



PERMANENT MISSION OF SINGAPORE  
TO THE UNITED NATIONS

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**STATEMENT BY MS. DAPHNE HONG, DIRECTOR-GENERAL,**  
**INTERNATIONAL AFFAIRS DIVISION, ATTORNEY-GENERAL'S**  
**CHAMBERS OF SINGAPORE, ON AGENDA ITEM 78 ON THE REPORT**  
**OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS**  
**SIXTY-EIGHTH SESSION (CLUSTER 1: CHAPTERS I-VI & XIII OF**  
**A/71/10), SIXTH COMMITTEE,**  
**26 OCTOBER 2016**

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Mr Chair

1. I would like to begin by thanking the Commission for its comprehensive report on the work of its sixty-eighth session (A/71/10). In particular, Singapore notes the significant achievements of the Commission at the end of its 2012-2016 quinquennium. We record our appreciation to the Commission for the adoption on second reading of draft articles on the topic, 'Protection of persons in the event of disasters', as well as the adoption on first reading of draft conclusions on the topic, 'Identification of customary international law' and draft conclusions on the topic, 'Subsequent agreements and subsequent practice in relation to the interpretation of treaties'.

2. Singapore is firmly committed to supporting the work of the Commission. Through its mandate for the codification and progressive development of international law, the Commission plays a significant role in advancing the rule of law, guiding and systematising the substantive content of public international law. In order to drive this enterprise, there must be a good dialogue between the Commission and Member States, through this Committee. Accordingly, my delegation looks forward to the annual interactive dialogue to take place later in the week.

3. Singapore also welcomes the Commission's continuing efforts to engage with young scholars and early career practitioners in public international law through the International Law Seminar. An officer from my Division had the opportunity to participate in this Seminar in 2016. Singapore has also carefully noted the specific issues on which the written comments of Member States would be of particular interest to the Commission. Singapore intends to submit its responses to the Commission through the Secretariat in due course.

4. On this note, Singapore would like to take this opportunity to recognise the invaluable support provided to the Commission by the Secretariat, namely the Codification Division of the UN Office of Legal Affairs. We also note, with appreciation, the support provided to the Commission by the Treaty Section of the UN Office of Legal Affairs concerning work on the topic, 'Provisional application of treaties'.

Mr Chair

5. As regards the substantive work of the Commission, my delegation would like to offer views on Chapters V and VI of the report at this time.

### **Identification of customary international law**

6. We turn first to Chapter V of the report, on the topic, ‘Identification of customary international law’. Singapore expresses its appreciation to the Special Rapporteur Sir Michael Wood for his fourth report. We commend the Special Rapporteur and the Commission for adopting on first reading a set of 16 draft conclusions and commentaries thereto. We consider this a topic of practical importance for all States. This is particularly so for small States. We are therefore grateful for the Commission’s comprehensive and meticulous approach. We share some initial observations now, and will respond in writing to the Commission’s request before 1 January 2018.

7. We are heartened that the Commission’s present work addresses some of the concerns my delegation has previously raised. We cite just three examples. First, in respect of draft conclusion 4, paragraph 2, my delegation had earlier expressed that caution is required in assessing the practice of international organisations and the weight to be accorded. We note that the need for such caution is reflected in the commentary to this draft conclusion. Second, on draft conclusion 16 concerning the ‘persistent objector’ principle, we note that the commentary thereto emphasises that the persistency of such objection must be assessed in a pragmatic manner. Third,

my delegation refers to draft conclusion 12, paragraph 2 and its commentary. We welcome the commentary's careful description of the various factors required for ascertaining *opinio juris* from resolutions adopted within international organisations and at international conferences.

8. When reviewing the Commission's report on this topic, we noted that much of the nuance and detail of the draft conclusions are now to be found in their commentaries. We agree with the Special Rapporteur that the draft conclusions and their commentaries should be eventually applied in practice as "an indissoluble whole". This is the correct approach for a topic of this complexity.

9. Finally, Singapore supports and welcomes the Special Rapporteur's recommendation for a review of the ways and means for making the evidence of customary international law more readily available.

### **Subsequent agreements and subsequent practice in relation to the interpretation of treaties**

10. We turn now to Chapter VI of the report, on the topic, 'Subsequent agreements and subsequent practice in relation to the interpretation of treaties'.

Mr Chair

11. My delegation congratulates the Commission on successfully concluding its first reading of these thirteen draft conclusions and their commentaries. We also wish to extend our particular appreciation to the Special Rapporteur, Professor Georg Nolte, for his fourth report and his rigorous approach to this highly technical area of treaty law.

12. We note the Commission's request for comments and observations from States by 1 January 2018. Singapore is studying the thirteen draft conclusions and the commentaries thereto, with a view to responding to the Commission's request.

13. At this time, my delegation wishes to make a few specific comments on draft conclusion 13 and its commentary. This work concerns the legal significance of pronouncements of expert bodies for the purpose of interpretation, and as forms of practice under a treaty.

