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European Committee on Legal Co-operation; exchange of letters

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European Committee on Legal Co-operation: exchange of letters

[Original text: English]

[6 May 1968]

I. Letter dated 1 December 1967 from Sir Humphrey Waldock, Chairman of the International Law Commission, to the Director of Legal Affairs, European Committee on Legal Co-operation

The international Law Commission was fortunate at its nineteenth session to receive a visit from you in your capacity of observer on behalf of the European Committee on Legal Co-operation. As Chairman of the Commission, I can assure you how much it appreciated the account which you then gave of the work of the European Committee in the field of codification.

During your visit to Geneva you intimated that the Commission would be receiving an invitation from the Council of Europe to send a representative to attend the eighth meeting of its Committee on Legal Co-operation; and this invitation you subsequently transmitted to the Commission by your letter of 19 October 1967 to Mr. Constantin Stavropoulos, Legal Counsel to the United Nations. Meanwhile, having regard to your previous intimation, the Commission nominated me to represent it in connexion with the meeting of the European Committee.

I was hoping to be in Strasbourg for the meeting of the Committee but, in the event, this has proved not to be possible. The European Court of Human Rights, as you are aware, is now engaged in the hearing of the Belgian Linguistics Case and, in my capacity as a Judge of the Court, I have been in Strasbourg during the present week. Having regard to the further visits to Strasbourg in the near future which the work of the Court will entail and other urgent duties, I do not now find it possible to be present at the meeting of the Committee next week.

The International Law Commission attaches great importance to its friendly links with the several regional

bodies engaged in codification in the field of international law; for it believes that only by this mutual co-operation will it be possible to prevent legal concepts in the different regions from so far diverging as to prejudice the codification of general international law through the United Nations. Accordingly, it is with real regret that I find myself unable to attend the Committee in person and I shall be grateful if you would convey this regret to the Committee.

At the same time I should like to do what I can to make good my absence by communicating to the Committee in this letter some of the points which I would have wished to make, if I had been able to be present next week. You have been good enough to make available to me the agenda for the meeting and the papers which accompany it and this has enabled me to inform myself of the general nature of the work in progress in the Committee.

The item on the Committee's agenda which is most directly linked with the present work of the International Law Commission is "Privileges and immunities of international organizations" (item 4 (b)). At your seventh session Mr. Yasseen, then Chairman of the Commission, pointed out that one of the questions under study by the Commission is "Relations between States and inter-governmental organizations"; and, in fact, the intention of the Commission is to give priority to the "privileges and immunities" aspect of that topic. The work of the European Committee on item 4 (b) of its agenda could, therefore, be of undoubted value to the International Law Commission. This being so, I may mention that at its session last summer [nineteenth session] the programme of the Commission was upset by events in the Middle East which obliged its Special Rapporteur on the relations between States and inter-governmental organizations to absent himself from Geneva. In con-

sequence, no further progress was made with this topic but the Commission intends to begin its discussion of the Special Rapporteur's report at its forthcoming session in 1968.

In connexion with the same item the Committee may like to have its attention also drawn to the fact that at its last session the International Law Commission completed its draft articles on special missions and recommended the General Assembly to take appropriate steps to have them converted into an international convention.¹ This topic, entrusted to the Commission at the request of the 1961 Vienna Conference on Diplomatic Relations, has points of contact with the privileges and immunities of representatives attending diplomatic conferences, which in turn has points of contact with the privileges and immunities of inter-governmental organizations. The Commission's draft articles on special missions, if they cover the case of two or more special missions of different countries meeting together for the same purpose in the territory of the same host State, do not attempt to deal generally with the privileges and immunities of diplomatic conferences. The latter question the Commission has left to be studied in conjunction with the privileges and immunities of inter-governmental organizations. I may add that, according to the latest information available to me, the examination of the Commission's draft articles on special missions with a view to preparing an international convention is likely to be taken up in the Sixth Committee of the General Assembly in 1968.

