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**Report on the Fourth Session of the Asian African Legal Consultative Committee (Tokyo
February 1961) by Mr. F.V. Garcia Amador, Observer for the Commission**

Topic:
Cooperation with other bodies

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CO-OPERATION WITH OTHER BODIES

[Agenda item 5]

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Report on the fourth session of the Asian-African Legal Consultative Committee

BY F. V. GARCÍA-AMADOR, OBSERVER FOR THE COMMISSION

[Original: English & Spanish]

[30 May 1961]

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INTRODUCTION

At its twelfth session, the International Law Commission decided unanimously to accept the invitation of the Asian-African Legal Consultative Committee to send an observer to the Committee's fourth session.¹ Noting that the topic of State responsibility was on the agenda of that session, a topic which was also to be studied by the Commission at its next session, the latter decided to designate Mr. F. V. García-Amador, its Special Rapporteur for that subject, as observer at the Committee's fourth session.

In fulfilment of his mandate, the observer attended the session in question, which took place in Tokyo, Japan, from 15 to 25 February 1961. This report contains an account of the proceedings of this fourth session, especially in regard to topics in the field of international law which form part of the Commission's programme of work. In addition, it gives a short account of the Committee's activities prior to the Tokyo session.

ESTABLISHMENT AND COMPOSITION OF THE COMMITTEE

The Committee was established — with the title, "Asian Legal Consultative Committee" — in November 1956 by the Governments of Burma, Ceylon, India, Indonesia, Iraq, Japan and Syria. On the suggestion of the Prime Minister of India, which the other member countries accepted, the statutes of the Committee were

¹ *Official Records of the General Assembly, Fifteenth Session, Supplement No. 9 (A/4425), chapter IV, paragraph 43.*

amended to enable countries from the African continent to become members as from April 1958. As a result, the Committee's title was changed to its present one. On the formation of the United Arab Republic, this State became a founder member in place of Syria. Sudan was admitted to membership with effect from 1 October 1958, Pakistan with effect from 1 January 1959 and Morocco at the fourth session.

Under article 3 of its statutes, the Committee is to function for an initial period of five years, which terminates on 14 November 1961. By a resolution adopted at the fourth session member governments were recommended, in view of the work already accomplished by the Committee and the further work still pending, and in view of the Committee's valuable role in promoting Asian-African co-operation, to make it a permanent body or at all events to extend its term for a further five years, at the end of which period the question would be reconsidered.

The representatives of the States members of the Committee attending the fourth session were:

Burma

Member and leader of the delegation: Hon. U Myint Thein, Chief Justice of the Union of Burma
Alternate member: U Nyun Tin, Legal Adviser to the Municipal Corporation of Rangoon
Adviser: U Soe Tin, Secretary to the Government of Burma, Ministry of Foreign Affairs
Adviser: U Kyaw Thaung, Assistant Attorney-General

Ceylon

Member and leader of the delegation: Senator the Hon. Mr. Sam P. C. Fernando, Minister of Justice
 Alternate member: Mr. E. R. S. R. Coomaraswamy, Advocate
 Adviser: Mr. R. S. Wanasundera, Crown Counsel, Attorney-General's Department

India

Member and leader of the delegation: Mr. M. C. Setalvad, Attorney-General for India
 Alternate member: Hon. Mr. Justice S. K. Das, Judge, Supreme Court of India
 Alternate member: Mr. B. N. Lokur, Secretary to the Government of India, Ministry of Law
 Adviser: Mr. P. K. Banerjee, Counsellor, Embassy of India in Japan
 Secretary: Mr. A. G. Asrani, Third Secretary, Embassy of India in Japan

Indonesia

Member and leader of the delegation: Hon. Mr. R. Wirjono Prodjodikoro, Chief Justice of the Republic of Indonesia
 Alternate member: Dr. S. H. Tajibnapis, Acting Chief of Legal Division, Department of Foreign Affairs
 Adviser: Mr. Mochtar Kusumaatmadja, Professor of International Law, Bandung University
 Secretary: Mr. Utarso, Second Secretary, Embassy of Indonesia, Tokyo

Iraq

Member and leader of the delegation: H.E. Mr. Abdul Amir Al-Egaili, Attorney-General and Chief Public Prosecutor, Iraq
 Alternate member: Dr. Hassan Al-Rawi, Director-General, Legal Department, Ministry of Foreign Affairs
 Adviser: Mr. Abdul Malik Al-Zaibeq, First Secretary, Embassy of Iraq in Japan

