

Document:-  
**A/CN.4/SR.818**

**Summary record of the 818th meeting**

Topic:  
**Other topics**

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

*Downloaded from the web site of the International Law Commission  
(<http://www.un.org/law/ilc/index.htm>)*

**818th MEETING**

*Tuesday, 6 July 1965, at 11.30 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.

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

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

*(resumed from the 816th meeting)*

1. The CHAIRMAN invited the Commission to consider chapter V of its draft report.

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

2. Mr. ELIAS, Rapporteur, said that, as in previous reports of the Commission, a number of different matters were dealt with in chapter V. The Commission would need to decide whether or not it wished to endorse the fifth paragraph in section A.1. The words "Alternative I" in parentheses above that paragraph should be deleted.

3. As Mr. Sen, the Secretary of the Asian-African Legal Consultative Committee, had only visited Geneva in a private capacity, the reference to him in the second paragraph of section A.2 should be deleted; the sentence would then end with the words "who addressed the Commission".

4. The main conclusions of the Committee set up to consider the exchange and distribution of documents of the Commission were summarized in section B.

5. In section D, two corrections should be made. In the third sentence, the words "in respect of" should be replaced by the words "during the discussion by the General Assembly of"; in the second paragraph, the word "nineteenth" should be replaced by the word "twentieth".

6. Mr. RUDA said that, if the Commission decided to retain the fifth paragraph of section A.1, it should at least amend the second sentence, which gave the impression that there was a wide gulf between the Commission and the bodies mentioned.

7. Mr. ROSENNE said that if the statement in that sentence was intended to reflect a change of policy, he could not support it. The Commission had never previously made its decision on whether or not to send an observer to meetings of other bodies contingent on either the nature of the items to be discussed or their connexion with its own agenda. If it maintained formal relations with other bodies in accordance with the provisions of its Statute, surely it would wish to be represented at their sessions and vice versa.

8. Mr. ELIAS, Rapporteur, said that the Commission was free to accept or to reject the wording suggested.

9. Mr. JIMÉNEZ de ARÉCHAGA proposed that the words "In view, however, of the relatively remote connexion of the subjects of the meetings described above with the topics under discussion by the Commission, and also" be deleted.

10. Mr. TUNKIN said he agreed, of course, that it was open to the Rapporteur to make suggestions for inclusion in the draft report. It would, however, be interesting first to hear the views of members from the Latin American countries on the question of sending an observer to an appropriate body.

11. Mr. RUDA said he entirely agreed with Mr. Rosenne that the Commission ought not to take as a criterion the topics dealt with by the bodies with which it maintained relations. In principle, it was desirable that the Commission should co-operate as closely as possible with other bodies active in the field of international law.

12. On the initiative of the Brazilian Government, a conference on the utilization of international rivers and lakes was to be held at Rio de Janeiro in 1966. It would be an inter-American conference, which would raise many legal and political problems of great importance in relations among South American States, and the International Law Commission should be represented.

13. Mr. TSURUOKA said it would be rather paradoxical if, in section A.1, the financial difficulties of the United Nations were advanced as a reason for not sending an observer to inter-American meetings, and in section A.2, the Chairman was requested to attend the session of the Asian-African Legal Consultative Committee. The reasons which applied to one body held good for the others. Perhaps the Commission could be represented at the Rio conference by one of its members who lived in the region.

14. Mr. AMADO, referring to Mr. Ruda's comments, said that if there was one subject of vital importance in international law at the moment, it was the industrial use of international waters. It was certainly of vital importance for the Latin American States, which had not been able to reach agreement on it either at the Havana Conference of 1928 or at the Montevideo Conference of 1933. The utilization of hydro-electric resources had in the past been regulated bilaterally, on the basis of arbitration by experts. Ever since the Barcelona Conference, however, the trend had been towards the drafting of a convention. The conference to be held at Rio was a bold venture which did honour to the legal capacity of the Latin American States; their aim was to exchange views in the hope of establishing rules of law which could not only be applied by them, but could also serve other States as a model and a stimulus.

15. Mr. JIMÉNEZ de ARÉCHAGA said he had been willing to accept the suggestion put forward in the fifth paragraph of section A.1, not because he minimized the importance of the Rio conference, but because it had not been the Commission's practice to send observers to international conferences. The United Nations would in any case be represented at the Rio conference, for which its Secretariat had done some extremely useful work. If

the Commission decided to appoint an observer, however, he would not oppose that course.

16. Mr. ELIAS, Rapporteur, said that an additional reason for his suggestion had been that, according to the information available, the proposed conference would be mainly concerned with economic and political considerations, so that an observer from the Commission was unlikely to be able to make any useful contribution.

