



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

231 EAST 51ST STREET, NEW YORK, NY 10022
TEL: (212) 826 0840 FAX: (212) 826 2964

**STATEMENT BY MRS RENA LEE,
DELEGATE TO THE 68TH SESSION
OF THE UNITED NATIONS GENERAL ASSEMBLY
ON AGENDA ITEM 81,
ON PART 1 OF THE REPORT OF THE INTERNATIONAL LAW
COMMISSION ON THE WORK OF ITS SIXTY-THIRD AND SIXTY-FIFTH
SESSIONS (CHAPTERS I-V & XII OF A/68/10),
SIXTH COMMITTEE,
28 OCTOBER 2013**

[Please check against delivery]

1. Mr Chairman, Singapore would like to express its appreciation to the Commission for the comprehensive report on the work undertaken in its sixty-fifth session.
2. My delegation strongly supports the work of the Commission, given the important role it plays in the codification of international law as well as its many contributions to the rule of law. We also appreciate the effort taken by the Commission to take into account the views of member states by way of the opportunity afforded to member states to offer their views and comments. We have taken note of the specific requests for views spelt out in Chapter III and we will endeavour to provide them to the Commission.

Immunity of State officials from foreign criminal jurisdiction

3. Mr Chairman, my delegation is deeply interested in the work of the

Commission on the topic of “Immunity of State officials from foreign criminal jurisdiction”. We commend the work of both the previous Special Rapporteur, Mr Roman A. Kolodkin, as well as the current Special Rapporteur, Ms Conception Escobar Hernandez, in advancing our understanding of this topic. We are pleased that the Commission has commenced the task of drafting articles on this topic as well as their accompanying commentaries.

4. Singapore will study closely the draft articles produced thus far. However, my delegation would like to make three initial observations. First, on Article 1 on the Scope of the present draft articles, my delegation agrees that immunity from foreign criminal jurisdiction is procedural in nature and serves only as a procedural bar to criminal proceedings. The underlying substantive criminal responsibility remains. As such, immunity from foreign criminal jurisdiction should not be viewed as a loophole in the fight against impunity. Therefore, the immunity of state officials from foreign criminal jurisdiction should be respected, on the understanding that immunity is only procedural.

5. Second, we note that the Commission has provided that the draft articles are without prejudice to any immunity which may be derived from special rules of immunity, such as diplomatic immunity. In its Commentary, the Commission has observed that in the event of any conflict between the draft articles and any special regime, the special regime would prevail. The Commission has also observed that persons who are the subject of these special rules are “automatically excluded” from the scope of the draft articles. My delegation is of the view that it would be helpful for the Commission to clarify whether the automatic exclusion kicks in only in circumstances when an official would enjoy immunity under the special rules. In other words, if, by applying the special rules, an official does not enjoy immunity, would that official be entitled to apply the present draft articles to

determine if he enjoyed immunity under the draft articles? For example, if under the Vienna Convention on Diplomatic Relations, a diplomatic agent would not enjoy immunity in a given situation, would he be entitled to apply the present draft articles to determine if he could claim immunity under the draft articles? This would be especially pertinent for members of military forces because of instances where Status of Forces Agreements would provide a hierarchy of applicable jurisdiction rather than immunity *per se*.

6. Third, we note that the Commission has decided to confine the application of immunity *rationae personae* only to the troika. My delegation had previously suggested that the Commission could consider, as a matter of progressive development of the law, the extension of immunity *rationae personae* to high officials beyond the troika. This was in recognition of the reality in today's world that foreign policy is often conducted by high officials other than the Minister for Foreign Affairs. We note that one of the reasons for not expanding beyond the troika was the difficulty of identifying the officials and the basis for the enjoyment of immunity *rationae personae*. The basis, in our view, is the same as that for the troika, namely representational and functional. As for the identification of other high officials, we acknowledge the difficulties involved in the identification of such officials but we do not think this is an insurmountable problem. Given the rationale, the conferment of immunity *rationae personae* would, in our view, be contingent upon the specific functions undertaken by the high official in question. We would thus like to suggest that the Commission may wish to revisit the issue following completion of its work on immunity *rationae materiae*. My delegation looks forward to studying the further outcomes of the Commission on this topic.

7. Finally, Mr Chairman, my delegation takes note of the new topics which the Commission has included in its programme of work, namely, "Protection of the

Environment in relation to Armed Conflicts” and “Protection of the Atmosphere”. We are entirely in agreement with the Commission that its work on the topic “Protection of the Atmosphere” should proceed in such a manner as not impede relevant political negotiations which are ongoing elsewhere, particularly given that the intended outcome of the Commission’s work on this topic will be draft guidelines. We look forward to the outcome of the Commission’s deliberations on the two new topics.

8. Thank you Mr Chairman.

.....