Japan

Member and leader of the delegation: Dr. Kenzo Takayanagi, President, Cabinet Commission on Constitutional Reforms, Japan
 Alternate member: Mr. Kumao Nishimura, Judge, Permanent Court of Arbitration
 Adviser: Dr. Zengo Ohira, Professor of Law, Hitotsubashi University
 Adviser: Dr. Toshio Mitsudo, Counsellor, Embassy of Japan, New Delhi
 Adviser: Mr. Yoshiho Yasuhara, Counsellor, Criminal Affairs Bureau, Ministry of Justice
 Adviser: Mr. Jiro Muraoka, Public Prosecutor, Civil Affairs Bureau, Ministry of Justice

Adviser: Mr. Chikara Ikegami, Public Prosecutor, Immigration Bureau, Ministry of Justice

Adviser: Mr. Motto Ogiso, Chief of Legal Affairs Section, Ministry of Foreign Affairs, Japan

Adviser: Mr. Hirohiko Otsuka, Legal Affairs Section, Ministry of Foreign Affairs, Japan

Pakistan

Member and leader of the delegation: Mr. A. T. Mustapha, Barrister-at-law
 Adviser: Mr. K. A. Aziz Khan, Third Secretary, Embassy of Pakistan

Sudan

Not represented

United Arab Republic

Member and leader of the delegation: H.E. Hafez Sabek, Attorney-General of the United Arab Republic

Alternate member: Dr. Ezz El-Din Abdullah, Dean, Faculty of Law, University of Ein Shams

Adviser: Dr. Jabir Abdul Rahman, Professor, Faculty of Law, University of Cairo

Adviser: Mr. Mohammed Hafiz Genem, Professor of Public International Law, University of Ein Shams

Adviser: Mr. Gamal El Nomani, Ministry of Justice

Adviser: Mr. Nazar El Kayyali, Advocate

In addition, the Governments of Cambodia and Ghana were represented by observers.

The Committee elected the leader of the Japanese delegation as President, and leader of the Indonesian delegation as Vice-President for the session.

Mr. B. Sen acted as General Secretary of the Conference and Secretary of the Committee, Mr. T. Mitsudo as liaison officer with the Government of Japan and chief organizational officer, and Mr. H. Otsuka as conference officer.

FUNCTIONS AND ORGANIZATION

Under article 3 of its statutes, the Committee has the following functions:

- (a) 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 said commission;
- (b) To consider legal problems that may be referred to the Committee by any of the participating countries and to make such recommendations to governments as may be thought fit;
- (c) To exchange views and information on legal matters of common concern; and
- (d) To communicate, with the consent of the governments of the participating countries, the points of

view of the Committee on international legal problems referred to it, to the United Nations, other institutions and international organizations.

It is the first and last of these functions which are of special interest to the United Nations and the International Law Commission. The Commission's statute explicitly recognizes the advisability of consultation with intergovernmental organizations whose task is the codification of international law (article 26, paragraph 4). This point will be mentioned again elsewhere in this report.

The Committee normally meets once a year in the different member countries. The first session was held at New Delhi (1957); the second at Cairo (1958); the third at Colombo (1960) and the fourth at Tokyo (1961). At the most recent session, it was decided that the fifth session should be held at Rangoon, Burma, in January 1962.

Since its establishment, the Committee has had a permanent secretariat at New Delhi, which is responsible both for administrative matters and for preparing studies and documents relating to the topics on the Committee's programme. Each State appoints a member of its diplomatic mission to act as liaison officer with the secretariat, and to co-operate with it. At the Committee's request, the Government of India offered the services of Mr. B. Sen, Legal Adviser to the Ministry of External Affairs, as honorary secretary. In response to repeated requests by the Committee, Mr. Sen has continued to hold this office since the first session.

In accordance with its statutes (article 7) and statutory rules, the Committee may enter into arrangements for consultations with other organizations and bodies. In this respect, the Committee has maintained close relations, especially for the purpose of exchanging documents, with the United Nations, certain of the specialized agencies, the Inter-American Council of Jurists and the League of Arab States. In keeping with the nature of these activities, the Committee has been represented by observers at meetings of these organizations and bodies.

