



**PERMANENT MISSION OF SINGAPORE  
TO THE UNITED NATIONS**

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**STATEMENT BY MR. MARCUS SONG,  
DELEGATE TO THE 67TH SESSION  
OF THE UNITED NATIONS GENERAL ASSEMBLY  
ON AGENDA ITEM 79,  
ON CHAPTERS VI, VII, VIII, IX, X & XI OF THE REPORT OF THE  
INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS  
SIXTY-FOURTH SESSION,  
SIXTH COMMITTEE,  
5 NOVEMBER 2012**

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Mr Chairman,

Immunity of State officials from foreign criminal jurisdiction

1. My delegation wishes to express our appreciation to Mr Roman Kolodkin for the excellent work he has contributed on the topic “Immunity of State officials from foreign criminal jurisdiction”. We also welcome the decision of the Commission to appoint Ms Concepción Escobar Hernández to carry on the work of Special Rapporteur. We thank Ms Hernández for her preliminary report on this topic and note the extensive efforts she has put into organising the work. We look forward to the new perspective Ms Hernández will bring to work on the topic including by dividing the issues under consideration into four groups, namely, General issues of a methodological and conceptual nature; Immunity *ratione personae*; Immunity *ratione materiae*; and Procedural aspects of immunity. We have full confidence that Ms Hernández will succeed in taking a balanced approach towards addressing the sensitive issue of immunity of State officials and the possible exceptions to it.

Provisional application of treaties

2. We note the decision of the Commission to include the topic “Provisional application of treaties” in its long-term programme of work and welcome Mr Juan Manuel Gómez Robledo’s appointment as Special Rapporteur for the topic. My delegation eagerly anticipates elaboration on this topic by the Commission, especially since the “provisional” application

of treaties is well-used in the area of bilateral and multilateral civil aviation treaties. As an aviation hub, these are matters which are not just of academic interest to Singapore, but also practical application. Interestingly, there are even instances where some provisional bilateral aviation treaties, which although have never entered into force, are subsequently replaced by updated but nevertheless still “provisional” treaties.

### Formation and evidence of customary international law

3. We further note the decision of the Commission to include the topic “Formation and evidence of customary international law” in its long-term programme of work and welcome Sir Michael Wood’s appointment as Special Rapporteur for the topic. We thank Sir Michael for his Note which helpfully sets out the challenges and potential outcomes for this topic. We are supportive of the Special Rapporteur’s comment in his note that the outcome of the Commission’s work could be a set of “conclusions” or “guidelines” with commentaries and that a convention would “scarcely be appropriate” in this field given the need to preserve the degree of flexibility inherent in the customary process. We agree with the Special Rapporteur’s astute observation. We also recognise the Special Rapporteur’s view that it would be appropriate to seek certain information from Governments. We would be happy to assist when such a request is made.

### The obligation to extradite or prosecute (*aut dedere aut judicare*)

4. My delegation notes the decision by the Commission to establish an open-ended Working Group on the obligation to extradite or prosecute (*aut dedere aut judicare*) and would like to thank Mr Zdzislaw Galacki for his work as Special Rapporteur on this topic. We hope for a speedy appointment by the Commission to build on Mr Galacki’s good work. My delegation foresees that work of the Working Group on the obligation to extradite or prosecute will be given greater impetus by the judgment rendered by the International Court of Justice on 20 July 2012 in the *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*. We had provided our detailed views to the Commission on this issue in our interventions in the Sixth Committee in 2011 pursuant to a request by the Commission. We look forward to our contributions being factored into the working paper which will be prepared by the Chairman and considered at the sixty-fifth session of the Commission.

5. In concluding, we would like to touch briefly on the work of the two Study Groups constituted by the Commission to consider the topics “Treaties over time” and “The Most-Favoured-Nation clause”.

6. We thank the Chair of the Study Group on “Treaties over time”, Professor Georg Nolte, for his efforts in narrowing the Study Group’s approach to the topic in order to focus on the ultimate outcome of the group. The manner in which interpretation of treaties can be affected by subsequent practice or silence is of vital and practical application. My delegation appreciates the progress made by the Study Group in arriving at six additional preliminary conclusions which will serve to guide our thinking in this area of international law that is presently clouded with uncertainty.

7. We also thank the Co-Chairs of the Study Group on “The Most-Favoured-Nation clause”, Mr. Donald McRae and Mr. Rohan Perera, for their efforts in this connection. We support the objectives of the Study Group, which are to “safeguard against the fragmentation of international law” and “stress the importance of greater coherence in the approaches taken in the arbitral decisions” on MFN provisions. The product of the Study Group can make a significant contribution towards greater certainty and stability in the field of investment law. As a country with its economy heavily dependent on trade, we have a special interest in urging the Commission to expedite its work on this issue and to provide much needed clarity in this area of law. This would alleviate one of the perennial issues we and other Member states face in negotiating Free Trade Agreements and Bilateral Investment Treaties as regards the scope of the MFN obligation.

8. Thank you, Mr Chairman.

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