



**“ASIAN-AFRICAN CONTRIBUTIONS TO THE PROGRESSIVE
DEVELOPMENT OF INTERNATIONAL LAW AND THE ROLE
OF AALCO”**

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Distinguished judges of the International Court of Justice, distinguished dignitaries on the dais, international law scholars, legal professionals and dear students,

It gives me immense pleasure to deliver this lecture on this momentous occasion—the tenth anniversary of Xiamen Summer Programme on International Law. I wholeheartedly thank the Ministry of Foreign Affairs of People’s Republic of China and Xiamen Academy for inviting me and giving me this opportunity to address this esteemed gathering of international law scholars and students. The year 2015 has been historic for another reason—it marks the sixtieth anniversary of the Bandung Conference.

I have divided this lecture roughly into—parts. In the first part, I discuss the genesis of Asian-African cooperation and the role of Bandung Conference in its promotion. The second part touches on the Afro-Asian efforts to

reformulate the model and praxis of modern international law and how its dynamics changed after the Cold War. In the third part, since the history of AALCO, the organization I represent, is inseparable from the history of Asian-African efforts to ensure progressive and equitable development of international law, I will briefly explain the role of AALCO in ensuring Asian-African cooperation in this area. The next part will discuss some of the non-traditional challenges that Asian and African States face. The concluding part will ponder on ways to improve cooperation between the two continents and the potential role of AALCO in this regard.

Asian-African States and the Bandung Spirit

As we all know, sixty years ago, the leaders of twenty nine Asian and African countries gathered in Bandung, Indonesia, to declare themselves the masters of their own future and destiny. They proclaimed to the world, the emergence of developing countries on the global stage as an important force, heralding a new chapter in the history of the world.

A landmark in the history and development of international politics, the Bandung Conference, a meeting of minds from two continents—Asia and Africa, was the harbinger of the Non-aligned Movement (NAM) that aimed to promote the political and diplomatic autonomy of less developed countries in the face of international power struggles.

Seeking to forge their own path, these countries covered one-quarter of the Earth's land surface and represented over half of its population, came together in an unprecedented show of solidarity. Their determination to work together, with a keen sense of kinship came to be known as the “Bandung spirit”. The Conference gave a unique message to the world-whatever

may be the differences in political, economic or legal systems, the states of Asian-African region were inextricably linked together as an Asian-African identity. Bandung spirit gave rise to the new wave of African decolonization and laid down the foundation of G-77 as well.

Aside from asking the superpowers to suspend their nuclear tests, reduce armaments, and increase economic aid, the conference passed the “Ten Principles of Peace” underscoring such themes as mutual respect for territorial integrity and sovereignty, nonaggression, noninterference in each other’s internal affairs, equality, mutual benefits, and peaceful coexistence. These principles remain at the basis of the system of international law even today.

Through emphasizing ideas of sovereignty, human rights, equality and cooperation embodied in the United Nations Charter, the Ten Principles not only reaffirmed the keystone of the edifice of the international legal order, upholding rule of law and international relations that govern us till date, but gave fresh impetus to these principles.

What then, was legacy which this Conference conferred upon us? The lessons of the Conference can be summarized in three key words - friendship, solidarity and cooperation. These came to be known as the Bandung Spirit and by giving birth to this Spirit, the Conference called for recognition of the common mission of Asian and African people to fight imperialism and to seek common ground by shelving their differences. The Spirit has been repeatedly upheld and recognized in international fora and publications.

The conference had a profound effect on how Asian-African States saw international legal order as well. Established a year after the Bandung Conference, the Asian-African Legal Consultative Organization (AALCO), the organization that I serve, is considered to be a tangible outcome of this Conference. For all these reasons, Bandung Conference is considered to have no parallel in history.

Decolonization and Ensuing Challenges to the Westphalian International Law

Distinguished dignitaries, ladies and gentlemen,

It is well-known that for many centuries, the Westphalian international law paradigm has been, in many respects, Eurocentric and thus geared to serve only the interests of European States. Essentially, international law failed to serve as an instrument of justice and peace for the rest of the world, particularly the Asian-African States whose interests were not taken into account when it was being developed. They were just objects and not subjects of international law. In other words international law-making was the exclusive preserve of European states. In consequence of that, the rules of international law were framed by the European colonial powers and, needless to say, that they were European, in character and in application.