17. Mr. TUNKIN said that the Commission co-operated with the Inter-American Juridical Committee and the Asian-African Legal Consultative Committee, but it had never sent a representative to an international conference, whether universal or regional. He therefore agreed with the view expressed by Mr. Jiménez de Aréchaga.

18. Mr. BRIGGS said that in his opinion it was not advisable to give any reason for not sending an observer to a particular meeting. He therefore suggested that the second sentence of the fifth paragraph of section A.1 be reworded to state that the Commission, while recognizing the importance of the proposed conference, had, with regret, arrived at the conclusion that it would not be in a position to send an observer.

19. Mr. AMADO said that he accepted the arguments advanced by Mr. Jiménez de Aréchaga and Mr. Tunkin against sending an observer to a conference which would be essentially a diplomatic one.

20. The CHAIRMAN said he noted that in the fourth paragraph of section A.1 it was stated that "the Commission has been informed . . .". He would like to know who had informed it.

21. Mr. WATTLES (Secretariat) said that, in reply to a request for information on the legal meetings to be held in 1966 under the auspices of the Organization of American States, the Legal Division of the Pan-American Union had informed the Secretariat of the Commission that there would probably be a specialized conference on the utilization of the waters of international rivers and lakes, and possibly also a joint meeting of the Inter-American Economic and Social Council and the Inter-American Council of Jurists for the purpose of examining the economic and legal aspects of development. That explained the paragraph in the draft report.

22. The CHAIRMAN asked what was the relationship between the Inter-American Juridical Committee and the Inter-American Council of Jurists.

23. Mr. JIMÉNEZ de ARÉCHAGA said that the observer who attended the meetings of the Commission was the Vice-Chairman of the Inter-American Juridical Committee and had been appointed as observer by the Inter-American Council of Jurists. The Inter-American Council of Jurists was a body of twenty-one jurists, one from each American State; the Inter-American Juridical Committee was a standing Committee of the Council, consisting of seven of its members. The exact date of the next session of the Council, to be held in Caracas, was not yet known. He therefore proposed that the Commission postpone its decision regarding the appointment of an observer to attend that session.

24. Mr. AMADO said that, so far as the Rio conference was concerned, the Commission should decide forthwith

that it would not participate in a diplomatic meeting of that kind.

25. Mr. RUDA said he fully agreed with Mr. Amado. He could not accept the two reasons given in the report for not sending an observer, namely, the nature of the topics and the financial situation. The report should state that the reason for not sending an observer was that the proposed conference was of a diplomatic character.

26. Mr. AGO observed that since the Commission maintained relations with the Inter-American Council of Jurists it was only necessary for the Council's representative to inform the Commission of the date and place of the next session. The heading of section A.1, "Inter-American juridical bodies", should be amended to read "Inter-American Council of Jurists" and it should be explained that the Inter-American Juridical Committee was the Council's executive body. The last two paragraphs of the section, referring to the invitation, should be deleted.

27. Mr. ELIAS, Rapporteur, said it might perhaps be better to delete the reference to the proposed conference altogether, rather than state the reason for not sending an observer, namely, that the Commission was not normally represented at diplomatic conferences.

28. Mr. TUNKIN said he supported Mr. Jiménez de Aréchaga's proposal; the Secretariat should be asked to redraft the fifth paragraph.

29. The CHAIRMAN, speaking as a member of the Commission, said he had always opposed the Commission's being represented at the meetings of certain bodies, for which provision was made in the United Nations budget, and not at the meetings of others.

30. Mr. ROSENNE said that the statement that "the Commission desired to stress the importance it attaches to consultation with the bodies with which it co-operates under article 26 of its Statute" applied to all such bodies in general, and should be moved to the first paragraph of section A.1.

31. The CHAIRMAN suggested that the first part of the first sentence of the fifth paragraph, down to the words "under article 26 of its Statute", should be added to the first paragraph to form an introductory paragraph to section A. Then, under the heading "Inter-American Council of Jurists" would come the existing second and third paragraphs, after which Mr. Ago's proposal would be followed.

*It was so agreed.*

32. The CHAIRMAN invited the Commission to consider section A.2.

33. Mr. AGO suggested that the second sentence of the third paragraph be amended to begin with the words "In view of the interest which the Committee shows in the Commission's work".

34. Mr. ELIAS, Rapporteur, said he could accept Mr. Ago's suggestion. In the same sentence, the word "indispensable" should be replaced by the word "useful".

35. Mr. JIMÉNEZ de ARÉCHAGA suggested that, in the same sentence, the references to "the Committee's practice of discussing the work done by the Commission"

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