

## **Written Comments and Observations of the Republic of Singapore Submitted in Response to Paragraph 6 of General Assembly Resolution A/RES/77/249 on the Agenda Item Crimes Against Humanity**

Singapore is pleased to respond to the invitation to States in General Assembly resolution A/RES/77/249 to submit written comments and observations on the International Law Commission's ("ILC") draft articles on the prevention and punishment of crimes against humanity ("**draft articles**") and on the ILC's recommendation for the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles.

### **Draft article 4 (Obligation of prevention)**

2. Singapore agrees with the principle of the general undertaking in draft article 4. Singapore understands draft article 4 as an obligation of conduct and not result, to be fulfilled through appropriate measures to be determined by each State under its national frameworks, in conformity with applicable international law.

3. Singapore remains of the view that it will be useful to clarify the scope of a State's obligation pursuant to the undertaking under draft article 4, paragraph (b), and the relationship between this paragraph and other draft articles detailing specific acts of cooperation. Singapore reiterates its earlier suggestion to include some explanation in the commentary on draft article 4 paragraph (b) to assist States to understand the nature of the commitment contained in this paragraph.

### **Draft article 6 (Criminalization under national law)**

4. In relation to draft article 6, paragraph 5, Singapore agrees with the clarification in paragraph 31 of the Commentary that this paragraph has no effect on the procedural immunity that a foreign State official may enjoy before a national criminal jurisdiction, which continues to be governed by conventional and customary international law. It does not preclude raising immunity of State officials as a procedural bar to the exercise of foreign criminal jurisdiction over State officials. This clarification should be stated in the text of the draft article itself, for legal certainty that the obligation under this paragraph addresses only substantive criminal responsibility under national law.

5. In relation to draft article 6, paragraph 7, Singapore agrees that the appropriate penalties for offences under national criminal law is the sovereign prerogative of each State to determine, in conformity with applicable international law, including safeguards of due legal process. In relation to the discussions on the use of capital punishment, Singapore reiterates its consistent position that international law does not prohibit the use of capital punishment and there is no international consensus prohibiting its use. The General Assembly has affirmed that States have the sovereign right to develop their own national legal systems, including determining legal penalties,

in accordance with international legal obligations. For the same reasons, Singapore also disagrees that draft article 13 (Extradition) could benefit from an additional paragraph according to which nothing in a future treaty could be interpreted as imposing an obligation to extradite when there is substantial ground for believing that the fugitive may face the application of the death penalty. The multilateral conventions addressing crimes on which draft article 13 is based do not contain such a provision.

### **Draft article 7 (Establishment of national jurisdiction)**

6. Singapore reiterates its earlier comments that the draft articles should clarify how potential conflicts of jurisdiction are to be resolved. In Singapore's view, where conflicts of jurisdiction arise, the draft articles should accord primacy to the State that can exercise jurisdiction under draft article 7, paragraph 1. Such a State would have greater interest in prosecuting the offence in question than a custodial State that can only exercise jurisdiction based on paragraph 2 alone.

7. Singapore also emphasises its understanding, which the Special Rapporteur affirmed in his fourth report (A/CN.4/725), that the jurisdictional link established under draft article 7, paragraph 2, is a treaty-based one that can only be exercised in respect of nationals of States Parties to a future treaty, on the basis of the alleged offender's presence alone when none of the jurisdictional links in paragraph 1 exist. For legal certainty, this important understanding should be incorporated into the draft article.

### **Draft article 11 (Fair treatment of alleged offender)**

8. Singapore appreciates the balance struck in draft article 11 in its current form, which ensures the entitlement of an alleged offender of crimes against humanity to fair treatment, without being overly prescriptive, in line with the practice in other multilateral conventions addressing crimes. It is not necessary to replicate in the draft articles the wide array of rights possessed by an alleged offender before a national court. Draft article 11, paragraph 1, suffices to make it clear that a State must accord the legal protections that an accused person is entitled to under national and international law.

### **Draft article 12 (Victims, witnesses and others)**

9. It is important that draft article 12, paragraph 3, takes appropriate account of the variety of ways in which States' respective domestic legal systems address rights to obtain reparation and forms of compensation. Singapore appreciates the explanation in the Commentary, at paragraph (22), that reparation may be "through the use of regular civil claims processes in national courts". It is useful to incorporate this clarification into the text of draft article 12, that the obligation in paragraph 3 may be fulfilled through the availability of civil claims processes in national courts. Singapore also considers that the reference to moral damages in draft article 12 paragraph 3 is

unnecessary and inappropriate. The scope of damages for which reparation is available should be left to each State to determine in each case, consistent with the approach in many multilateral conventions addressing crimes.

### **ILC's recommendation**

10. Singapore supports a consensus-based decision on the question of further steps to be taken with respect to the draft articles. Considering the diverse views expressed and important issues raised in the Sixth Committee, Singapore believes that improvements to the substance of the draft articles that are grounded in established international legal rules and principles will bring Member States closer towards consensus, in order to achieve the effective prevention and punishment of crimes against humanity.

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