



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

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**STATEMENT BY MRS RENA LEE,
DELEGATE TO THE 68TH SESSION
OF THE UNITED NATIONS GENERAL ASSEMBLY
ON AGENDA ITEM 81,
ON PART 3 OF THE REPORT OF THE INTERNATIONAL LAW
COMMISSION ON THE WORK OF ITS SIXTY-THIRD AND SIXTY-FIFTH
SESSIONS (CHAPTERS VI-XI OF A/68/10),
SIXTH COMMITTEE,
4 NOVEMBER 2013**

[Please check against delivery]

1. Mr Chairman, Singapore thanks all Special Rapporteurs responsible for the topics under consideration in this cluster for their efforts in advancing the work of the Commission on several complex questions. Singapore also thanks the Chairman of the 65th session of the Commission, Mr Bernd Niehaus, for his comprehensive reports on all three clusters of issues during this debate.

Protection of persons in the event of disasters

2. On the topic of “Protection of persons in the event of disasters”, we thank the Special Rapporteur, Mr Eduardo Valencia-Ospina for his continued work in developing draft articles. We note that the Commission has adopted draft article 5bis as well as draft articles 12 to 15 and accompanying commentaries. My delegation wishes to make three comments on the work of the Commission on the topic this year.

3. First, on draft article *5bis*, my delegation notes that the list is only illustrative and is not intended to create additional legal obligations. Singapore agrees with the view of the Commission. In our view, beyond the duty to cooperate as set out in draft article 5, there is no further duty for the affected state to request the forms of cooperation described in the list. Neither is there any additional duty for other states to offer the forms of cooperation described in the list.

4. Second, draft article 13 on “Conditions on the provision of external assistance” requires affected states to provide an indication on the scope and type of assistance sought when specifying conditions for the provision of assistance. There appears to be a degree of ambiguity in this statement and it would be helpful for the Commission to clarify this. As we understand it, states and other actors have the “right” to offer assistance pursuant to draft article 12. My delegation had previously expressed doubts about whether the concept was correctly expressed as a “right” and that focus should be on the duty of the affected state receiving the offer. Nevertheless, it is not inconceivable that an affected state may receive unsolicited offers of assistance. It is unclear whether in such a situation, where the offer of assistance is unsolicited, an affected state can specify conditions without having to indicate the scope and type of assistance sought. This is because while draft article 10 imposes a duty on affected states to seek assistance, this is only where a disaster “exceeds its national response capacity”. In a situation where a disaster is well within the national response capacity of the affected state but where unsolicited offers of assistance are received, would the affected state be able to specify conditions without having to indicate that it is seeking assistance and the scope and type of assistance sought?

5. Third, it is the view of our delegation that in relation to draft article 15 on the “Termination of external assistance”, it would be helpful for the Commission to

clarify the extent of the requirement to consult. Does the requirement to consult carry with it the notion that there must be agreement amongst the relevant actors in relation to the termination and the modalities of termination? We note that the Commission has indicated that it is not always feasible to terminate on a mutual basis. However, even in such a situation, there is a requirement to consult on the modalities of termination. If agreement is the intended outcome of such consultations, what happens in a situation where no agreement can be reached? For example, if an assisting state has to terminate its assistance owing to a depletion of resources, but no agreement on the modalities of termination is reached after consultations, can the assisting state proceed with the termination nevertheless?

Formation and evidence of customary international law

6. Next, Mr Chairman, on the topic of “Formation and evidence of customary international law”, my delegation thanks the Special Rapporteur, Mr Michael Wood, for his first report. Singapore supports a common, unified approach to be taken in the identification of customary international law. We look forward to the work of the Commission on this topic, which is intended to serve as a practical guide for judges and lawyers. We also welcome the comment of the Special Rapporteur on the need to proceed with caution to ensure that the flexibility in the process of forming customary international law is preserved and that the study is not intended to consider the substance of customary international law nor expound on purely theoretical matters.

7. My delegation notes that there have been suggestions to examine the role played by actors other than states, such as the UN or the ICRC, in the formation of customary international law. We also note that the Special Rapporteur, in his report on the future programme of work, has indicated that the role of international

organisations will be considered in his second report. Singapore urges caution when examining this issue. There is wide variation in international organisations, including in their organisational structures, their mandates, the composition of their decision-making organs and the manner in which decisions of the organisations are taken. Membership in these organisations also varies widely. These variations do have an impact in determining what, if any, role is played by such actors in the formation of customary international law, in particular, the weight to be accorded to actions taken by such actors. As such, it should not be presumed that actions by such actors are always relevant in the consideration of formation of customary international law.

Provisional application of treaties

8. In looking at the topic of “provisional application of treaties”, my delegation thanks the Special Rapporteur, Mr Juan Manuel Gomez-Robledo, for his report. We note that the Special Rapporteur had examined the purpose and usefulness of provisional application, including identifying the factors which may lead states to resort to provisional application of treaties. While useful, Singapore agrees with the members of the Commission that the study should not be aimed at persuading states to utilise the mechanism of provisional application. Instead, the focus should be a practical guide how provisional application can be effected and what its legal effects are. This will enable states to better understand what provisional application is and to utilise it in appropriate circumstances.

Protection of the environment in relation to armed conflicts

9. On the protection of the environment in relation to armed conflicts, as this is a new topic, my delegation will confine itself to agreeing with the Special

Rapporteur, Ms Marie Jacobsson, that the study should not delve into consideration of possible effects of particular weapons on the environment. Also, there are existing legal regimes applicable in this area and our understanding is that the study undertaken by the Commission is not intended to undermine these existing regimes. As such, we agree with the Special Rapporteur that non-binding draft guidelines may be an appropriate outcome on this topic.

10. Finally, Mr Chairman, my delegation would like to touch briefly on two other topics considered by the Commission, namely, the “obligation to extradite or prosecute” and “the most-favoured-nation clause”. My delegation takes note of the report of the Working Group on the “obligation to extradite or prosecute”, chaired by Mr Kriangsak Kittichaisaree, which provided a useful analysis of the recent decision of the International Court of Justice in the case of *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* delivered last year. We see that the Commission took note of the report by the Working Group. It is not clear to my delegation how the Commission intends to proceed on this topic, particularly in light of suggestions made by some members of the Commission during its 64th session of the possibility of suspending or terminating this topic. We understand from the report of the Commission at its 64th session that the Working Group intends to submit concrete suggestions to the Commission on the way forward. In this regard, my delegation will study closely the suggestions of the Working Group.

11. My delegation also takes note of the work of the Study Group on “the most-favoured-nation clause”, under the chairmanship of Mr Donald McRae. We think it would be useful to look at the question of MFN as it relates to trade in services, as well as its relationship with fair and equitable treatment and national treatment standards. We note that the Study Group considered the possibility of guidelines

and model clauses and share the view that there are risks of being overly prescriptive as this could limit the options for states as they pursue economic cooperation. We look forward to reading the final report of the Study Group.

Thank you Mr Chairman.

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