



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

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

**STATEMENT BY MS DAPHNE HONG,
DIRECTOR-GENERAL, INTERNATIONAL AFFAIRS DIVISION,
ATTORNEY-GENERAL'S CHAMBERS OF SINGAPORE,
ON AGENDA ITEM 81 ON THE REPORT OF THE
INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS
SIXTY-NINTH SESSION (CLUSTER 2: CHAPTERS VI & VII OF A/72/10),
SIXTH COMMITTEE,
25 OCTOBER 2017**

[Please check against delivery]

Mr Chairman, my delegation thanks the International Law Commission for its report on the topics, "Protection of the atmosphere" and "Immunity of State officials from foreign criminal jurisdiction". We continue to follow both topics with great interest and would like to offer some comments.

Protection of the atmosphere

2. On the topic of "Protection of the Atmosphere", my delegation wishes to thank the Special Rapporteur Mr Shinya Murase, for his well-researched fourth report. We note the Commission's consideration of the fourth report of the Special Rapporteur, and the provisional adoption of draft guideline 9, three additional preambular paragraphs, as well as their accompanying commentaries.

3. My delegation reiterates our support for the Special Rapporteur's work on this topic, and in particular, that international cooperation is at the core of these guidelines.

4. My delegation notes the preamble that the interests of future generations of humankind in the long-term conservation of the quality of the atmosphere should be fully taken into account. We are of the view that the concept of intergenerational equity in environmental contexts is of great importance. My delegation, however, considers that there is merit in focussing on the atmospheric pollution and degradation suffered by the *current* generation as well. My delegation thus proposes that reference be made to "current generations of humankind" in the preamble.

5. In respect of draft guideline 9, my delegation has no doubt that there is an interrelationship between the international law rules on protection of the atmosphere and the three areas of law identified by the Special Rapporteur. We are, however, less certain about the potential fragmentation between these rules of law, and whether draft guideline 9 is of practical value. The concept of "mutual supportiveness" in paragraph (7) of the commentary is not a clearly defined concept and is more of a policy-making tool rather than a legal principle. The reliance on "mutual supportiveness" does not elevate our understanding of any potential fragmentation that might exist. Further, my delegation has some difficulty with paragraph (12) of the commentary, in particular, the "disconnect" in the application of the rules of international law relating to the atmosphere and human rights law. My delegation is of the view that further consideration is required on the question of

whether extraterritorial jurisdiction in respect of human rights obligations should apply in situations of transboundary atmospheric damage.

6. My delegation notes with interest the interrelationship between the rules of international law relating to the protection of the atmosphere and the rules of international trade and investment law. My delegation considers that there is practical value in exploring this interrelationship. For instance, we are of the view that there is room for the consideration of schemes that encourage companies to produce for trade in a sustainable manner, which does not cause environmental damage.

7. My delegation has two further specific comments on the topic. In respect of the preamble on the special situation of low-lying coastal areas and small island developing States due to sea-level rise, my delegation supports the recognition that small island developing States are more vulnerable to atmospheric degradation and pollution. We are of the view that the special situation of small island developing States has already been established in the Paris Agreement, and should not be considered controversial.

8. Concerning future work, my delegation reiterates our concerns that the Special Rapporteur's proposal to deal with issues of implementation, compliance and dispute settlement relevant to the protection of the atmosphere in 2018 may be inconsistent with the 2013 understanding.

Immunity of State officials from foreign criminal jurisdiction

9. Turning to Chapter VII of the Report on the topic “Immunity of State officials from foreign criminal jurisdiction”, my delegation is deeply interested in the work of the Commission on this topic. We reiterate our appreciation to the Special Rapporteur Ms Concepción Escobar Hernández for her continued work on the limitations and exceptions to the immunity of State officials from foreign criminal jurisdiction.

10. We, however, note the unusual manner in which draft article 7 was provisionally adopted by the Commission; that is by way of recorded vote. The dissension within the Commission on draft article 7 reflects that the propositions contained within could benefit from further consideration. My delegation is of the view that there are legitimate concerns, and we would invite the Commission to reconsider draft article 7.

11. First, my delegation is of the view 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. In this vein, we have concerns as to whether there is sufficient State practice, in terms of case law, national statutes and treaty law, which would justify the codification of the specific list of crimes under international law in draft article 7 for which immunity *ratione materiae* shall not apply. If, instead, it is the Commission’s intent to state a conclusion *de lege ferenda*, this intent should be clearly articulated.

12. Second, given the manner in which draft article 7 is currently framed, my delegation reiterates our suggestion that the Commission may wish to revisit, as a matter of progressive development of the law, the extension of immunity *rationae personae* to high officials beyond the troika, following completion of its work on immunity *rationae materiae*.

13. Third, Singapore has previously suggested a more pragmatic way to approach the analysis on possible limitations and exceptions to immunity *ratione materiae* instead of specifying a list of crimes. Our full comments are contained in the document A/C.6/71/SR.27 at paragraphs 131 – 132. Singapore is of the view that framing the analysis in this way will avoid procedural hurdles. We agree particularly with paragraph 8 of the commentary on draft Article 7, that it is not possible to assume that the existence of criminal responsibility for any crimes under international law committed by a State official automatically precludes immunity from foreign criminal jurisdiction; and that further, immunity does not depend on the gravity of the act in question or on the fact that such act is prohibited by the peremptory norm of international law.

14. Finally, we empathise with the concerns expressed by several members of the Commission concerning the need to avoid proceedings which were politically motivated or an illegitimate exercise of jurisdiction. In this respect, our delegation wishes to underscore the need to focus on safeguards to ensure that exceptions to immunity *ratione materiae* are not applied in a wholly subjective manner.

15. My delegation is of the view that more in-depth analysis should be given to the draft articles, given this intrinsically complex area of international law, and we look forward to studying the further outcomes of the Commission on this topic.

16. I thank you, Mr Chairman.

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