

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

Delivered by Craig J. Hawke, Permanent Representative of New Zealand to the United Nations

5 November 2020

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 issued raised in those reports.

New Zealand welcomes the First Issues Paper on the topic of 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

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 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

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

. 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.