



**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 87 ON THE REPORT
OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS
SEVENTIETH SESSION (CLUSTER 1: CHAPTERS I-IV, V, XII & XIII OF
A/73/10), SIXTH COMMITTEE,
22 OCTOBER 2018**

[Please check against delivery]

Mr Chair,

1. As this is the first time that I take the floor on behalf of my delegation, allow me to congratulate you on your election as Chair, and reaffirm our full support to you and the Bureau.

2. I thank the Commission for the comprehensive report on the work of its seventieth session (A/73/10), and join others in offering my warmest congratulations to the Commission on its seventieth anniversary. It was Singapore's privilege to have contributed to and taken active part in the commemorative events, which are recounted in Chapter XII of the report. As a small State with a firm belief in rules-based multilateralism, Singapore is a strong supporter of the Commission's work and its symbiotic relationship with the General Assembly through this Committee. We also take this opportunity to recognise and commend the Codification Division of the United Nations Office of Legal Affairs for their unstinting dedication and substantive support to the Commission as it discharges its important mandate.

Mr Chair,

3. It seems apt that the Commission's platinum jubilee should bring the completion on second reading of two important projects on sources doctrine. These are the draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties (Chapter IV), and the draft conclusions on identification of customary international law (Chapter V). We record our deep appreciation to the Special Rapporteurs: to Professor Georg Nolte, on the first topic, and to Sir Michael Wood, on the second.

Mr Chair,

4. First, I address Chapter IV of the report, on the topic "Subsequent agreements and subsequent practice in relation to the interpretation of treaties". My delegation regards the draft conclusions as a valuable compendium and useful practical guide for States. We have some specific observations on draft conclusions 5, 7 and 12. Heeding your call for brevity, Mr Chair, we have made these observations available in the version of this statement published on PaperSmart. We can, however, give our clear support to the Commission's recommendation in terms of paragraph 49 of its report (A/73/10).

Additional observations not included in oral delivery

- (a) Singapore particularly welcomes the clarification provided in draft conclusion 5, that it is only the practice of States parties to a treaty that constitutes subsequent practice under Articles 31 and 32, and a clarification to similar effect in draft conclusion 12. The cornerstone of interpretation remains the treaty text. The

words reflect the delicate balance that the treaty parties to it strove to achieve. That balance should not be easily unravelled. Practice may be reflective of a shared binding understanding between the treaty parties of how their obligations have been varied subsequent to the conclusion of the treaty. But for the vast majority of States, especially States without the resources to do so, practice is usually not properly recorded. Practice may indeed sometimes be inferred from particular acts, but there are many instances where the exact contours of practice cannot be clearly ascertained.

- (b) We remain conscious of the flexibility and adaptability to changing circumstances that may sometimes be required to make a treaty work over time. However, Singapore reiterates that there is a need to proceed prudently to avoid taking “short-cuts” that inappropriately circumvent the amendment mechanisms within the constituent document. We view draft conclusion 7 as reaffirming this position.

5. Next, I address Chapter V of the report, on the topic “Identification of customary international law”. Singapore views the draft conclusions and commentaries as work of practical importance to all States. We are grateful for the Commission’s comprehensive and meticulous approach. We have observations on specific elements of the draft conclusions on their commentaries. Those are available via PaperSmart. We can, however, express clear support for the Commission’s recommendation in terms of paragraph 63 of its report (A/73/10). In particular, we wish to thank the Secretariat for its very useful memorandum on ways

and means for making the evidence of customary international law more readily available (A/CN.4/710). Singapore supports efforts to leverage technology in order to make information concerning the evidence of customary international law more readily available, including from a diversity of States.

Additional observations not included in oral delivery

- (a) Singapore supports draft conclusion 15, which affirms the existence of the “persistent objector” principle. Singapore considers this principle to be *lex lata*. We also welcome the commentary to draft conclusion 15 paragraph 2, which acknowledges that the determination of whether the requirement that a State’s objection be maintained persistently should be done in a pragmatic manner, bearing in mind the circumstances of the case.
- (b) With respect to draft conclusion 4 paragraph 2, Singapore takes the view that the practice of international organisations can contribute to the formation or expression of rules of customary international law in the limited circumstances identified by the Commission *where the practice of the international organisation reflects the practice of States*.
- (c) We also note with interest the Commission’s commentary in Part Five concerning the circumstances when the Commission’s output can have value in identifying the existence of a rule of customary international law or lack thereof. In particular,

footnote 741 of the commentary states that “Once the General Assembly has taken action in relation to a final draft of the Commission, such as by annexing it to a resolution and commending it to States, the output of the Commission may also fall to be considered under draft conclusion 12...”. In such cases, there needs to be a careful consideration of various factors to determine whether the States concerned intended to acknowledge the existence of a rule of customary international law. Such factors would include the State’s reception to the Commission’s output, as well as considerations of the particular context of General Assembly action on that output.

6. Finally, I address Chapter XIII of the report, concerning “Other decisions and conclusions of the Commission”.

7. Singapore is pleased to note that the Commission will commence work on the topic “General principles of international law”, and welcomes the appointment of the Special Rapporteur. We look forward to following the Commission’s progress on this front.

8. We join other delegations which have remarked before on the number of topics on the Commission’s agenda. Based on the information we gathered from its report, the Commission’s agenda may include up to five topics at its seventy-first session. This list includes complex and important topics, aspects of which could not be fully considered at the seventieth session. Our view is that the character and rigour of the Commission’s work requires a certain expansiveness of time that may not be possible with a heavy workload composed of potentially disparate topics. Related to this, we would welcome some clarity in the specific process for Member

States to propose topics directly to the Commission (referenced at paragraph 38 of A/73/10), in the Commission's methodology for deciding when a topic advances from its long-term programme to its current programme of work, and on whether the Commission considers that the existing long-term programme of work should be refreshed or consolidated. We hope that the Commission will consider addressing these matters in the report of its seventy-first session.

9. I thank you, Mr Chair.

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