



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

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**STATEMENT BY MR LIONEL YEE,
DEPUTY ATTORNEY-GENERAL OF THE REPUBLIC OF SINGAPORE,
ON AGENDA ITEM 82 ON THE REPORT OF THE INTERNATIONAL
LAW COMMISSION ON THE WORK OF ITS SEVENTIETH SESSION
(CLUSTER 2: CHAPTERS VI, VII & VIII OF A/73/10),
SIXTH COMMITTEE, 26 OCTOBER 2018**

[Please check against delivery]

1 Mr Chair, my delegation thanks the International Law Commission for its report on the topics “Protection of the atmosphere”, “Provisional application of treaties”, and “Peremptory norms of general international law (*jus cogens*)”. We continue to follow all three topics with great interest and would like to offer some comments.

Protection of the atmosphere

2 First, on the topic of “Protection of the Atmosphere”, my delegation congratulates the Commission on successfully concluding its first reading of these twelve draft guidelines and their commentaries. We also wish to extend our particular appreciation to the Special Rapporteur, Professor Shinya Murase, for his rigorous approach to this topic.

3 We have taken note of the Commission’s request for comments and observations from States to be submitted to the Secretary-General by 15 December 2019. My delegation will be studying the twelve draft guidelines and the commentaries thereto and provide our detailed views in due course before the given deadline.

4 It remains for me to reiterate my delegation’s support for the Commission’s work on this topic and the importance of international cooperation, which is at the core of these guidelines.

Provisional application of treaties

5 I now turn to Chapter VII of the Report, on the topic “Provisional application of treaties”. Singapore expresses its appreciation to the Special Rapporteur, Mr Juan Manuel Gómez-Robledo, for his fifth report. We commend the Special Rapporteur and the Commission for adopting on first reading a set of draft guidelines and commentaries thereto. Provisional application is a tool of immense practical value in modern international life. Singapore continues to support the Commission’s work. Singapore will endeavour to respond in writing to the Commission’s request through the Secretary-General before 15 December 2019.

6 We are heartened that the Commission’s present work addresses some of the concerns my delegation had raised before. Our observations on these are available via PaperSmart.

Additional observations not included in oral delivery

(a) First, my delegation had earlier suggested that the Commission consider recasting draft guideline 6 in terms of an explicit reference to the “binding” character of provisional application, instead of using the term “legal effects”. Draft guideline 6 now provides that “*The provisional application of a treaty or part of a treaty produces a legally binding obligation to apply the treaty or part thereof as if the treaty were in force, unless the treaty provides otherwise or it is otherwise agreed.*”

(b) Second, we had asked that the Commission clarify the relation between provisional application and reservations. My delegation therefore welcomes new draft guideline 7 and its commentary which addresses this very important issue. However, we agree with views expressed in the Commission that further work is required. For example, with respect to draft guideline 7, paragraph 1, the Commission might state that the relevant rules in the Vienna Convention on the Law of Treaties are those relating to the formulation of reservations. This is consistent with the commentary and will provide the correct reference point for users when the guidelines are eventually finalised.

7 On the Commission’s proposal to annex draft model clauses to the guidelines, my delegation observes a lack of examples involving Asian States in the draft model clauses and hopes that more could be done to represent the full diversity of State practice in this field. For instance, the Memorandum by the Secretariat, refers to Article 20.5 of the Trans-Pacific Strategic Economic Partnership Agreement as an example of provisional application of part of a treaty that applies only to one party. The Commission may wish to consider similar examples in its 71st session.

Peremptory norms of international law (*jus cogens*)

8 Mr Chair, I turn next to Chapter VIII of the Report on the topic of “Peremptory norms of international law (*jus cogens*)”. My delegation wishes to thank the Special Rapporteur, Professor Dire Tladi, for his rich and thoughtful third report. My delegation supports the Commission’s work in attempting to clarify this intrinsically complex and challenging area of international law.

9 This said, we can only provide our comments on a preliminary basis at this time. The lack of commentaries accompanying the draft conclusions to date has made it difficult for States to consider these draft conclusions meaningfully. Singapore would greatly appreciate the production of a full set of commentaries on the draft conclusions in 2019. Within this context, our views on draft conclusions 10 through 14 are as follows.

10 My delegation welcomes **draft conclusions 10 to 13**, which seek to consolidate and affirm the legal effects and consequences of conflict of treaties with peremptory norms of general international law. Singapore is of the view that these draft conclusions should be based on and consistent with the Vienna Convention on the Law of Treaties, and we are satisfied that this is reflected in draft conclusions 10 to 13.

11 On **draft conclusion 14**, my delegation is of the view that it may not be appropriate or necessary to include such a provision. My delegation is concerned with the significant overlap with the procedures already established in the Convention. Although the Commission included a “without prejudice” clause, my delegation is of the view that draft conclusion 14 does not, and indeed should not, differ from the procedures in the Convention. In this regard, its inclusion would only serve to confuse rather than clarify matters. Further, my delegation does not consider the content of this provision as one that is appropriate in the set of draft conclusions, given that it is simply a recommended procedure and not a reflection of the state of international law.

12 I wish to emphasise that these comments do not seek to detract from our appreciation of the work done as a whole and the in-depth analysis which has gone into the preparation of the report, and we look forward to undertaking further reflection on the draft conclusions.

13 I thank you, Mr Chair.

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