



# New Zealand Permanent Mission to the United Nations

Te Māngai o Aotearoa

## United Nations General Assembly: Sixth Committee Debate on the Report of the International Law Commission – New Zealand Statement

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Chair,

New Zealand thanks the Chair-designate of the International Law Commission for his oral report and acknowledges the challenging context presented this year.

For New Zealand, the challenges of COVID-19 have only underscored the importance of international law. The Commission, with its responsibility for developing and codifying international law, is a critical institution. There is no other international body that draws together academic and state views to discuss and progress international law.

We thank all members of the Commission for their efforts to explore how their work can progress while in-person meetings are not possible. We remain ready to support the Commission by ensuring it has the tools and resources it needs to do its work, in whatever manner it considers will be most productive.

A substantive report was not possible this year, but we note that reports of the Special Rapporteurs and study group Co-Chairs have continued to be issued, in anticipation of the seventy-second session.

That session has been postponed, but in recognition of the important relationship between the Sixth Committee and the Commission, and the usual substantive nature of this debate, we would nevertheless like to take this opportunity to make a few comments on some of the issues raised in those reports.

New Zealand welcomes the First Issues Paper on the topic of **Sea-level rise in relation to international law** prepared by Co-Chairs Dr Bogdan Aurescu and Dr Nilüfer Oral and congratulates the study group on its work.

New Zealand aligns itself with the statement made by Tuvalu on behalf of Pacific Islands Forum Members on this important issue.

New Zealand considers that the Sea Level Rise in International Law topic is an excellent example of the Commission responding to the critical needs of states, in a manner that underscores the Commission's ongoing relevance as it approaches its 75th birthday. We consider that the Commission's work on this issue can be a significant element in addressing this issue of concern to the international community.

The law of the sea issues covered in the study group's first paper are of particular priority to New Zealand and our region. Maritime zones are critically important to Pacific countries' identities, economies and societies. For many their ocean spaces and rights guaranteed under UNCLOS represent their development pathways.

Pacific Island Forum Leaders have committed in their meeting in Tuvalu in August 2019 to collective effort to ensure that once a Forum member's maritime zones are

delineated in accordance with UNCLOS, they could not be challenged or reduced as a result of sea level rise and climate change.

New Zealand considers that the study group's paper provides a valuable and thorough consideration of the issues related to the Law of the Sea and maritime zones, including existing state practice.

New Zealand particularly appreciates the emphasis placed by the authors (in paragraphs 27, 190(g) and 220) on the importance of preserving legal stability, security, certainty and predictability. New Zealand agrees that the principle of stability and certainty is a key principle underlying UNCLOS, along with justice and equity; good faith; reciprocity; and the duty of states to cooperate. New Zealand considers that these principles are all relevant to the issue of sea level rise and international law.

New Zealand agrees that the issue of baselines and how they are affected by sea level rise is a key question and we note the useful concluding observations in paragraph 104 on this point. We particularly note the observations in sub-paragraphs (e) and (f) that an approach which responds adequately to the concerns of states is one based on the preservation of baselines and outer limits and of the maritime zones measured from baselines and that UNCLOS does not expressly prohibit such an approach.

As New Zealand has noted in previous statements, it is important that there be discussion and consideration of the issue of sea level rise and maritime zones amongst states, in parallel to the Commission's work. We commend the study group for their outreach to states on the topic. Over the past year there have been some significant discussions in our region, most notably the 2020 Regional Conference on Securing the Limits of the Blue Pacific and Institutional Responses to the Impact of Sea-level Rise on Maritime Zones, in the Context of International Law, held from 9-17 September. This conference, which was held online due to COVID 19 restrictions, was attended by all Pacific Island Forum members, with input from regional organisations and international law experts from around the world. The conference was helpful in setting a pathway for collective action by Pacific Island Forum members with a view to ensuring that maritime zones are secure. The conference benefitted from the presentations of Dr Aurescu and Dr Oral on the study group's work (and especially appreciated Dr Aurescu participating in the conference during the middle of his night).

New Zealand looks forward to further engaging with the Commission on this important work, and we encourage States to respond to the authors' request for further submissions from Governments to assist the Study Group in its work. The members of the Pacific Islands Forum Group provided its submission in December last year.

We will also seek opportunities to engage directly with other Governments to discuss potential solutions to this global challenge. We further welcome the consideration of

the topic “Sea-level rise and its impacts” at next year’s United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea.

New Zealand also thanks Special Rapporteur, Mr Pavel Šturma, for his fourth report on **succession of states in respect of state responsibility**. We agree with the Special Rapporteur’s approach, as articulated in draft article 1, that in determining state responsibility, priority should be given to agreements between the States concerned. We also agree that the draft articles must recognise and align with existing rules, including the Vienna Convention on succession of States in respect of treaties and the Vienna Convention on succession of States in respect of State property, archives and debts. We acknowledge the limited state practice in this area and appreciate the work of the Commission in this area of law – including the significant focus on the application of different forms of reparation in the latest report. We also welcome Special Rapporteur Mr Pavel Šturma’s proposal to address in his next report the application of international law in instances where there are several successor States.

New Zealand also thanks Special Rapporteur, Mr Juan Manuel Gómez-Robledo for his sixth **report on the provisional application of treaties**. New Zealand welcomes the updated guidelines, which will be a valuable practical tool for States, supporting the development of consistent practice in this area. New Zealand also welcomes the detailed analysis on the crucial question of which rights and obligations arising from the entry into force of a treaty are triggered in the event of provisional application. As highlighted in the report, provisional application is not, and cannot be used as a means of bypassing Parliamentary procedures, and retaining the flexibility of provisional application is key to managing the tension between bringing a treaty into force at the international level, and ensuring relevant domestic constitutional procedures are completed.

New Zealand also thanks Special Rapporteur, Ms. Concepción Escobar Hernández, for her eighth report on the **immunity of State officials from foreign criminal jurisdiction**. We agree 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 behavior that constitute the most serious crimes under international law. We also welcome the attention in this eighth report on the interaction between the immunity of State officials from foreign criminal jurisdiction and international criminal tribunals. As the Special Rapporteur notes, it is critical to ensure that the draft articles on this topic reflect, and do not undermine, the substantive strides made in the area of international criminal law. Fighting impunity and ensuring responsibility for international crimes is an essential interest for the international community as a whole.

To close, New Zealand highly values the Commission’s work, and we appreciate any opportunity to engage in substantive dialogue on the topics before it.

Thank you.