



New Zealand Permanent Mission to the United Nations

Te Māngai o Aotearoa

UNGA 72: Sixth Committee
Report of the International Law Commission
on the work of its sixty-ninth session
(Agenda Item 81), Clusters II and III

New Zealand Statement

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25 October 2017

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Chairperson,

New Zealand would like to comment on Chapters VII (immunity of state officials) and VI (protection of the atmosphere) from cluster II and chapter VIII (peremptory norms of international law) of cluster III of this debate. We support the ongoing work of the Commission on these issues, and the important debate in this Committee.

New Zealand would like to thank the Special Rapporteur for the fifth report analysing the question of limitations and exceptions to the immunity of state officials from foreign criminal jurisdiction and notes the debate that went into the provisional adoption of draft article 7. We support the view that there are limitations and exceptions to the immunity of State officials from foreign criminal jurisdiction *rationae materiae*, particularly in respect of certain types of behaviour that constitute the most serious crimes under international law. We note the concerns expressed by many representatives in this Committee and ask the Commission to consider the issues raised.

In this regard, New Zealand would be interested to see further consideration by the Special Rapporteur of the suggested alternative approach of reformulating draft article 7 on the basis of an obligation to waive or prosecute international crimes. This could explore a possible duty of a State either to waive the immunity of its officials before the criminal courts of a foreign State, or to undertake to fulfil its obligation to prosecute its own officials, thereby reducing any impunity gap.

Fighting impunity and ensuring responsibility for international crimes is an essential interest for the international community as a whole. Limitations and exceptions are closely linked to the procedural aspects of immunity, and we look forward to the Special Rapporteur's next report on this topic.

New Zealand thanks the Special Rapporteur Mr Dire D Tladi for the second report on peremptory norms of general international law setting out the criteria for the identification of peremptory norms. New Zealand supports the adoption of draft conclusions 4 – 9 and endorses the approach of analysing the effects or

consequences of jus cogens in 2018 with a view to developing proposals for an illustrative list of jus cogens norms in 2019.

Chairperson,

I now move to chapter VI and thank Mr Shinya Murase and the drafting committee for its work on the draft guidelines on the protection of the atmosphere. New Zealand supports the idea that the rules of international law relating to the protection of the atmosphere and other relevant rules of international law should, to the extent possible, be identified, interpreted and applied in a coherent manner. In doing so, it will be important to consider the specific contexts in which existing obligations have arisen. Guideline 9 provides a useful starting point, highlighting the techniques in international law for addressing tensions between legal rules and principles. New Zealand also welcomes the recognition in the new preambular paragraphs of the close interaction between the atmosphere and the ocean, as well as the special situation of low-lying coastal areas and small island developing states due to sea-level rise.

Chairperson,

New Zealand welcomes the Commission's decision to hold part of its 2018 session here in New York. We look forward to the participating in the commemorations of the seventieth anniversary of the Commission. We suggest this may be an opportunity to start a conversation about where the ILC can add the most value going forward.