In response to the invitation addressed to it by the International Law Commission, which I had the honour to convey to the Committee on the Commission's instructions, Mr. Hafez Sabek, Attorney-General of the United Arab Republic and leader of its delegation, was designated at the Tokyo session to represent the Committee as an observer at the Commission's thirteenth session.

THE THREE PREVIOUS SESSIONS

Since its establishment, the Committee has had an extensive programme of work. At its first session (1957), the following topics were submitted for its consideration: Functions, privileges and immunities of diplomatic envoys and agents, including questions regarding the enactment of legislation to provide for diplomatic immunities; principles governing the extradition of offenders taking refuge in the territory of another State, including questions relating to the desirability of concluding extradition treaties and simplifying the procedure

for extradition; the law relating to the regime of the high seas, including questions relating to the rights to the sea-bed and sub-soil; status of aliens, including questions relating to the responsibility of States in respect to the treatment of foreign nationals; restrictions on the immunity of States in respect of commercial transactions entered into by or on behalf of States and by state trading corporations; the law of the territorial sea; questions relating to dual nationality; ionospheric sovereignty; questions relating to the reciprocal enforcement of foreign decrees in matrimonial matters and questions relating to free legal aid. During the session almost all the agenda items were discussed, although it proved impossible to prepare drafts or reports on any of them.

At its second session (1958), the Committee concentrated on the following subjects: diplomatic immunities, extradition, immunity of States in respect of commercial transactions, dual nationality, and status of aliens. At the close of that session the Committee submitted to member governments a report on diplomatic immunities and another on immunity of States in respect of commercial transactions.

At its third session (1960) the Committee considered the comments received from governments on the two aforesaid reports and made certain changes in the report on diplomatic immunities. It discussed in greater detail the legal status of aliens and extradition and prepared provisional draft articles on each of these two topics. For the first it took as the basis of discussion the memorandum prepared by the secretariat and for the second a draft multilateral agreement submitted by the Government of the United Arab Republic and another memorandum prepared by the secretariat. In addition, the Committee held a general discussion on questions relating to dual nationality and on the International Law Commission's report on arbitral procedure (A/3859, chapter II). At the same session it was decided that the question of the legality of nuclear tests and the legal aspects of certain economic questions — viz., conflicts of law regarding international contracts of sale and double taxation — should be placed on the agenda of the following session.

THE TOKYO SESSION

At its fourth session, the Committee considered the topics held over for study and decision from the earlier sessions. In some instances, it confined itself to settling the procedure to be followed in the future consideration of the topics in question. In other cases, however, it decided that its consideration of particular topics was concluded and removed them from its programme of work. In the other cases it prepared final texts of what had previously been provisional drafts.

The subject of consular immunities and privileges falls in the first group. In view of the stage reached in the International Law Commission's work on the subject, the Committee decided to place it on the agenda for its next session, when the Commission's draft is to form the basis for discussion, and requested the secretariat to communicate any necessary background material.

Similarly, in view of the stage reached in the International Law Commission's work on the law of treaties, it requested the Secretariat to collect background material and prepare commentaries concerning this topic in order that it might be included in the agenda for the fifth or sixth session. With regard to the immunities and privileges of the Committee, consideration of which had been repeatedly postponed at the request of member governments which wished to study the subject more thoroughly, the Committee decided that the draft articles should be referred to the fifth session for a final decision.

As regards the topic of conflicts of law concerning international contracts of sale, the Committee decided to study only the case-law relating to transfers of corporeal movable property and to request the secretariat to ask governments for particulars of municipal law, to prepare a report thereon and to circulate it to governments in good time for the problem to be discussed at the 1962 session. The Committee adopted a like decision on the subject of double taxation: the Secretariat is to ask member governments for the texts of laws and agreements concluded by them on the subject of double taxation and on that basis to continue its preparatory work with a view to facilitating the Committee's future discussions. In contemplation of the future study of the topic of double nationality the Committee decided to ask the delegation of the United Arab Republic to prepare a revised text of its draft agreement in the light of the comments received from governments.

At the Tokyo session, the Committee paid special attention to the question of the legality of nuclear tests. All the delegations made statements in which they thoroughly examined the different aspects of the question. Although unanimous in condemning such tests, by reason of the serious damage which they are capable of causing, the Committee confined itself to declaring the question as one of the utmost urgency, and to including it, as item 1, in the agenda of the fifth session. In keeping with the same resolution, it was decided that the Secretariat should continue its study of the subject and to invite governments to transmit their comments on the list of topics which it had drawn up. It was likewise decided that the statements made by delegations should be circulated to governments so that they could express their views on the legal aspects raised during the discussion.

