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Summary record of the 1200th meeting

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INTERNATIONAL LAW COMMISSION

SUMMARY RECORDS OF THE TWENTY-FIFTH SESSION

Held at Geneva from 7 May to 13 July 1973

1200th MEETING

Monday, 7 May 1973, at 3.20 p.m.

Chairman: Mr. Richard D. KEARNEY

later: Mr. Jorge CASTAÑEDA

Present: Mr. Ago, Mr. Bartoš, Mr. Bilge, Mr. Elias, Mr. Hambro, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Opening of the Session

1. The CHAIRMAN declared open the twenty-fifth session of the International Law Commission.

Tribute to the memory of Mr. Gonzalo Alcívar

2. The CHAIRMAN said that it was a matter of extreme regret for him to have to announce the death of a member of the Commission, Mr. Gonzalo Alcívar, who had been not only a distinguished jurist, but also a man with an endearing personality and a keen sense of humour. He had already sent the following telegram to Mr. Alcívar's widow, Mrs. Eugenia Calderón de Alcívar: "As Chairman of the United Nations International Law Commission, I wish to extend on behalf of all the members of the Commission our profound sense of loss upon learning of the death of our esteemed colleague, Gonzalo Alcívar, and to send our most sincere expressions of sympathy. Gonzalo Alcívar served on the Commission with great distinction and unwavering devotion to the legal ideals in which he believed. His contribution to the development of international law, both in the Commission and in the General Assembly of the United Nations, will be his most enduring monument".

At the suggestion of the Chairman, the members of the Commission stood and observed one minute's silence in memory of Mr. Alcívar.

3. Mr. CASTAÑEDA said that Mr. Alcívar, after teaching as a professor of international law at the University of Guayaquil, had had a distinguished political career, in the course of which he had represented his country in the Sixth Committee of the General Assembly,

which he had served both as Vice-Chairman and as Chairman. He had represented his country at the Vienna Conference on the Law of Treaties, in the Special Committee on the Question of Defining Aggression and in the Preparatory Committee for the Conference on the Law of the Sea. He had always identified himself with the interests of Latin America, which he had defended with passion and conviction. He had won the respect and esteem of his colleagues in the Commission for his splendid personal qualities, and all members would, he was sure, wish to join in transmitting the expression of their sympathy and grief to his widow.

4. Mr. SETTE CÂMARA said that he had known Mr. Alcívar for many years and had worked closely with him in the Sixth Committee of the General Assembly in New York, where Mr. Alcívar had distinguished himself by his special sensibility for political problems and by his pragmatic approach to them. His presence would be greatly missed, and if there was a place for international lawyers in the world to come, he himself was confident, as a firm believer in the immortality of the soul, that Mr. Alcívar's generous laughter would continue to be heard on the other side of the veil.

5. Mr. BARTOŠ said he wished to associate himself with the tributes paid to Mr. Alcívar. As Chairman of the Sixth Committee in 1969, Mr. Alcívar had defended the Commission's draft articles on special missions in a masterly fashion.

6. Mr. YASSEEN said he deplored the loss of Gonzalo Alcívar, an eminent, sincere and conscientious lawyer, an excellent representative of Ecuador and a devoted friend.

7. Mr. USHAKOV said that Mr. Alcívar had possessed outstanding qualities as a jurist. His death meant the loss of an eminent colleague for members of the Commission and of a great diplomat for the Government of Ecuador.

8. Mr. ELIAS said that he had first come to know Mr. Alcívar during the difficult days of negotiations at the Vienna Conference on the Law of Treaties. He had possessed a warmly human personality and had been an energetic defender of the cause of peace. He had always been humorous but firm, and had pursued his ideals with sincerity and tenacity. When he had heard the news of Mr. Alcívar's death, he had asked his country's representative at United Nations Headquarters to

express the sincere regrets of Nigeria and of all other African countries.

9. Mr. RYBAKOV (Secretary to the Commission) said that, on behalf of the Secretary-General and of the Legal Division of the United Nations, he wished to pay a warm tribute to Mr. Alcívar, who for many years had defended the cause of international peace, security and justice in the United Nations.

