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**Statement made by Mr. Endre Ustor, Observer for the International Law Commission at the
sixteenth session of the Asian-African Legal Consultative Committee**

Topic:
Cooperation with other bodies

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CO-OPERATION WITH OTHER BODIES

[Agenda item 8]

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Statement made by Mr. Endre Ustor, observer for the International Law Commission at the sixteenth session of the Asian-African Legal Consultative Committee*

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[7 July 1975]

It is a great privilege and honour for me to attend the sixteenth session of the Asian-African Legal Consultative Committee and to represent here the International Law Commission of the United Nations. It is also a pleasure for me to congratulate the President, on his election to his high office and to express my firm conviction that under his able chairmanship this session of the Committee will be able to carry out its work successfully. I also warmly congratulate the distinguished Vice-President on his election and Mr. Sen, the Secretary General, on his re-election. I should like also to avail myself of this opportunity to express my deep gratitude for the generous hospitality with which the Government of Iran has received me.

The International Law Commission deeply appreciates the co-operation existing between itself and the Committee and the fact that the founders of the Committee enshrined this co-operation in the Committee's statutes. According to article 3, paragraph (a) of the Statutes one of the functions of the Committee—and indeed the first mentioned among the others—is “to examine questions that are under consideration by the International Law Commission and to arrange for the views of the Committee to be placed before the Commission; to consider the reports of the Commission and to make recommendations thereon to the Governments of the participating countries”. Members of the International Law Commission esteem highly the practice of the sending by the two bodies of observers to each other's sessions. On the last occasion, when the Commission was honoured by the visit of Mr. Nishimura on behalf of the Committee, members emphasized that since the geographic area covered by the Committee was

so immense and characterized by so many rich and varied cultures and legal inheritances, the Committee had a valuable contribution to make to the work of the Commission which, indeed, often drew inspiration from the result of the Committee's proceedings.

The year 1974 was marked for the Commission by the sad event of the death of Professor Milan Bartoš of Yugoslavia, the great diplomatist and jurist whose vast knowledge, wisdom and warm personality his colleagues will never forget. The Commission devoted one solemn meeting to paying tribute to his memory. Mr. Milan Šahović, a compatriot of Mr. Bartoš, was elected in his place. Mr. Šahović is a well known scholar of international law; he held the chair of the Sixth Committee of the General Assembly at its twenty-ninth session with great distinction.

The main task of the commission for the year 1974 was to complete the second reading of its draft articles on succession of States in respect of treaties. On the basis of the favourable comments of Governments, the Commission has not changed the structure of its 1972 draft too much. The new draft deals with the following types of State succession:

(a) *Succession in respect of part of territory.* Here the moving treaty-frontier rule applies. Shortly stated, this rule means that on a territory's undergoing a change of sovereignty, it passes automatically out of the treaty régime of the predecessor sovereign into the treaty régime of the successor sovereign.

(b) On the most important case of the *newly independent States* the Commission maintained its previous stand. It adhered to the clean slate principle, i.e. that a newly independent State is not bound to maintain in force or to become a party to any treaty concluded by its predecessor. It was felt that this clearly follows from the right of peoples to self-determination.

This freedom of the newly independent State is—in the view of the Commission—not restricted by a possible

* In accordance with the decision taken by the International Law Commission at its twenty-sixth session (*Yearbook... 1974*, vol. II (Part One), p. 306, document A/9610/Rev. 1, para. 173), Mr. Endre Ustor, Chairman of the Commission at that session, attended the sixteenth session of the Asian-African Legal Consultative Committee, held in Teheran, Iran, from 26 January to 2 February 1975, as an observer for the Commission.

devolution agreement concluded between the predecessor and the successor State. The newly independent State is thus held completely free to maintain or not maintain its status in respect of the predecessor State's treaties. In respect of bilateral treaties and the so-called restricted multilateral treaties, however, the freedom to maintain the predecessor's treaty is subject to the express or tacit agreement of the other States parties.

An important general rule qualifies the "clean slate" of the newly independent State, namely that boundary régimes and other territorial régimes are not affected by State succession. The effect of this general rule is that all successor States are entitled to enjoy the rights arising from such inherited régimes and are bound to carry the burden of obligations stemming therefrom. Of course, if these régimes have been based on void or voidable treaties, these may be challenged by the successor State.

With respect to the position of newly independent States there is one important point which the Commission left open and to the consideration of the Governments. This point is whether a special provision should not be made for multilateral treaties which are of a universal character. It has been argued that it is of the utmost importance to the newly independent States and to the international community as a whole that such universal conventions as the humanitarian conventions, the ILO conventions, the Universal Postal Convention, etc., if they are already applied in respect of the territory to which the succession relates, should not cease to be in force for the newly independent State, at least not until such time as that State gives notice of the termination of the said treaty for itself. This solution would, in relation to general multilateral treaties, introduce the "contracting out" system into the draft, which otherwise has been based on the principle of "contracting in".

(c) Another part of the draft deals with the case of the creation of a new State by *uniting of States* and by *separation of States*. Unlike the articles on the newly independent States, this part is based on the *ipso jure* continuity principle. As an exception to this are the cases where the separated part of a State becomes a State in circumstances which are essentially of the same character as those existing in the case of the formation of a newly independent State. In such cases the rules pertaining to newly independent States apply.

After the conclusion of the topic of succession of States

in respect of treaties, not much time was left for the Commission to deal with other topics on its agenda. It still continued its study on State responsibility which is a subject belonging to the very core of international law. It found some time to deal with treaties between States and international organizations or between two or more international organizations and lastly it took up the consideration of the topic of "Legal problems relating to the non-navigational uses of international waterways". No work was done on two items, namely on succession of States in respect of matters other than treaties and the most-favoured-nation clause.

Finally, I have to report briefly on that meeting of the Commission by which it celebrated its twenty-fifth anniversary. Such a meeting gives occasion for reflection, stock-taking and speculation on the future. Members were able to recount the results of the Commission with an amount of satisfaction. Thus Professor Ago, who after the sad departure of Milan Bartoš has become the senior member of the Commission, said that the activities of the International Law Commission were less spectacular than those of other United Nations bodies, but there was reason to believe that in the long term its work would not be the least important. Ambassador Tsuruoka, another long-time member of the Commission, reminded the audience that in the new world where the birth of a great number of States had created a new diplomatic, political and economic climate, the Commission was called upon to play an increasingly important part, meeting the new needs and aspirations, and taking into account all the trends of ideas and legitimate interests of all people. Among these interests, peace and security are of course the first.

Concluding with these words I should like to emphasize that it is precisely for the proper accomplishment of these tasks that the Commission counts mostly on the assistance of this Committee. To the activities of this Committee I beg to wish on behalf of the International Law Commission and on my own part every success. I wish good health and good luck to the President, and to you all who have had the good chance of assembling here in the imperial and hospitable city of Teheran. I am sure that your meeting—so splendidly organized by Mr. Sen, the Secretary General and his able collaborators also from the host country—that your meeting will be pleasant and fruitful to the benefit of all countries of Asia and Africa and indeed, to the benefit of the whole international community.