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**Report on the thirteenth session of the Asian-African Legal Consultative Committee by
Mr. Senjin Tsuruoka, Observer for the Commission**

Topic:
Cooperation with other bodies

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CO-OPERATION WITH OTHER BODIES

[Agenda item 8]

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by Mr. Senjin Tsuruoka, observer for the Commission¹

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ABBREVIATIONS

FAO	Food and Agriculture Organization of the United Nations
OAY	Organization of African Unity
UNCITRAL	United Nations Commission on International Trade Law
UNIDROIT	International Institute for the Unification of Private Law

1. In accordance with the decision taken by the International Law Commission at its twenty-third session,² I had the honour to attend, as an observer for the Commission, the thirteenth session of the Asian-African Legal Consultative Committee which was held at Lagos (Nigeria) from 19 to 25 January 1972.

2. The delegations of the following member States attended the session: Ceylon, Egypt, Ghana, India, Indonesia, Iran, Iraq, Japan, Kenya, Malaysia, Nepal, Nigeria, Pakistan, Philippines, Syrian Arab Republic and Thailand. The delegation of the Republic of Korea, an associate member State, also attended the session. The fifteen non-member States of Asia and Africa were represented by observers. Australia, Austria, Brazil, Canada, Iceland, Norway, Peru, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the United States of America were also represented

¹ Mr. Tsuruoka attached to his report (1) a full list of the delegates and observers who attended the thirteenth session of the Committee and (2) the draft standard form of contract and the report of the Sub-Committee on the law relating to the international sale of goods, referred to in paragraph 19 below. These documents are being kept in the files of the secretariat of the International Law Commission.

² *Yearbook of the International Law Commission, 1971* (Part One), p. 352, document A/8410/Rev.1, para. 141.

by observers. In addition, representatives of the United Nations, FAO, UNCITRAL, the Commonwealth Secretariat, the League of Arab States, OAU and UNIDROIT attended as observers.

3. At its first meeting on 20 January 1972, the Committee adopted the following agenda:

- I. Administrative and organizational matters:
 1. Adoption of the agenda
 2. Election of the President, the Vice-President and the Secretary-General
 3. Admission of observers
 4. Consideration of the Secretary-General's report on policy and administrative matters and the Committee's programme of work
 5. Dates and place for the fourteenth 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)
 2. Law of international rivers (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 Ghana and India)

4. At the same meeting, Mr. T. O. Elias, Attorney-General of Nigeria and Mr. Mustapha Kamil Yasseen of Iraq were elected respectively President and Vice-President for the session. Mr. B. Sen, present Secretary-General of the Committee, was re-elected for a further term of three years. Following the admission of observers, the President invited me to make a statement on the work of the International Law Commission at its twenty-third session, the text of which is annexed to this report.

5. The Committee started the discussion on the subject of the law of the sea at its very first business meeting held on 20 January 1972. Throughout the session, the emphasis was placed on the law of the sea as had been done at the previous session.

The law of the sea

6. The Committee had started consideration of the question of the law of the sea at its twelfth session held in Colombo, Ceylon, in January 1971. At that session, a fairly extensive discussion of a general nature had taken place on several major topics. The Lagos session of the Committee was therefore the second occasion on which the Committee had taken up the law of the sea, reverting to it for a fuller consideration of the subject. This was in keeping with the recent important development in this field in the United Nations and elsewhere. The United Nations Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction (which, in accordance with the decision taken by the General Assembly at its twenty-sixth session,³ is now composed of ninety-one Member States), is currently undertaking the preparatory work for a comprehensive conference on the law of the sea, tentatively scheduled for 1973 under General Assembly resolution 2750 C (XXV). The work of the Asian-African Legal Consultative Committee on the law of the sea has therefore an important bearing on the work carried on in the United Nations Committee. Also, there have been gatherings of representatives of States on the law of the sea on a regional basis, in Africa, Latin America and elsewhere, such as, for example, the one that recently took place within OAU, an account of which was given to the Committee by the observer for that body.

7. A wide participation of observers, of which there were 38, from non-member countries both from within and from without the continents of Africa and Asia, is worth mentioning, and it seemed to testify to the acute interest which the subject matter arouses in the community of nations in general, and in particular, in the developing nations. This was significant in view of the fact that the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction is now about to enter into a more important phase of its work in the preparation of the forthcoming conference on the law of the sea.