10. The CHAIRMAN suggested that the Commission request the Secretariat to prepare a suitable message of condolence to Mrs. Eugenia Calderón de Alcívar.

It was so agreed.

Statement by the outgoing Chairman

11. The CHAIRMAN said that, after his return to the United States in the summer of 1972, he had been invited to address the International Law Association in New York City on the work of the Commission's twenty-fourth session, in particular its study of succession in respect of treaties. He had also reviewed the Commission's activities at the twenty-seventh session of the General Assembly, where there had been long and substantive discussion of its draft articles on succession in respect of treaties and on the protection of diplomatic agents.

12. The Commission's draft articles on succession in respect of treaties had been generally accepted as representing the existing law on the subject, although a variety of questions had been raised with respect to the articles in part IV on uniting of States and the dissolution and separation of States. There had also been an extensive debate on the two articles in part V concerning succession in respect of boundary régimes and other territorial régimes established by treaties. He looked forward with interest to receiving the comments of governments on those matters.

13. With regard to the protection of diplomatic agents, there had been a long and penetrating debate in which a wide variety of views had been expressed. The Sixth Committee had decided to take up that subject at its next session, to study the proposed articles in depth and to decide whether they should be opened for signature by States.

14. In December 1972, he had attended a meeting of the Council of Europe, but he had unfortunately been prevented by illness from attending the meeting of the Asian-African Legal Consultative Committee at New Delhi. However, he had been represented there by Mr. Tabibi, who had presented a thorough and complete analysis of the Commission's work.

15. After recovering from his illness, he had been able to attend a meeting of the Inter-American Juridical Committee at Rio de Janeiro, at which much attention had been devoted to the problems of the sea-bed, ocean fisheries and the law of the sea.

16. Lastly, he must mention that the Commission on Human Rights had requested the International Law Commission to comment on the Report of the *Ad Hoc* Working Group of Experts of the Commission on Human

Rights concerning the question of *Apartheid* from the point of view of international penal law (A/CN.4/L.193). That request raised a number of complicated procedural problems which would have to be dealt with by his successor.

Election of officers

17. The CHAIRMAN called for nominations for the office of Chairman.

18. Mr. SETTE CÂMARA, after paying a tribute to the outgoing Chairman for his outstanding leadership during a difficult session, proposed Mr. Castañeda, whose achievements as an international lawyer, diplomat and participant in the legal activities of the United Nations, eminently fitted him for that office. It was a great privilege for him, as a citizen of a Latin American country, to put forward the name of such a distinguished Latin American jurist.

19. Mr. USTOR said he wholeheartedly associated himself with the tribute to the outgoing Chairman. He seconded the nomination of Mr. Castañeda.

20. Mr. TAMMES, Mr. AGO, Mr. ELIAS, Mr. USHAKOV and Mr. BARTOŠ also associated themselves with the tributes to the outgoing Chairman and supported the nomination.

Mr. Castañeda was unanimously elected Chairman and took the Chair.

21. The CHAIRMAN thanked the Commission for the honour it had done him and called for nominations for the office of First Vice-Chairman.

22. Mr. TSURUOKA proposed Mr. Yasseen.

23. Mr. AGO seconded and Mr. ELIAS supported that proposal.

Mr. Yasseen was unanimously elected First Vice-Chairman.

24. Mr. YASSEEN thanked the Commission for the honour it had done him.

25. The CHAIRMAN called for nominations for the office of Second Vice-Chairman.

26. Mr. USHAKOV proposed Mr. Bartoš.

Mr. Bartoš was unanimously elected Second Vice-Chairman.

27. Mr. BARTOŠ thanked the Commission for the honour it had done him.

28. The CHAIRMAN called for nominations for the office of Rapporteur.

29. Mr. REUTER said he wished to associate himself with the tributes already paid to the outgoing Chairman. He proposed Mr. Tammes for the office of Rapporteur.

Mr. Tammes was unanimously elected Rapporteur.

30. Mr. TAMMES, expressing his appreciation of the honour done him, said that he would do his best to maintain the high standard set by his predecessor, the greatly regretted Mr. Alcívar.

