

Document:-  
**A/CN.4/SR.819**

**Summary record of the 819th meeting**

Topic:  
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-  
**1965, vol. I**

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and to "the Committee's decision to prepare comments on the Commission's draft on the law of treaties" be dropped. The Commission might wish to send an observer to a meeting of the Committee even if it was discussing a topic which was not on the Commission's agenda.

36. Mr. TUNKIN proposed that the sentence be reworded to state that the Commission had considered it useful to send a representative to the Committee's eighth session, which would be considering the Commission's draft on the law of treaties. In that way, a connexion would be established with the topic, without necessarily implying that the reason for sending an observer resided in the topics on the agenda of the Committee.

37. Mr. BRIGGS said he supported the proposal to delete all reference to the reasons for sending an observer.

38. Mr. RUDA said he supported Mr. Jiménez de Aréchaga's proposal. The Commission had already decided, in connexion with co-operation with Inter-American bodies, that the choice of topics was not a decisive consideration; the same reasoning should apply to the Asian-African Legal Consultative Committee.

39. Mr. AGO said he understood Mr. Tunkin's proposal to be that all reference to the reasons for sending an observer should be deleted, while the reference to the Committee's decision to prepare comments on the Commission's draft on the law of treaties should be retained.

*Mr. Tunkin's proposal was adopted.*

40. Mr. BRIGGS formally proposed that the Chairman of the Commission be requested to attend the eighth session of the Asian-African Legal Consultative Committee; if the Chairman were unable to do so, he could appoint another member of the Commission, or its Secretary, to represent the Commission.

41. Mr. YASSEEN, supporting the proposal, expressed the hope that the Chairman himself would be able to attend.

42. The CHAIRMAN said he would be very honoured to represent the Commission at Baghdad if he could. He suggested that the Rapporteur be asked to redraft section A.2.

*It was so agreed.*

43. Mr. AGO said that, during his term of office as Chairman, he had received an informal communication from Mr. Wiebringhaus intimating that the European Committee on Legal Co-operation, set up by the Council of Europe, would like to know whether the Commission was willing to be officially invited to take part in its meetings.

44. The CHAIRMAN proposed that Mr. Ago be authorized to reply unofficially in the affirmative, the Commission's final decision being reserved until it had received an official request.

*It was so agreed.*

The meeting rose at 1.10 p.m.

## 819th MEETING

Wednesday, 7 July 1965, at 9.30 a.m.

Chairman: Mr. Milan BARTOŠ

*Present:* Mr. Ago, Mr. Amado, Mr. Briggs, Mr. Castrén, Mr. Elias, Mr. Jiménez de Aréchaga, Mr. Lachs, Mr. Pal, Mr. Pessou, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Mr. Verdross, Sir Humphrey Waldock, Mr. Yasseen.

*Also present:* Mr. Provenzali-Heredia, observer for the Inter-American Council of Jurists.

### Co-operation with Other Bodies

(A/CN.4/176)

(resumed from the 801st meeting)

[Item 7 of the agenda]

1. The CHAIRMAN invited Mr. Jiménez de Aréchaga to introduce his report on the fifth meeting of the Inter-American Council of Jurists (A/CN.4/176).

2. Mr. JIMÉNEZ de ARÉCHAGA, introducing his report, said that it had been his privilege to represent the Commission as an observer at the fifth meeting of the Inter-American Council of Jurists held at San Salvador from 25 January to 5 February 1965. The Council attached the greatest importance to co-operation with the Commission and had shown the keenest interest in the Commission's approach to the topic of State responsibility.

3. The next meeting of the Council was due to take place at Caracas, probably not before May 1966. He suggested, however, that the Commission should decide, as it had done on similar occasions in the past, to request its Chairman to represent it at the meeting at Caracas, on the understanding that he could appoint another member of the Commission, or its Secretary, to replace him if he was unable to attend in person.

4. There might also be a joint meeting of the Inter-American Economic and Social Council and the Inter-American Council of Jurists to examine the economic and legal aspects of social development, but it would be at some place other than Caracas and probably not before 1967. The Commission would no doubt wish to take a decision regarding that meeting when it had more information.

5. The CHAIRMAN invited the observer for the Inter-American Council of Jurists to address the Commission.

6. Mr. PROVENZALI-HEREDIA (Observer for the Inter-American Council of Jurists) said that the Council was concerned to secure the utmost co-operation between the International Law Commission and the legal bodies of the Organization of American States, and the attendance of an observer for the Commission at meetings of those bodies was deeply appreciated. The topics being considered by the Council and its subsidiary bodies included "The contribution of the Americas to the

principles of international law that govern the responsibility of the State" and "The programming of studies on the international aspect of legal and institutional problems of the economic and social development of Latin America". With regard to the economic and legal aspects of development, the proposed joint meeting of the Inter-American Economic and Social Council and the Inter-American Council of Jurists would be very important. Since many of the questions discussed by the legal bodies of the Organization of American States were of more than purely continental interest, he hoped that the United Nations would be represented at their meetings.

7. The CHAIRMAN thanked the observer for the Inter-American Council of Jurists and, on behalf of the Commission, expressed the hope that co-operation between the Council and the Commission would continue.

**Draft Report of the Commission on the work of its seventeenth session**

(A/CN.4/L. 111 and addenda)

*(resumed from the previous meeting)*

**CHAPTER V: OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION (A/CN.4/L.111/Add.1) (continued)**

8. The CHAIRMAN invited the Commission to continue consideration of chapter V of its draft report.

**B. Exchange and distribution of documents of the Commission**

9. Mr. CASTRÉN suggested that the text of footnote 2 be inserted in sub-paragraph (i).

10. Mr. ROSENNE, agreeing with Mr. Castrén, proposed that the Rapporteur and the Secretariat be asked to find a suitable place and form for the incorporation of footnote 2 in the text.

