



# New Zealand Permanent Mission to the United Nations

Te Māngai o Aotearoa

UNGA 73: Sixth Committee: Report of the  
International Law Commission on the work  
of its seventieth session (Agenda item 82),  
Cluster I

## **New Zealand Statement**

Delivered by Victoria Hallum, International Legal Adviser

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Chairperson,

New Zealand associates itself with the statement delivered by the Republic of the Marshall Islands on behalf of Pacific Islands Forum Members and will also make some additional comments in a national capacity.

New Zealand thanks the International Law Commission and its Commissioners for its report on the work of the seventieth session. We also thank the Chairman, Mr Eduardo Valencia-Ospina, for his introductory speech. In our statement today we will comment on Chapter V (identification of customary international law) and Chapter III (on the inclusion of sea-level rise in relation to international law on the Commission's long-term work programme).

New Zealand will first, however, take this opportunity to congratulate the Commission on the **commemoration of its seventieth anniversary**. We would like to register our deep appreciation for the work of the International Law Commission and to acknowledge its achievements in the progressive development and codification of international law.

Over the course of the last 70 years, the Commission has made an enormous contribution to international law, including through the 1969 Vienna Convention on the Law of Treaties, the Vienna Convention on Diplomatic Relations, and the 2001 draft articles on State responsibility for

internationally wrongful acts. The Commission's work also laid the foundations for the establishment of the International Criminal Court.

The overarching theme for the Commission's seventieth anniversary was "drawing a balance for the future". International law is not static. In the face of a range of contemporary challenges that comprise a pressing concern for the international community as a whole, such as climate change, we look forward to continued engagement with the Commission on the progressive development and codification of international law.

In this regard, we would like to express our appreciation to the Commission for holding the first part of its seventieth session in New York. New Zealand welcomed the opportunity to engage with the Commission here in New York, and would invite the Commission to consider holding part of its session in New York on a regular basis.

New Zealand acknowledges the work of Sir Michael Wood as Special Rapporteur for the topic '**identification of customary international law**' and thanks the Commission for the work that has gone into the draft Conclusions and their commentaries.

We welcome the adoption by the Commission of 16 draft Conclusions, together with commentaries, for second reading. The draft Conclusions

can be expected to be a helpful reference point for practitioners and others called upon to identify and to apply customary international law.

By its nature, it is important that work on this topic reflects and takes account of the views expressed by states. New Zealand was among the states that provided feedback on the 16 draft Conclusions and Commentaries following their adoption by the Commission at its sixty-eighth session.

New Zealand appreciates the Commission's efforts to make the draft Conclusions concise and accessible. At times, however, this has resulted in general statements that do not always provide clear guidance and do not capture some of the significant qualifications that can be found in the Commentaries.

In this regard, New Zealand continues to have some hesitations about draft Conclusion 4.2. New Zealand is cautious about the proposition in draft Conclusion 4.2 that the practice of an international organisation itself may contribute to the formation of customary international law. We continue to consider it would be helpful to articulate clearly in the text of the draft Conclusion the "certain cases" in which the practice of an international organisation may contribute to the formation of customary international law.

It also remains difficult to identify from the Commentaries the “certain cases” in which the practice of an international organization will be relevant, given the Commentaries state that “it may be the practice of only some, not all, international organisations that is relevant”.

New Zealand would also welcome greater clarity in the expression of draft Conclusions 6.1, 10.3 and 15. The Commentaries to each of these draft Conclusions elaborate on important exceptions that would be appropriate to include in the text of each of the draft Conclusion.

The Commission has recommended that the General Assembly take note in a resolution of the draft Conclusions on the identification of customary international law, annex the draft Conclusions to the resolution and ensure their widest dissemination. New Zealand supports this proposal and would be interested in the views of others as to whether the General Assembly might also commend the Commentaries to the attention of Governments alongside the draft Conclusions.

Finally, New Zealand welcomes the Commission’s decision to include **sea-level rise in relation to international law** in its long-term work programme.

New Zealand considers that this topic reflects the needs of States, and pressing concerns of the international community as a whole, particularly given the likely impact of rising sea levels on low-lying islands and coastal communities. This is an issue close to home for New Zealand and our Pacific Island neighbours, some of whom are experiencing sea-level rise that is nine times the global average.

The legal questions identified in Annex B of the Commission's report are well chosen and are at the forefront of our minds.

Earlier this year, the New Zealand Government decided to take early and collaborative action on Pacific climate migration. As part of this the Government considered the international legal challenges presented by sea-level rise and confirmed its commitment to work with partners to ensure that, in the face of changing coastlines, the current balance of rights and obligations under UNCLOS is preserved.

Put simply, our goal is to find a way, as quickly as possible, to provide certainty to vulnerable coastal states that they will not lose their rights over their marine resources and zones due to rising sea levels. As our Prime Minister said recently at the UN's Climate Week "New Zealand firmly believes that coastal states' baselines and maritime boundaries should not have to change because of human-induced sea level rise."

These issues are also regional priorities for the Pacific. Pacific Island Forum leaders have consistently highlighted that settling maritime boundaries in the Pacific is crucial to our security and prosperity. For the first time this year, our Foreign Ministers also identified the complex legal issues raised by rising seas impacting states' baselines.

While I have spoken a lot about the Pacific, as is well captured in the Commission's reports, the legal implications of sea-level rise raise questions of global significance. All States have an interest in preserving the delicate balance of rights and responsibilities that are captured in UNCLOS. It is also in the interest of all States to ensure there is certainty over maritime zones to avoid potential disputes.

New Zealand encourages the Commission to move this topic onto its active programme of work as soon as possible. In the meantime, New Zealand will be looking for opportunities to engage with other states about the possible solutions to these pressing legal questions.