The post-war era saw the emergence of newly independent states coming out of the colonial yoke as an equal member of the international community of States. Decolonization, which led to the horizontal expansion of the international community, was one of the most important structural changes that took place in the 1950s and 1960s. This process has been aptly captured in the phenomenon called, ‘Democratization of International

Relations' which meant that newly independent States entered for the first time into the family of nations on an equal footing with their Western counterparts. At least in the strict legal sense, they became master of their own destiny. They started to challenge the traditional aspects of the international law that were not to their liking and wanted to create new international law by writing their own interests into it. The quest for a New International Economic Order (NIEO) at various international fora including the United Nations is a good example of the efforts of the Third World to prompt rethinking of the institutional structure of international law.

Asian-African Engagement in Post-Cold War Era

Ladies and Gentlemen,

In the post Cold War era, forces of globalization have prompted developing Asian-African States to engage with the developed nations as never before. Increased political and diplomatic interactions have made them realize the significance of contributing to the progressive development of international law. They have begun to actively participate in international law making. However, this contribution is limited to certain areas like international trade law and environment law.

For instance, about two thirds of the WTO's around 150 members are developing countries and Asian-African nations form the majority among them. They play an increasingly important and active role in the WTO because of their numbers, because they are becoming more important in the global economy, and because they increasingly look to trade as a vital tool in their development efforts. In the Doha Development Round which began in November 2001), major developing countries led and represented mainly by AALCO Member States, namely India, China and South Africa.

These States has been proactively furthering the interest of the developing world especially in demanding better access to their agricultural produce in developed nations and protesting against high level of subsidies developed countries give to their agricultural sector.

The Bali Package, which is the trade agreement resulting from the Ninth Ministerial Conference of the World Trade Organization in Bali, in December 2013 is the first substantive breakthrough for the WTO since the launch of the Doha Round—the accord includes provisions for lowering import tariffs and agricultural subsidies, with the intention of making it easier for developing countries to trade with the developed world in global markets. Developing nations’ right to stockpile food grains for addressing poverty is recognized through a ‘peace clause’ in Trade Facilitation Agreement entered into as a part of Bali package. It is the latest example of the will of the developing states of Asia and Africa prevailing over the insistence of developed states.

The economic divide between the developing states of Asia and Africa is increasing and their aspirations and interests are no longer the same in many fields of international engagement.

Delving into another are of Environmental Law, the Asian-African States are a fragmented bloc in climate negotiations at the UN—primary reason: the economic divides between developing countries are widening, so they have diverging economic interests to protect. India and China are among the highest polluting nations and has not so far agreed to legally binding emission cuts. However, a few developing states of the continents advocate mandatory obligations on emission reduction.

To achieve greater influence at UN negotiations, developing countries have formed an umbrella organization called the G77. Founded in 1964, it is the largest group of developing countries taking part in the climate negotiations. The G77 contains enormous variety, including the powerful emerging economies of India and China; less advanced Member States like Sierra Leone and Nepal and even members of the OECD like South Korea.

As a result, the group defends a broad patchwork of interests that are often far removed from those of the more developed countries—this is to be viewed as a good example of solidarity between developing nations, despite their varied national interests, to tackle a global issue that involves the destiny of our future generations.

Contributions of AALCO in the Progressive Development of International Law

Ladies and Gentlemen,

As mentioned earlier, the establishment of AALCO was a direct and tangible consequence of the Bandung Conference, espousing values of cooperation, and a response to the under-representation of Asian and African nations in the realm of public international law. Its history and antecedents is

intrinsically intertwined with the Asian-African efforts to ensure that their voices are heard and heeded to in international law making.

AALCO will celebrate its sixtieth anniversary next year. As envisaged by its founding fathers, it has in this period contributed in the codification and progressive development of many important topics of international law. I would now like to provide a brief summary of AALCO's contribution to this development, since its inception, over the years.

The organization has fulfilled this task by preparation of researched studies on a variety of topics, and furthering participation in the law making process. AALCO has a secondary, advisory role and statutorily bound to serve its member states by providing legal assistance, in addition to providing a platform for nations to collectively raise their views in international fora. Pursuant to that, the organization is committed to extend to its Member States legal assistance in drafting model legislations and recommending draft principles and conventions.

