



STATEMENT

BY

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REPUBLIC OF MALAWI TO THE UNITED NATIONS**

**AT THE DEBATE ON
*AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW
COMMISSION ON ITS WORK AT ITS SIXTY-NINTH SESSION***

**SIXTH COMMITTEE AT THE 72ND SESSION OF THE UNITED
NATIONS GENERAL ASSEMBLY**

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Your Excellencies

Distinguished delegates

Ladies and Gentlemen

Since this is the first time that my delegation is taking the floor in the Committee, let me at the outset congratulate you, Mr Chairman, and other members of the Bureau on your election. We appreciate the excellent manner in which you are steering the business of the Committee. I wish to pledge my delegation's cooperation and support.

Thank you, Mr. Chairman for giving me the floor to make some remarks on agenda item 81.

Mr Chairman,

My delegation wishes join other delegations in expressing our appreciation to Mr Georg Nolte, Chairperson of the Commission for the excellent presentation of the Report to this Committee on all the three clusters. Furthermore, we would like to thank the Commission for the report contained in document A/72/10 which contains the thorough details of the work of the Commission at its sixty-ninth session.

Since my delegation did not have an opportunity to make comments during the consideration of each cluster, I would like to touch briefly on some of the topics across the clusters. My comments will be on Crimes against humanity, Immunity of state officials from foreign criminal jurisdiction, Other decisions and conclusions of the Commission.

Mr Chairman,

My delegation wishes to express its appreciation to the Commission for the work and its contribution in the codification and progressive development of International Law. Malawi values the exchanges that Member States have with the Commission within the Sixth Committee and in that regard we welcome the invitation to participate in the commemoration of the 70 years of the ILC's existence next year.

On the draft articles on Crimes against humanity, my delegation takes note of the articles and expresses appreciation to the Special Rapporteur for the work on this topic. My delegation wishes to urge the Commission to further study the articles on victims' right to get reparations. The issue that merits further consideration under this draft article 12 is the extent to which States will bear the burden of reparations, regard being had to the difficulties that may be associated with the discharge of that burden.

My delegation is cognisant of the opportunity to give written comments by 1 December 2018 and will do so by that date so that practice of states in this area forms the basis for the articles.

Mr Chairman,

On immunity of States Officials from Criminal jurisdiction, my delegation notes with concern, the departure from the ILC's established procedure of adopting its work by consensus. Article 7 contains exceptions of crimes on which immunity does not apply. The fact that it was adopted by a recorded vote is a sign that it merits further study. My delegation therefore wishes to urge the Commission to revisit this article. My delegation also wishes urge the Commission to exercise caution not conflate this topic with the scope and application of the principle of universal jurisdiction.

Mr Chairman

On other decisions and conclusions of the Commission my delegation notes the inclusion of two topics on the future work of the Commission. My delegation supports the inclusion of the topic general principles of International Law. The identification of these principles and the methods of their identification will give guidance to States in this area. My delegation however doubts if the topic evidence before international tribunal merits consideration by the Commission. Each International Tribunal has its own rules on evidence and in that regard, it would be difficult to attempt to harmonise them.

In that regard, Malawi wishes to urge the Commission to choose topics that will help settle some contemporary issues in international law. The work load of the Commission continues to grow and therefore it should direct its resources to those topics that merit its consideration.

Mr Chairman,

In conclusion, my delegation takes note of the reminder by the Chairperson of the Commission for States to provide by 15 January 2018, written comments on the topics - Protection of the atmosphere, provisional application of treaties, and *jus cogens*. Be assured that Malawi will do so.

Thank you for your attention