Furthermore, the Committee decided to consider its work with respect to other subjects which had been included in its programme of work (free legal aid and questions concerning the recognition of foreign decrees in matrimonial matters) as completed. In the case of both these topics, the Committee decided to publish the Rapporteur's report, together with the annexed documents, and submit them to governments, and to remove both topics from its programme of work. The question of the extradition of fugitives from justice was also removed from the Committee's agenda. During the fourth session, the existing draft relating to this matter was revised and the final report to be submitted by the secretariat to governments was drawn up. The Committee's other decisions are discussed below in the next section.

STATUS OF ALIENS, AND STATE RESPONSIBILITY

On the basis of the material referred to above, the topic of the status of aliens had been the subject of a general debate at the Committee's second session. It had been decided, with an express recognition of the importance of the subject, that the subject would be studied more thoroughly and that the Secretariat should collect the necessary working material and submit its report in the form of draft articles at the ensuing session. At Colombo the Committee differentiated the aspects relating to the diplomatic protection of citizens abroad and the responsibility of the State for maltreatment of aliens from the other aspects of the status of aliens, on the grounds that the first two were not related to the substantive rights of aliens in the matter of their status and treatment. At the same session, as noted earlier, the Committee approved provisional draft articles on the second aspect and invited the comments of governments. On this basis it drew up the final report, which contains the draft articles reproduced in annex I hereto.

At the Tokyo session, procedural resolutions on this subject were also adopted. At an early stage in the proceedings it was decided that the topic of State responsibility should be considered within the context of the topic of the status of aliens. When the report just mentioned was adopted, it was decided that the Secretariat should prepare the relevant commentaries on the draft articles for transmission to governments together with the report. In a subsequent and final resolution it was decided: (1) to include in the agenda of the fifth session the topic of State responsibility and the diplomatic protection of citizens abroad; (2) that the Secretariat should revise the draft articles appearing in its memorandum on the subject, if possible in conformity with the principles contained in the articles relating to the status of aliens approved at the present session; and (3) that, together with the memorandum prepared by the secretariat, the Harvard Law School's draft of 1960 on the subject, any provisional draft articles adopted by the International Law Commission, and the draft prepared by Mr. F. V. García-Amador, the Commission's Special Rapporteur, should be submitted to the Committee for consideration at its next session.

In connexion with the foregoing, it is interesting to note that the Committee has decided to take private studies and draft articles as the basis for its discussion of this subject. In doing so it has followed an old-established practice of official organizations which has proved exceptionally valuable in the progressive development of international law and its codification. In conformity with its statute, the International Law Commission has likewise made extensive use of such studies and drafts.

During the discussion of the topic the Committee did me the honour of inviting me to make a statement on the different problems and aspects of the international responsibility of the State, particularly in the light of recent developments. It was, of course, made clear that I would make the statement in my personal capacity and in no wise as a member of the International Law Commission and Special Rapporteur for the topic. It was subsequently decided that my statement, made under

those conditions, should be circulated to the members of the Committee and included in the documentation of the fifth session.

IMPORTANCE OF THE COMMITTEE

As I had occasion to state at the Tokyo session, in the present transitional stage of international law, the peoples of Africa and Asia are called upon to make a contribution to the inescapable task and goal of adapting that law to the new needs and interests of the international community, and their contribution could be as valuable as that made by the Latin American countries in a different period. (See full text of the statement in annex 2.) This historical parallel is proof of the importance of the Asian-African Committee. Even though the problems and situation which we face today are not precisely the same it cannot be denied that the Committee has a valuable part to play.

The parallel between the two regional movements is also obvious from the point of view of the risk of indulging in excessive and unjustified regionalism or from that of the risk of adopting ultra-nationalist positions which are negative and self-defeating and would be even more detrimental to the genuine interests of the peoples forming part of a regional system. Such positions would be neither compatible nor consistent with the interdependence which characterizes the world in which we live. In the western hemisphere that danger has been successfully avoided because, in considering the needs and interests of our countries, we have so far been able to look after them without disregarding the overriding considerations of interdependence.