11. Mr. ELIAS, Rapporteur, said he could accept that proposal.

*It was so agreed.*

*Section B was adopted.*

**C. Dates and places of next year's meetings**

12. Mr. TUNKIN said he noticed that it was proposed to begin the regular session on 2 May 1966; that date would be inconvenient for members from countries in which 1 and 2 May were public holidays, as it would not allow them time to reach Geneva for the opening meeting. He therefore proposed that the Commission should decide to begin its regular session on 9 or possibly 5 May.

13. Mr. BRIGGS, supporting Mr. Tunkin, suggested that the opening date be Monday, 9 May.

14. Mr. CASTRÉN said that there were also reasons for not postponing the opening date. If it was postponed, the session would have to be extended beyond the scheduled closing date.

15. Mr. VERDROSS suggested that the session should open on the last Monday in April.

16. Mr. ROSENNE said he supported the proposal to open the session on 9 May, because it would allow a slightly longer interval between the end of the January session and the commencement of the regular session.

17. Sir Humphrey WALDOCK suggested, as a compromise, that the session should open in the middle of the week, perhaps on Thursday 5 May 1966. The Commission could then dispose of some necessary formal business by the end of the week and start work on substantive items on Monday 9 May.

18. Mr. PESSOU supported Mr. Castrén's objection.

19. Mr. AGO said that the opening date of the session should be set as close as possible to the date proposed; he suggested that the Commission should meet on the afternoon of 4 May.

20. Mr. TUNKIN said he could accept Mr. Ago's suggestion that the regular session should begin on Wednesday 4 May 1966.

*Mr. Ago's suggestion that the Commission hold its next regular session from 4 May to 8 July 1966 was adopted.*

*Section C, as amended, was adopted.*

**D. Representation at the twentieth session of the General Assembly**

21. Mr. AMADO said that the phrase "who had been entrusted by the Commission with certain explanations in that connexion", at the end of the first paragraph, was not satisfactory.

22. Mr. AGO said he was not clear about the meaning of the words "for purposes of consultation" at the beginning of the first paragraph.

23. The CHAIRMAN said that those words were unnecessary. The last sentence of the first paragraph might be amended to read: "... the Commission emphasized the importance of its decision to be represented in the General Assembly, in respect of its work in 1964, by Mr. Ago".

24. Mr. ROSENNE pointed out that the phrase "for purposes of consultation" had been used in a similar context in all previous reports. To be consistent, the Commission should use that phrase not only in the first paragraph, but also in the second.

25. Mr. AMADO said it was a regrettable practice which should not be perpetuated.

26. The CHAIRMAN proposed that section D be adopted with the amendments he had suggested.

*Section D, as amended, was adopted.*

**E. Seminar on International Law**

27. Mr. AMADO said it was not correct to say, in the second sentence of the second paragraph, that a "careful" choice had been made, or, in the third sentence, that the seminar had "turned out to be a rewarding experience" for the members of the Commission who had taken part in it.

28. Mr. AGO said he agreed that the word "careful" should be deleted, although the standard of the participants had been particularly high.

29. The CHAIRMAN and Mr. PESSOU supported Mr. Ago.

30. Mr. LACHS said he entirely agreed with Mr. Amado. The sentence should be amended to state simply that the Seminar had proved a useful experience for all participants. It could perhaps be added that the Seminar had served to establish useful contacts between members of the International Law Commission and students of international law.

31. Mr. ROSENNE said he supported Mr. Lachs on the last point.

32. He also proposed the deletion from the first paragraph of the opening words "In connexion with the present session of the Commission", and the addition, at the end of the first sentence, of the words, "to take place during the present session of the Commission". The emphasis would then be on the fact that the Seminar had been organized by the European Office of the United Nations.

33. A reference should be included somewhere to General Assembly resolution 1968 (XVIII)<sup>1</sup> on technical assistance to promote the teaching, study, dissemination and wider appreciation of international law; that would be useful in connexion with the suggestion at the end of the third paragraph that the General Assembly might wish to consider the possibility of granting fellowships to enable nationals of developing countries to attend future seminars.

34. Mr. BRIGGS said that, at its 816th meeting, the Commission had adopted a proposal by Mr. Rosenne that, in future, volume I of the *Yearbook* should include, at the beginning of the record of each meeting, the names of the members who had attended it.<sup>2</sup> Perhaps it would be appropriate to include some reference to that decision in the report.

35. Mr. ROSENNE said he thought it was sufficient that the Commission's decision appeared in the record of the 816th meeting; it might seem invidious to include a reference to the matter in the report. It would not be desirable to enter into the reasons for the absence of members, which could include sickness or recall to official duties.

36. At the first meeting of the present session, Mr. Paredes had made a number of observations regarding the presentation of the *Yearbook*,<sup>3</sup> and the Commission, after hearing an explanation from the Legal Counsel of the United Nations, had reached certain practical conclusions in the matter. He suggested that a short paragraph be included in the report, indicating that the Commission had reviewed the form of its *Yearbook* and had adopted certain decisions which would be reflected in the presentation of future *Yearbooks*.