8. The topics discussed at the thirteenth session of the Committee included nearly all important subjects and issues that are likely to be dealt with by the forthcoming

conference on the law of the sea, namely: (a) international régime for the sea-bed, (b) exclusive economic zone, (c) territorial sea and straits, (d) regional arrangements, (e) archipelago and (f) position of land-locked countries.

9. In the afternoon of 20 January, in plenary, the Committee commenced deliberations on the law of the sea by hearing brief statements of members of the Working Group on certain topics on which they had prepared working documents. This Working Group, which consists of seven members, was originally established at the twelfth session, with the main task, *inter alia*, of preparing one or more working papers on any specific topics on the law of the sea. The working papers presented at the thirteenth session were the following: (1) "Preliminary draft and outline of a convention on the sea-bed and the ocean floor and the sub-soil thereof beyond national jurisdiction", prepared by the Rapporteur of the Sub-Committee on the Law of the Sea, Mr. C. W. Pinto of Ceylon, and introduced, in his absence, by the delegate of India; (2) "Proposed régime concerning fisheries on the high seas", prepared by Japan; (3) "The exclusive economic zone concept", prepared by Kenya. Also available were the working papers on the "Concept of archipelago" and on "International straits", which had been submitted earlier by Indonesia and Malaysia, respectively, both as members of the Working Group.

10. On 21 and 22 January, the Committee heard in three plenary sessions general statements by States members of the Committee, observers, and the representatives of international organizations including FAO and OAU. Observers from major maritime nations, such as the United States of America, the USSR, and the United Kingdom, also took part in the general debate, in which they set out the position of their respective Governments. The Committee thereafter continued discussion of the subject in the Sub-Committee on the Law of the Sea, which is an assembly of the whole, on the basis of the various working papers to which I have just referred.

11. Of the various topics and issues, the question of fisheries and the concept of exclusive economic zone were undoubtedly the two principal subjects on which the debate focused for the most part. The view was expressed, with force, by several delegates and observers of developing countries, that there was a need to depart from the traditional concept of the law of the sea and to find new ideas to resolve the existing conflict of interests so that a fair and equitable framework for the use of the sea and the exploitation of its resources could be established. The working paper on fisheries submitted by Japan, which attempted to set out in considerable detail the concept of preferential fishing rights of coastal States with special reference to developing coastal countries, was considered insufficient by many participants, for the reason that the proposal therein contained did not go far enough adequately to protect their interests. It was felt in general that while there appeared to be a growing consensus on according the coastal States an increasing share of fisheries adjacent to their territorial sea under concepts of economic, exclusive or preferential zones, the crucial question was one of jurisdiction. The view was also expressed in this connexion that the concept of exclusive fishing zone was separate from the concept of territorial sea jurisdic-

³ Resolution 2881 (XXVI).

tion, and that outer limits for the two should therefore be separately defined.

12. Regarding the economic zone, a great majority of developing countries, both member States and observers, expressed themselves in favour of the concept. It was felt however that there was need for greater clarity in defining the jurisdictional aspects of the concept in such matters as resources control, prevention and control of the pollution of the sea, scientific research and national security. Emphasis was laid by those wedded to the concept that the interests of land-locked countries could be protected by regional arrangements providing national treatment for land-locked countries in the region concerned.

13. The concept of archipelago was forcibly expounded by the two most important archipelagic countries, the Philippines and Indonesia, and there were a certain number of questions and answers on such related questions as the baseline criteria and the status of the waters within the archipelago in relation to navigation rights of foreign ships.

14. With regard to the international régime for the seabed beyond the limits of national jurisdiction, it was argued that if the limits of national jurisdiction were too wide, for example, at 200 miles from the coast, as advocated by some Latin American countries, the resources in the international area left for exploitation for the common benefit of the international community would only be of insignificant value and consequently the international machinery to be established for the management of the area and its resources would be of little economic significance, because practically all the valuable resources would be placed under the exclusive control of individual coastal States. In refutation of this, the points were made that mineral resources of commercial value had been discovered on the deep ocean floor, and that sea-bed technology had developed to the extent of enabling their recovery. On the basis of such facts, it was argued that the establishment of an appropriate international machinery with comprehensive powers and functions was necessary, because its absence would bring about the situation in which only the technically advanced States would enjoy freedom to acquire them.

