



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

318 EAST 48<sup>TH</sup> STREET, NEW YORK, NY 10017  
TEL: (212) 826 0840 FAX: (212) 826 2964

**STATEMENT BY MRS. NATALIE Y. MORRIS-SHARMA, COUNSELLOR,  
PERMANENT MISSION OF SINGAPORE TO THE UNITED NATIONS,  
ON AGENDA ITEM 83, ON THE PART III OF THE REPORT OF THE  
INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-  
SEVENTH SESSION (CHAPTERS IX-XI OF A/70/10), SIXTH COMMITTEE,  
9 NOVEMBER 2015**

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1. Mr. Chairman, my delegation thanks the Commission for its work on the topics: “Protection of the environment in relation to armed conflicts”, “Immunity of State officials from foreign criminal jurisdiction”, and “Provisional application of treaties”.

*Protection of the environment in relation to armed conflicts*

2. On the topic of “Protection of the environment in relation to armed conflicts”, my delegation thanks the Special Rapporteur, Dr. Marie Jacobsson, for her work on what is an incredibly complex topic. Further complexity is occasioned by the factual circumstances of armed conflict and environmental damage, which can be unforeseeable. We are of the view that the most productive approach to this topic would be to focus on identifying how existing international humanitarian law relates to the environment, rather than introducing principles of international environmental law or human rights law which complicate the issue. My delegation agrees with the Special Rapporteur that it is not the task of the Commission to revise the law of armed conflict. The Commission should not seek to modify existing legal regimes.

3. We note the draft introductory provisions and draft principles that were provisionally adopted by the Drafting Committee at its most recent session. We would suggest that paragraph 2 of draft principles II-1 and draft principle II-4 be phrased in less absolute terms. While the draft principles may have been inspired by existing treaty obligations, they are not generally accepted as rules under customary international law. In addition, we would caution against the broad statement embodied in draft principle II-2, as there may be differing views over the applicability, and manner and extent of application, of the various principles and rules of the law of armed conflict to the protection of the environment. We suggest further study of to clarify draft principle II-2. In respect of the designation of protected zones, we recognise that the Special Rapporteur's original intention was in relation to the designation of areas as demilitarised zones. However, the current formulation in draft principle I-(x) of "protected zones" suggests something broader. We may have concerns over such a broader formulation as we anticipate that this would give rise to considerable uncertainty over how the designation of such zones, particularly in peacetime, would overlap with other related regimes. As for the concept behind the principle, we look forward to the Special Rapporteur's further analysis and elaboration of the proposed regime in her next report.

4. We will continue to study the draft principles, and look forward to the commentaries to these principles that we are certain will clarify our understanding of the principles and their nuances. On the form which the work of the Commission should take, we continue to hold the view that non-binding draft guidelines may be the most appropriate outcome on this topic. As a related matter, we do not agree with what some members of the Commission has expressed, that the work should take the form of draft articles "as this corresponded better with the prescriptive nature of the terminology used" in the draft principles. This puts the cart before the horse. As a matter of principle, we would prefer that the Commission first consider the object of its work, recommend the form most suited to that objective, and then draft the provisions accordingly.

### ***Immunity of State officials from foreign criminal jurisdiction***

5. On the topic of “Immunity of State officials from foreign criminal jurisdiction”, my delegation thanks the Special Rapporteur for her report on the material and temporal scope of immunity *ratione materiae*. My delegation agrees that, while the temporal scope of immunity *ratione materiae* is not controversial, the material scope has benefited and would still benefit from further study and elucidation.

6. The distinction between “acts performed in an official capacity” and “acts performed in a private capacity” is not easy to make. We appreciate the difficulties in defining “acts performed in an official capacity”, and my delegation is encouraged by the Drafting Committee’s provisional draft, which provides that such acts are “any act performed by a State official in exercise of State authority”. We think that this is a workable definition and we look forward to the commentary on it. Until then, our preliminary view is that the definition is an elegant one, and offers a way of addressing the questions of scope of immunity *ratione materiae* vis-à-vis certain acts such as *ultra vires* acts, *acta jure gestionis*, and acts performed in an official capacity but exclusively for personal benefit.

7. On a related note, the Chapter of the Commission’s report on this topic visits a number of times the question of whether the criminal nature of the act needs to be part of the definition of “acts performed in an official capacity”. In our view, the answer is no. The central issue in determining whether an act is in an official capacity for the purposes of the question of immunity is not the nature of the act but the capacity in which the person in question acted. It may be that the question of immunity becomes relevant because of an alleged criminal act having been committed, but to extrapolate from there that the criminal nature of the act is a definitional element would be confusing the issues. It would also confuse other aspects of the analysis such as whether there was the exercise of governmental authority when the act was performed. Further, not subsuming the criminal nature of the act within the definition of “acts performed in an official capacity”

would be consistent with our understanding of the question of immunity being one that is procedural in nature.

8. On the attribution of the act to the State, while it was important that the Special Rapporteur's report addressed the question, we appreciate that this element was not introduced into the text of the draft articles proposed. We agree that the notion of attribution of the act to the State is not a helpful criterion in determining what constitutes an act performed in an official capacity.

9. Mr. Chairman, my delegation concurs that it would be useful for commentaries to deal with the relationships and distinctions between acts performed in an official capacity and in a private capacity; *acta jure gestionis* and *acta jure imperii*; and lawful and unlawful acts. We also hope that the Commission will address acts of persons acting under governmental direction and control, such as private contractors. We look forward to the Commission's further work on this topic.

#### ***Provisional application of treaties***

10. On the topic of "Provisional application of treaties", we note the summary and examination in the Special Rapporteur's third report on the topic of the relationship of provisional application to the other provisions of the Vienna Convention on the Law of Treaties, and of provisional application of treaties by international organisations.

11. My delegation agrees with the general thrust of the Commission's discussions, that we would benefit from further substantiation regarding the conclusion that the legal effects of provisional application were the same as those after entry into force of the treaty. As we have previously stated, we recognise that the provisional application of a treaty is capable of giving rise to legal obligations as if the treaty were itself in force. But questions remain: Would this be the case all the time? What factors would have to subsist?

12. We share the view that it would be useful to study whether the various “processes” for treaties that have been provisionally applied and for treaties that have entered into force would be the same. In this regard, we support the Special Rapporteur’s intention to consider in his next report processes such as termination and suspension, reservations, and provisions of internal law regarding the competence to conclude treaties. We also continue to be interested in the Commission’s study of whether or not provisional application could result in the modification of the content of the treaty. In undertaking the consideration of these questions, we support the Commission’s desire to deal with the position of States first and to return to the question of international organisations at a later stage.

13. Thank you, Mr. Chairman.

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