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TO THE UNITED NATIONS**

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**STATEMENT BY MR LUKE TANG,  
DELEGATE TO THE 69<sup>TH</sup> SESSION  
OF THE UNITED NATIONS GENERAL ASSEMBLY  
ON AGENDA ITEM 84,  
EFFECTS OF ARMED CONFLICTS ON TREATIES,  
SIXTH COMMITTEE,  
23 OCTOBER 2014**

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1. Mr Chairman, Singapore recalls the General Assembly resolution on this agenda item, A/RES/66/99, which took note of and annexed the draft articles on the effects of armed conflicts on treaties that were presented by the International Law Commission. We recall also the decision in that resolution to include this agenda item in the current session of the General Assembly, with a view to examine, among other things, the question of the form that might be given to these draft articles.

2. At the outset, our delegation wishes to reiterate our appreciation for the work of the International Law Commission. We also wish to underline our support for draft article 3, which sets out the general principle that the existence of an armed conflict does not, in and of itself, cause the suspension or termination of a treaty. This establishes the important principle of legal stability and continuity and sets the tone for the rest of the draft articles.

3. On the question of the form that might be given to these articles, the view of our delegation at this time is that they should remain as draft articles and

there is no need to have them formally endorsed or elaborated into a convention. Our view is due mainly to our concerns regarding some of the articles, to which we shall now briefly allude.

4. First, our delegation is of the view that there is some ambiguity regarding non-international armed conflict under the draft articles. On the one hand, the definition in draft article 2 does not explicitly refer to “international” or “non-international” armed conflict because, according to the commentary, the Commission wishes to avoid reflecting specific factual or legal considerations in the article, which may cause conflicting interpretations. On the other hand, the term “non-international armed conflict” appears in draft article 6, paragraph (b). Our delegation is of the view that there should be consistency in the approach in that term “non-international armed conflict” should either be expressly defined in draft article 2, or not be used at all throughout the draft articles. In addition we note also that the term “non-international armed conflict” is meant to be covered by the phrase “*protracted resort to armed force between governmental authorities and organized armed groups*” in draft article 2. We note that the term ‘protracted’ introduces a qualitative element to the definition, which according to the commentary, was meant to introduce a threshold requirement. This qualitative element however, creates ambiguity because it is not clear what length of time would qualify as being “protracted”. This in turn introduces ambiguity into the definition of “armed conflict”.

5. Secondly, our delegation has some difficulties with the analytical approach set out in draft articles 5, 6 and 7. We are of the view that the relationship between draft article 5 on the one hand, and draft articles 6 and 7 on the other, should have been better articulated. The commentary to draft article 6, paragraph (a) acknowledges “a measure of overlap” with the inquiry undertaken under draft

article 5, but then goes on to say that “the object and purpose of the treaty when taken in combination with other factors such as the number of parties may open up a new perspective”. Respectfully, we cannot agree with this statement. Our delegation is of the view that the rules which draft articles 6 and 7 purport to articulate should really be treated as an application of the normal rules of treaty interpretation referred to in draft article 5. They should not be articulated as rules which operate independently, or even partially independently, of draft article 5.

6. Finally, our delegation has difficulty with the broad categorisation approach adopted in the indicative list of treaties referred to in draft article 7. The weakness of this approach is that some of the categories in the indicative list encompass treaties which should not necessarily come within the "implication" created by draft article 7. For instance, whilst the category of “Treaties on international criminal justice” is meant to cover treaties establishing international mechanisms for the prosecution of persons suspected of international crimes such as war crimes and crimes against humanity, it could also be wide enough to cover extradition and criminal mutual legal assistance treaties for other offences of a transnational nature, such as corruption, drug trafficking or organized crime. Similarly, the category of “Treaties of friendship, commerce and navigation and agreements concerning private rights” uses nomenclature that covers a wide range of inter-State arrangements, when the clear objective of the Commission (based on the commentary) was only to include those treaties or treaty provisions dealing with “private rights”. It follows that my delegation remains uncertain about the correctness of the “indicative list” approach used in draft article 7 and the annex. We would have preferred an approach that lists specific types of treaty provisions rather than broad categories of treaties.

7. In conclusion, whilst our delegation is of the view that the draft articles

should remain in their present form, we continue to acknowledge them as a useful collection of relevant State practice and academic writings on this difficult area of treaty law.

8. I thank you, Mr Chairman.