

Document:-  
**A/CN.4/SR.1201**

**Summary record of the 1201st meeting**

Topic:  
**Other topics**

Extract from the Yearbook of the International Law Commission:-  
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### 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,<sup>1</sup> 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.

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

### Organization of Work

1. The CHAIRMAN said that the officers of the Commission, together with the Special Rapporteurs and former Chairmen, had met that morning and considered three questions: first, the organization of the work of the Commission during its present session; secondly, the action to be taken on the request from the Economic and Social Council for the International Law Commission's comments 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); thirdly, the date of the elections to fill the casual vacancies in the Commission in accordance with article 11 of its Statute (item 1 of the agenda).

2. On the first question, they had taken into account the fact that the Commission had been instructed by the General Assembly to give the highest priority to the topics of State responsibility (item 2 of the agenda) and succession of States in respect of matters other than treaties (item 3 of the agenda).<sup>1</sup> They therefore recommended that the Commission should consider the topic of State responsibility first, and allocate about three weeks or fifteen meetings to it. The Commission should then consider the topic of succession of States in respect of matters other than treaties, to which it should also allocate about fifteen meetings. If the Special Rapporteur for that topic preferred a later opening date, the Commission might deal first with the topic of the most-favoured-nation clause (item 6 of the agenda). It was suggested that five meetings should be allocated to the latter topic, although some members had thought that seven or eight would be more appropriate.

3. The Commission should next consider, for about five meetings, item 5 (a): Review of the Commission's long-term programme of work: "Survey of International Law" prepared by the Secretary-General; and then, for two or three meetings, item 5 (b): Priority to be given to the topic of the law of the non-navigational uses of international watercourses. Finally, the Commission should examine item 4: Question of treaties concluded between States and international organizations or between two or more international organizations. If it allocated two or three meetings to that topic, that would leave approximately one week at the end of the session for consideration of the Commission's draft report.

4. On the second question, which was far from easy, it had been noted that it was open to any of the main organs of the United Nations to request the Commission to study a subject. It was not at all certain, however, that the Economic and Social Council's request for the Commission's comments on the report of the *Ad Hoc* Working Group of Experts of the Commission on Human Rights concerning the question of *apartheid* came within the scope of the Commission's object as specified in its Statute, namely, the promotion of the progressive development of international law and its codification.

5. Even if the Commission's role were interpreted as requiring it not to revise the *Ad Hoc* Working Group's draft, but rather to determine the compatibility of the provisions of the draft with the basic principles of international penal law, such an investigation would undoubtedly involve a protracted study. The Commission, however, had to abide by its agenda and the order of priorities laid down for it by the General Assembly, and it could not set them aside to meet a request from another organ.

6. There had been general agreement on the importance of the subject and on the need to respond to the request made by the Economic and Social Council. It was therefore suggested that a small group, consisting of the first Vice-Chairman (Mr. Yasseen), Mr. Reuter and Mr. Ustor, should examine the question and report to the larger group, consisting of the officers of the Commission, the Special Rapporteurs and former Chairmen, which could then make recommendations to the Commission on the action to be taken.

7. With regard to the third question, it was necessary to reconcile two conflicting needs: first, that the casual vacancies on the Commission should be filled as soon as possible, and secondly, that as many members as possible should participate in the election. It was therefore recommended that the Secretariat be asked to get in touch with those members who had not yet arrived at Geneva in order to ensure that some of them at least would be present for the election. The date of the election would be decided in the light of the results of the Secretariat's enquiries, but would not be later than Tuesday, 15 May.

8. If there were no comments, he would take it that the Commission endorsed the Group's recommendations on those three questions.

*It was so agreed.*

The meeting rose at 12.5 p.m.

### 1202nd MEETING

*Wednesday, 9 May 1973, at 10.5 a.m.*

*Chairman:* Mr. Jorge CASTAÑEDA

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

### Filling of casual vacancies in the Commission

(A/CN.4/268 and Add.1 and 2)

[Item 1 of the agenda]

1. The CHAIRMAN suggested that the election to fill the four casual vacancies in the Commission should be held on Tuesday, 15 May 1973. Four members of the Commission were absent, but two of them, Mr. Bedjaoui and Mr. El-Erian, had intimated that they would be

<sup>1</sup> See General Assembly resolution 2926 (XXVII).