

New Zealand Submission to the International Law Commission regarding sea-level rise in relation to statehood and the protection of persons

30 June 2023

New Zealand welcomes the opportunity to contribute further information regarding the important topics of statehood and the protection of persons in relation to sea-level rise, to help inform the International Law Commission's (ILC) ongoing work on sea-level rise in relation to international law.

New Zealand is a Member of the Pacific Islands Forum (PIF). After PIF Leaders issued in 2021, a Declaration on Preserving Maritime Zones in the Face of Climate Change related Sea-Level Rise, they in 2022 directed the region to work together on the complex issues of statehood and protection of persons affected by sea-level rise. To this end the PIF Secretariat in March 2023 hosted a regional conference on statehood and protecting persons to guide the region's collective efforts on these issues.

New Zealand recommends consideration of the PIF submission to the ILC on these matters.

Statehood

State Continuity

New Zealand welcomes the ILC's Second Issues paper of 19 April 2022 on statehood and protection of persons by the Co-Chairs of the Study Group on sea-level rise in relation to international law. This is an important step in the ongoing consideration of the legal implications of sea-level rise.

New Zealand agrees with the Second Issues paper that there is a strong presumption of continuity of statehood and that this is a highly relevant legal principle to States whose territory could be covered by the sea or become uninhabitable due to sea-level rise.

Moreover, in New Zealand's view, international law does not say anything about the demise of statehood in the context of sea level rise. The Second Issues paper, and the examples of state practice it outlines, demonstrates the flexibility of international law in providing for continued statehood.

Continuity of statehood is also supported by other principles of international law, including the right to self-determination, equity and fairness, the duty of cooperation, maintaining peace and security, and stability in international relations.

New Zealand agrees with the Second Issues paper that States whose territory could be covered by the sea or become uninhabitable due to sea-level rise have the right to provide for their preservation, and international cooperation will be of particular importance.

New Zealand further refers to the submission from the PIF.

Territory

The New Zealand *Legislation Act* 2019 provides principles and rules for the interpretation of legislation. Section 13 of the Act provides that when legislation refers to the territorial limits of New Zealand that means the outer limits of the territorial sea of New Zealand.

Protection of Persons

Domestic sea-level rise work-streams

Sea-level rise is one of a number of impacts New Zealand faces as a result of climate change. New Zealand's national adaptation plan sets out the Government's strategies, policies and plan to address climate risks, including from the impacts of sea level rise. It is focused on four main areas: enabling better decisions, driving climate-resilient development in the right locations, options to adapt to climate change including community-led retreat, and embedding resilience across government. Adapting to climate change in partnership with Māori is an essential foundation of the New Zealand long term adaptation strategy and plan.

To assist local (sub central) governments make good decisions about where and how to develop in the face of climate risk, the Government published interim guidance on the use of new sea-level rise projections in July 2022. The interim guidance updates the Coastal hazards and climate change: Guidance for local government (coastal hazards guidance). A full update to the coastal hazards guidance will be published in 2023. The New Zealand Coastal Policy Statement 2010 also provides direction on planning for development in the coastal zone, which local governments are obliged to give effect to the direction in regional policy statements.

Many local governments are already completing hazard assessments and developing maps to show areas which are expected to be affected over the next 50-100 years. Other activities include planning for managed retreat, rejecting consents for alterations or extensions to existing buildings in the coastal zones, discouraging the construction of defences such as sea walls, and restricting development in coastal erosion areas. The Government is currently working on more comprehensive tools to support local governments manage these risks.

New Zealand International Adaptation Projects, with a focus on the Pacific

New Zealand's International Climate Finance Strategy – Tuia te Waka a Kiwa, is guiding the delivery of our NZD 1.3 billion international climate finance commitment, of which at least 50 percent will support Pacific Island countries and at least 50 percent will target adaptation. Under the Strategy, climate finance initiatives are aimed at enhancing resilience and adaptation to the impacts of climate change, promoting ambitious mitigation action, improving institutional capability for evidence-based decision-making and leveraging our investments to achieve greater impact.

Some of our climate change adaptation activities have a focus on supporting adaptation to sea level rise impacts specifically, including:

- **Information for Decision Making:** New Zealand's focus in this area is to support understanding of sea-level rise and other associated hazards to help inform decision making and adaptation planning. To aid in this purpose, for example, New Zealand is supporting the Pacific Risk Tool for Resilience (PARTneR) project, which aims to develop hazard risk models for six countries in the Pacific, and to provide support for capacity building so decision makers are able to make better risk informed decisions. New Zealand is also supporting the development of a probabilistic assessment for coastal inundation model, and has supported the Pacific Ocean Climate Crisis Assessment.
- **Water Security:** Low-lying atoll countries are particularly vulnerable to sea-level rise impacts and New Zealand has supported projects relating to water quality monitoring, rainwater harvesting,

groundwater assessments, solar still distillation, desalination, community WaSH, and funding support.

- **Ecosystems:** New Zealand has continued to invest in activities which support community resilience by enhancing and protecting ecosystems across the Pacific. These activities include: supporting the utilisation of indigenous knowledge to enable co-designed nature-based solutions, such as mangrove replanting and enhancing reef ecosystems; supporting the management of the impact of invasive species on ecosystems so as to promote land-based biodiversity.

New Zealand and Climate Mobility

New Zealand recognises the importance of retaining the Pacific's social and cultural identity and the desire to remain in-place, where possible. To this end, a key part of New Zealand's investment in climate action has been on supporting adaptation initiatives, as set out above. Specific climate mobility investments also help to prepare people for relocation and migration, where this becomes necessary.

New Zealand is currently working with other Pacific countries, civil society and non-state actors to develop a Pacific Regional Framework on Climate Mobility. This Framework will guide Pacific regional action on this complex issue.

One of the biggest challenges in this area is the lack of reliable data on climate migration. To address this, New Zealand is commissioning multi-year research to better understand climate migration trends, and the impact on communities in the Pacific and New Zealand. This research will support evidence-based responses to Pacific climate mobility.

Similarly, New Zealand has extended our investment in the Pacific Climate Change Migration and Human Security (PCCMHS) programme delivered by a group of UN agencies, and led by the International Organization for Migration (IOM). This regional programme is focused on protecting and empowering communities to deal with migration, displacement and planned relocation that can result from climate change and disaster.

Other climate mobility related investments include New Zealand's support for the establishment of the Fiji Relocation of Communities Trust Fund, and funding to a non-governmental organisation to work with Pacific communities to prevent and manage conflicts that could arise from displacement and relocation.

New Zealand commends the valuable work of the ILC on this topic to date. New Zealand looks forward to continuing working with the international community on the important issues of preserving statehood and protecting persons affected by sea level rise.