

**Oral report of the Secretary of the International Law Commission,  
Mr. Huw Llewellyn, pursuant to paragraph d) of GA decision 74/566 of 12  
August 2020**

**5 November 2020**

Thank you, Mr. Chair,

Paragraph d) of General Assembly decision 74/566 of 12 August 2020 requested the Secretariat to report to the Sixth Committee at its 75th session on the matters referred to in paragraph c) of that decision. As the Secretary of the International Law Commission, I am making this oral report in fulfilment of that request.

First, I would like to confirm the general points just made by the Chair designate for the 72nd session of the Commission. Further to GA decision 74/566, the Commission's 72nd session is postponed until 2021. It does not have a mandate to meet in 2020 and the next time that the Commission will be in session will be from 26 April until 6 August 2021. The references to the International Law Commission in GA decision 74/566, particularly those in paragraph b) urging the Commission to advance its work in the absence of a formal in-person session in 2020, are therefore to be understood as references to the members of the Commission acting informally and intersessionally. The Commission as such cannot hold any meetings or take any decisions when not in session.

As the Chair designate has underlined, intersessional informal work and contacts among members of the Commission, and with academic and other expert bodies, is a long-established part of the Commission's working methods. We, the Codification Division of the Office of Legal Affairs, as the Secretariat of the International Law Commission, assist in these informal contacts as needed, and help to keep the members of the Commission informed of all such activities. The absence of a formal session in 2020 has not impacted the collegiate and collaborative approach that characterises interactions among the members of the Commission. As the Chair designate has just underlined, such work by the members of the Commission undertaken intersessionally, which is considerable, is necessarily informal in nature, carried out in their private time and unremunerated.

I confirm that we the Secretariat have organised by virtual means and participated in a considerable number of meetings of the Bureau designate since March this year. We participated by virtual means in the various consultations with delegations in

connection with the recommendations of the Bureau designate. We organised by virtual means and participated in the meeting of the enlarged Bureau on 19 August 2020. We organised and participated in the informal virtual meeting of members of Commission on 3 September 2020. We have also been instrumental, as you know, in organising the events taking place this week for International Law Day, yesterday, and the opportunity to interact with Special Rapporteurs and two of the Co-Chairs of the Study Group on Sea-level rise in relation to international law that will take place tomorrow, 28 October.

Turning now to the specifics of the matters that the Secretariat was requested to do in paragraph c) of GA decision 74/566, I confirm that we have been exploring all of the options open regarding the working methods of the International Law Commission in the event that an in-person session is not possible in 2021. Assisting the Bureau designate to meet since March this year by virtual means, and preparations for this Sixth Committee session have, of course, involved many of the same considerations and taken us forward in our knowledge and experience of the challenges.

There are three main means available to us in the lead up to the 72nd session of the International Law Commission to plan for the possibility that the holding of the session might still be impacted by the COVID-19 pandemic. These are virtual means of meeting, hybrid means of meeting and flexibility in the dates of the session.

Dealing first with the latter, we are of course in regular contact with the UN administration in Geneva regarding the possibilities for moving the dates of the Commission's session later in 2021, if this should become necessary, and we will remain in close contact with them. In the event that an in-person session is possible, which we all very much hope will be the case, the meetings would likely be subject to the same COVID-19 health and safety mitigation measures as the meetings that you are experiencing now. The wearing of face coverings and social distancing would be required. A sufficiently large room would be needed so that the 34 members of the Commission can be seated at 2 meters or more distance from each other. There may need to be a restriction on the attendance of research assistants who many of the members normally bring with them to the session. Meetings may, however, take place in the same room back to back, morning and afternoon, because deep cleaning can be arranged at lunchtimes. No reduction in the Commission's number of meetings during an in-person session are therefore envisaged.

