



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

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**STATEMENT BY MR. MARCUS SONG,
DELEGATE TO THE 67TH SESSION
OF THE UNITED NATIONS GENERAL ASSEMBLY
ON AGENDA ITEM 79,
ON CHAPTERS I-III, IV, V & XII OF THE REPORT OF THE
INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS
SIXTY-FOURTH SESSION,
SIXTH COMMITTEE,
1 NOVEMBER 2012**

Mr Chairman

1. My delegation would like to thank the Commission for its comprehensive report on the work of its 64th Session (“the Report”).
2. The work undertaken by the Commission is important in clarifying, codifying and progressively developing international law and contributes in no small measure to the promotion of the rule of law. The Commission’s contribution is especially significant as the topics under its purview frequently involve complex and nascent areas of international law.
3. My delegation is committed to supporting the Commission’s work. The Commission plays a significant role in promoting the rule of law. In order to drive this enterprise, there must continue to be good dialogue between the Commission and Member States, through this Committee. We therefore wish to express our appreciation for the Commission’s practice of actively engaging Member States during the course of its work. We welcome the Commission’s invitation to Member States to comment on specific issues and topics on its agenda in Chapter III of its report. My delegation commends this practice as it is the means through which all states have the opportunity to participate in the process of codification and progressive development of international law. We will provide our written responses to the Secretariat in due course.

Expulsion of Aliens

4. With regard to Chapter IV of the Report, my delegation congratulates the Commission on the completion, on first reading, of the draft articles on the “Expulsion of Aliens”. My delegation thanks the Special Rapporteur, Mr Maurice Kamto, for his efforts in this connection. The draft articles and the accompanying commentaries are a substantial contribution on a topic which is of considerable relevance and significance.

5. Two years ago, during the debate on the report of the 62nd session of the Commission, my delegation objected to the then draft article 14(2) on this topic, which has now been revised and renumbered as article 23(2). The reasons we gave then were: firstly, the draft article suggests that a State that has abolished the death penalty has an automatic and positive obligation under general international law not to expel a person who has been sentenced to death to a State in which that person may be executed, without first obtaining a guarantee that the death penalty will not be carried out. Secondly, it also suggests that this so-called obligation is one aspect of the right to life.

6. My delegation notes that, unlike the title of the former draft article 14, the title of the new draft article 23 no longer suggests that the obligation proposed in draft article 23(2) is one aspect of the right to life. My delegation welcomes this development and recognition. As the Special Rapporteur himself observed when introducing his fifth report, the right to life does not imply the prohibition of the death penalty. There is no global consensus on the abolition or retention of the death penalty, much less any agreement that prohibition of the death penalty is part of the right to life.

7. My delegation is, however, unable to express the same enthusiasm for the substantive changes between the former draft article 14(2) and the new draft article 23(2). While the former draft article 14(2) applied only to States which have already abolished the death penalty, the new draft article 23(2) extends to States which have NOT abolished the death penalty but are merely not imposing the death penalty in practice. The coherence of this extension eludes my delegation. It is difficult to find any legal or principled basis for imposing, on a State which continues to retain the death penalty as a lawful sanction, the obligation to interfere with the rights of other States to carry out its laws in relation to the death penalty.

8. The new draft article 23(2) is also wider than the former article 14(2) in another way. While the former draft article 14(2) only applied if the alien has been sentenced to death, the new draft article 23(3) will apply if the alien (and I quote) “would be threatened with the death penalty”. The phrase “would be threatened” is so broad and open-ended as to be practically all-encompassing. It appears to be a phrase designed to ensure that abolitionist States will never be allowed to expel an alien to any retentionist State under any circumstances.

9. My delegation is unable to agree with or accept this provision, whether in its new, wider iteration as the new draft article 23(2), or in its less ambitious incarnation as the former draft article 14(2). There is simply no customary international law obligation to the effect that a State that has abolished the death penalty is then *ipso facto* bound to prohibit the transfer of a person to another State where the death penalty may be imposed, without seeking the relevant guarantee. Whether it chooses to bind itself to do so by undertaking specific treaty obligations is a different matter, one that is distinct from a decision not to apply the death penalty domestically.

10. My delegation understands that there have been concerns expressed by some states that the topic of expulsion of aliens is not suitable for codification. We are of the view that we should keep all options open, including the possibility that the outcome of the Commission’s work take the form of “fundamental guiding principles”, “standards and guidelines” or “guidelines or guiding principles”, rather than “draft articles”.

Protection of persons in the Event of Disasters

11. Moving on to Chapter V of the Report on the topic “Protection of persons in the Event of Disasters”, my delegation thanks the Commission for its continued work on these proposed draft articles. We extend our particular appreciation to the Special Rapporteur, Mr. Eduardo Valencia-Ospina, for his fifth report on this topic. We commend the Commission’s efforts in attempting to navigate the complex issues surrounding the duty to cooperate in the provisions of disaster relief and the need to strike a balance in the various aspects.

12. We are particularly heartened by the Commission’s receptiveness to the views of Member States, including by placing emphasis on “duties” rather than “rights” on the issue of provision of cooperation to an affected

state as set out in draft article A. This is in line with the views our delegation had previously expressed in that rather than focus on the right of States, intergovernmental organisations or non-governmental organisations to offer assistance to an affected state, the emphasis should be more correctly on the duty of the State that receives offers of assistance to give serious consideration to such offers. We look forward to the continued progress made by the Commission on this topic.

13. Thank you Mr Chairman.

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