Contributions in the Initial Years of its Inception

AALCO, in the initial years of inception, has made substantial contributions in the areas of law of the sea, diplomatic law and law of treaties. Particularly, its contributions during the negotiation UN Convention on the Law of the Sea (UNCLOS) are widely recognized. Not only did AALCO help prepare member countries in formulating their positions, it later became a negotiating forum and powerful bloc in UNCLOS III. Topics introduced in

AALCO deliberations, reflecting concerns of developing countries and the views of largely landlocked Member States found their way into the final convention. In 1971 AALC Meeting in Colombo, most delegations, in principle, supported the right of a coastal State to claim exclusive jurisdiction over an adjacent zone for economic purposes. At this meeting, a working paper prepared by Kenya, was presented on "The Exclusive Economic Zone Concept". This concept finally found its way to the final text of UNCLOS.

Further, as regards diplomatic law, AALCO's recommendations, considered in its first three Sessions, not only comprised of an evaluation of the draft Articles submitted by the ILC, but suggested certain formulations of its own, suited to the requirements of member countries. At the UN Conference on Diplomatic Relations in Vienna in 1961, AALCO's draft convention was formally placed for consideration and some of its recommendations found place in the *Vienna Convention on the Diplomatic Relations*, 1961.

Another important area is the *Vienna Convention on the Law of Treaties*. It was adopted by the United Nations Conference of Plenipotentiaries in 1969. It marked the first time that our nations had a voice in the formation of a uniform set of principles, in a fundamental branch of international law. AALCO reviewed the major issues raised at the first session of the Conference, dedicating an Annual Session to consolidate the position of the Asian-African delegations in preparation for the final session. The organization's efforts to unite the positions of its Member States, paved the way for further global compromise and subsequent adoption of the Convention.

Post-Cold War Contributions

Post Cold War period saw, among other things, the consolidation and strengthening of international criminal law as evidence by the establishment of International criminal Court, and evolving jurisprudence of environmental law in response to global warming and climate change. AALCO contributed in the formulation of the *Rome Statute of the International Criminal Court*, with the organization represented in the Rome Conference of Plenipotentiaries for the adoption of the statute. Efforts made to unify Asian-African positions were appreciated by Member States.

AALCO has also contributed immensely to the development of law related to global warming and climate change. In fact, issues pertaining to environment and sustainable development have constituted an important element of AALCO's work programme since the 1970s. The organization has been commended for promoting the adoption of the three Rio Conventions. Since the initial stages of Kyoto Protocol negotiations, AALCO has also been noted for advocating the principle of common but differentiated responsibility, to further the cause of developing member countries.

Also, AALCO, in close cooperation with various international organizations including UNHCR, UNHRC, ICRC *et al* has made significant contributions to the field of human rights and the narrower *lex specialis* of international humanitarian law. Notable contributions are found in the field of refugee law, legal protection of migrant workers, promotion of international humanitarian law and against the trafficking of women and children. Particular mention must be made of the widely recognized Bangkok Principles on the Status and Treatment of Refugees.

Furthermore, AALCO has actively participated in the International Law Commission's meetings and kept matters under discussion in constant review. The organization then has made valuable recommendations on the subjects and facilitated final adoption of UN Conventions. Recently, the Informal Working Group on Identification of the Customary International Law was constituted at the recommendation of Eminent Persons Group (EPG) of AALCO. It was envisaged to act as a technical expert group on identification of Customary International Law and formulate responses to the work of the ILC, including that of Sir Michael Wood, the Special Rapporteur of the ILC on Identification of Customary International Law. The Group has had three meetings so far and the fourth meeting is scheduled to be held this October.

Contemporary Challenges Facing Afro-Asian States

Ladies and Gentlemen,

In the contemporary era of globalization and exponential developments in science and technology and ensuing non-traditional asymmetric challenges to national security and peaceful coexistence, it is often found that the oft-quoted distinction between the developed and developing States is rather blurred in many areas of international law and relations. AALCO is cognizant of this issue and is committed to espouse the collective cause of the Asian-African States on issues of international law of common concern at the international legal fora. Let me highlight the most prominent legal challenges that the international community (particularly the developing Countries of Asia and Africa) is facing at the current juncture. Though this list of challenges is potentially long, I would be confining myself to just

three which are an integral part of the current work programme of AALCO.

