



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

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**STATEMENT BY MR. LUKE TANG
DELEGATE TO THE 69TH SESSION
OF THE UNITED NATIONS GENERAL ASSEMBLY
ON AGENDA ITEM 78,
ON CHAPTERS VI, VII, VIII AND IX OF THE REPORT OF THE
INTERNATIONAL LAW COMMISSION ON
THE WORK OF ITS 66TH SESSION,
SIXTH COMMITTEE,
31 OCTOBER 2014**

Madame Chair,

1. My delegation would like to express its thanks to the Commission for its report on the work conducted on the topics “Obligation to extradite or prosecute”, “Subsequent agreements and subsequent practice in relation to the interpretation of treaties”, “Protection of atmosphere” and “Immunity of State officials from foreign criminal jurisdiction”.

2. On the topic of “**Obligation to extradite or prosecute**”, my delegation would like to thank the Working Group, under the chairmanship of Mr. Kriangsak Kittichaisaree, for its final report and congratulates the Commission on the conclusion of its consideration of the topic following the adoption of the 2013 and 2014 reports.

3. This topic has been an important part of the Commission’s work for some time. The topic is marked by a complex web of treaties that feature different formulae on this issue. Knowing how the obligation to extradite or prosecute is differently framed across different international treaties, my delegation welcomes the Commission’s report as a useful tool for understanding the conventional landscape. My delegation notes that

the 2014 report also examines the implementation of the obligation to extradite or prosecute, and undertakes a comprehensive consideration of the various comments and queries posed by delegates to the 6th Committee over the last year. In the view of my delegation, these aspects of the 2014 report enhance its practical value to the international community.

4. Turning to the topic of **subsequent agreements and subsequent practice in relation to the interpretation of treaties**, my delegation wishes to express its appreciation for the work of the Special Rapporteur, Professor Nolte, in producing his second report on this topic, as well as for the work of the Commission, which has resulted in draft conclusions 6 to 10 and the accompanying commentaries.

5. We now wish to comment briefly on the aspect of ‘subsequent practice’. First, we wish to reiterate that whilst subsequent practice can influence the interpretation of a Treaty, the cornerstone of interpretation remains the wording of the Treaty itself. This is not only because the wording of the Treaty is the most authoritative expression of the parties’ intentions, but also because it reflects the balance, which often is a careful and delicate one, that had been struck as a result of negotiations between the parties. As such, we are of the view that the wording of the Treaty should not be easily unravelled and that subsequent practice as a means of interpretation should be applied prudently.

6. That said, we are also aware of the need for flexibility and adaptability to changing circumstances, which may sometimes be required in order to make a Treaty work over time. In these situations, one has to bear in mind the fact that the tools of treaty interpretation are simply the means of establishing what the intention of parties is. With this in mind, the key issue in the context of subsequent practice is the extent to which evidential value or weight may be accorded to such practice. Accordingly, we note with interest draft conclusion 8, which identifies relevant criteria that may be helpful in determining the issue of weight. These criteria include the “clarity” and “specificity” of the practice and “whether and how the practice is repeated”. According to the

commentary, the latter criteria brings in the elements of time and the character of a repetition and indicates, for example, that something more than just a technical or unmindful repetition of a practice may contribute to its interpretative value. Whilst we can see why a conscious and mindful repetition may generally be perceived as having more weight than one that is not, we are reluctant to summarily dismiss or discount the value of technical or unmindful repetitions. This is because, in some circumstances, practice may be repeated mechanically precisely because of an unquestioningly clear intention and understanding between the parties, which as we have mentioned above, is the ultimate goal of treaty interpretation.

7. Finally, we wish to express our appreciation for the many practical examples provided in the commentary on each of the draft conclusions, and we hope that the Commission will continue to provide and compile such examples, which will serve as a very useful guide in the application of article 31(3) of the Vienna Convention.

8. We will conclude our statement with some brief comments on the topic of **“Immunity of State officials from foreign criminal jurisdiction”**.

9. My delegation has reviewed draft article 2 subparagraph (e) and draft article 5, as well as the commentaries thereto. My delegation recognises that it is not possible to list the individuals to whom immunity may apply, and that often the assessment has to be made on a case-by-case basis. The functional approach that the Commission has taken in drafting article 2 subparagraph (e) reflects the realities of State practice.

10. In respect of our consideration of draft article 5, my delegation looks forward to the Special Rapporteur’s next report, which is envisaged to address the material and temporal scope of immunity *ratione materiae*. Reading draft article 5 on its own, and in view of the functional nature of immunity *ratione materiae*, we can see the merit in the doubts expressed by some members of the Commission about the need to define the persons who enjoy it, since the essence of immunity *ratione materiae* is the nature of the

acts performed and not the individual who performs them. That said, my delegation recognises that the definition in draft article 5 could provide coherence to the draft articles on the topic when viewed in the context of the overall framework of the draft articles. As such, we prefer to keep an open mind on this until we have the benefit of the Special Rapporteur's next report.

11. In conclusion, Madame Chair, my delegation welcomes once again the work of the Commission on these issues and look forward to receiving its future deliberations on them, as well as on the other topics that are on its agenda.

12. I thank you, Madame Chair.

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