15. In conclusion, the points made were cogent, the debate was lively and forceful, and a high degree of expert knowledge and competence characterized the deliberations. The question of the law of the sea is expected to continue to be the priority item on the agenda of the fourteenth session of the Committee in 1973.

The law of international rivers

16. The subject "Law of international rivers" was referred to the Committee at its ninth session by the Governments of Iraq and Pakistan. Both Governments appeared to be primarily interested in the uses of waters of international rivers. At the eleventh session of the Committee, the delegates of Iraq and Pakistan submitted the joint draft articles which they wished the Committee to take up as the basis for discussion. The delegate of India also submitted a proposal that the Helsinki Rules adopted

by the International Law Association in 1966⁴ should be the basis of the Committee's study and that, to begin with, the first eight articles of the Helsinki Rules should be taken up. No progress could be made at the eleventh session on this subject as the discussions centred round procedural matters.

17. At the twelfth session, the Sub-Committee on the subject requested its Rapporteur to prepare a set of draft articles amalgamating as far as possible the proposals contained in the two drafts submitted at the eleventh session. The Rapporteur submitted his working paper containing ten draft proposals, which were accepted by the Sub-Committee as the basis of discussion. However, owing to lack of time, the Sub-Committee was able to consider only draft proposals I to V during the session, and the rest were considered at the inter-session meeting held at Colombo in September 1971.

18. At the thirteenth session, the Sub-Committee was reminded at the beginning of its work by one member that the draft proposals prepared by the Rapporteur at the twelfth session did not cover all aspects of the law of international rivers and that they were silent in particular on the rules relating to navigational uses of such rivers. The Sub-Committee accordingly agreed to take up other aspects of this subject including navigation, pollution, timber-floating etc., at future sessions. The Sub-Committee also agreed that the Committee should direct the secretariat to prepare a study on the subject of the right of access of land-locked countries to the sea through international rivers. It was further agreed that the new draft proposals, with appropriate commentaries on each proposal, should be prepared by the Rapporteur of the Sub-Committee and should be distributed through the secretariat to members of the Sub-Committee before the date of the fourteenth session.

International sale of goods

19. The Sub-Committee on the law relating to the international sale of goods took up for discussion only the draft standard form of contract for sale of consumer goods, prepared by the Joint Rapporteur of the Sub-Committee at the suggestion of the Secretary-General of the Committee, on 24 January 1972. The Assistant Secretary of UNCITRAL and the Secretary-General of UNIDROIT attended the meeting of the Sub-Committee. After some discussion, the Sub-Committee adopted the report recommending certain amendments to the draft standard form of contract. The draft standard form of contract and a copy of the report of the Sub-Committee are annexed to the present report.⁵

20. Earlier, at the plenary meeting, the Committee heard the statement made by the Assistant Secretary of UNCITRAL on the work of that Commission during 1971.

⁴ International Law Association, *Report of the Fifty-second Conference, held at Helsinki, 1966* (London, International Law Association, 1967), pp. 484-532.

⁵ See foot-note 1.

21. In conclusion, I should like to express my deep gratitude for the warm welcome accorded to me by the President of the Committee, Mr. T. O. Elias, Attorney-General of Nigeria, and for the cordial reception and kindness shown to me by the Secretary-General of the Committee and the officials of the Government of Nigeria.

ANNEX

Statement made by Mr. Senjin Tsuruoka, Chairman of the International Law Commission, at the thirteenth session of the Asian-African Legal Consultative Committee

1. It is a great honour and pleasure for me to attend the thirteenth session of the Asian-African Legal Consultative Committee on behalf of the International Law Commission. I am convinced that under the able leadership of the Chairman, the Committee will be able to carry out its work successfully. I should also like to ask the Chairman to convey to the Government of Nigeria my deep gratitude for the warm hospitality which it has given me.

Now, I would like to give the Committee a general idea of the work of the International Law Commission during its twenty-third session in 1971.

