



# New Zealand Permanent Mission to the United Nations

Te Māngai o Aotearoa

SIXTH COMMITTEE

INTERNATIONAL LAW COMMISSION REPORT: CLUSTER III

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Speech by Natalie Pierce

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Mr Chair,

New Zealand wishes to share some comments on Chapters XI to XIII of the Report, including issues raised. We support the robust debate from members, and the work of the Commission on these issues.

Mr Chair,

New Zealand welcomes the preliminary Report of the Special Rapporteur on the **protection of the environment in relation to armed conflict** and applauds Ms Marie Jacobsson's work, as explained in the overview of Phase I on the subject.

New Zealand supports the increased attention given to this topic. Armed conflict itself poses considerable risks to the environment, but particularly the use of nuclear, chemical and biological weapons. Over the last few years we have seen an increase in the threat, particularly from chemical and biological warfare. As such, careful consideration of the environmental impacts is integral to managing the risk of lasting damage. We abhor the use of these weapons and express our utmost concern about the long-term impacts they have on the natural environment and those living within it.

New Zealand's Military Manual of 1992 provides that "[c]are shall be taken in warfare to protect the natural environment against widespread, long-term *and* severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage *to* the natural environment and thereby to prejudice the health or survival of the population." Work is currently under way on the draft Law of Armed Conflict Manual, which is intended to replace the 1992 iteration, and includes provision for the relationship between the protection of the environment and armed conflict. When finalised, its provisions will constitute orders issued by the Chief of Defence Force pursuant to the Defence Act 1990. In accordance with the Commission's call for information on domestic instruments aimed at protecting the environment in relation to armed conflict, New Zealand can provide further information on this body of work in due course.

We commend the Special Rapporteur's temporal and phased approach to the examination of this topic, which is a useful and practical way of isolating complex legal issues. However we note that it may not be possible to adhere to a rigid division, since many of the issues dealt with are relevant to more than one phase of conflict. We reiterate our support for an approach which does not duplicate the existing international rules on the Law of Armed Conflict and look forward to the Special Rapporteur's next report which, among other matters, will address Phase II.

New Zealand encourages the Special Rapporteur to consider a broad working definition of 'armed conflict', to ensure that harm caused to the environment is included irrespective of the parties to the armed conflict or where the harm is caused. We believe it is important to refrain from limiting the consideration of this topic at such an early stage and, in that regard, we support the current working definition of 'environment' contained in the report. The definition will allow this Committee the opportunity to express its support for a broad definition of 'environment' in the future, with the aim of preventing overlap with other areas of IHL. In considering further reports, New Zealand supports addressing the need to minimise environmental degradation during armed conflict, as well as considering reparation and compensation by those responsible, for which Principle 13 of the Rio Declaration may prove useful.

Mr Chair,

New Zealand welcomes the second report of the Special Rapporteur on the **provisional application of treaties**. We place particular emphasis on ensuring the Commission's stated objective for this work, namely "greater clarity to States when negotiating and implementing provisional application clauses", is maintained. New Zealand agrees that the implications of provisional application are significant and, accordingly, supports efforts to provide additional guidance.

New Zealand shares the view that it is not appropriate for the Commission to seek to promote the provisional application of treaties in general. While we acknowledge that provisional application may be a legitimate tool, its use must be coupled with an

appreciation of the constitutional challenges that provisional application presents for many States.

We agree with the Special Rapporteur's view that the legal effect of provisional application is the same as that of treaties. In this regard, we appreciate the acknowledgement of Mr Gómez-Robledo that provisional application, if not fully implemented domestically, may give rise to an inconsistency between a State's international obligations and its domestic law. Domestic implementation of obligations accepted through provisional application is therefore a major issue for States. The use of provisional application to circumvent domestic constitutional processes is also a significant concern.

Despite his view on the legal effect of provisional application, New Zealand notes the Special Rapporteur's indication that the consideration of domestic procedures is out of scope of the Commission's work at this time. New Zealand does not necessarily expect a full study to be undertaken of the domestic implementation procedures for treaties accepted through provisional application. We accept the challenges this would present, given there is no common agreed framework for such domestic procedures as they are governed by individual States' relevant constitutional frameworks. However, New Zealand considers that the Commission needs – in some respect – to take into account the significance of domestic procedures for the acceptance of international obligations and their implementation when addressing provisional application.

Mr Chair,

New Zealand continues to appreciate the work of the Study Group on the **Most-Favoured-Nation Clause** and its chairs Professor Donald McCrae and, in his absence, Mr Mathias Forteau.

New Zealand welcomes further consideration on the question of the Most-Favoured-Nation Clause in relation to trade in services and investment agreements; its relationship to the core investment disciplines; as well as the relationship between Most-Favoured-Nation Clauses, fair and equitable treatment, and national treatment standards. We support the

Study Group's proposal to produce a revised draft final report for consideration on the Most-Favoured-Nation clause at the sixty-seventh session of the Commission next year.

New Zealand is encouraged by the final draft report including an overview of the general background, and an analysis of the case law. We look forward to recommendations in the report following analysis of these aspects. In light of the ever-evolving nature of international investment jurisprudence, the Commission's work is a timely and valuable contribution. We are encouraged that the final product will provide useful practical guidelines for States in the interpretation of Most Favoured-Nation clauses. In the future, such guidelines may also provide assistance to investment tribunals and help to prevent the discrepancies between the decisions of various bodies on the interpretation of Most Favoured-Nation obligations in bilateral investment treaties.

Thank you, Mr Chair.