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**Report on the twelfth session of the Asian-African Legal Consultative Committee, by
Mr. Taslim O. Elias, Observer for the Commission**

Topic:
Cooperation with other bodies

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CO-OPERATION WITH OTHER BODIES

[Agenda item 9]

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[6 May 1971]

ABBREVIATIONS

ECE	Economic Commission for Europe
UNCITRAL	United Nations Commission on International Trade Law

1. In accordance with the decision reached at the twenty-second session of the Commission,¹ I attended the twelfth session of the Asian-African Legal Consultative Committee held in Colombo, Ceylon, from 18 to 28 January 1971.

2. At the opening meeting of the session, the following agenda was adopted:

I. Administrative and organizational matters

1. Adoption of the agenda
2. Election of the President and Vice-President
3. Admission of observers
4. Consideration of the Secretary's report on policy and administrative matters and the Committee's programme of work
5. Date and place for the thirteenth session

II. Matters referred to the Committee by the Governments of the participating countries under article 3 (b) of the Statutes

1. Law of the sea including questions relating to sea-bed and ocean-floor (referred by the Government of Indonesia) (priority item).
2. Law of international river (referred by the Governments of Iraq and Pakistan)

III. Matters taken up by the Committee under article 3 (c) of the Statutes

International sale of goods (taken up by the Committee at the suggestion of the Governments of India and Ghana).

3. On 18 January 1971, following the election of the President and the Vice-President as well as the admission of observers, the President invited me to make a state-

ment on the work of the International Law Commission at its twenty-second session. I gave a summary account of the contents of the Commission's report, high-lighting those features which were of special interest to the Committee. This was well received. The first day's session concluded with this event.

A. THE LAW OF THE SEA

4. From the morning of 19 January till noon on 22 January, there was a general discussion in the Committee on the law of the sea and the law of international rivers. Statements on the law of the sea by non-members were made by observers from the United States of America, Ecuador, Brazil, Argentina, Peru and the German Branch of the International Law Association. The United States and the Latin American countries argued their cases with cogency, the former explaining in detail its memorandum on the subject which had been in circulation since its presentation in New York and elsewhere, while the latter strongly advocated the adoption of the 200-mile limit for the territorial sea.

5. The work of the session was thereafter carried on in two Sub-Committees, one on the law of the sea and one on the law of international rivers. I was elected Chairman of the first Sub-Committee, which turned out to be a committee of the whole. This meant that the Sub-Committee on the Law of International Rivers only functioned whenever the Committee of the Whole on the Law of the Sea was not sitting. The third subject, international sale of goods, was discussed at the meeting of the Committee on 25 January, and later considered briefly in a sub-committee before the Committee resumed its deliberations on the first two topics.

¹ See *Yearbook of the International Law Commission, 1970*, vol. II, p. 311, document A/8010/Rev.1, para. 95.

6. The emphasis throughout was on the law of the sea. This was because the United Nations had decided to hold a conference on the subject in 1973² to deal, *inter alia*, with the new legal régime governing the exploration of the sea-bed resources beyond the continental shelf, the breadth of the territorial sea, the régime of the international straits, the definition of the limit of the continental shelf, special rights of the coastal States in the fisheries resources of the sea and the anti-pollution measures of the high sea. It was felt in the Committee that the problem would be to attempt to reconcile the two dominant principles underlying the law of the sea: the principle of the freedom of the sea and the principle of the sovereignty of coastal States over areas off their coast. The 1958 Conventions on the Law of the Sea do not resolve the question of the breadth of the territorial sea and the outer limit of the continental shelf. They recognize, however certain rights of coastal States in a contiguous zone adjacent to its territorial sea which is not more than 12 miles from the coast or the baseline from which the territorial sea is measured. Many States exercise fisheries jurisdiction within 12 miles of their coast, either in the territorial sea or in the contiguous zone.

7. Views were divided as to whether to accept (a) the Latin American idea of a 200-mile limit, (b) the United States-espoused theory that the sea-bed and its resources are a common heritage of mankind as a whole, and that there should be established an international organization or régime to administer and govern all activities on the ocean floor, having full international personality and being independent and impartial, (c) the United States trust concept, implying the difficult problem of having to define the boundary of the area between the continental shelf and the sea-bed area which would be placed under the international régime, or (d) the fact that most States today have accepted only the twelve-mile limit, so that (b) and (c) should be practicable if there could be general agreement. The representatives of the Philippines and of Indonesia strenuously advocated an archipelago principle which guarantees the unity of their groups of islands while recognizing the right of innocent passage for foreign ships. The principle must be regarded as an exception to any general rule that might emerge.

8. There were available to the Sub-Committee these documents, *inter alia*: (a) the United Nations Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction (resolution 2749 (XXV) adopted by the General Assembly on 17 December 1970); (b) the draft statute for an international sea-bed authority, submitted by the Mission of the United Republic of Tanzania to the United Nations (document NY/CSB 2/3, dated 8 January 1971);³ and (c) the statement by Bernard H. Oxman, Assistant Legal Adviser for

Ocean Affairs, Department of State, United States of America, regarding the statement by President Nixon of 23 May 1970 and the draft United Nations Convention on the International Sea-Bed Area submitted by the United States as a working paper on 3 August 1970.⁴ These were all discussed at considerable length. In the end, the representative of Ceylon, acting as Rapporteur on the subject, was requested to formulate proposals based on the various views expressed in the Sub-Committee, which would be used at the pre-conference meeting of members of the Asian-African Legal Consultative Committee to be held in Geneva on 15 July 1971, just before the session of the United Nations Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction to consider the working papers prepared by a working group of nine member States as well as comments by Governments thereon.

