putrajaya, Malaysia from 17-20th August, 2009. One of the most noteworthy achievements of this Session was the adoption of the "*Putrajaya Declaration on Revitalizing and Strengthening the Asian-African legal Consultative Organization*", which, besides acknowledging the contribution of AALCO to the cause of Asian-African solidarity, and reaffirming the continuing relevance of the Bandung Principles in the current era, also laid out a blueprint for collective future action based on the greater coordination and strengthening of Asian-African solidarity.

Firstly, AALCO could be used as an important carrier of South-South collaboration and towards that end, is willing to establish South-South networks among relevant institutions to facilitate the exchange of programmes, ideas, academia, etc. The South-South cooperation has acquired more importance in the wider context of substantial changes to the international system at large.

Secondly, AALCO, as the only legal inter-governmental consultative body of its kind in the family of inter-governmental organizations comprising of Member States from Asia and Africa, has a very critical role to play in international negotiations with the objectives of advancing and protecting the rights and opportunities of developing countries and in

muscling up their negotiating positions and skills. In this way, AALCO could contribute a lot to the Asian-African solidarity.

Thirdly, AALCO could serve as a Think Tank for the developing countries of the South by undertaking research, analysis and discussion of the most critical issues of concern to the Asian-African States. Motivated, as we are, to serve and be a learning and knowledge organization for our Member States, we have been trying to establish a Data-Based Centre which is intended to be a substantial knowledge repository on international law issues of critical concern to the third world states. I am of the firm view that, once established, it will benefit our Member States immensely.

Ladies and Gentlemen, AALCO, *as an Organization of the South, for the South and by the South*, indeed, has an immense role to play in the creation of a just and equitable international legal order based on common interests, and one which seeks to promote the well-being and fulfill the legitimate aspirations of the Asian-African peoples. The relevance of AALCO to its Member States in the contemporary era can hardly be exaggerated, given the current common challenges faced by the developing countries in various areas such as international trade, environment, peace and security and others.

It is my earnest belief that in this endeavour, the leaders and the peoples of Asia and Africa are, as ever, ready to embark on a journey of cooperation, friendship and solidarity with AALCO and its common objectives.

I thank you profusely for giving me the opportunity to share my views with you on a topic that holds immense significance not only for your University and Country but also for the Third World as a whole.

I thank you.