The work so far done by the Committee seems to indicate that it is following the same lines. In this connexion, it is interesting to note the philosophy underlying its draft on the legal status of aliens, the final text of which was approved at Tokyo and is reproduced in annex 1 hereto. According to the Secretariat's report on the Colombo session, the Committee's provisional recommendations can be said to contain new concepts on the law on the subject. The Committee rejected the theory of "minimum standard of treatment" for foreigners, which had been developed during the nineteenth century, and recommended the concept of "equality of treatment" with the nationals of a State. The Committee's views appear to be based on the fact that in the modern society the doctrine of the minimum standard of treatment has become somewhat outmoded. In the course of the discussion the view which found favour was that, in the context of the United Nations Charter and the Declaration of Human Rights, every State was expected to accord fair treatment to its own nationals, which should be taken into account in the formulation of the principles concerning the treatment of foreigners.² It is clear from the foregoing that the concept on which the authors of the draft articles based themselves is that the domestic legislation concerning

the treatment of aliens should in essence conform to the internationally recognized human rights and fundamental freedoms.

For all these reasons it is to be regretted that the International Law Commission, by a recent decision, decided not to send an observer to the Committee's session which is to be held at Rangoon in February 1962, thus breaking the continuity of the co-operative relationship established between the two bodies.³ The fact that the election of the members of the Commission will take place this autumn and that the Commission will not meet again until after the Committee's fifth session makes it admittedly somewhat difficult to appoint an observer but it is in no wise an insuperable obstacle. I trust, therefore, that the Commission will reconsider its decision before the end of its present session, as I am convinced that it will be possible to find a formula permitting of a suitable solution of the problem. One possible course might be to authorize the Chairman to designate, in consultation with the persons elected members of the Commission, one of their number, a national of some African or Asian country, as observer.⁴

It is likewise regrettable that the Chairman of the Commission should have said, at the same meeting that "he did not think that the Commission could establish the principle of regular representation, in view of the considerable expense involved, which was, moreover, all the less justified in view of the extensive exchange of material. Every case should therefore be decided on its own merits and in the light of such possibilities as sending members who happened to be near the place of the session" (of the regional body).

Before I conclude this short report, I should like once again to thank the International Law Commission for the great honour which it conferred on me in designating me observer at the fourth session of the Asian-African Legal Consultative Committee, thus giving me an opportunity to be present at the deliberations of such distinguished jurists. For those of us who are devoting ourselves to the study and practice of international law there are few experiences as valuable as this.

May I also once again express my sincere gratitude to the Committee for its exceedingly great courtesy towards me and to the Government of Japan for its many and constant acts of kindness during my stay at Tokyo.

ANNEX 1

Principles concerning admission and treatment of aliens
(adopted by the Asian-African Legal Consultative Committee
at its fourth session)

Article 1. — Definition of the term "alien"

An alien is a person who is not a citizen or national of the State concerned.

³ *Yearbook of the International Law Commission, 1961, 597th meeting.*

⁴ At its 621st meeting (*ibid.*), the Commission decided to request its Chairman (or, if he should be unable to attend, another member of the commission to be designated by him, or its secretary) to act as its observer at the fifth session of the Asian-African Legal Consultative Committee [Editor's note].

² Asian-African Legal Consultative Committee, Third Session, Colombo, 20 January to 4 February 1960; issued by the secretariat of the Asian-African Legal Consultative Committee, New Delhi, India, pp. 83-84.

Note: In a Commonwealth country, the status of the nationals of other Commonwealth countries shall be governed by the provisions of its laws, regulations and orders.

Article 2

(1) The admission of aliens into a State shall be at the discretion of that State.

(2) A State may

- (i) Prescribe conditions for entry of aliens into its territory;
- (ii) Except in special circumstances, refuse admission into its territory of aliens who do not possess travel documents to its satisfaction;
- (iii) Make a distinction between aliens seeking admission for temporary sojourn and aliens seeking admission for permanent residence in its territory; and
- (iv) Restrict or prohibit temporarily the entry into its territory of all or any class of aliens in its national or public interest.

Note: (1) The delegation of Japan is of the view that in sub-clause (iv) of clause 2 of this article, the words "armed conflicts or national emergency" should be substituted in place of the words "national or public interest". (2) The delegation of Indonesia stated that it preferred clause 2 of article 2 as adopted by the Committee at its third session at Colombo.⁵

Article 3

A State shall not refuse to an alien entry into its territory on the ground only of his race, religion, sex or colour.