9. It was the view of the Committee that all the detailed discussion in Colombo and Geneva should be regarded as tentative only and that a more definitive position would be taken in Lagos, Nigeria, at the thirteenth session of the Committee to be held in January 1972, when the law of the sea should be the main business.

B. THE LAW OF INTERNATIONAL RIVERS

10. As already explained in paragraph 5 above, this topic was given a subordinate role by the Committee, as it had been discussed at the eleventh session. The Sub-Committee of Ten (Ceylon, Ghana, Iran, Iraq, Japan, Jordan, Nigeria, Pakistan and the United Arab Republic) met a number of times to consider the question of international rivers. Two sets of draft proposals were tabled, one by India based on a section of the draft articles of the International Law Association containing the Helsinki Rules⁵ and the other by Pakistan containing general provisions on the utilization of international rivers. The Sub-Committee soon saw the futility of any attempt to study the subject in depth on the basis of the two parallel approaches, and invited the Ceylonese Rapporteur to aim at achieving a synthesis on which meaningful discussion could take place. Both India and Pakistan would appear to be so preoccupied with their immediate dispute over the sharing of the waters of the Ganges River that neither said it was ready to accept any objective approach to the problem of international rivers. The Secretary-General of the International Institute for the Unification of Private Law suggested that it would be wise to establish a commission for each international river, citing those of the Rhine and the Danube as examples. The examples of the Nile River, the Senegal River and the River Niger régimes⁶ did not seem to appeal to them as useful

² General Assembly resolution 2750 C (XXV), of 17 December 1970.

³ Reproduced in *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21 (A/8421)*, annex I, sect. 1.

⁴ *Ibid.*, *Twenty-fifth Session, Supplement No. 21 (A/8021)*, annex V.

⁵ International Law Association, *Report of the Fifty-second Conference, held at Helsinki, 1966* (London, International Law Association, 1967), pp. 484-532.

⁶ The particular attention of the Committee was drawn to my article entitled "The Berlin Treaty and the River Niger

precedents. A permanent commission of even a purely administrative character was unacceptable to both. The best that the Committee could do was to decide to keep the subject under further study at an inter-sessional meeting of the Sub-Committee to be held during 1971.

C. INTERNATIONAL SALE OF GOODS

11. The leader of the Pakistan delegation, as the Chairman of the standing Sub-Committee on this subject, gave an account of the work of the Sub-Committee and of the progress made so far on the subject in UNCITRAL. The subjects considered were international payments, shipping, bills of lading and international commercial arbitration. Also considered was the question of model contracts for commodities such as rubber and cocoa products prepared by the Trade Association of Overseas Buyers. Suitable commodities that could be used as a beginning for such contracts could be rubber, timber, rice, textile, machinery, oil and coconut products. Mr. Hannold, Chief of the International Trade Law Branch of the United Nations Office of Legal Affairs, agreed to make available all contracts prepared by ECE. He explained a number of changes made to articles 1-17 of the Uniform Law on International Sale of Goods, and described briefly the work done by UNCITRAL on the subjects of prescription, negotiable instruments, international shipping legislation and international arbitration. It was decided that more information should be obtained by the secretariat of the Committee on the research already carried out in Africa and Asia, and that a questionnaire should thereafter be sent to all member States with a view to determining the line of future work on this subject.

D. ENLARGEMENT OF MEMBERSHIP

12. In pursuance of the Committee's consideration of the question of increased membership at its eleventh

Commission", which appeared in the *American Journal of International Law* (Washington D.C.), vol. 57, No. 4 (October, 1963), p. 873. The article gave an account of the régime set up by the nine riparian States of the Niger River Basin.

session (Accra, 1970), the twelfth session gave some thought to the subject at Colombo. It was decided:

(a) That a summary of the proceedings of that session, especially in relation to the law of the sea, be made available in both English and French in order to draw the attention of non-member African States to the important subjects being studied and thereby induce them to join;

(b) That the francophone African States be invited to consider becoming members before the thirteenth session of the Committee to be held in Lagos in January 1972, at which there would be provision for simultaneous translation in English and French if an encouraging number (say four or five) should indicate a desire to do so within a reasonable time;

(c) That the basic documents of the Committee (i.e., the background papers, including the constitution) should be translated into French and forwarded to such States under cover of a circular letter from the Secretary; and

(d) That, as part of the effort to acquaint them with the Committee's work, the Governments of member States be requested to use their good offices to persuade non-members to join, and that the leaders of the delegations present at the session should undertake to take up the matter at the personal level with their counterparts in non-member African States on all appropriate occasions.

E. CONCLUSION

13. The Committee decided: (a) that the present practice of supplying a copy of the printed report to each member of the International Law Commission as well as six sets of the Committee's brief of documents and the reports of the sessions to the Commission's secretariat be continued; and (b) that the Committee's representative should attend the Commission's sessions for at least one week, although attendance for a period of two weeks would be preferable.

14. Finally, the Committee wished to convey its appreciation to the Commission for sending to its twelfth session an observer to give it an account of the work of the Commission's twenty-second session.