



New Zealand Permanent Mission to the United Nations

Te Māngai o Aotearoa

UNGA 72: Sixth Committee Report of the International Law Commission on the work of its sixty-ninth session (Agenda Item 81), Cluster I

New Zealand Statement

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Chairperson,



New Zealand thanks the International Law Commission and its commissioners for its report on the work of the sixty-ninth session. We also thank its Chairman, Mr Georg Nolte, for his introductory speech. In our statement today we will comment on Chapters IV (crimes against humanity) and V (provisional application of treaties) and XI (other decisions taken by the Committee).

Chairperson,

New Zealand acknowledges the work of Mr Sean D Murphy as Special Rapporteur for the topic of crimes against humanity, enabling the successful conclusion of the Commission's first reading of the draft articles on crimes against humanity. We congratulate the thorough analysis and thinking that went into these draft articles as evidenced by the comprehensive commentary provided.

The Commission's work in this area presents an opportunity to address a gap in the international legal framework. We recognise that the focus of these draft articles is on addressing inter-state cooperation in national laws on the prevention of crimes against humanity. This would complement the Rome Statute, which makes provision for that cooperation but does not regulate it. Care is needed to ensure that any new obligations reinforce and promote existing international law mechanisms, including by enhancing the existing complementarity regime of the International Criminal Court. New Zealand is supportive of strengthening cooperation in the prosecution of serious international crimes, ending the impunity for these crimes and preventing their recurrence, as States have primary responsibility for the investigation and prosecution for these crimes. In this respect, New Zealand's current legal framework enables New Zealand to receive and respond to extradition requests and provide mutual legal assistance for atrocity crimes.

New Zealand notes with interest the inclusion of new draft article 5 extending the principle of non-refoulement to persons where there are substantial grounds for believing

that person may be subjected to a crime against humanity. We look forward to hearing more about the views of other states on this issue.

New Zealand strongly supports crimes against humanity being criminalised under national laws and that States establish national jurisdiction to prosecute these crimes. We also welcome the obligation to protect and consider the rights of victims of crimes against humanity. New Zealand supports the flexibility built into article 12(3) which enables states to have discretion to determine the appropriate form of reparation. This recognises that in the aftermath of the commission of crimes against humanity, various scenarios may arise which require reparations to be tailored to specific circumstances.

Chairperson,

I will now move onto chapter V. New Zealand thanks Mr Juan Manual Gomez Robledo and the drafting Committee for their work on the provisional application of treaties. New Zealand supports the current draft guidelines 1 – 11 but has some concerns about the current formulation of guideline six, where the default position is that provisional application of treaties produces the same legal effects as if the treaty was in force unless the treaty says otherwise. If provisional application of treaties has the same legal effects as the treaty when it is in force by default, this would undermine entry into force provisions which are key components of upholding parliamentary democracy and the rule of law in common law systems.

Care must be taken not to interpret these guidelines in a way that could result in a limitation on the ability of states to amend, suspend or terminate a treaty that is provisionally applied, as established in existing international treaty law. New Zealand believes that the intention of the parties should determine whether the provisional application of treaties produces the same legal effects as when the treaty is in force. In this regard, parties to a treaty should ensure the intention of provisional application is

clear by addressing the issue in the text of a treaty or by recording the intention in another agreement.

Further, New Zealand notes the general approach supported by state practice that for multilateral treaties a state party who does not vote in favour of provisional application, or who does not join consensus, should not be required to provisionally apply the treaty obligations.

Chairperson, I now move to the final topic for this intervention.

New Zealand supports the addition of the topics "General Principles Of Law" and "Evidence Before International Courts And Tribunals" on the long term agenda for the Commission. Given that general principles of law are being analysed as part of the current topic of "jus cogens", New Zealand sees the benefit of using this analysis and further clarifying the nature, scope and functions of "general principles of international law". This topic could further complement the Commission's previous work on the law of treaties and international customary law. New Zealand notes the rise in factually complex international disputes and appreciates the importance of clear rules of evidence to establish fact and uphold the rule of law. We support the scope of the "evidence before international courts and tribunals" topic including the conditions that would be required for the rules to apply and the areas that the topic intends to cover.