

Oral Report by the Chair Designate for the 72nd session of the International Law Commission pursuant to paragraph d) of General Assembly decision 74/566 of 12 August 2020

Thank you Mr. Chair,

It is a great pleasure to present this oral report today in my capacity as the Chair designate for the 72nd session of the International Law Commission. I am reporting in particular on the matters referred to in paragraphs b) and d) of General Assembly decision 74/566 of 12 August 2020. The Secretary of the Commission will be reporting on the matters referred to in paragraphs c) and d) of that decision.

I am myself a former Sixth Committee delegate, and I know the interest and attention that the Committee pays to the work of the Commission. International Law Week would normally be the centrepiece of the Sixth Committee's session. It has not been possible this year for the Commission to hold its 72nd session, nor to adopt a report, but nevertheless it is very pleasing to see that you, Mr. Chair, together with the Bureau and the delegates, have decided to retain some important elements of this week and maintain the important bond and interactions between the Commission and the Committee.

Mr. Chair, I should recall that GA decision 74/566 of 12 August 2020 postponed the 72nd session of the Commission until 2021 and the 73rd session of the Commission until 2022. In accordance with that decision, the Commission has not held a session in 2020. It has not been in session since 9 August 2019 and it will not be in session again until 26 April 2021. Paragraphs b) and d) of that decision in particular asked the Commission to report to the Sixth Committee on progress made on the topics in its programme of work in the absence of a session of the Commission in 2020.

This leads me to the general point that I would like to make. Although the members of the Commission in their individual capacities can, and frequently do, interact informally in the intersessional period to exchange ideas and advance

their knowledge and understanding of the topics that are before the Commission, the Commission as such cannot advance its work in the intersessional period.

It is a long-established and inherent part of the working methods of the Commission that the members are in informal contact with each other and do considerable work in the intersessional period. We exchange ideas, consult each other and consult academic institutions and other expert bodies. These interactions may take place in-person, for example in the form of workshops organised in conjunction with academic institutions when conditions permit this, or by virtual means, email, in writing or by telephone.

Further, the detail and complexity of the legal issues addressed by the Commission, and the thoroughness with which they are researched and considered, are such that the members necessarily have to do considerable preparation in advance of the sessions. The Special Rapporteurs and Co-Chairs of the Study Group in particular spend several months researching, drafting and preparing their reports or issues papers which form the basis of the Commission's work during the session. They do so often in consultation with other members of the Commission, academic institutions, and other expert bodies. The other members of the Commission who receive these reports and issues papers equally spend a significant amount of time in preparation for the session, digesting and analysing the reports and papers, often conducting their own research into the issues raised, and preparing their views for presentation before the Commission.

It is perhaps not well understood that the members of the International Law Commission are part-time and unremunerated. We are variously university professors, legal practitioners, either private or governmental, judges, and current or retired diplomats or other government officials. The members carry out the considerable intersessional preparatory and informal work that I have just described in their private time.

Making progress on the topics in the programme of work of the Commission in this sense, informally in the intersessional period, through work carried out by the Commission members in their individual capacities, is a standard working method for the Commission, which clearly fulfils paragraph b) of GA decision 74/566.

I should repeat, however, so that there is no misunderstanding, that the Commission as such can only advance the topics before it in the formal sense, through debate, deliberations in the Drafting Committee and Study Group, and decisions taken on the basis of those deliberations, when it is in session, and through the annual report of its session to the General Assembly. Whatever informal progress is made by the individual members during the intersessional period needs to be brought by them to the Commission and presented there in order for it to be on the record, in the six official languages of the United Nations, to form part of the official proceedings of the Commission.

I turn now to the specific actions that the members of the Commission have been taking over the past few months which fulfil the request in paragraph b) of GA decision 74/566.

I begin with the actions of the Bureau designate of the Commission for its 72nd session. Like the Bureau of the Sixth Committee, the Bureau of the Commission plans, organises, coordinates and enables the work of the Commission as a whole. The overarching fact to report is that the Bureau designate has had multiple virtual meetings since March this year to consider questions relating to the postponement of the 72nd session of the Commission, to keep the members of the Commission informed and consulted, and to coordinate and guide the possibilities for informal intersessional working among the members of the Commission. These virtual meetings were organised and participated in by members of the Secretariat of the Commission. I will deal relatively briefly with the matters related to the postponement of the 72nd session of the Commission because delegates are already familiar with the main points.