Article 4

Admission into the territory of a State may be refused to an alien

- (i) Who is in a condition of vagabondage, beggary or vagrancy;
- (ii) Who is of unsound mind or is mentally defective;
- (iii) Who is suffering from a loathsome, incurable or contagious disease of a kind likely to be prejudicial to public health;
- (iv) Who is a stowaway, a habitual narcotic user, an unlawful dealer in opium or narcotics, a prostitute, a procurer or a person living on the earnings of prostitution;
- (v) Who is an indigent person or a person who has no adequate means of supporting himself or has no sufficient guarantee to support him at the place of his destination;
- (vi) Who is reasonably suspected to have committed or is being tried or has been prosecuted for serious infractions of law abroad;
- (vii) Who is reasonably believed to have committed an extraditable offence abroad or is convicted of such an offence abroad;
- (viii) Who has been expelled or deported from another State; and
- (ix) Whose entry or presence is likely to affect prejudicially its national or public interest.

Article 5

A State may admit an alien seeking entry into its territory for the purpose of transit, tourism or study, on the condition that he is forbidden from making his residence in its territory permanent.

Article 6

A State shall have the right to offer or provide asylum in its territory to political refugees or to political offenders on such conditions as the State may stipulate as being appropriate in the circumstances.

⁵ See Asian-African Legal Consultative Committee, *op. cit.*, p. 152.

Article 7

(1) Subject to the conditions imposed for his admission into the State, and subject also to the local laws, regulations and orders, an alien shall have the right

- (i) To move freely throughout the territory of the State; and
- (ii) To reside in any part of the territory of the State.

(2) The State may, however, require an alien to comply with provisions as to registration or reporting or otherwise so as to regulate or restrict the right of movement and residence as it may consider appropriate in any special circumstances or in the national or public interest.

Note: The delegation of Indonesia expressed a preference for the text adopted at the Colombo Session in clause 1 of this article.

Article 8

Subject to local laws, regulations and orders, an alien shall have the right

- (i) To freedom from arbitrary arrest;
- (ii) To freedom to profess and practise his own religion;
- (iii) To have protection of the executive and police authorities of the State;
- (iv) To have access to the courts of law; and
- (v) To have legal assistance.

Note: (a) The delegation of Ceylon was of the view that in clause (ii) the expression "to freedom of religious belief and practice" should be substituted; (b) the delegations of Burma and Indonesia suggested retention of clause 2 of the draft adopted at the Colombo session, which provides that: "Aliens shall enjoy on a basis of equality with nationals protection of the local laws." The delegations of Iraq and Japan had no objection to the retention of this clause.

Article 9

A State may prohibit or regulate professional or business activities or any other employment of aliens within its territory.

Note: The delegation of Iraq was of the view that the words "shall be free to" should be inserted in place of the word "may". The delegation of Pakistan wished to keep its position open.

Article 10

An alien shall not be entitled to any political rights, including the right of suffrage, nor shall he be entitled to engage himself in political activities, except as otherwise provided by local laws, regulations and orders.

Article 11

Subject to local laws, regulations and orders and subject also to the conditions imposed for his admission into the State, an alien shall have the right to acquire, hold and dispose of property.

Note: The delegation of Indonesia, whilst accepting the provisions of this article, stated that according to the new laws of Indonesia aliens cannot acquire title to property though they can hold property.

Article 12

(1) The State shall, however, have the right to acquire, expropriate or nationalize the property of an alien. Compensation shall be paid for such acquisition, expropriation or nationalization in accordance with local laws, regulations and orders.

(2) The State shall also have the right to dispose of or otherwise lawfully deal with the property of an alien under orders of expulsion or deportation.

Note: (i) The delegation of Japan did not accept the provisions of this article. According to its view "just compensation" should be paid for all acquisition, nationalization or expropriation and not "compensation in accordance with local laws, regulations, and orders." The delegation could not accept the provisions of clause 2 as such a provision would be contrary to the laws of Japan. (ii) The delegation of Indonesia reserved its position on clause 2 of this article. (iii) The delegation of Pakistan stated that, though it accepted the provisions of this article, the view of the delegation was that acquisition, nationalization or expropriation should be in the national interest or for a public purpose.

