



New Zealand Permanent Mission to the United Nations

Te Māngai o Aotearoa

SIXTH COMMITTEE

INTERNATIONAL LAW COMMISSION REPORT: CLUSTER I & II

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NEW ZEALAND
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Mr Chair,

New Zealand wishes to make some comments on some of Chapters included in Clusters 1 and II of the debate on the Report of the International Law Commission, and make some brief comments on some other issues raised in the Report. We would like to take this initial opportunity to thank the Chairman of the Commission, Mr Kirill Gevorgian and the members of the Commission for their work over the past year.

Mr Chair,

New Zealand thanks the Special Rapporteur, Mr Maurice Kamto, for his ninth report on the **Expulsion of Aliens**. As the commentary usefully clarifies on numerous occasions, substantive parts of these draft articles represent progressive development of international law, rather than a reflection of the law as it currently stands. This topic addresses issues that go to the heart of sovereignty and national security, as well as human rights. They require States to carefully strike a balance between all three in light of their national circumstance. In this context, we would encourage the Commission to be cautious about moving too far ahead of State practice in this area.

New Zealand notes, in this regard, that the draft articles do not distinguish between the expulsion of aliens who enter the territory of a State lawfully and those who enter unlawfully, a point that has been commented on in this forum before. This approach has caused some challenges as it puts it at odds with State practice which often does distinguish between these two circumstances. A related issue arises in draft article 26 which refers to the procedural rights of aliens. We were pleased to see that the Commission recognised that national laws often provide for simplified procedures for the expulsion of aliens unlawfully present in their territory for a short duration. While paragraph 4 recognises the particularities in State practice, we would encourage greater clarity around this point in the commentary.

In light of these issues, we would counsel against the elaboration of these articles in a binding document. Instead, we consider that these articles could best be utilised as guidance that States can consider and apply in a manner most appropriate to their setting.

Mr Chair,

New Zealand welcomes the seventh Report of the Special Rapporteur on the **protection of persons in the event of disasters**. The draft articles which have been provisionally adopted by the International Law Commission place emphasis on the response to a disaster and the recovery of the affected State. We support the inclusion of protection of relief personnel and their equipment in disaster scenarios as an essential condition for any relief operation to be carried out. We appreciate the incorporation of the terminology of "appropriate measures" in draft article 18. In our view this provides the right approach that

allows the affected State flexibility depending on a range of factors including the potential threats and the actors involved.

New Zealand welcomes the balance which the draft Articles seek to achieve between the sovereignty of an affected State and the need to assist affected populations following a disaster. From experience, New Zealand knows all too well the importance and respect for external assistance in the event of disasters.

Mr Chair,

New Zealand also welcomes the second Report of the Special Rapporteur on **subsequent agreements and subsequent practice** in relation to the interpretation of treaties. New Zealand is a strong supporter of the practical application of subsequent agreements and subsequent practice to allow for the evolving relationship between Parties based on mutual acceptance and the shared intentions of the Parties. New Zealand is particularly encouraged by the Rapporteur's intention to address subsequent agreements and subsequent practice in the context of constituent treaties of international organisations. New Zealand has experienced some practical problems where the constituent treaties of certain international organisations have not kept up with evolving realities. Identifying best practice and providing guidance on implementation will be a key factor in producing a useful piece of work for international organisations.

Mr Chair,

New Zealand also wishes to make some short comments on **other decisions and conclusions of the Commission**, in particular, the proposed additional work programme.

New Zealand supports the inclusion of the topic "crimes against humanity" in the agenda of the Commission. As he continues his work in this area we encourage the Special Rapporteur to draw from the definition of crimes against humanity contained in the Rome Statute of the International Criminal Court rather than elaborate a new definition of such crimes.

New Zealand also supports the inclusion of the topic *jus cogens* in the work programme of the Commission. We agree that it would be useful to identify the nature of *jus cogens* and the requirements for identification of *jus cogens*. This could then form the basis for consideration of whether it would be productive to undertake the even more difficult task of developing an illustrative list of norms which have achieved the status of *jus cogens*. We note the observations on the interaction between *jus cogens* and customary law, obligations *erga omnes*, international rules outside the realm of treaties, and subsequent norms of a similar character. We would welcome a careful and detailed analysis by the Commission that takes into account, and appropriately weighs, the international legal guidance on these issues.

New Zealand also notes its strong support for the cooperation of the International Law Commission in sharing knowledge of international law and providing opportunities to build relationships among international lawyers. To that end, Mr Chair, we join others that have stressed the value of greater engagement between New York based delegates to the 6th Committee and members of the International Law Commission. We are pleased that the Commission continues to consider the possibility of holding part of its future sessions in New York, although we recognise the resource constraints on the Secretariat to facilitate such a move. In the meantime we encourage the Commissioners and the Secretariat to find opportunities for informal interactions and engagements which will contribute to the dialogue between Member States and the International Law Commission on its work.

Thank you.