37. The CHAIRMAN suggested that section E be adopted with the amendments proposed.

*Section E, as amended, was adopted.*

*Chapter V, as amended, was adopted.*

<sup>1</sup> *Official Records of the General Assembly, Eighteenth Session, Supplement No. 15, p. 71.*

<sup>2</sup> 816th meeting, paras. 85-86.

<sup>3</sup> 775th meeting, para. 26 *et seq.*

## CHAPTER II : LAW OF TREATIES (A/CN.4/L.111/Add.2)

38. The CHAIRMAN invited the Commission to consider chapter II of its draft report.

39. Sir Humphrey WALDOCK, Special Rapporteur, said it would be remembered that the Commission had decided not to attach any commentaries to the draft articles adopted at the present session, and had asked him to prepare an introduction to the draft articles which would explain the reasons for that decision.

40. Chapter II of the report began with five paragraphs (10-14) of a formal character, similar to those included in earlier reports. There followed two paragraphs (15-16) on the form of the draft articles, one paragraph (17) on the question of a single draft convention, and three paragraphs on the scope of the draft articles (18-20). The remaining eight paragraphs (21-28) dealt with the revision of the draft articles at the present session, giving an account of the more important changes made and ending with an explanation of the reasons for not attaching a commentary.

### *Paragraphs 10 and 11*

*Paragraphs 10 and 11 were adopted without comment.*

### *Paragraph 12*

41. Mr. TUNKIN asked that the paragraph should state the number of Governments which had submitted written comments.

42. Sir Humphrey WALDOCK, Special Rapporteur, said he agreed : a footnote would also be added giving the names of the countries in question.

*Paragraph 12, thus amended, was adopted.*

### *Paragraph 13*

43. Mr. WATTLES (Secretariat) explained that the Secretariat report on "Depositary Practice in Relation to Reservations" (A/5687) had no connexion with any of the items on the agenda of the General Assembly and so would not be printed as part of the General Assembly's official records; it would therefore remain in mimeographed form unless the Commission decided that it should be included in volume II of the *Yearbook* for 1965.

44. Mr. RUDA proposed that the Secretariat report on Depositary Practice be included in volume II of the 1965 *Yearbook* and that the concluding words of paragraph 13 "in response to the request of a Member of the Commission", be amended to read "in response to the request of some Members of the Commission".

*It was so agreed.*

*Paragraph 13, thus amended, was adopted.*

### *Paragraph 14*

*Paragraph 14 was adopted without comment.*

### *Paragraph 15*

45. Mr. ROSENNE proposed that the words "and submitted its final report on the topic to the General Assembly" be added at the end of the paragraph.

*It was so agreed.*

*Paragraph 15, thus amended, was adopted.*

*Paragraph 16*

*Paragraph 16 was adopted without comment.*

*Paragraph 17*

46. Mr. BRIGGS proposed that the last sentence of paragraph 17 should include a reference to the number of the meeting at which the decision had been taken.

*It was so agreed.*

*Paragraph 17, thus amended, was adopted.*

*Paragraph 18*

47. Mr. RUDA proposed the deletion of the words "a certain" before the word "capacity" in the second sentence of paragraph 18. Those words did not make the meaning of the sentence any clearer.

48. Mr. YASSEEN said that as the Commission had not discussed the matter thoroughly, it would be better to keep the word "certain" before the word "capacity".

49. Sir Humphrey WALDOCK, Special Rapporteur, said he agreed with Mr. Yasseen; the wording in question had been adopted to take into account the fact that some members had less liberal views than others on the subject of the treaty-making capacity of international organizations.

50. Mr. JIMÉNEZ de ARÉCHAGA said that at first he had had doubts similar to those of Mr. Ruda. However, he noticed that the same wording was used in the corresponding passage of the Commission's report on its fourteenth session.

51. Mr. ROSENNE proposed that, in order to make the meaning clear, the words "at that session", be inserted after the word "However" at the beginning of the second sentence.

*It was so agreed.*

*Paragraph 18, thus amended, was adopted.*

*Paragraph 19*

52. Mr. ROSENNE proposed that the opening words of the paragraph be amended to read: "The Commission, at its present session, noted that . . .".

*It was so agreed.*

53. Mr. TUNKIN proposed that the latter part of the first sentence, from the words "that considerable modifications" down to the end, should be deleted. Since the Commission had not considered the question of treaties concluded between States and other subjects of international law, or between such other subjects of international law, it would not be appropriate to say that, in order to cover that question "considerable modifications in the wording of these articles would be necessary" or that, before the Commission could determine the modifications and additions required, it would be necessary "to undertake a further special study of treaties concluded by international organizations".

54. Sir Humphrey WALDOCK, Special Rapporteur, said it was undoubtedly true to say that alterations would be necessary to adapt the draft articles to cover that category of treaties, and also that a special study would be required for the purpose. The draft articles were couched

in terms that covered only treaties between States. It would be necessary to study the special procedures for the conclusion of treaties by international organizations, and such questions as who would represent an organization for that purpose. He was willing to condense the passage but would oppose its being deleted altogether.

55. Mr. TUNKIN said that the difficulty arose from the fact that the Commission had not made any study of the question of treaties concluded by international organizations. Some of the draft articles might not apply to such treaties at all. Moreover, the Commission had not decided whether it would undertake a study of that category of treaties once it had completed its work on the law of treaties concluded between States.

56. Sir Humphrey WALDOCK, Special Rapporteur, said that the words "if found desirable" in the third sentence, made it clear that the Commission had not taken any decision in the matter. The passage in the first sentence was necessary to explain why the Commission had dropped from the draft articles all references to treaties concluded by international organizations.