Article 13

(1) An alien shall be liable to payment of taxes and duties in accordance with the laws and regulations of the State.

(2) An alien shall not be subjected to forced loans which are unjust or discriminatory.

Note: (i) Clause 1 of this article was accepted by all delegations except that of Japan. The delegation of Japan wished a proviso to that clause to be inserted to read as follows: "provided that the State shall not discriminate between aliens and nationals in levying the taxes and duties." (ii) Clause 2 was accepted by the delegations of Burma, India, Indonesia and Iraq.

The delegate of Ceylon wished the words "or discriminatory" to be deleted.

The delegate of Japan wished the clause to be drafted as: "An alien shall not be subjected to forced loans."

The delegate of Pakistan suggested the following draft: "An alien shall not be subjected to loans in violation of the laws, regulations and orders applicable to him."

The delegate of the United Arab Republic was of the view that the draft should be as follows: "An alien shall not be subjected to unjust forced loans."

Article 14

(1) Aliens may be required to perform police, fire-brigade or militia duty for the protection of life and property in cases of emergency or imminent need.

(2) Aliens shall not be compelled to enlist themselves in the armed forces of the State.

(3) Aliens may, however, voluntarily enlist themselves in the armed forces of the State with the express consent of their home State which may be withdrawn at any time.

(4) Aliens may voluntarily enlist themselves in the police or fire-brigade service on the same conditions as nationals.

Note: The delegation of Indonesia reserved its position on the whole article. The delegation of Iraq reserved its position on clause 3 of this article. The delegation of Japan wished clause 3 of this article to be deleted.

Article 15

(1) A State shall have the right in accordance with its local laws, regulations and orders to impose such restrictions as it may deem necessary on an alien leaving its territory.

(2) Such restrictions on an alien leaving the State may include any exit visa or tax clearance certificate to be procured by the alien from the authorities concerned.

(3) Subject to the local laws, regulations and orders a state shall permit an alien leaving its territory to take his personal effects with him.

Note: (i) The delegate of Pakistan reserved his position on clause 3. (ii) The delegates of Ceylon and the United Arab Republic wished the following clause to be retained in this article: "An

alien who has fulfilled all his local obligations in the State of residence shall not be prevented from departing from the State of residence."

Article 16

(1) A State shall have the right to order expulsion or deportation of an undesirable alien in accordance with its local laws, regulations and orders.

(2) The State shall, unless the circumstances warrant otherwise, allow an alien under orders of expulsion or deportation reasonable time to wind up his personal and other affairs.

(3) If an alien under orders of expulsion or deportation fails to leave the State within the time allowed, or, after leaving the State, returns to the State without its permission, he may be expelled or deported by force, besides being subjected to arrest, detention and punishment in accordance with local laws, regulations and orders.

Article 17

A State shall not refuse to receive its nationals expelled or deported from the territory of another State.

Note: The delegate of Pakistan suggested the addition of the word "normally" before the word "refuse".

Article 18

Where the provisions of a treaty or convention between any of the signatory States conflict with the principles set forth herein, the provisions of such treaty or convention shall prevail as between those States.

ANNEX 2

Statement by Mr. Francisco V. García-Amador, observer for the International Law Commission

Mr. Chairman:

Allow me, first of all, to tell you and the distinguished members of the Asian-African Legal Consultative Committee that I feel deeply honoured by the mission which the International Law Commission has entrusted to me and by the opportunity that mission affords me to be present at your deliberations. It is only natural that, having devoted half my life to the study and teaching of international law and having during the last few years taken part in the work and efforts of the United Nations and the Organization of American States to promote its development and codification, I should take a special interest in the appearance of a new regional body which can make a valuable contribution to the task and goal we have in common.

I should like, Mr. Chairman, to dwell for a moment on the observation I have just made. As a Latin American I represent, in the International Law Commission, another group of countries — a regional system — which at one stage of its history made a deep impact on the prevailing notions and principles of international law. As the distinguished members of the Committee know, the notions and principles in question were those which more particularly affected the interests of the small and weak countries. Although the problems before us today are not precisely the same, it cannot be denied that, in the transitional period through which international law is obviously passing, the peoples of Asia and Africa are called upon to make a no less valuable contribution to the inescapable task and goal of adapting that law to the new needs and interests of the international community. No one who has observed the course of events over the last fifteen years can fail to see the potential reality revealed by the historical parallel to which I have drawn attention.

