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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),
Clusters II and III

New Zealand Statement

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Thank you Chairperson.

New Zealand would like to comment on Chapter VI (protection of the atmosphere), Chapter VIII (peremptory norms of general international law (*jus cogens*), and from Cluster III, Chapter IX (Protection of the environment in relation to armed conflicts).

New Zealand thanks Mr Shinya Murase and the Drafting Committee for their work on the draft Guidelines on **protection of the atmosphere**. As noted in previous years, New Zealand supports the idea that the rules of international law relating to the protection of the atmosphere and other relevant rules of international law should, to the extent possible, be identified, interpreted and applied in a coherent manner.

In this regard, the emphasis in draft Guideline 11 on States complying with the rules and procedures in the relevant agreements to which they are parties is helpful. We also support the emphasis placed in draft Guideline 12 on the settlement of disputes by peaceful means. However, we note that issues related to implementation, compliance and dispute settlement will rest primarily within the ambit of the relevant international legal regime.

We thank the Commission for referring the draft Guidelines to Governments and international organizations for comments and observations, and look forward to engaging on the draft Guidelines and Commentaries in their entirety.

New Zealand thanks the Special Rapporteur, Mr Dire Tladi, for the third report on **peremptory norms of general international law**. We have welcomed the inclusion of this topic on the Commission's agenda and consider the analysis of the consequences and legal effects of peremptory norms to be an important step toward developing proposals for an illustrative list of peremptory norms. We will also be interested to learn whether the Commission intends to attempt to articulate the content of the jus cogens norms included in the illustrative list.

As with the Commission's work on the identification of customary international law, this topic may have real practical value for States, including for domestic courts. However, given the nature of the jus cogens norms and their place in the hierarchy of sources of international law, the lack of State practice in this area, and the serious consequences flowing from either breach of or conflict with a peremptory norm, we recommend that Commission continue to take a cautious and balanced approach to this work.

The Commission's discussions on this topic at its latest session cover a wide range of significant and highly complex issues which clearly require a more in-depth consideration by States than has been possible in the available time since the publication of the report. At this point New Zealand makes some initial observations.

We welcome the analysis of the intersection between the international law related to peremptory norms and the relevant provisions of the Vienna Convention on the Law of Treaties as articulated in draft Conclusions 10 to 13. We regard the Vienna Convention on the Law of Treaties as the appropriate starting point when considering the effect of peremptory norms on States' treaty-based obligations. We also consider it helpful that the draft Conclusions follow the formulation of the draft Articles on State responsibility, where appropriate.

Finally, we also note the Special Rapporteur's view that a provision in a treaty should, as far as possible, be interpreted in a way that renders it consistent with a peremptory norm, and the proposal to formulate a single draft Conclusion on interpretation that would be applicable to all sources of international law.

New Zealand looks forward to further considering the draft Conclusions alongside a full set of commentaries in 2019.

Turning to Cluster III and to Chapter IX of the Commission's report (protection of the environment in relation to armed conflict), New Zealand thanks the special rapporteur Ms Marja Lehto for her report on the question of **protection of the environment in situations of occupation**. The law of occupation is an area of the law that was developed in the early twentieth century and we consider it important to consider the issue in the contemporary context and to address the linkages between the law of occupation, international human rights law and international law of the environment. We agree that consultations with the United Nations Environment Programme and the International Committee of the Red Cross are important in this context and we note the continuing importance of ensuring this work aligns with international humanitarian law.

New Zealand considers that the three draft principles introduced by the special rapporteur on the general obligations of an Occupying Power, the sustainable use of natural resources and due diligence to be soundly based on the relevant legal principles and a helpful addition to the draft principles already developed under this topic. New Zealand looks forward to studying these new draft principles further and to considering the commentaries developed to accompany them.

New Zealand supports the Special Rapporteur's intention to address in her next report questions relating to the protection of the environment in non-international armed conflicts and questions related to responsibility and liability for environmental harm in relation to armed conflicts. We also note the Special Rapporteur's intention to replace the term "occupying State" with "occupying Power" and to consider the extent to which the principles may have relevance to the administration of a territory, such as United Nations Missions, to the extent they entail the exercise of functions and powers that are comparable to those of an occupying State under the law of armed conflict.

Finally, following the interactive dialogue with Committee members on 24 October, New Zealand would like to suggest that in addition to the requests for information in Chapter III of the Commission's report, it would be helpful if the Commission could also outline a modest number of questions on each of the current topics on which the Commission would particularly appreciate comment from States. Providing a small number of key questions would help to direct States' attention and may assist States in providing the Commission with more specific feedback.

Thank you.