Regarding virtual means of meeting, there are various forms of meeting platforms available to the Secretariat, as you have all experienced over the last several weeks and months. For smaller meetings without interpretation, including of the Bureau of the Sixth Committee and of the Bureau designate of the International Law Commission, we have been able to use the Microsoft Teams application, which is the software provided to us within the Secretariat by the United Nations. This is easy to use in terms of organising the meetings, but we have had a number of connectivity issues when meeting with participants, even within New York, with less than reliable high-speed internet access.

For virtual meetings without simultaneous interpretation, we have, as you know, been using the Webex platform, which has worked successfully. This is useful only for meetings of an informal nature, which are not plenary or other such UN meetings. It is relatively easy to use for both the participants and for us the Secretariat as the “hosts” of the meeting. However, there are normally very few meetings of this informal nature during a session of the International Law Commission.

For virtual meetings with simultaneous interpretation into the six official languages of the United Nations, which is the case for almost all meetings of the Commission, the Secretariat in New York has available the Interprefy platform, and in Geneva, there are also one or two other authorised virtual platforms with simultaneous interpretation. Multilingualism is an essential part of the Commission’s work, the membership of the Commission being independent experts drawn from the major legal traditions of the world. We therefore anticipate the use of one of these authorised virtual platforms in Geneva to conduct the meetings of the Commission during its 72<sup>nd</sup> session in 2021 in the unfortunate event that it is not possible to hold in-person meetings. If this is indeed the case, then there are a number of observations to make.

First, as you have experienced during this Sixth Committee session, Interprefy meetings (and other virtual platforms with interpretation) are limited to two hours duration. The Commission’s session would thus have reduced meeting time.

Second, to date, as delegates are aware, summary records are not available in New York for Interprefy meetings. We are in touch with the UN administration in Geneva regarding the availability of summary records with their authorised virtual platforms with interpretation. This issue is an important one to address and resolve because

summary records of the Commission's proceedings are an essential and integral part of its work. The Commission's draft articles and other forms of output, together with the reports of the Special Rapporteurs and the summary records of its meetings, form part of the *travaux préparatoires* of the legal texts that result from the Commission's work.

Third, and very importantly, the Drafting Committee of the Commission, which is critical to the formulation of the texts that comprise the Commission's outputs, would be challenging to conduct by virtual means. The characteristic and dynamic of these meetings in normal circumstances is a close, face to face detailed dialogue among a relatively small group of members of the Commission in which the text being deliberated on develops and changes very rapidly. Informal conversations in the margins of the Drafting Committee among the members most engaged can be an essential element in the deliberations. This form of close and dynamic interaction is difficult to replicate by virtual means.

Fourth, Mr. Chair, there are 16 hours of time difference spanning the various members of the International Law Commission from Peru and Ecuador in the west to China and Japan in the east. Organising virtual meetings of the Commission at times that are reasonable for the members would therefore be a great challenge, and would limit significantly the number of hours for which the Commission can meet each day. Creative means for overcoming this would need to be considered, such as exchanges of view in writing among the members, in which case the important question of summary records of such exchanges would need to be addressed and resolved for the reasons that I gave earlier.

From the Secretariat's perspective, the Interpretive and other such virtual platforms with interpretation are relatively heavy to "host", requiring additional staff to be involved. For the Codification Division, this new "host" role is a challenging non-legal one, not within our prior experience or normal skill set. There is also a possibility that there may be financial charges for the use of these virtual platforms.

Mr. Chair, a further possible scenario that might face the 72<sup>nd</sup> session of the International Law Commission is that of hybrid meetings. By this, I mean the possibility that some of the members of the Commission are able to attend the Commission's 72<sup>nd</sup> session in Geneva in-person, while others are not able to attend. In this event, it would be open to the Commission to decide to meet partly in-person

and partly by virtual means. If so, the issues surrounding virtual meetings of the Commission, as I have just described, together with the limitations on in-person meetings that I mentioned earlier, would apply in combination.

This brings me to the end of this report, Mr. Chair. Needless to say the Secretariat will stay in close touch with the Chair designate and the Bureau designate in the coming months so that the Commission is able to make informed decisions about the possibilities for holding its 72<sup>nd</sup> session.

Thank you.