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**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**

Topic:  
**Cooperation with other bodies**

Extract from the Yearbook of the International Law Commission:-  
**1961 , vol. II**

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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

the principle of absolute equality of aliens and nationals. It has established a minimum standard of treatment to be respected in favour of aliens, who must not in any way hope for more rights than nationals and have no reason to complain if the State, for some economic or social reasons grants to aliens in certain cases less rights than to nationals, so long as their basic rights as defined in that standard of treatment are ensured.

The Committee also has not accepted the theory of prior compensation nor that of full compensation to aliens in the case of the acquisition, expropriation or nationalization of their property. It has not provided any other conditions or limitations for that, save the payment of compensation, the amount of which is to be governed only by local laws, regulations and orders.

(Signed) Hafez SABEK

## DOCUMENT A/CN.4/L.94

### Communication regarding matters of interest to the International Law Commission discussed at the United Nations Conference on Diplomatic Intercourse and Immunities

[Original: English]

[26 April 1961]

#### I. TRIBUTE TO THE INTERNATIONAL LAW COMMISSION

1. At its twelfth plenary meeting, on 18 April 1961,<sup>1</sup> the Conference unanimously adopted a draft resolution submitted by the United Arab Republic<sup>2</sup> expressing a tribute to the International Law Commission. The resolution reads as follows:<sup>3</sup>

*The United Nations Conference on Diplomatic Intercourse and Immunities,*

*Having adopted* the Vienna Convention on Diplomatic Relations on the basis of draft articles prepared by the International Law Commission,

*Resolves* to express its deep gratitude to the International Law Commission for its outstanding contribution to the codification and development of the rules of international law on diplomatic intercourse and immunities.

#### II. SPECIAL MISSIONS

2. At its twenty-third meeting, on 21 March 1961,<sup>4</sup> the Committee of the Whole of the Conference appointed a sub-committee to study the question of special missions which had been referred to the Conference by the General Assembly in its resolution 1504 (XV) of 12 December 1960.

3. The Sub-Committee on Special Missions held three meetings, and thereafter submitted a report<sup>5</sup> to the Committee of the Whole recommending that the subject be referred back by the General Assembly to the International Law Commission for further study. At its thirty-ninth meeting, on 5 April 1961,<sup>6</sup> the Committee of the Whole adopted the sub-committee's report, and requested the drafting committee to pre-

pare a resolution for submission to the Conference containing the recommendations of the sub-committee.

4. At its fourth plenary meeting, on 12 April 1961,<sup>7</sup> the Conference unanimously adopted the resolution on special missions prepared by the drafting committee<sup>8</sup> in accordance with the foregoing instructions. The resolution reads as follows:<sup>9</sup>

*The United Nations Conference on Diplomatic Intercourse and Immunities,*

*Recalling* that the General Assembly of the United Nations, by its resolution 1504 (XV) of 12 December 1960, referred to the Conference the draft articles on special missions contained in chapter III of the report of the International Law Commission covering the work of its twelfth session,

*Recognizing* the importance of the subject of special missions,

*Taking note* of the comments of the International Law Commission that the draft articles on special missions constituted only a preliminary survey and that the time at its disposal had not permitted the Commission to undertake a thorough study of the matter,

*Considering* the limited time available to the Conference to study the subject in full,

*Recommends* to the General Assembly of the United Nations that it refer to the International Law Commission further study of the subject of special missions in the light of the Vienna Convention on Diplomatic Relations adopted at the present Conference.

#### III. QUESTION OF PRECEDENCE OF HEADS OF INTERNATIONAL ORGANIZATIONS

5. At the twenty-third meeting of the Committee of the Whole, on 22 March 1961, the representative of the Philippines (Mr. Regala) referred<sup>10</sup> to the question of the precedence of heads of international organizations in connexion with article 13 of the draft articles on diplomatic intercourse and immunities prepared by

<sup>1</sup> For the summary record, see Official Records of the Conference, vol. I.

<sup>2</sup> Document A/CONF.20/L.22, reprinted, *ibid.*, vol. II.

<sup>3</sup> Document A/CONF.20/10/Add.1, reprinted, *ibid.*, vol. II.

<sup>4</sup> For the summary record, see *ibid.*, vol. I.

<sup>5</sup> Document A/CONF.20/C.1/L.315, reprinted, *ibid.*, vol. II.

<sup>6</sup> For the summary record see *ibid.*, vol. I.

<sup>7</sup> For the summary record, see *ibid.*, vol. I.

<sup>8</sup> Document A/CONF.20/L.2/Add.2, reprinted, *ibid.*, vol. II.

<sup>9</sup> Document A/CONF.20/10/Add.1, reprinted, *ibid.*, vol. II.

<sup>10</sup> For the summary record, see *ibid.*, vol. I.