



STATEMENT
by
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on behalf of the Caribbean Community (CARICOM)

on

Agenda Item 82: Report of the International Law Commission on the
Work of its Seventieth Session

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Mr. Chairman

As this is the first time that my delegation is taking the floor, I wish to extend our congratulations on your election to the chairmanship of the Sixth Committee. Congratulations are also extended to the other members of the Bureau, and we thank the Secretariat and interpreters for all of their dedicated work. Please be assured of The Bahamas' continued cooperation and support during the work of the Committee.

Mr. Chairman

I have the honour to speak on behalf of the fourteen Member States of the Caribbean Community (CARICOM). CARICOM aligns itself with the statement delivered by the representative of El Salvador on behalf of the Community of Latin American and Caribbean States (CELAC).

At the outset, CARICOM extends its gratitude to the Chairman of the International Law Commission (ILC) for his statement introducing the various clusters of the Report of the Commission on the work of its Seventieth session. CARICOM congratulates the ILC on commemorating its 70th anniversary, and commends the Commission on its work in fostering the codification and progressive development of international law.

CARICOM supports the decision of the ILC to hold part of its meeting in New York. We encourage the Commission to continue its outreach to delegation in New York, including the holding of future ILC meetings in New York, especially given that the legal advisers of many developing countries are not represented in Geneva.

With your permission, Mr. Chairman, CARICOM would like to comment on several topics cutting across the clusters of the Report.

Mr. Chairman

CARICOM commends the proposal put forward by the Government of the Federated States of Micronesia, in January 2018, requesting the inclusion of a topic titled "Legal Implications of Sea-level Rise" on the Long-term Programme of Work of the ILC.

CARICOM agrees with the Commission that the issue of sea level rise should be addressed more comprehensively, and as a matter of priority, given that this issue will have important direct implications for more than one-third of the international community, and indirect implications for all Member States.

Further, CARICOM strongly encourages the maintenance or expansion of the scope of this topic, as proposed in Annex B of the ILC report. Making reference to the Protection of the atmosphere, considered in Chapter VI of the report, CARICOM wishes to express its concern about the scope of the topic, as defined during the ILC's Sixty-fifth session in 2013, and

repeated in draft preambular paragraph 8 and draft guideline 2, and encourages the Commission to avoid narrowing the scope of topics in such a manner which might negatively impact the outcome's relevance and utility to Member States.

CARICOM welcomes the deeper exploration of issues including:

- the “legal implications of the inundation of low-lying coastal areas and of islands upon their baselines, upon maritime zones extending from those baselines and upon delimitation of maritime zones, whether by agreement or adjudication”;
- the “consequences for statehood under international law should the territory and population of a State disappear”;
- the “international law protections enjoyed by persons directly affected by sea-level rise”; and
- “whether the principle of international cooperation [should] be applied to help States cope with the adverse effects of sea-level rise on their population”.

CARICOM encourages the ILC to elaborate on the envisaged outcome of the work on this topic, including whether a Special Rapporteur will be appointed upon completion of the preparatory work in the study group format.

We note that in its Seventieth session, the ILC concluded two topics on its current programme of work and added one new topic, General Principles of Law, and express our hope that sea-level rise will be the next topic added to the **current** programme of work. You can count on our full support, in this regard.

Mr. Chairman

Regarding Universal criminal jurisdiction, in Chapter XIII of the report, CARICOM can lend its support to the decision of the Commission to include this topic in its Long-Term work programme. CARICOM recognises that certain crimes, including genocide, crimes against humanity, torture and war crimes, pose such a serious threat to and affect the fundamental interests of the international community as a whole, that it is the responsibility and moral duty of States to investigate and prosecute, in accordance with international law, those suspected of committing such heinous crimes.

CARICOM is aware of the disparity with which international justice is applied, and appreciates universal criminal jurisdiction as an important means of reducing the imbalance in the landscape of international justice, by offering a subsidiary basis for promoting accountability, bridging the impunity gap, and international justice systems.

Discussions during previous sessions of the General Assembly have called for the establishment of guidelines for the scope and exercise of universal jurisdiction, including possible list of crimes, conditions for its application, and its relationship with existing concepts of international law. CARICOM reiterates its caution that the extraterritorial application of domestic law by a State is contrary to the principle of universal jurisdiction,

unless permitted under international law, such as in cases where the State has the jurisdiction to do so over one of its own nationals. It is therefore important to ensure that the exercise of universal jurisdiction does not generate abuse of or conflict with international law.

CARICOM, once again, underscores the need to further develop the discussions on this matter, and welcomes the inclusion of this topic on the Long-Term Programme of Work of the ILC. We note the debate that took place during the working group on Universal Jurisdiction, and express our support for Brazil's proposal. We believe that we should take advantage of the first time this body and the ILC will be addressing the same subject matter simultaneously, as an opportunity to revitalise the work of the Sixth Committee through a new form of relationship with the ILC.