From early March through September 2020, the Chair of the 71st session of the Commission and myself, as the Chair designate for the 72nd session, have convened multiple virtual meetings of the members designate of the Bureau for the 72nd session. In March, these were focused on the need to postpone the first part of the 72nd session of the Commission, taking into account advice from the Secretariat and from the UN administration at the UN Office in Geneva, which resulted in our letter of 16 March 2020 to the President of the General Assembly recommending the postponement of the first part of the 72nd session to the earliest date possible, and that an additional week be added to the second part of the 72nd session.

Through April and May, these virtual Bureau designate meetings were focused on whether it would be possible to hold the second part of the Commission's 72nd session as planned. Taking into account information received from the Secretariat and the UN administration in Geneva, and in accordance with the unanimous views of all of the members of the Commission, these consultations resulted in our letter of 30 May 2020 to the President of the General Assembly recommending that the 72nd session of the Commission be postponed to 2021 and its 73rd session to 2022, and that the term of office of the current Commission members be extended by one year. Subsequent to that letter, the Chair of the 71st session and I were pleased to brief delegates on this recommendation, together with the other members of the Bureau designate, at virtual consultations chaired by Ambassador Mlynar, the then Chair of the Sixth Committee, on 15 June 2020.

From June to September 2020, the Bureau designate continued to meet by virtual means to keep abreast of the progress among delegations in New York on the question of the postponement of the 72nd session, but also to share information and to consider the possibilities for informal working among the Commission members in the absence of the session that had been scheduled for July to August 2020. In order to take this consideration forward, the Bureau designate agreed first to convene a meeting of what is known as the "enlarged Bureau" – which comprises the five Bureau members plus the Special Rapporteurs of the Commission and one of the Co-Chairs of the Study Group on Sea Level Rise in relation to International Law.

This meeting of the enlarged Bureau designate took place by virtual means, organised and attended by members of the Commission's Secretariat, on 19 August 2020. Through these consultations, the Co-Chairs of the Study Group updated the enlarged Bureau on the informal process of consultations in writing that they had been conducting since the issuance of the First Issues Paper on Sea-level Rise in relation to International Law, dealing with the possible implications for the law of the sea, and informed the enlarged Bureau of their future plans, including the possibility of virtual informal consultations at some point. In addition, three of the Special Rapporteurs and the Co-Chairs of the Study Group indicated their intention to participate in the informal virtual interaction with Sixth Committee delegates that will take place tomorrow, 28 October. As you

know, these are the Special Rapporteurs for the topics: Peremptory norms of general international law (*Jus cogens*); Protection of the environment in relation to armed conflicts; Immunity of State officials from foreign criminal jurisdiction; and two of the Co-Chairs for the Study Group on Sea Level Rise in relation to International Law.

The virtual meeting of the enlarged Bureau designate also decided to convene an informal meeting of all of the members of the Commission, which subsequently took place on 3 September 2020. This meeting of all of the members, again organised and participated in by members of the Commission's Secretariat, was an opportunity to update the members on the activities of the Bureau designate, to bring to their attention the content of GA decision 74/566 and the intentions of the Special Rapporteurs and Co-Chairs of the Study Group, and to exchange information and hear views. This virtual meeting of all of the members also heard memorial statements in tribute to Judge Yankov of Bulgaria, a former eminent member of the Commission, who sadly passed away in October 2019. The statements are available on the website of the Commission.

In addition to the above matters, there have been a number of informal exchanges among Commission members, including on possible topics for the Commission's Long-term programme of work.

So to conclude, Mr. Chair, the members of the Commission have been continuing to work informally in the intersessional period, as they always do, exchanging ideas, enriching and furthering their understanding of the topics in the programme of work of the International Law Commission, and interacting with others to this end. This will continue tomorrow in the form of the informal interactions that are planned with Sixth Committee delegates, and I am confident that it will continue among the members of the Commission thereafter until we next meet in the Commission's session, scheduled to begin in Geneva on 26 April 2021. The progress thereby made informally in the intersessional period on the topics in the Commission's programme of work will no doubt be reflected by the various members of the Commission in their participation in the Commission's proceedings at its 72nd session, enabling the Commission to take account of that informal work and to include it in its deliberations and decision-making, as appropriate.

This brings me to the end of my oral report.
Thank you Mr Chair.