I note from item 7 the European Committee's interest in the work of the United Nations Commission on International Trade Law (UNCITRAL). The Committee may therefore like to know that at its recent session the International Law Commission decided to add to its agenda the topic of the "most-favoured-nation" clause as a continuation of its codification of the law of treaties and with the express hope that it might thereby assist the work of UNCITRAL.

The International Law Commission, for its part, will certainly be interested to hear of the comprehensive character of the study that is being made by the European Committee, under item 4 (c), of the means of promoting the uniform interpretation of European treaties. If this study is being undertaken with particular reference to European treaties, much of it would appear to have a more general relevance.

I understand from you that a special meeting is being held in January [1968] under the aegis of the European Committee for an exchange of views prior to the opening of the Diplomatic Conference on the Law of Treaties next March. The Commission is informed that the Asian-African Legal Consultative Committee will be holding one of its regular sessions in the second half of December [1967] at which it also will be having an exchange of views regarding the work of the forthcoming Conference on the Law of Treaties. Mr. Yas-

seen will be attending the session of this Committee as observer on behalf of the Commission. The magnitude of the task which confronts the Diplomatic Conference is something of which the Commission cannot fail to be aware and it will certainly applaud the initiative being taken by the regional bodies concerned to prepare the way for the Conference. As Chairman, I would only stress to you—as I have already stressed to the Secretary of the Asian-African Legal Consultative Committee—the importance of the several regional bodies not arriving at too fixed positions before the Conference.

In connexion with the law of treaties I may, perhaps, mention that at its recent [nineteenth] session the Commission decided to give priority to the topic of State succession in respect of treaties at its session in 1968 which will open in Geneva immediately after the end of the Diplomatic Conference.

Finally, it may be of interest to the European Committee to know that the Commission has decided to celebrate the first twenty years of its experience in the codification of international law by undertaking a general review of its programme and methods of work.

(Signed) Humphrey WALDOCK

II. Reply from Mr. Golsong, Director of Legal Affairs, European Committee on Legal Co-operation

Thank you for your letter of 1 December 1967, which was communicated to the European Committee on Legal Co-operation (CCJ) at its eighth meeting held in December 1967.

The Committee regretted that you were prevented from being present, but of course understood the reason for your absence. It noted, with satisfaction, the contents of your letter, as mentioned on page 36 of its report (document CM(67)187).

As regards the item "Privileges and immunities of international organizations", the Sub-Committee of the CCJ has continued its comparative study of the privileges and immunities of the United Nations, the Council of Europe, ELDO [the European Space Vehicle Launcher Development Organisation] and ESKO [the European Space Research Organisation], and has revised the preliminary conclusions it reached earlier. The draft report on this matter will be put into final shape early in March. At the time the Sub-Committee will consider:

(a) The position of international organizations other than the four which had so far been considered;

(b) Any special problems which arose in connexion with the granting of privileges and immunities by the "host State" in respect of the headquarters or other permanent establishment of an international organization in its territory.

When informing the CCJ of the present state of work of this Sub-Committee, its Chairman stressed the usefulness of the work in connexion with:

¹ See *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, p. 347, para. 33.

(a) The establishment of further international organizations;

(b) The revision, if any, of existing agreement governing privileges and immunities of international organizations;

(c) The United Nations International Law Commission's work on relations between States and inter-governmental organizations.

I am sending you the report of the Sub-Committee on the Uniform Interpretation of European Treaties (document CCJ(67)22) which will be examined by the CCJ at its ninth meeting from 18 to 22 March 1968.

I very much hope that it will be possible for the International Law Commission to be represented at that meeting, particularly for the discussion of this report.

I appreciate your remarks about the special meeting which is being held later this month for an exchange of views on the forthcoming Diplomatic Conference on the Law of Treaties and I assure you that I will do all in my power to avoid that the meeting should do anything to prejudice the success of the Conference.

Yours sincerely,

(Signed) H. GOLSONG