Adoption of the agenda

31. The CHAIRMAN said that the provisional agenda (A/CN.4/265) had been prepared by the Secretariat on the basis of the programme of work approved by the Commission at its previous session, and therefore contained no reference to the decision of the Economic and Social Council to transmit to the International Law Commission, for its comments, the report of the *Ad Hoc* Working Group of Experts of the Commission on Human Rights concerning the question of *Apartheid* from the point of view of international penal law (A/CN.4/L.193, para. 3). That decision had not been officially communicated to the Secretariat until after the conclusion of the Commission's twenty-fourth session, and since it raised a number of delicate procedural problems, he suggested that, before the Commission expressed its views, those problems should be referred to the officers of the Commission, together with the former Chairmen and the Special Rapporteurs, who would consider them with particular reference to the Commission's programme of work. If there were no comments, he would take it that the Commission agreed to that suggestion.

It was so agreed.

The provisional agenda (A/CN.4/265) was adopted.

Communication from the Secretary-General

32. The CHAIRMAN said he had been asked to remind the Commission of the communication received from the Secretary-General at the previous session,¹ which read:

"The Secretary-General is preoccupied with the increasingly adverse effects of the critical financial situation of the United Nations on the reputation of the Organization, as well as on the efficiency and effectiveness of its future operations. While the relationship between this financial situation, which has many intractable aspects of a political nature, and the level of the budget estimates can be a matter of controversy, as has been amply demonstrated in the course of the General Assembly debate on the budget estimates for 1972, the Secretary-General is convinced that in view of the continuing financial difficulties of the Organization, some measure of budgetary restraint is unavoidable.

"As far as 1972 is concerned, he has made it clear that the budget appropriations need to be administered in such a manner as to achieve a final unexpended balance in the amount of \$4 million, i.e. the approximate equivalent of the anticipated shortfall in the payment of assessed contributions. As for 1973, on the assumption that no real progress will be made in the immediate future towards a basic solution of the deficit situation, the Secretary-General has stated that it is essential that the level of the estimates should demonstrate maximum self-restraint and fiscal care on the part of the Secretariat. He has indicated, in particular, that

even in those circumstances where a legitimate case could be made for the strengthening in 1973 of particular offices and departments, he would not seek the necessary provisions for such purposes until present difficulties have been resolved.

"To attain these objectives, the Secretary-General has called for the co-operation of all members of the Secretariat, and it is now apparent that he is receiving a positive response. It is evident, however, that if the goals which he seeks to achieve are to be reached, it will be necessary to enlist also the full support of the various United Nations bodies where new programmes and activities are originated. The Secretary-General therefore feels it to be his duty to make all United Nations Councils, Commissions and Committees aware of his preoccupations and his objectives. The Secretary-General does not believe that the application of a policy of financial restraint necessarily means that new programmes and activities cannot be undertaken. The aim should rather be to seek to accommodate such new responsibilities within the staff resources which will have become available as a result of the completion of prior tasks, or by the assignment of a lower order of priority to certain continuing activities.

"While the extent to which the members of the International Law Commission will wish to associate themselves with the Secretary-General's preoccupations and policies is undoubtedly a matter for them to decide, the Secretary-General trusts that they will wish to assist him in attaining objectives which, in his view and in present circumstances, are in the best interest of the Organization."

33. The CHAIRMAN said that if there were no comments he would take it that the Commission agreed to take note of the Secretary-General's communication.

It was so agreed.

34. The CHAIRMAN said that a telegram of good wishes for the success of the present session, addressed to the Chairman of the International Law Commission, had been received from Judges Lachs, Gros, Ignacio Pinto, Jiménez de Aréchaga, Waldock, Nagendra Singh and Ruda, of the International Court of Justice, all of whom were former members of the Commission. He would reply with a telegram of appreciation on behalf of the Commission.

The meeting rose at 5.0 p.m.

1201st MEETING

Tuesday, 8 May 1973, at 11.40 a.m.

Chairman: Mr. Jorge CASTAÑEDA

Present: Mr. Ago, Mr. Bartoš, Mr. Bilge, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

¹ See *Yearbook of the International Law Commission, 1972*, vol. I, p. 4, para. 56.