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Report of the International Law Commission (70th Session)

Chapter IV – Subsequent agreements and subsequent practice
Chapter V – Identification of customary international law
Chapter XII – Commemoration of the 70th anniversary of the Commission
Chapter XIII – Other decisions and conclusions of the Commission

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La ROUMANIE pays candidat au Conseil de sécurité des Nations Unies 2020-2021

General considerations

Allow me first to express my delegation's appreciation to the Chair of the International Law Commission for the comprehensive presentation of the report of this year's ILC session and to all members of the ILC for their continued efforts in ensuring a good progress of work, giving the 6th Committee the substance for an in-depth discussion and dialogue on matters of significance for the progressive development and codification of international law.

Chairperson,

This year's report is not one other of the ILC, but it is a report marking 70 years of activity of this prestigious body of recognized experts in the field of international law. Ever since its inception, the Commission produced crucial outcomes, in various fields of international law that shaped, in a significant measure, the present day international legal order.

The commemorative events in New York and Geneva contemplated the accomplishments of the Commission in progressively developing and codifying international law over the past seven decades, while, at the same time, offered the opportunity of anticipating the prospective 70 (and more) year-contribution of ILC to international law.

The past, present and future relevance of the International Law Commission is beyond any doubt, given the constancy of issues of concern that stem on the international arena which require certain adequate regulatory framework. Such kind of issues will keep the agenda of the ILC busy for a significant number of sessions to come, as, certainly, international law can know no rest, being the common ground of all nations, of all cultures, of all thoughts and beliefs, the manifestation of shared global values, constantly called "to articulate the politics of critical universalism", to use the words of a former renowned member of ILC, Martti Koskenniemi.

This moment of commemoration offers also a good opportunity to discern on ways to improve the methodology of work of the ILC and to seek ways to increase the interaction in between the Commission and the 6th Committee in order to ensure a correspondent reflection of state practice in the work of the ILC and the concrete use of the ILC's outcome in the international geopolitical context.

For its part, Romania commends the work of the ILC over the last 70 years and stands ready to assist the Commission in the discharge of its critical work for the next 70 years at least. Romania has a long lasting commitment for the enhancement and the development of international law, having witnessed in its not too distant in the past history, the application of what are today,

important principles of international law: succession of states or the principle of self-determination.

Should I be permitted a short divagation, a hundred years ago, through the application of the Wilsonian principle of self-determination, Romanians from various territories within neighbouring multinational empires, decided, through plebiscite, to be incorporated in the Romanian State. In 2018, Romania celebrates a hundred years since those historical decisions that shaped, in a decisive manner, its existence.

Chairperson,

Turning to the order of business, we can already notice that this year's debate in the ILC prompted the inclusion on its long term agenda of work of topical issues of international law, namely *universal criminal jurisdiction* and *sea-level rise in relation to international law*.

With regard to the first of the topics, we do recognize that it is a subject of actuality in the realm of international law, which could indeed be further looked into by the ILC in order to shed light on the status of the law.

We have noted the prudent approach proposed in the syllabus, given the political discussions that surround the application of the principle of universal criminal jurisdiction, and the organization of the study so that the outcome is intended to further guide States in their discussions on the subject matter. The Romanian delegation sees merits in furthering the analysis within the ILC along the terms of reference included in the syllabus [and encourages the inclusion of the topic on the active agenda of the Commission.

Concerning the second topic, *sea-level rise in relation to international law*, while acknowledging its width and the interplay with numerous fields of international law, we do consider that the problems raised by this phenomenon (*sea-level rise*), especially as concerns low-lying coastal States and small island States and their populations, are justification enough for the ILC to embark into an in-depth study of the legal issues posed and thus, include the topic on its active agenda of work.

It could be that the outcome of the study identify areas where the law as it stands is not sufficient, prompting the international community to take diligent and timely action in ensuring the adequate regulatory framework.