57. Mr. ROSENNE suggested that the word "considerable" before the word "modifications" be deleted and that the rest of the first sentence be shortened so as to state merely that it would be necessary to undertake a special study.

58. Mr. LACHS said he was in favour of deleting the whole passage. It was undesirable to suggest to Governments the possibility of inviting the Commission to adapt the draft articles to cover the treaties of international organizations. It would be better to suggest instead that, if Governments were interested in the subject, they should consider the possibility of a separate study of that category of treaties.

59. Mr. BRIGGS said that, if the words "might be necessary" were substituted for the words "would be necessary", a full stop substituted for the semi-colon after the words "international law" and the rest of the sentence deleted, that would allow for the possibility of some of the articles, at least, being applicable to treaties concluded between international organizations.

60. Mr. ELIAS said that it would be better to delete the whole passage, since the point was adequately covered in the rest of the paragraph.

61. Sir Humphrey WALDOCK, Special Rapporteur, said that his intention had been to explain why, after so long a time spent on the law of treaties, the Commission had not succeeded in producing a comprehensive draft that would include treaties concluded by international organizations. If members did not favour such an explanation, the text could be abbreviated on the lines suggested by Mr. Rosenne.

62. Mr. TUNKIN and Mr. LACHS said that that course would be acceptable.

*It was so agreed.*

*Paragraph 19, thus amended, was adopted.*

*Paragraph 20*

*Paragraph 20 was adopted without comment.*

*Paragraph 21*

63. Mr. CASTRÉN said that since, for the time being, all the Commission's decisions were provisional, the word "provisionally" in the third sentence should be deleted.

64. The CHAIRMAN said that the Commission had voted for the omission of article 5, but that the provisional text of the draft would be revised when it was ready.

65. Sir Humphrey WALDOCK, Special Rapporteur, said that, although the Commission had provisionally decided to omit article 5, it had been agreed that it would still be open to any member to submit a text for an article on the negotiation of a treaty, since some members had been in favour of including such a provision. As Special Rapporteur, however, he did not intend to put forward any new proposal on the subject.

66. Mr. CASTRÉN said that in that case, he would not press his amendment.

*Paragraph 21 was adopted.*

*Paragraph 22*

67. Mr. TSURUOKA proposed that in the French text the words "*pour conclure*" in the fourth sentence be deleted.

68. Sir Humphrey WALDOCK, Special Rapporteur, said that the French translation was not correct and would be rectified.

*Paragraph 22 was adopted.*

*Paragraph 23*

69. Mr. JIMÉNEZ de ARÉCHAGA proposed that at the end of the seventh sentence the words "residuary rule" be substituted for the words "general rule".

70. Mr. ROSENNE proposed that the words "in international law" be inserted after the word "rule" in the same passage.

71. Mr. TSURUOKA suggested that in the French text the phrase "*selon ces directives*" in the eighth sentence should be replaced by some more adequate formula, such as "*dans le sens indiqué ci-dessus*".

72. Mr. AGO suggested that in the third sentence, the word "basic" should be deleted, leaving the term "residuary rule" without qualification.

73. Sir Humphrey WALDOCK, Special Rapporteur said that all the proposed amendments were acceptable.

*Paragraph 23, thus amended, was adopted.*

*Paragraph 24*

74. Mr. RUDA asked whether the Special Rapporteur intended to add to chapter II a paragraph on the definitions in article 1, or to insert in paragraph 24 a definition of general multilateral treaties, since the adjournment of the discussion on articles 8 and 9 had been closely connected with the definition of such treaties.

75. Sir Humphrey WALDOCK, Special Rapporteur, said that article 1 was to be examined by the Drafting Committee that very day. He had prepared a paper on the subject suggesting that consideration of the definition of a general multilateral treaty be deferred until the Commission discussed articles 8 and 9. He would prefer not to go into too much detail on the matter in paragraph 24.

76. Mr. BRIGGS said that the French translation of the first sentence was not wholly satisfactory. The words "*la question des parties*" did not adequately render the meaning of "participation in a treaty".

77. Mr. LACHS said that some mention should be made of the fact that the Commission had discussed the question of participation in general multilateral treaties.

78. Sir Humphrey WALDOCK, Special Rapporteur, said he was willing to insert a statement that the Commission had decided to defer consideration of the problem.

*It was so agreed.*

*Paragraph 24, thus amended, was adopted.*

*Mr. Jiménez de Aréchaga, first Vice-Chairman, took the chair.*

*Paragraph 25*

*Paragraph 25 was adopted without comment.*

*Paragraph 26*

79. Mr. TSURUOKA proposed that the last part of the last sentence, beginning with the words "when its work", be replaced by the words "before concluding its work on the draft articles".

80. Mr. ROSENNE proposed the insertion of the word "provisionally" before the words "adopted revised texts" in the first sentence, and the insertion of the words "and concordance of the three language versions" after the word "terminology" in the second sentence. He also proposed that the last sentence of the paragraph should be deleted.

81. Mr. TUNKIN said he was opposed to Mr. Rosenne's first amendment, because it might detract from the value of the work done by the Commission during the session.

82. The CHAIRMAN\*, speaking as a member of the Commission, said he agreed with Mr. Tunkin. He proposed the deletion of the words "provisional and" in the last sentence.

83. Mr. RUDA suggested that the words "in general", the meaning of which was not clear, be deleted from the last sentence.

84. Mr. PAL proposed the substitution of the words "is expected to be completed" for the words "will be completed" in the last sentence.

