



New Zealand Permanent Mission to the United Nations

Te Māngai o Aotearoa

UNGA70: Sixth Committee Report of the International Law Commission, Cluster I

New Zealand statement

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Mr Chair,

New Zealand wishes to make some comments on Chapters IV and XII included in Cluster one of the debate on the Report of the International Law Commission. We would like to take this opportunity to welcome Mr Narinder Singh's election as Chairman of the Commission this year. The work of the Commission members is valuable in the codification and progressive development of international law.

Mr Chair,

New Zealand thanks the Chairman of the Study group on the Most Favoured Nation Clause, Professor Donald McRae, for his significant work in the completion of the final report. Since the revitalisation of this topic, New Zealand has supported the work of the Commission in reviewing the 1978 draft articles. We share Professor McRae's assessment that it was necessary to consider whether further practical guidelines on the application and interpretation of the Most Favoured Nation clause were required.

New Zealand welcomes the final report, including the conclusions drawn by the Study Group. We note, in particular, the ever-evolving nature of jurisprudence on the Most Favoured Nation clause, which increasingly restricts the ability to authoritatively define how this clause should be applied in international law. The 1978 draft articles provide guidance on the interpretation of MFN, and New Zealand agrees that there is no appetite to revisit the draft articles with the

intent to provide an exhaustive baseline for the interpretation and application of MFN.

New Zealand is encouraged by the robust and extensive review of the case law in the report. We encourage the wide dissemination of this final report to provide context and guidance for States and practitioners in the field of investment arbitration. We hope that this report will provide some assistance in encouraging consistency between the decisions of various bodies on the interpretation of MFN obligations in bilateral investment treaties.

New Zealand would like to take this opportunity to again thank the work of the Study Group in the conclusion of this topic and Professor McRae for his service to the Commission.

Mr Chair,

New Zealand also wishes to make some short comments on other decisions and conclusions of the commission, in particular, the topic *jus cogens* and further cooperation between the Commission and this Committee.

New Zealand welcomes the inclusion of the topic of *jus cogens* in the programme of work and the appointment of Mr Dire Tladi as Special Rapporteur. We note the Special Rapporteur's request for information to assist in understanding States' practice on the nature of *jus cogens*, the criteria for its formation, and the consequences as expressed in official statements and decisions of national

regional courts and tribunals. We note that States' contributions on these important issues may allow the Commission to determine whether it has sufficient information to provide an illustrative list of norms which have achieved the status of *jus cogens*, for consideration and discussion with States. We acknowledge the Commission's ongoing careful analysis of the material provided to it, including by giving this material appropriate weight in its considerations.

New Zealand reiterates our strong support for further cooperation of the International Law Commission in sharing its knowledge of international law, and in building relationships with New York based delegates to the Sixth Committee. The importance of sharing information between delegates and Commission members, and building quality working relationships, is integral to ensuring efficient and effective work in both the Commission and this Committee. In this regard, we welcome the increase of informal briefings to Sixth Committee delegates by ILC Commissioners that has occurred in the last year. To continue this positive trend, we appreciate the Commission's consideration of holding a half session in New York and we look forward to that occurring in either 2017 or 2018.

New Zealand welcomes the improvements to the new website of the Commission and emphasises our thanks to the Secretariat for the completion of this update. The updated website provides a format that is easier to use, and modernises the way in which the work of the Commission is presented. Consistent with New Zealand's long-standing support of the wide dissemination of the work of the Commission, we see the improvements to the website as an encouraging

shift towards increased public access and availability of the work of the Commission.

New Zealand would also like to acknowledge the distinguished work of Mr George Korontzis, the former Director of the Codification Division and Secretary of the Commission, and wishes him all the best in his future endeavours.

I thank you