(1) Violent Extremism and Terrorism

We are living in a world of exploding tensions where conflict and violence prevail in many parts of the world. The multi-faceted scourge of violent extremism has become so pandemic for the past couple of years that an increasing number of AALCO Member States have been hard hit by its diverse atrocious manifestations; many innocent civilians have fallen victim to horrendous acts of terror violence perpetrated by members of extremist groups throughout Asia and Africa and millions of people in the two continents are affected by the surge in violent extremism. The appalling story of hundreds of girls being abducted in Nigeria or thousands of innocent men and women being persecuted and massacred in Iraq not long ago is extremely shocking and utterly heartbreaking.

The need to tackle the increasing acts of violent extremism by using the international legal instruments was consensually accepted by all the Member States of AALCO at the Fifty-Third Annual Session of AALCO at Tehran in 2014 and has been reiterated in the recently concluded Annual Session in Beijing. According to the mandate given in these Sessions, the goal is to come out with the AALCO Principles for Cooperation to Combat Violent Extremism. AALCO will hold an inter-sessional meeting this year to deliberate on this issue.

(2) International Law and Cyberspace

Another important, but new legal challenge that the international community in general and the Asian-African states in particular face relates to the issue

of cyberspace. The increase of international cyber terrorism in recent years has resulted in computer-based criminal activities that generate worldwide fear, destruction and disruption. National laws and policies that address cyber terrorism are mainly limited to developed nations and are not cohesive in managing 21st century cyber terrorism. Given the absence of an international legal framework to address cyber crimes (except the Convention on Cyber Crime of the Council of Europe), authorities and governments around the world face extreme challenges in finding and prosecuting those responsible for cyber terrorism.

The ability of governments to prevent and deal with such attacks is dependent on a number of factors, the most important being the existence and implementation of appropriate legislation. Given the current lack of international regulation on cyber terrorist attacks, the onus is on individual countries to rely on their domestic laws to take legal action.

Apart from cyber terrorism, there are other important aspects on international law in cyber space, principal of which include; i) cyber sovereignty and cyber freedom; ii) peaceful uses of cyberspace iii) rules for international cooperation in combating cyber crimes. It is these concerns that motivated the Government of the People's Republic of China to introduce the topic "International Law in Cyberspace" into the agenda of AALCO formally at the Fifty-Third Annual Session of AALCO. No wonder this proposal was accepted by all the Countries of the Asian-African region by consensus at the Session. Pursuant to the mandate it received in the recently concluded Beijing Annual Session, AALCO Secretariat is carrying out an in-depth study on these issues.

(3) Armed Conflict and Refugee Flows

Another critical challenge that the Asian-African countries face emanates from the forced displacement of people triggered by armed conflicts occurring in many parts of Asia and Africa.

The recent case of Rohingya refugee crisis in Myanmar has been heartbreaking. According to the United Nations, hundreds of thousands of have been displaced internally. This human tragedy has shocked the world's conscience and has led for appeals for humanitarian relief. In addition, hundreds of thousands who became refugees across Asia and Africa – from Syria, the Central African Republic, the Democratic Republic of the Congo, Sudan, Mali, to Somalia to name a few. Millions more were displaced inside their own countries.

It needs to be stressed here that the local and international response to the refugee crisis is paramount. Ensuring that refugee camps are secure, so that they are not used as staging ground for militants, and that humanitarian assistance is provided as well as assistance to local communities in the spirit of burden sharing to ameliorate these risks.

This requires much more coordinated effort and attention than is currently being afforded to. If not addressed in a timely manner by the international community, host countries could face a catastrophe or see no choice but to shut their borders. Either scenario would be a humanitarian nightmare for those who have been uprooted by the brutal conflicts.

The importance of finding durable solutions including legal mechanisms for the putting up of proper refugees and displaced people remains one of

the ultimate challenges facing the international community in general and particularly the Asian-African States in a global environment marked by many protracted conflicts. Again this was recognized by the Member States of AALCO at the Fifty-Third Annual Session in 2014 and the Member States of AALCO were encouraged to consider the possibility of ratifying the 1951 Convention and the 1967 Protocol and abiding by the Bangkok Principles adopted by AALCO in 1997.

**The Future Role of AALCO in Promoting Asian-African Cooperation
and Progressive Development of International Law**

Ladies and Gentlemen,

If one generalizes, then growth and development of AALCO may be divided into three broad phases.