85. Sir Humphrey WALDOCK, Special Rapporteur, said that for the reasons given by Mr. Tunkin he would be reluctant to insert the word "provisionally" in the first sentence. There was no real need for Mr. Rosenne's second amendment and he considered that the last sentence should be retained because it formed an introduction to paragraphs 27 and 28. Mr. Ruda's amendment was acceptable and the words "provisional and" in the last sentence could be omitted. He did not, however, favour the change proposed by Mr. Pal.

*Paragraph 26, with the amendments accepted by the Special Rapporteur, was adopted.*

*Paragraph 27*

86. The CHAIRMAN\*, speaking as a member of the Commission, said it would be preferable not to refer to

\* Mr. Jiménez de Aréchaga.

the provisional character of the texts adopted at the session, but to indicate that they were subject to review. Perhaps some other wording could be found for the passage dealing with the comments of governments, which seemed rather offhand in tone.

87. Sir Humphrey WALDOCK, Special Rapporteur, said that the Chairman's first point was well taken, but he did not think the criticism of the remainder of the first sentence was justified, or that governments could possibly take offence at what was said.

88. Mr. LACHS said he agreed with the Special Rapporteur. As to the Chairman's first point, he thought it would suffice to delete the word "provisional"; there was no need to refer yet again to the fact that the texts were subject to review.

89. Mr. AGO said it would be simpler to begin the paragraph with the phrase "In the light of the considerations set out in the foregoing paragraphs . . .".

90. Mr. ROSENNE said that the Commission had decided not to present commentaries on the texts adopted at the present session, not only because of their provisional character, but also because it had decided to present commentaries when the complete draft was submitted to the General Assembly. It would therefore suffice to re-draft the first sentence on some such lines as "Having regard to the foregoing considerations, the Commission did not think that any useful purposes would be served etc.". Furthermore, instead of speaking of detailed commentaries, it would be better to use some such wording as "Commentaries which by its Statute the Commission is required to attach to its draft articles".

91. Sir Humphrey WALDOCK, Special Rapporteur, said that he could re-draft the first sentence on the lines suggested by Mr. Rosenne, but it was hardly necessary to refer to the Commission's statutory obligation to prepare commentaries, as that would make the text unnecessarily heavy.

*It was so agreed.*

*Paragraph 27, thus amended, was adopted.*

*Mr. Bartoš resumed the Chair.*

#### *Paragraph 28*

*Paragraph 28 was adopted without comment.*

*Chapter II, as amended, was adopted.*

### **Special Missions**

*(resumed from the 817th meeting)*

[Item 3 of the agenda]

#### **DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE** *(continued)*

92. The CHAIRMAN invited the Commission to consider the draft articles on special missions proposed by the Drafting Committee.

#### **ARTICLE 34 (Members of the family) [35]<sup>4</sup>**

93. The CHAIRMAN, speaking as Special Rapporteur, said that article 34 read :

<sup>4</sup> For earlier discussion, see 808th meeting, paras. 48-61.

"1. The members of the families of the head and members of the special mission and of its diplomatic staff who are authorized by the receiving State to accompany them shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in articles 25, 26, 27, 27 *bis*, 28, 28 *bis*, 29 and 30.

2. Members of the families of the administrative and technical staff of the special mission who are authorized by the receiving State to accompany them shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in article 31."

*Article 34 was adopted by 14 votes to none.<sup>5</sup>*

#### **ARTICLE 35 (Nationals of the receiving State and persons permanently resident in the territory of the receiving State) [36]<sup>6</sup>**

94. The CHAIRMAN, speaking as Special Rapporteur, said that article 35 read :

"1. Except in so far as additional privileges and immunities may be recognized by special agreement or by decision of the receiving State, the head and members of the special mission and the members of its diplomatic staff who are nationals of or permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of their functions.

2. Other members of the staff of the special mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the special mission."

95. Mr. TSURUOKA said he hoped that in his commentary the Special Rapporteur would explain the meaning of the word "unduly", in paragraph 2.

96. The CHAIRMAN, speaking as Special Rapporteur, said that the word was taken from article 37 of the Vienna Convention on Diplomatic Relations.<sup>7</sup>

*Article 35 was adopted by 15 votes to none.<sup>8</sup>*

#### **ARTICLE 36 (Duration of privileges and immunities) [37]<sup>9</sup>**

97. The CHAIRMAN, speaking as Special Rapporteur, said that article 36 read :

"1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State for the purpose of performing his functions in a special mission, or, if already in its territory, from the moment when his

<sup>5</sup> For adoption of commentary, see 821st meeting, paras. 96-108.

<sup>6</sup> For earlier discussion, see 808th meeting, paras. 75-90.

<sup>7</sup> *United Nations Conference on Diplomatic Intercourse and Immunities, Official Records, Vol. II, p. 86.*

<sup>8</sup> For adoption of commentary, see 821st meeting, paras. 109 and 110.

<sup>9</sup> For earlier discussion, see 809th meeting, paras. 1-4.

appointment is notified to the competent organ of that State.

"2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in the case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the special mission, immunity shall continue to subsist".

98. Mr. CASTRÉN said that the word "*pénètre*" in the French text of paragraph 1 gave the impression that the person in question entered the receiving State's territory against that State's will. He suggested that the wording of article 53 of the Vienna Convention on Consular Relations,<sup>10</sup> "*dès son entrée sur le territoire . . .*", should be used, as the Drafting Committee had intended.

