



**New Zealand Permanent Mission to the United Nations
Te Aka Aorere**

**United Nations General Assembly: Sixth
Committee, Agenda Item 82 - Cluster II.
Report of the International Law
Commission**

**New Zealand Statement delivered by
Permanent Representative, H.E. Craig J. Hawke**

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CHECK AGAINST DELIVERY



Thank you Chair,

With respect to Chapter 6 of the ILC report, on Immunity of State officials from foreign criminal jurisdiction, New Zealand thanks Special Rapporteur, Ms. Concepción Escobar Hernández, for her eighth report on this item.

We also thank the Commission for its work on this topic and acknowledge the Commission's provisional adoption of draft articles 8-12 and commentaries.

On article 7, we agree that immunity *ratione materiae* of State officials from foreign criminal jurisdiction does not apply in respect of the most serious crimes under international law. However, we also note the diverse views among States and Commission members, and consider the issue may benefit from further reflection by the Commission.

We welcome the attention in the Special Rapporteur's report on the interaction between the immunity of State officials from foreign criminal jurisdiction and international criminal tribunals in a manner which recognises their separate and independent regimes. An appropriate "without prejudice" clause should assist in ensuring that the draft articles on this topic do not undermine the substantive strides made in international criminal law.

We note that draft articles 8-12 articulate expectations around the process to be followed when a State is considering exercising criminal jurisdiction over an official of another State. However, the Commission may benefit from further analysis of State practice and dialogue with States about the processes followed in practice. For example, New Zealand considers that the state of the official does not need to be notified when a criminal investigation is undertaken, but only when proceedings are formally initiated or coercive measures are taken.

The involvement of the state of the official in the process is appropriate given the immunity is for the benefit of the state, not the individual, and the right to make decisions in relation to the immunity rests with the state. However, New Zealand notes that the forum state is required by international law to respect immunities when they apply regardless of whether the State of the official has formally invoked immunity, for example through the process outlined in draft article 10. We consider the information sharing envisaged by draft article 12 will assist with the determination of whether immunity applies to the charges,

and we look forward to the Commission's consideration of a further draft article on "determination of immunity" in forthcoming sessions.

I will now turn to Chapter Nine, Sea-level rise in relation to international law.

We align ourselves with the statement made by Fiji on behalf of Pacific Islands Forum Members.

New Zealand reaffirms the written and oral comments that we offered in 2020 on sea-level rise in relation to international law, including our comments on the First Issues Paper. We want to commend the International Law Commission for tackling this important issue, which reflects the critical needs of states, and the 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. We welcome the way the International Law Commission has been conducting its work, and consider that the approach of the Study Group, which is functioning as a hybrid between the special rapporteur format and traditional study group continues to be very apt for the complex and interconnected nature of this topic. We endorse the usefulness of the four areas identified in paragraph 294 of the Commission's report as topics for further in-depth analysis.

As we have underlined in our past statements, we think it important that there continue to be discussion and consideration of the issue of sea level rise and maritime zones amongst states, in parallel with the Commission's work. A good example of this was the United Nations Open-Ended Informal Consultative Process on Oceans and the Law of the Sea, which took place earlier this year. We think the Commission can provide valuable assistance to states by providing an in-depth legal analysis of the existing law and principles underlying it. However, we are not, at this point, persuaded that this is an area where the Commission should proceed to develop draft articles, as is suggested in paragraph 286 of the report.

The impact of sea-level rise on maritime zones is a priority issue for New Zealand and our Pacific partners. Maritime zones, and the resource rights that come with them, are essential to Pacific countries' economies, identities, and ways of life. The stark findings on global sea-level rise in the recently released 2021 Intergovernmental Panel on Climate Change Report, including that

continued sea-level rise is locked in for centuries to come, add even more urgency to the importance of securing maritime zones for future generations. The international community must cooperate to address this challenge. This requires the development of appropriate political and policy frameworks, the elaboration of scientific, technical and technological responses, adaptation and resilience building, and responding to the legal challenges posed by sea-level rise.

The International Law Commission has encouraged states to come forward with views and examples of state practice, to inform its analysis of the legal issues. In this regard, we draw attention to an important contribution of the Pacific Islands Forum on this issue. Earlier this year, Pacific Islands Forum Leaders issued the Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level-Rise. This Declaration sets out our region's collective position on how the United Nations Convention on the Law of the Sea's rules on maritime zones should apply in the situation of climate change-related sea-level rise, and promotes the principles of legal stability and certainty over maritime zones.

New Zealand is proud to be part of this initiative, which upholds the integrity of the Convention as the definitive legal framework within which all activities in the oceans and seas must be carried out while also safeguarding a sovereign and resilient Pacific region. The Declaration also continues the Pacific region's proud record of leadership on oceans issues.

The Alliance of Small Islands States has since reinforced the approach set out in the Pacific Islands Forum Declaration in their Leaders' Declaration adopted in September. This Declaration affirms that there is no obligation in the Convention to keep baselines and outer limits of maritime zones under review nor to update charts or lists of geographical coordinates once deposited with the Secretary-General of the United Nations, and that such maritime zones and the rights and entitlements that flow from them shall continue to apply without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise.

We recall that the Convention was adopted as an integral package containing a delicate balance of rights and obligations, which are integral to many states' development pathways. It is in the interests of the international community to preserve this balance and to ensure there is certainty, security, stability and

predictability over maritime zones. New Zealand is committed to working constructively with other states to this end.

Thank you Chair.