In the first, from the time of its inception in 1956, AALCO's advisory role was particularly important for newly independent States who were confronted with a series of problems concerning their borders, succession to treaties, treatment of foreigners and their properties. It was felt that these countries needed if not to evolve a common approach on these issues, but also to be guided by an expert body.

This state of affairs lasted till 1970, after which membership of AALCO grew substantially. Though the work of AALCO received recognition in this first phase, it was only in the second phase from the 1970s, till the dawn of the new millennium, when it contributed heavily in the codification and development of international law, that AALCO's efforts became internationally acknowledged.

The fact that AALCO completes 60 years of its existence next year is demonstrative of the continued relevance of the organization in harmonizing views of Asian-African States in international affairs. In this time, AALCO has managed to perform its mission effectively by contributing to the progressive development of international law while serving the interests of its members.

We are entering the third, newer era, one where AALCO's significance in the active development of international law will be revitalized, due to new developments in science and society. The rise of the internet and the spectre of terrorism in particular, have challenged the basic norms of international law as it currently stands today.

The challenges the future brings to AALCO's task may be described in three keywords, underlying the Bandung Spirit that brought about its founding.

First, implementation. AALCO needs to once again play a greater role in providing developing countries in Asia and Africa with legislative assistance, especially with developments in science and society prompting recent advances requiring legal standing. The mandate we received on *International law in Cyberspace* is a good starting point. As mentioned earlier, the Member States has directed us to study this subject with special attention to international law pertaining to (1) State Sovereignty in cyberspace, (2) peaceful use of cyberspace, (3) rules of international cooperation in combating cybercrimes, and (4) identification of the relevant provisions of the UN Charter and other international instruments related to cyberspace.

Further, the renewed mandate on Violent Extremism and Terrorism directs the Secretariat to coordinate holding inter-sessional expert meetings, joined also by eminent international legal experts from AALCO Member States, in order to consider AALCO legal principles to combat violent extremism and its manifestations. These Principles when adopted will be the first of its kind in consolidating the international legal norms governing and binding the international community while addressing the scourge of violent extremism.

Furthermore, the topic, Customary International Law—its formation and identification, is not given adequate attention by most Asian-African States. Although a traditional topic in International Law, its contours remain largely undefined and non-participation in the process of its identification might entail international obligations which Asian-African States did not agree to at the first place. AALCO is concentrating its efforts to actively engage its Member States in the deliberations on Customary International Law at the International Law Commission. A two day “AALCO Legal Expert Meeting on the Identification of Customary International Law” will be held next month in Kuala Lumpur Malaysia wherein Sir Michael Wood, ILC Special Rapporteur on this topic will share his views on the Third Report on the Formation of Customary International Law with AALCO Legal Experts.

Second, inclusiveness. AALCO should have a greater role in strengthening the solidarity amongst Asian-African States. This includes, first and foremost, enlarging AALCO’s membership in Asia and Africa, in particular more members from Africa, thereby enhancing its representation in these two regions. AALCO should also continue to strengthen its cooperation with the United Nations and other important international and regional organizations, as well as the academia and legal practitioners.

Third, cooperation. To quote from H.E. Premier Li Keqiang’s inaugural address, “Win-win cooperation has become the prevailing trend and peace and development remain the call of our times”. AALCO should enhance exchanges between Member States on important issues through symposiums and training as well as thematic research projects, furthering mutual understanding and trust. An important development in this front is the establishment of China-AALCO Research and Exchange Programme on International Law in the 2015 Annual Session. I hope other Member States would take a similar proactive approach to deepen exchanges with AALCO and amongst themselves.

Since its inception as a consequence of the Bandung Conference, AALCO as a major platform for Asian-African legal exchanges and cooperation has played a vital role in strengthening regional governance and safeguarding our common rights and interests. The Bandung Spirit is then reflected in every act AALCO undertakes, from its meetings to the issues it has focused on, and contributed to in international law.

The cause of AALCO will surely continue in the face of new circumstances. I firmly believe that by following the founding principles of AALCO and with the support of our member states, AALCO would be able to fulfil its role in serving the best interests of Asian and African regions, carrying out the Bandung Spirit.

This so far, has been made possible by the extraordinary dedication and intellect of generation of legal experts from Asia and Africa. Let us once again, join hands in ushering in a brighter future for Asian-Africa unity and cooperation and create a better world of lasting peace, justice and

cooperation. I sincerely believe that this programme is a definitive step towards that direction and I am sure of its success.

Thank you all very much.