14. First, my delegation agrees with paragraph 2 of draft conclusion 13 and its accompanying commentary, which states that “any possible legal effect of a pronouncement by an expert treaty body depends, first and foremost, on the specific rules of the applicable treaty itself”<sup>1</sup>. As my delegation has said before in this Committee, the cornerstone of interpretation is the language of the treaty. Given the

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<sup>1</sup> Draft conclusion 13, commentary (7).

range of different treaty monitoring bodies with varying responsibilities, some of which were highlighted in the Special Rapporteur's fourth report, we agree that the effect and weight of pronouncements by such bodies must depend first on the provisions inscribed in their constituent documents.

15. Second, we examined with interest the analysis by the Special Rapporteur which covered, among others, the pronouncements of certain expert treaty bodies, the views expressed in the literature, and international and domestic judicial practices. We support the conclusion of the Special Rapporteur and the Commission that “[a] pronouncement of an expert treaty body cannot as such constitute subsequent practice under article 31, paragraph 3 (b), since this provision requires a subsequent practice of the parties that establishes their agreement regarding the interpretation of the treaty.”<sup>2</sup>

16. Consistent with this view, we appreciate and agree with the clarification provided on paragraph 3 of draft conclusion 13 in its accompanying commentary. This clarification is that the expression “may give rise to” specifically addresses situations in which a pronouncement comes first and the practice and the possible agreement of the parties occur thereafter”<sup>3</sup>. We understand then that the expression “may give rise to” does *not* suggest that it is the pronouncement that creates such practice or agreement. We align ourselves with the view, expressed by the Commission, the Special Rapporteur and other delegations, that the “subsequent practice” referred to in Article 31, paragraph 3 (b) of the 1969 Vienna Convention

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<sup>2</sup> Draft conclusion 13; commentary (9); Fourth report of the Special Rapporteur, para. 42.

<sup>3</sup> Draft conclusion 13, commentary (17).

is generally understood to mean the actual practice of the States Parties, provided that such practice is consistent and is common to, or accepted by, all the Parties.

17. In connection with this, we have previously emphasised that the effect and weight of pronouncements by such bodies depend on the provisions inscribed in the constituent documents themselves, as well as the practice *of the parties* in the application of the treaty pursuant to that pronouncement. We also wish to reiterate that there is a need to proceed with prudence on this topic, so as to avoid taking ‘short-cuts’ that inappropriately circumvent the amendment mechanisms provided for in the constituent document.

### **Other decisions and conclusions of the Commission**

18. Finally, my delegation wishes to touch on Chapter XIII of the report, ‘Other decisions and conclusions of the Commission’. In the interest of time, we confine our comments today to the Commission’s long-term programme of work.

19. First, we see that the topic, ‘The fair and equitable treatment standard in international investment law’ remains inscribed on the Commission’s long-term programme of work. My delegation again underlines its strong support for work by the Commission on this topic. Since we last spoke on this point in 2011, Member States’ work on several plurilateral comprehensive economic agreements has had a palpable impact on the development of the relevant law. Thus we now have, in addition to the jurisprudence of arbitral tribunals, significant state practice. Rules

governing the treatment of foreign investment, including the ‘fair and equitable treatment’ standard, may not be familiar to many public international lawyers. But as we have said before, the impact of this area of international law on governmental activity and the amount of legal work thus generated for government lawyers and private practitioners is significantly higher than that generated by many other topics which are or have been on the Commission’s agenda. We simply cannot ignore this reality. International investment law is part of public international law, and must be mainstreamed into the Commission’s work if the Commission’s work is to continue to be relevant to the realities of international discourse and public policy.

20. Second, and in the same vein, we see that the topic, ‘Protection of personal data in transborder flow of information’ remains inscribed on the Commission’s long-term programme. We note that this topic has been thus inscribed since 2006. Since it has been ten years since the very thorough syllabus was prepared by the Secretariat, with all the advancements in technology that that entails, Singapore would support the Commission revisiting the syllabus on this topic in its next quinquennium. Singapore would welcome the Commission’s views on whether the topic should be expanded to include other cyberspace-related challenges relevant to public international law.

21. Third, of the two new topics recommended by the Commission for inclusion in its long-term programme of work this year, Singapore supports the inclusion of the topic, ‘The settlement of international disputes to which international organizations are parties’. As a small state, Singapore is committed to promoting the international rule of law through its membership of the UN and other international organisations.



In this regard, we are gratified that several international organisations have established permanent bases in Singapore, and that we host many others on an *ad hoc* basis for meetings and conferences.

22. Like many other host States, Singapore must enter into the appropriate arrangements to facilitate these activities in its territory. Systematic work on this topic will therefore be of great practical assistance to us, and to many other Member States in our position who wish to contribute to the international legal order in this way. In our view, the law of international organisations has also reached a natural turning point when a thorough examination of dispute settlement involving international organisations is now very much necessary.

23. As ever, Singapore would welcome concise final products that could serve as practical and authoritative guidance on these important issues.

Thank you, Mr Chair.