2. The main items on the agenda of the twenty-third session of the Commission were :

- Relations between States and international organizations;
- Succession of States;
- State responsibility;
- Most favoured-nation clause;

The question of treaties concluded between States and international organizations or between two or more international organizations.

I wish to deal in the first place with the topic of relations between States and international organizations.

Following the recommendation of the General Assembly in 1970,^a the International Law Commission at its twenty-third session completed the preparation of a draft entitled "Draft articles on the representation of States in their relations with international organizations". The draft articles, which represent the fourth achievement of the Commission in the field of diplomatic law, constitute both codification and progressive development of international law.

3. The final draft consists of 82 articles and is divided into four parts and an annex. Part I, entitled "Introduction", contains provisions applicable to the draft articles as a whole. Article 2 provides that the draft articles apply to the representation of States in their relations with international organizations of universal character, that is, intergovernmental organizations whose membership and responsibilities are on a world-wide scale. They are also applicable to the representation of States at conferences convened by or under the auspices of such organizations. The representation of entities other than States in their relations with international organizations is not within the scope of the draft articles.

The draft articles, while intended to provide a uniform régime, are without prejudice to different rules laid down in headquarters agreements or other conventions which are in force. Nor do they preclude the conclusion of future agreements which may contain provisions diverging in some respects from the rules laid down in the draft articles.

4. Part II contains provisions dealing, *inter alia*, with the establishment of permanent missions and permanent observer missions, their functions, appointment of their members, their size and composition, as well as privileges and immunities of missions and of their members.

5. Part III deals specifically with delegations to organs of international organizations of universal character and delegations to conferences convened by or under the auspices of such organizations. It contains, provisions on, among other questions, privileges and immunities as well as the sending, credentials, size and composition of delegations.

6. Part IV contains provisions which are generally applicable to missions to international organizations and delegations to organs and conferences, dealing with questions such as nationality of the members of missions and delegations, respect for the laws and regulations of the host State, the entry into and departure from the host State. Special attention must be given to articles 81 and 82. Article 81 provides for consultations between the sending State the host State and the organization aiming at the settlement of any dispute arising between them. Article 82 envisages the utilization of any settlement procedure which may be established in the organization and, in the absence of any such procedure, the reference of the dispute to conciliation.

7. Finally, the International Law Commission presented a set of provisions on observer delegations to organs and to conferences in the form of an annex.

8. The Commission recommended that the General Assembly of the United Nations should convene an international conference of plenipotentiaries to study the Commission's draft on this subject. The General Assembly, at its twenty-sixth session, which I attended as the representative of the International Law Commission, invited Member States and Switzerland to submit their written comments and observations on the draft articles and on the procedure to be adopted for the elaboration and conclusion of a convention on the subject.^b

9. As for the other topics currently under study, it was unfortunately not possible for the Commission to consider them owing to the fact that the Commission devoted its time almost entirely to the completion of the draft articles on the representation of States in their relations with international organizations.

10. Turning to other decisions and conclusions, the International Law Commission at its twenty-third session decided to include a question entitled "Non-navigational uses of international watercourses" in its general programme of work. The Commission, however, left to the Commission in its new composition the question of the priority to be given to that topic.

11. In connexion with the organization of work of the Commission at its twenty-fourth session (1972), the Commission requested indication from the General Assembly as to the priority to be given to the problem of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law. The General Assembly at its twenty-sixth session requested the Commission to study this subject as soon as possible with a view to preparing a set of draft articles for submission to the General Assembly at the earliest date which the Commission considered appropriate.^c

12. Before concluding my statement, I should like to inform the Committee that the International Law Commission was very pleased to have Mr. Fernando and Mr. Sen as observers at its twenty-third session. I should also like to inform the Committee that, in the course of the debate on the report of the International Law Commission in the Sixth Committee of the General Assembly, several representatives welcomed the continuing co-operation between this Committee and the International Law Commission. I hope that this close relationship between the Asian-African Legal Consultative Committee and the International Law Commission will be strengthened further in the future.

^a Resolution 2634 (XXV), para. 4 (a).

^b Resolution 2780 (XXVI), sect. II, para. 2.

^c *Ibid.*, sect. III, para. 2.