



New Zealand Permanent Mission to the United Nations

Te Māngai o Aotearoa

UNGA70: Sixth Committee Report of the International Law Commission Cluster II **New Zealand statement**

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Mr Chair,

New Zealand wishes to share some comments on the topics found in Chapters VII and VIII of the Report, including issues raised. We support the ongoing work of the Commission on these issues, and the important debate in this Committee.

Mr Chair,

New Zealand welcomes the first report of Mr Sean Murphy on the topic of **Crimes Against Humanity**.

We welcome the focus on both prevention and punishment of crimes against humanity as stated in draft articles 1 and 4. New Zealand acknowledges the careful analysis undertaken by the Commission with regard to the concept of prevention as articulated in a number of international criminal law and international human rights law instruments. We note the call in draft article 4 for states to use a wide range of tools at their disposal to prevent atrocities from occurring.

New Zealand also welcomes the proposed definition of crimes against humanity in draft article three, including the without prejudice provision in paragraph four. We note Article 10 of the Rome Statute of the International Criminal Court contains a similar provision to that proposed by the Commission and that the draft article does not attempt to elaborate a new definition of such crimes.

New Zealand has criminalised crimes against humanity in the International Crimes and International Criminal Court Act of 2000. Section 10 of this legislation provides that it is an offence to commit an act specified in Article 7 of the Rome Statute, whether in New Zealand or elsewhere. This Act, as well as the Mutual Assistance in Criminal Matters Act of 1992 and Extradition Act of 1999, provide a comprehensive framework for the provision of assistance in criminal cases and for cooperating with other countries in extradition for serious crimes.

Mr Chair I move now to the second topic I will be speaking on in today's debate,

New Zealand thanks Mr Georg Nolte and the Drafting Committee's work in this year's report on draft conclusion 11 on **subsequent agreements and subsequent practice** in relation to the interpretation of treaties. New Zealand would like to support paragraph 1 of the draft conclusion which concerns the applicability of Articles 31 and 32 of the Vienna Convention on the Law of Treaties to the constituent instruments of international organisations. New Zealand emphasises that we consider it necessary for international organisations to take a flexible approach to their founding instruments. This flexibility ensures those organisations do not become frozen in time and unable to meet the needs of their constituent states.

Mr Chair,

New Zealand acknowledges that this flexibility should not be an excuse for bypassing the provisions of a constituent instrument in the context of updating or making an alteration to an international organisation's mandate and practice. These draft conclusions should strike a balance between the ongoing and agreed mandate of an international organisation, and the collective interpretation of the provisions of an organisation's constituent instrument.

New Zealand welcomes the report's findings that decisions of a plenary body, whether supported by all States within the body or not, may provide the position or practice of Member States in the application of the treaty. In this regard, decisions adopted without vote, or without the full support of Member States of an international organisation, provide supplementary material when considering the interpretation of a treaty under Article 32 of the Vienna Convention on the Law of Treaties. Where Member States express no view at the time of the decision, and do not raise objection, this supplementary material is also informative.

New Zealand wishes to reiterate its strong support of the practical application of subsequent agreements and subsequent practice, among other methods of treaty interpretation, which allow for the evolving relationship between Parties based on mutual acceptance and the Parties' shared intentions. We support clear and concise conclusions that provide best practice and guidance for practitioners, States, and the judiciary in the interpretation of international agreements.

New Zealand is grateful for the work of the Commission in relation to this topic, and looks forward to further cooperation and engagement in this important work. I thank you.