Mr. Chairman,

Regarding the Protection of the atmosphere, addressed in Chapter VI, CARICOM commends the Commission for preparing the draft preamble and 12 draft guidelines, together with commentaries, for the consideration and comments of Member States and international organisations. In particular, we welcome the recognition of the special vulnerability of small island developing States and low-lying coastal areas, with regards to the effects of sea-level rise, as referenced in draft preambular paragraph 6 and draft guidelines 9(3).

As a matter of necessity, CARICOM has been at the forefront of combatting climate change, addressing social and economic impacts of sea-level rise and other impacts of loss and damage. CARICOM appreciates first-hand the potential and growing likelihood of "a strong regional pattern, with some places experiencing significant deviations of local and regional sea level change from the global mean change".

Mr. Chairman

With regards to Peremptory norms of general international law (*jus cogens*), Chapter VIII of the report, CARICOM reiterates its support of the Commission's undertaking of the task of setting out the criteria for the identification of peremptory norms. We thank the Commission for the work undertaken during 2018, including the provisional adoption of draft principles 4, 6, 7, 8 and 14 to 18, together with draft commentaries. We agree with the use of article 53 of the Vienna Convention on the Law of Treaties of 1969 ("the Convention") as a good starting place for the identification of criteria of *jus cogens*.

Further analysis of the meaning of "fundamental values", particularly with regards to the identification of a universal understanding of these values, is encouraged. And while caution must be exercised in the consideration of some treaties as part of general international law, CARICOM invites further contemplation of this issue.

CARICOM agrees that treaties must be interpreted in a manner consistent with peremptory norms, pursuant to article 31 of the Convention. However, where a treaty purports to conflict with *jus cogens* norms, CARICOM would support the formulation of a single draft conclusion, providing a general rule regarding interpretation, which would be applicable to all sources of international law.

CARICOM encourages the Commission's continued examination and exploration of this and other aspects of this topic, and looks forward to its future work in this regard.

Mr. Chairman

CARICOM welcomes the report of the ILC on the Protection of the environment in armed conflict, as contained in Chapter IX of this year's report, and notes the progress of this topic under elements of the international law including international humanitarian law, international criminal law, international environmental law and international human rights law.

CARICOM commends the Special Rapporteur's recognition that environmental obligations protect a collective interest and are owed to a wider group of States beyond those involved in armed conflict or occupation.

CARICOM remains cognisant of the gaps where international legal provisions protecting the environment during armed conflict, which were designed for international armed conflicts, do not necessarily apply to internal or national conflicts. Therefore, CARICOM again looks forward to the Commission addressing the application of draft principles to non-international armed conflicts, and other matters including compensation for environmental damage and questions of responsibility and liability.

Mr. Chairman

CARICOM commends the Commission's examination of and work to date on the topic of Succession of States in respect of State responsibility, addressed in Chapter X of the report.

While it is arguable that this subject only applies to a few states at this time, CARICOM is of the view that this issue is ripe for exploration. CARICOM supports the Special Rapporteur's view that further codification and development of the topic would allow for gaps to be addressed, particularly in the areas of State responsibility and succession of States. Further discussions on obligations arising from wrongful acts, subject to the Convention, would also be supported.

Mr. Chairman

CARICOM notes the Commission's work on the subject of Immunity of State officials from foreign criminal jurisdiction, covered in Chapter XI of the report.

CARICOM encourages the continued exploration and elaboration of procedural issues pertaining to immunity, such that the stability of international relations is safeguarded, while maintaining respect for the sovereign equality of states. Further consideration must be given to the issues of jurisdiction of the forum State, the fight against impunity, and the rights of the State official concerned.

CARICOM encourages the Commission to continue its careful deliberations on the subject of immunity timing, while maintaining the distinction between immunity *rationae personae* and *rationae materiae*. Immunity issues must be addressed at an early stage of procedures. In this regard, clarity must be provided on what is considered "an early stage" or "the earliest opportunity", in an effort to avoid ambiguity or misinterpretation.

Further consideration must be given to which forum is most appropriate for the determination of whether immunity applies – that is, whether the determination lies with the courts of the forum state; the executive; a specifically-designated State organ; international courts and tribunals; or another organ.

CARICOM looks forward to the Commission's continued work on this topic.

Finally, Mr. Chairman,

CARICOM reiterates its appreciation for the opportunity to interface with the International Law Commission, in New York. We commend the Commission's attention to increasing the number of women members, and for assisting developing states through capacity-building, so they can better engage with the work of the ILC. We also look forward to closer collaboration between the Commission and CARICOM Member States, including with our regional academic institutions.

We thank the ILC members for their participation in a side-event organised by the Permanent Missions of Honduras, St. Lucia, Fiji and Ghana on May 17th of this year on the essential goal of "enhancing the contribution of small and developing states to the work of the ILC". To that end, we encourage ILC members to seek further engagement with small island developing states, and encourage the General Assembly to assist in capacity-building through a formal internship programme for developing states.

I thank you.