



New Zealand Permanent Mission to the United Nations

Te Māngai o Aotearoa

REPORT OF THE INTERNATIONAL LAW COMMISSION: CLUSTER III: New Zealand Statement

Speech by Alexandra Lennox-Marwick

Second Secretary, New Zealand Permanent Mission to the United Nations

4 November 2013



Mr Chair,

New Zealand wishes to make some comments on Chapters VI to IX of the Report and on some of the issues raised. We congratulate the International Law Commission on the clear progress it has made on the associated topics.

Mr Chair

New Zealand welcomes the 6th Report of the Special Rapporteur on the **protection of persons in the event of disasters**. The draft articles provisionally adopted by the International Law Commission place emphasis on the response to a disaster, and the recovery of the affected State. 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, including through seeking and providing external assistance.

New Zealand particularly welcomes the inclusion of Article 5 *ter* and Article 16 and the emphasis that they place on the responsibility to reduce the risk of disasters.

There is compelling evidence that the impact of disasters can be significantly mitigated by building the resilience of communities and by addressing the root causes of vulnerability.

Preventing a hazard from becoming a disaster will not only save lives but will also save on the cost of response and recovery. New Zealand strongly supports a comprehensive disaster risk management approach which addresses risk reduction as well as response and recovery. New Zealand, like some other countries, has legislation addressing disaster risk management strategies including risk reduction. As a country which is still recovering from a devastating earthquake in Christchurch in February 2011, New Zealand acknowledges the importance of this aspect of the Commission's work.

Mr Chair,

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

New Zealand shares the view that it is not appropriate for the Commission to seek to promote the provisional application of treaties in general. New Zealand acknowledges that provisional application can be a legitimate tool, however we consider domestic procedures for entering into binding international obligations and for accepting provisional application are of the utmost importance. New Zealand agrees that such domestic procedures are a matter for individual States to determine in the context of the

relevant constitutional framework. We do not support using provisional application to circumvent domestic constitutional processes. It is essential, therefore, when negotiating provisional application clauses that there is recognition that domestic procedures may place constraints on certain States.

New Zealand also notes the view of some members of the Commission that provisional application of a treaty implied that the parties concerned were bound by the rights and obligations under the treaty in the same way as if it were in force. Given the domestic constitutional issues that I have just noted, New Zealand supports consideration being given by the Special Rapporteur to the legal effect of provisional application. We believe that this will assist States in considering the implementation of provisional application and we look forward to the next report on this topic.

Mr Chair,

New Zealand is pleased that the Commission decided to include the topic "**protection of the environment in relation to armed conflict**" in its programme of work and congratulates Ms Marie Jacobsson for her appointment as Special Rapporteur for the topic.

New Zealand recognises the increased need for attention to be given to this topic in light of continuing technological developments which place the environment at greater risk from weapons of mass destruction as well as from conventional methods and means of warfare.

We are supportive of the Special Rapporteur's temporal approach to the examination of this topic. We view this approach as a practical way of isolating concrete legal issues relating to this topic. A level of flexibility should be taken to the division of these phases; some rules will be relevant in more than one temporal phase. Furthermore, we support an approach which does not duplicate the existing international rules on the Law of Armed Conflict.

We would encourage the Special Rapporteur to consider harm caused to the environment of the State or States where the conflict occurs, to third States and, also, to areas beyond national jurisdiction. We would also suggest that the Rapporteur consider Principle 13 of Rio Declaration regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control. We would also suggest consideration of the Madrid Protocol on Environmental Protection to the Antarctic Treaty, specifically Annex VI on liability for environmental emergencies, which includes some important concepts notably: preventative measures, contingency plans and emergency response actions.

Mr Chair,

New Zealand takes this opportunity to acknowledge the continued efforts of Ambassador Kriangsak Kittichaisaree on the **obligation to extradite or prosecute**. We consider it to be a particularly valuable resource in relation to its examination and interpretation of the

obligation encapsulated in multilateral conventions as well as the Judgment of the International Court of Justice in *Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)*. We reiterate our view that there is merit in examining the question of whether an obligation to extradite or prosecute exists under customary international law in relation to specific crimes and encourage further work to be done on this topic including its relationship with universal jurisdiction.

Mr Chair,

New Zealand appreciates the excellent 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 looks forward to the draft report and considers that it will be of great assistance to States to include an overview of the general background, an analysis of the case law, and appropriate recommendations, as proposed. Given the constant evolving nature of international investment jurisprudence, we consider the Commission's work a timely and valuable contribution. We are sure that the final product will provide useful practical guidelines for States as to how MFN clauses should be interpreted and will add significantly to the coherence in approaches taken in the decisions of investment arbitral tribunals.

Thank you.