*It was so agreed.*

99. The CHAIRMAN, speaking as Special Rapporteur, pointed out that article 39 of the Vienna Convention on Diplomatic Relations used the words "*dès qu'elle pénètre . . .*" though he personally preferred "*dès son entrée . . .*".

*Article 36, thus amended, was adopted by 16 votes to none.*<sup>11</sup>

#### ARTICLE 37 (Death) [38]<sup>12</sup>

100. The CHAIRMAN, speaking as Special Rapporteur, said that article 37 read :

"1. In the event of the death of the head or of a member of the special mission or of a member of its staff, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

"2. In the event of the death of the head or of a member of the special mission or of a member of its staff, or of a member of their families, if those persons are not nationals of or permanently resident in the receiving State, the receiving State shall facilitate the collection and permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death.

"3. Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the receiving State was due solely to the presence there of the deceased as the head or member of the special mission or member of its staff, or as a member of their families".

101. Mr. LACHS said that the title in the English text was too bald and should be expanded.

102. Mr. BRIGGS suggested that the Special Rapporteur might be asked to revise the title so as to indicate that

the subject of the article was the continuation of privileges and immunities for the members of the family.

103. The CHAIRMAN, speaking as Special Rapporteur, suggested that a possible wording would be "Consequences of the death of a member of the mission or of a member of his family".

104. Sir Humphrey WALDOCK said that all that was necessary was to bring the English title into line with the French so that it read "Cases of death".

105. Mr. PESSOU suggested that, since in the event of death there was cessation of functions, articles 37 and 43 might be combined.

106. The CHAIRMAN, speaking as Special Rapporteur, said that article 37 dealt with succession *mortis causa* and with the privileges of members of the family after the death of the member of the special mission.

107. Mr. AGO thought that the French title "*Cas de décès*" should be retained and that a corresponding title should be found for the English text, for the article did not cover all the consequences of the death, but only the situation which arose in the context of the articles.

*It was so agreed.*

*Article 37 was adopted by 16 votes to none.*<sup>13</sup>

ARTICLE 38 (Transit through the territory of a third State) [39]<sup>14</sup>

108. The CHAIRMAN, speaking as Special Rapporteur, said that article 38 read :

"1. Subject to the provisions of paragraph 4, if the head or a member of the special mission or a member of its diplomatic staff passes through or is in the territory of a third State, while proceeding to take up his functions in a special mission performing its task in a foreign State, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the person referred to in this paragraph, or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the transit of members of the administrative and technical or service staff of the special mission, and of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. Subject to the provisions of paragraph 4, they shall accord to the couriers and bags of the special mission in transit the same inviolability and protection as the receiving State is bound to accord.

4. The third State shall be bound to comply with the obligations mentioned in the foregoing three paragraphs only if it has been informed in advance, either in the visa application or by notification, of the

<sup>10</sup> *Conférence des Nations Unies sur les relations consulaires, Documents officiels*, Vol. II, p. 188.

<sup>11</sup> For adoption of commentary, see 821st meeting, para. 110.

<sup>12</sup> For earlier discussion, see 809th meeting, paras. 1-4.

<sup>13</sup> For adoption of commentary, see 821st meeting, para. 111.

<sup>14</sup> For earlier discussion, see 809th meeting, paras. 5-9.

transit of the special mission, and has raised no objection to it.

5. The obligation of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to the official communications and bags of the special mission, whose presence in the territory of the third State is due to *force majeure* ”.

109. Mr. TSURUOKA said that he had been absent when the Commission had discussed the article. In his opinion, it was not certain that a third State had to accord inviolability to one of its own nationals. He would vote for the article, subject to that reservation.

110. The CHAIRMAN, speaking as Special Rapporteur, said that he was of the same opinion as Mr. Tsuruoka, but pointed out that, under paragraph 3 of article 38, the obligations of third States were no greater than those of receiving States, whose obligations vis-à-vis the persons concerned were laid down in article 35. Perhaps he might indicate in the commentary that the persons in question should enjoy all the necessary immunities, on condition that they were not greater than those accorded by the receiving State; in other words, the third State would not be obliged to accord to its nationals or permanent residents any immunity other than the functional immunity.

111. Mr. TSURUOKA said that that solution would satisfy him. He had been thinking of the case of a person accused of a criminal offence who was in transit through the territory of the country of which he was a national: the judicial authorities might perhaps object to his transit.

112. Mr. PESSOU said that a person who went on a mission, whether special or general, was provided with a passport, the nature of which determined whether transit was assured. He did not see any need to impose so many obligations on third States, and he doubted whether they would accept them.

113. The CHAIRMAN, speaking as Special Rapporteur, said that he agreed, but the Commission had decided to model the article on the corresponding provision of the Vienna Convention on Diplomatic Relations.<sup>15</sup> except for paragraph 4, under which the transit State would be informed of the transit of the special mission and could object.

*Article 38 was adopted by 16 votes to none.*<sup>16</sup>

ARTICLE 39 (Obligation to respect the laws and regulations of the receiving State) [40]<sup>17</sup>

114. The CHAIRMAN, speaking as Special Rapporteur, said that article 39 read:

“ 1. Without prejudice to their privileges and immunities, it is the duty of all persons belonging to special missions and enjoying these privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

<sup>15</sup> *United Nations Conference on Diplomatic Intercourse and Immunities, Official Records, Vol. II, p. 87, article 40.*

<sup>16</sup> For adoption of commentary, see 821st meeting, para. 112.

<sup>17</sup> For earlier discussion, see 809th meeting, paras. 52-66.

