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**International Law Commission**
**Seventy-second session**

Geneva, 26 April–4 June and 5 July–6 August 2021

**Report of the International Law Commission on the work of  
its seventy-second session (2020)**
**Topical summary of the discussion held in the Sixth Committee of  
the General Assembly during its seventy-fifth session, prepared by  
the Secretariat**

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## **I. Introduction**

1. In its resolution [74/186](#) of 18 December 2019, the General Assembly took note of paragraph 313 of the report of the International Law Commission and decided that the next session of the Commission would be held at the United Nations Office at Geneva from 27 April to 5 June and from 6 July to 7 August 2020. In its decision 74/545 of 2 April 2020, however, the General Assembly decided to postpone the first part of the seventy-second session of the Commission, and to extend by one week the second part of the session so that it would be held from 29 June to 7 August 2020. In its decision 74/559 of 23 June 2020, it further decided that the seventy-second session of the Commission would be postponed to a later date. Accordingly, in its decision 74/566 of 12 August 2020, it decided that the seventy-second session of the Commission should be postponed and should be held at the United Nations Office at Geneva in 2021, and that the seventy-third session of the Commission should be held at the United Nations Office at Geneva in 2022.

2. At its seventy-fifth session, the General Assembly, on the recommendation of the General Committee, decided at its 2nd plenary meeting, held on 18 September 2020, to include in its agenda the item entitled “Report of the International Law Commission on the work of its seventy-second session” and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 13th and 19th meetings, on 5 and 19 November 2020 (see [A/C.6/75/SR.13](#) and [A/C.6/75/SR.19](#)). Given the postponement of the seventy-second session of the Commission, pursuant to General Assembly decisions 74/545, 74/559 and 74/566, the Committee did not have before it any report of the Commission. Instead, the Committee received an informal briefing on 5 November by the Chair-designate of the International Law Commission for the seventy-second session and by the Secretariat on the activities of the Commission, pursuant to decision 74/566.

4. The present topical summary of the debate of the Sixth Committee on 5 November consists of five sections, reflecting comments and observations made by delegations during the debate on five of the items in the current programme of work of the Commission: provisional application of treaties; immunity of State officials from foreign criminal jurisdiction; succession of States in respect of State responsibility; sea-level rise in relation to international law; and other decisions and conclusions of the Commission.

## **II. Topics and items on the current programme of work of the Commission**

### **A. Immunity of State officials from foreign criminal jurisdiction**

5. With regard to the eighth report of the Special Rapporteur on immunity of State officials from foreign criminal jurisdiction ([A/CN.4/739](#)), it was noted that, despite the postponement of the seventy-second session of the Commission, it was critical to ensure that the draft articles on the topic reflected the substantive strides made in the area of international criminal law.

### **B. Provisional application of treaties**

6. Delegations expressed their appreciation for the sixth report of the Special Rapporteur on the provisional applications of treaties ([A/CN.4/738](#)), containing

revised draft guidelines and analysis concerning the rights and obligations resulting from the provisional application of treaties, which will be considered at the Commission's seventy-second session, in 2021. The revised draft guidelines were welcomed as a valuable practical tool for States, which supported the development of consistent practice on the subject.

### **C. Succession of States in respect of State responsibility**

7. Some delegations welcomed the third report of the Special Rapporteur on succession of States in respect of State responsibility ([A/CN.4/731](#)), particularly its focus on the application of different forms of reparation.

### **D. Sea-level rise in relation to international law**

8. Delegations commended the issuance of the first issues paper of the Study Group on sea-level rise in relation to international law ([A/CN.4/740](#) and [A/CN.4/740/Add.1](#)), which focused on issues related to the law of the sea. Delegations noted the role of climate change and the 2030 Agenda for Sustainable Development in relation to the topic and described various challenges produced by sea-level rise, including its impact on lives, livelihoods and economies and the way it limited access to fresh water and food as a result of saltwater inundation and coastal erosion.

9. A number of delegations supported the goal of ensuring that maritime zones delineated in accordance with the United Nations Convention on the Law of the Sea, of 1982, could not be challenged or reduced as a result of sea-level rise, thereby reaffirming a commitment to preserving existing entitlements and rights stemming from baselines and maritime zones.

10. Delegations expressed an overarching concern for preserving legal stability, security, certainty and predictability in response to the phenomenon of sea-level rise. Delegations also provided information on political and legislative measures taken to preserve baselines and the existing extent of maritime zones, inter alia, through domestic legislation, maritime boundary agreements and the deposit of charts, coordinates and declarations.

### **E. Other decisions and conclusions of the Commission**

#### **1. Future work of the Commission**

11. With regard to topics and their selection, the point was made that the Commission should select and consider practical topics of international concern. To this end, and in the light of the challenges posed by the coronavirus disease (COVID-19) pandemic, it was suggested that the Commission could consider discussing the role of international law, global response and resilience during pandemics. It was recalled that the topic "Pandemics and international law" had been the subject of consideration at an event organized by delegations on the margins of the seventy-fifth session of the General Assembly. Moreover, it was noted that the Commission should continue to determine the topics for its future programme of work, as and when legal questions arose for States. The role of States in putting forward proposals for new topics was also mentioned.

12. The view was expressed that the Commission could do more to clarify the scope of important concepts related to customary international law or treaties, and thereby contribute to legal certainty and the rule of law at the international level. The

suggestion was also made that the Commission continue its consideration of sectoral topics.

## **2. Programme and working methods of the Commission**

13. Delegations generally expressed appreciation for the oral reports delivered by the Chair-designate for the seventy-second session and by the Secretary of the Commission, in line with General Assembly decision 74/566. A number of delegations affirmed that the Assembly's decision on the extension of the term of office of the current members of the International Law Commission and other related matters was exceptional in nature, was without prejudice to article 10 of the statute of the Commission and did not constitute a precedent for the Commission or for other bodies of the United Nations with elected members. Moreover, some delegations noted that the decision did not affect the date for the elections of members for the following quinquennium, which they expected to be held in 2021.

14. While regretting that the Commission had not been able to hold its seventy-second session in 2020 owing to the COVID-19 pandemic, several delegations expressed appreciation for the work done by the Commission and its members during the intersessional period. In that connection, some delegations encouraged the Commission to consider its working methods and explore ways to adapt them to the current extraordinary circumstances. A suggestion was made for the Commission to consider holding virtual meetings if in-person meetings were not possible. A view was also expressed that the in-person format of the meetings of the Commission was vitally important and should be preserved.

15. Delegations expressed appreciation for the interaction between the Commission and the Sixth Committee. In particular, it was noted that the COVID-19 pandemic had underscored the importance of the rule of law, international law, international cooperation and multilateralism.

16. Delegations also expressed appreciation for the dialogue with some Special Rapporteurs and the Co-Chairs of the Study Group on sea-level rise during the virtual informal session held on 28 October 2020. The extension of the deadline for Member States to submit comments and observations on the topics "Protection of the environment in relation to armed conflicts" and "Peremptory norms of general international law (*jus cogens*)" to 30 June 2021 was also welcomed.

17. The Commission was also urged to consider, when making decisions about the addition of new topics to its programme of work, a balanced approach in the selection of Special Rapporteurs. A view was expressed that the Commission should draw inspiration from all legal systems in its work, as the process of codification and progressive development must be inclusive.

18. The Commission was called upon by some delegations to provide more clarity with regard to the classification of its products, particularly with regard to the usage of "guidelines", "articles", "conclusions" and "principles". The Commission was encouraged to produce a practice guide detailing the differences between and legal consequences of its different work products.