The study undertaken under this topic should not attempt to modify the existing international law, but should mere analyze the way the existing international law addressees the problems posed by sea-level rise (in areas identified in the presentation of the topic), the way in which

existing international law adapts or could adapt to this type of situations and, consequently, identifying possible legal gaps.

We encourage the work of the study group and we look forward to its reports and to the outcome of the study considering the difficulty of the issues the subject bears and the vitality of the questions rose for the existence of certain States.

With regard to the **Chapters IV and V** of the report, my delegation would like to submit the following views:

Chapter IV – Subsequent agreements and subsequent practice

We are very appreciative for the impressive work done by the Special Rapporteur, Mr. Georg Nolte, which enabled the Commission to bring to a successful conclusion the work on the topic *subsequent agreements and subsequent practice in relation to the interpretation of treaties*.

This delegation is in general agreement with the text of the conclusions and of the commentaries attached to them and is convinced of their added value in assisting all those concerned at certain points and in certain contexts with treaty interpretation. Our daily life, as legal advisers, concerns significantly treaty conclusion and treaty application which entails treaty interpretation. The ILC followed closely the language of the Vienna Convention when drafting the guidelines on subsequent agreements and subsequent practice, managing to give a comprehensive and accurate overview on the matter.

The approach undertaken by the Rapporteur and endorsed by the ILC is sufficiently broad to cover situations where the action of other international actors than States is relevant for the interpretation of statutory international treaties and for the establishment of the scope of a treaty provision. We welcome this approach as being in line with developments which have a bear on the subject matter, while not departing from the scope of articles 31 and 32 of the Vienna Convention.

We reiterate the appreciation of this delegation for the ILC's work under this topic.

Chapter V – Identification of customary international law

Romania welcomes the adoption by the Commission, on the second reading, of the *Draft conclusions on the identification of customary law*.

As Legal Adviser, I am fully aware of the great practical importance of the topic, as I routinely deal with issues pertaining to customary law. For example, Romania is not a party to the *Vienna Convention on the Law of Treaties*, but we often invoke and apply the rules enshrined in this

Convention on grounds that they reflect customary law. Guidance for identifying rules of customary international law is, thus, extremely important.

We endorse the Draft Conclusions as accurately and comprehensively describing the current state of international law on the matter.

The commentaries strike the right balance between the need of accurately and systematically reflect the law on this topic, on the one hand, and the need for conciseness and clarity, on the other hand. The document in its entirety reads quite easily and is not overburdened with information, making it a supple, very useful tool for the international lawyers to employ in cases where they need to establish whether a customary rule of international law exists and to determine its precise content; we have no doubt that they it be greatly relied upon in the process.

Romania noted that the States providing comments took quite different views on some of the issues covered by the Draft Conclusions, in particular on the issue of whether practice of international organizations is relevant for the identification of rules of international customary law – probably the topic on which the views of the States diverged the most. In line with our previous comments, we underline that in our view such practice might indeed contribute to the identification of customary law, in particular in the case of international organizations to which the States have transferred competences. While the primacy of State practice is undeniable, international organizations are actors in their own right on the international scene and they have separate international legal personality; we believe that their practice is relevant when identifying rules of customary law. We recognize nonetheless that others have quite robustly expressed different views on this topic. In this context we greatly commend the efforts of the Special Rapporteur to suggest language refining or adjusting both the text of Draft Conclusions and of the commentaries in order to accommodate the views and concerns expressed.

In relation to the forms of evidence of acceptance as law, we would agree that no type of practice has inherently more probative value and that the weight to be given to such forms needs to be assessed in context, on a case-by-case basis.

Romania also welcomes the fact that careful consideration was given to the circumstances in which State inaction amounts to a general practice that is accepted as law. The Draft Conclusions very prudently register the conditions in which failure to act has probative value, and we agree that it was necessary to strike a note of caution in this respect.

In the end, my delegation would like to express its warm appreciation and gratitude for the tremendous work of the Special Rapporteur, Sir Michael Wood, as well as of the Commission as a whole, on this very relevant and complex topic.

This concludes my remarks on the first cluster of topics.

Thank you.