2. The premises of the special mission must not be used in any manner incompatible with the functions of the special mission as laid down in these articles or by other rules of general international law or by any special agreements in force between the sending and the receiving State ”.

*Article 39 was adopted by 16 votes to none.*<sup>18</sup>

ARTICLE 40 (Organ of the receiving State with which official business is conducted) [41]<sup>19</sup>

115. The CHAIRMAN, speaking as Special Rapporteur, said that article 40 read:

“ All official business with the receiving State entrusted to the special mission by the sending State shall be conducted with or through the Ministry for Foreign Affairs of the receiving State or such other organ, delegation or representative as may be agreed ”.

116. The Drafting Committee had deleted the paragraph relating to liaison officers, being of the opinion that “ the organ ” of the receiving State included those officers.

*Article 40 was adopted by 15 votes to none.*<sup>20</sup>

ARTICLE 41 (Professional activity) [42]<sup>21</sup>

117. The CHAIRMAN, speaking as Special Rapporteur, said that article 41 read:

“ The head and members of the special mission and the members of its diplomatic staff shall not practise for personal profit any professional or commercial activity in the receiving State ”.

*Article 41 was adopted by 16 votes to none.*<sup>22</sup>

ARTICLE 42 (Right to leave the territory of the receiving State) [43]

118. The CHAIRMAN, speaking as Special Rapporteur, said that article 42 read:

“ The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property ”.

*Article 42 was adopted by 16 votes to none.*<sup>23</sup>

ARTICLE 43 (Cessation of the functions of the special mission) [44]

119. The CHAIRMAN, speaking as Special Rapporteur, said that article 43 read:

<sup>18</sup> For adoption of commentary, see 821st meeting, paras. 113 and 114.

<sup>19</sup> For earlier discussion, see 809th meeting, paras. 52-66.

<sup>20</sup> For adoption of commentary, see 821st meeting, paras. 115-117.

<sup>21</sup> For earlier discussion, see 809th meeting, paras. 10-51.

<sup>22</sup> For adoption of commentary, see 821st meeting, para. 118.

<sup>23</sup> For adoption of commentary, see 821st meeting, paras. 119-122.

“ 1. When a special mission ceases to function, the receiving State must respect and protect its property and archives, and must allow the permanent diplomatic mission or the competent consular post of the sending State to take possession thereof.

2. The severance of diplomatic relations between the sending State and the receiving State shall not automatically have the effect of terminating special missions existing at the time of the severance of relations, but each of the two States may terminate the special mission.

3. In case of absence or breach of diplomatic or consular relations between the sending State and the receiving State and if the special mission has ceased to function,

(a) the receiving State must, even in case of armed conflict, respect and protect the property and archives of the special mission;

(b) the sending State may entrust the custody of the property and archives of the mission to a third State acceptable to the receiving State”.

120. Mr. PESSOU said that there was a certain connexion between article 43 and article 36 (Duration of privileges and immunities) and he suggested that they might be combined.

121. The CHAIRMAN, speaking as Special Rapporteur, said that the two articles dealt with different questions: one related to the privileges and immunities of the persons forming the special mission, the other to the termination of the special mission as an institution.

122. He was still uncertain whether article 43 should appear in Part I or Part II, but that point would be settled later.

*Article 43 was adopted by 16 votes to none.*<sup>24</sup>

123. Mr. JIMÉNEZ de ARÉCHAGA, speaking as Chairman of the Drafting Committee, said that the Committee had not had time to discuss certain proposals by Mr. Rosenne which raised questions of substance, and it had therefore referred them to the Commission for consideration. One proposal was to substitute the words “ Part I — General Rules ” for the heading of the articles adopted in 1964; another was to insert as a heading for the articles adopted in 1965 the words “ Part II, Facilities, Privileges and Immunities ”.

124. Mr. Rosenne had also proposed the insertion of a new article reading:

“ ARTICLE 16 *bis* (Application of Part II)

“ 1. The provisions of Part II of these articles apply to all special missions, save as may be otherwise agreed between the sending State and the receiving State.

2. Nothing in this Part of these articles shall affect other international agreements in force as between the sending State and the receiving State, whether or not either or both of these States are parties to the present articles.

3. For the purpose of this Part, the following expressions have the meanings assigned to them:

(a) ‘ Head of the special mission ’ is the person designated by or in accordance with article 6 of the present articles;

(b) ‘ Members of the special mission ’ are the head of the special mission and the members of its staff;

(c) ‘ The members of the staff of the special mission ’, ‘ members of the diplomatic staff of the special mission ’, ‘ members of the administrative and technical staff of the special mission ’, ‘ members of the service staff ’, and ‘ premises of the special mission ’ have the same meanings as are set forth in article 1 of the Vienna Convention on Diplomatic Relations, of 18 April 1961 ”.

*Mr. Rosenne's proposals concerning the headings for Parts I and II were adopted.*

125. The CHAIRMAN invited the Commission to consider Mr. Rosenne's proposed article 16 *bis* paragraph by paragraph.

#### *Paragraph 1*

126. Mr. ROSENNE explained that the object of paragraph 1 was to show that the rules in Part II did not constitute *jus cogens* and that States were free to agree on something different in any given case. As he had already said during the earlier discussion, in his opinion articles 1-16 set out the distinguishing features of special, as opposed to permanent, missions. While not attaching much importance to the position of his proposed new article, he thought it might with advantage be used as an introduction to Part II.