Mr. Chairman, it has been a source of justifiable satisfaction for my colleagues in the Commission to see that one of the pur-

poses for which your Committee was established, as its statute specifically states, is to examine the questions which the Commission is considering and to bring its views to the Commission's attention. With respect to the latter purpose, I take pleasure in informing you that in similar situations the Commission has not only given the greatest attention to the opinions and points of view of regional bodies but has kept them very much in mind in taking its decisions. With regard to the first purpose I mentioned, after having concentrated its activity on the law of the sea and other subjects, the Commission will, as from this year's session, give detailed consideration to the principles of international law governing State responsibility. For that reason, and because the topic is on the agenda of the Committee's current session, I should like, with your permission, to make a few brief comments.

The international responsibility of the State has always been one of the most complex, if not the most complex, of subjects, especially from the point of view of codification. To the difficulties of the past have now been added those created by the profound transformation which the traditional system of international law is experiencing, precisely as regards those concepts and postulates most directly connected with the principles which have governed the various aspects of responsibility. From this point of view, it would be unrealistic to embark on the "codification" pure and simple of these principles and to ignore the need to revise them in the light of the new trends in contemporary international law which are daily becoming more evident. In other words, to use the expression with which we have become familiar since

the United Nations resumed these activities, the major problem with which this subject confronts us, as was largely the case with the law of the sea, is that of the "progressive development" of the principles of international law governing State responsibility.

Thus, Mr. Chairman, the opinions of regional bodies can play an important role when the question of promoting the development and codification of international law on a world scale is under consideration. It is through these opinions that the organs of the United Nations may become aware, better than by any other means, of the trends which really reflect the new needs and legitimate interests of the countries composing the United Nations. *In this respect the experience of the past is very significant and it should serve as the Committee's greatest incentive in carrying out its work.*

In only remains for me, Mr. Chairman, to express the gratitude of the International Law Commission for the Committee's invitation to send an observer to this session. Upon the Commission's explicit instructions I also have the pleasure to invite the Committee to send an observer to the Commission's sessions. This formalization of the co-operative relationship between the two bodies will further the achievement of the goals to which I have referred.

In thanking you, Mr. Chairman, and the distinguished members of the Committee for the time they have taken from their work to listen to me, I should like to say again how honoured and glad I am at this opportunity to be with you.

DOCUMENT A/CN.4/140

Letter, dated 26 June 1961, addressed to the Chairman of the International Law Commission by Mr. Hafez Sabek, observer for the Asian-African Legal Consultative Committee

[Original: English]

[4 July 1961]

Just a few lines to thank you, Mr Chairman and the distinguished members of the Commission, for your sincere welcome to me as observer for the Asian-African Legal Consultative Committee.

I would like also to thank Mr. García-Amador for his valuable report (A/CN.4/139), and to express my personal remarks on two questions mentioned in this report, since I am obliged to leave Geneva now and thus shall not be present when the Commission takes the said report for consideration.

As regards the first question which relates to the invitation extended to the Commission to be represented by an observer at the fifth session of our Committee, I wish to draw the attention of the distinguished members of the Commission to the fact that our Committee attaches very great importance to the attendance of a member of the Commission at its sessions not only for the great benefit which such attendance realizes, but also as a symbol for the co-operation existing between our two scientific bodies. I still hope that the Commission may reconsider this matter again and will find any way out to be represented by a member at the fifth session of our Committee.

As regards the second question, which relates to State responsibility for maltreatment of aliens, I would like to make a few comments on certain points included

in the said report which may lead to some misunderstanding. The Committee was able in its fourth session to draw up its final report on the subject of "status of aliens" in the form of draft articles containing principles concerning admission and treatment of aliens. It has decided to separate the item of State responsibility from that subject and to consider it independently at its fifth session.

The draft adopted by the Committee is based on the existing rules of international law. The Committee, however, took into consideration the following:

- (a) The necessity of the progressive development of international law to meet the needs of the newly independent States in Asia and Africa;
- (b) The anxiety of the aforesaid States to eradicate all the vestiges of colonialism and to liberate themselves from all manifestations of foreign domination;
- (c) The economic situation of the aforesaid States and the privileges acquired by aliens when these States were under domination.

The Committee, taking all this into consideration, decided to grant to aliens equitable treatment under conditions which will not hamper the development and progress of those States. It did not, however, accept