127. Mr. AGO said that, while appreciating the points made by Mr. Rosenne, he would like to reflect further on a question which certainly called for thought. The new article might well have disquieting results: where the Commission did not introduce a clause of that kind, it might be inferred that the rules laid down were rules of *jus cogens*, which was hardly desirable in the case of special missions. The problem might perhaps be solved by adding in other articles clauses like those the Commission had adopted in the provisions concerning immunity from civil jurisdiction. In any case, no hasty decision should be taken.

128. The CHAIRMAN, speaking as a member of the Commission, said he was opposed to Mr. Rosenne's proposal, and in particular to its application to Part II only. There could not be one system for Part I and another for Part II. The problems raised by the proposal were too delicate to be settled hastily.

129. Mr. TUNKIN said he was opposed to paragraph 1 for much the same reasons as those given by Mr. Ago and the Chairman. It was modelled on article 73 of the Convention on Consular Relations,<sup>25</sup> which was both unworkable and incorrect in law.

130. Another objection was that such a provision might be read as implying that States were not free to agree on some other procedure unless an express clause allowing them to do so appeared in every article.

<sup>24</sup> For adoption of commentary, see 821st meeting, paras. 123-126.

<sup>25</sup> *United Nations Conference on Consular Relations, Official Records*, Vol. II, p. 187.

131. Consideration of the whole problem should be postponed until the draft was re-examined by the Commission at a later stage.

132. Mr. ROSENNE said he could agree to consideration of paragraph 1 being deferred.

*Consideration of paragraph 1 was deferred.*

#### Paragraph 2

133. Mr. ROSENNE said that the purpose of paragraph 2 was to protect existing and future agreements between States in the same way as had been done in article 73, paragraph 1, of the Vienna Convention on Consular Relations. Such a provision was extremely important in order to emphasize the residuary character of the articles and should certainly be incorporated in the draft. Personally, he did not consider that it belonged to the final clauses; in the present case it was a matter of substance.

134. Mr. AGO suggested that paragraph 2 also should be considered at the last stage. He doubted whether it was right that it should apply only to Part II, instead of being placed at the end of the draft and applying to the articles as a whole. He could see that the clause would be useful for some conventions; but he doubted whether, if certain States should decide to adopt the convention on special missions, it was really advisable to lay down the principle that special agreements giving such missions a less important status should prevail over the convention. He thought the Commission should reserve its final decision.

135. Mr. RUDA said he agreed with Mr. Ago. He was not sure of the meaning of the words "whether or not either or both of these States are parties to the present articles"; they were not included in article 73, paragraph 1, of the Vienna Convention on Consular Relations. If one of the States was not a party to the articles, its special agreements concerning special missions would not be affected, as the provision was not *jus cogens*.

136. Mr. ROSENNE said that the issue was an important one and should be mentioned in the report, even though the Commission had reached no decision on it.

137. The CHAIRMAN, speaking as Special Rapporteur, said that the questions Mr. Rosenne had raised were too important to be left out of the report, and should be examined more thoroughly later on.

#### Paragraph 3

138. The CHAIRMAN, speaking as Special Rapporteur, said it was not advisable to give definitions applying to one part of the draft only; definitions should apply to the text as whole, so that a word would not have one meaning in one part and another meaning in the other. Besides, the Commission had already asked the Special Rapporteur to submit definitions at the next session.

139. Mr. JIMÉNEZ de ARÉCHAGA said that Mr. Rosenne's idea of taking the Vienna Convention as a basis was excellent, and should be adopted.

140. The CHAIRMAN proposed that the Commission should decide not to transmit article 16 *bis* to the

Drafting Committee, but to mention in the report that it would be considered later, during the second reading.

*It was so agreed.*

The meeting rose at 1 p.m.

### 820th MEETING

*Thursday, 8 July 1965, at 10 a.m.*

*Chairman:* Mr. Milan BARTOŠ

*Present:* Mr. Ago, Mr. Amado, Mr. Briggs, Mr. Castren, Mr. Elias, Mr. Jiménez de Aréchaga, Mr. Lachs, Mr. Pal, Mr. Pessou, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Sir Humphrey Waldock, Mr. Yasseen.

*Also present:* Mr. Provenzali-Heredia, observer for the Inter-American Council of Jurists.

### Co-operation with Other Bodies

(A/CN.4/176)

*(resumed from the previous meeting)*

[Item 7 of the agenda]

1. The CHAIRMAN invited the observer for the Inter-American Council of Jurists to make a statement.

2. Mr. PROVENZALI-HEREDIA (Observer for the Inter-American Council of Jurists) said that although the subjects studied by the inter-American juridical bodies and the International Law Commission were not always the same, there was often an obvious parallel, so that the presence of observers was not a mere formality. As contemporary international life was characterized by co-operation in all sectors of human activity — political, economic and legal — it was important for the representatives of regional systems to be thoroughly familiar with the general rules of law formulated by international juridical bodies. It was also important that the new countries should make known their desire that certain principles essential for their independent existence and their political and social development should be studied with a view to enriching or modifying traditional international law.

3. The American continent had worked out rules of great juridical value. With regard to the legal effects of reservations to multilateral treaties, the Pan-American rule, which rejected the unanimity theory for the acceptance of a reservation and admitted reservations among countries *inter se*, facilitated the progress of international law and safeguarded the sovereignty of all States, both those which accepted and those which rejected such reservations.

4. With regard to territorial and diplomatic asylum, the Inter-American Juridical Committee of Rio de Janeiro had prepared drafts which, having acquired the status of conventions, constituted legal rules of the greatest value relating to an institution of which the countries of America were justly proud.