



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

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**STATEMENT BY MR. PANG KHANG CHAU, DIRECTOR-GENERAL,  
ATTORNEY-GENERAL'S CHAMBERS OF SINGAPORE, ON AGENDA ITEM  
83, ON THE PART I OF THE REPORT OF THE INTERNATIONAL LAW  
COMMISSION ON THE WORK OF ITS SIXTY-SEVENTH SESSION  
(CHAPTERS I-III, XII, IV & V OF A/70/10), SIXTH COMMITTEE,  
2 NOVEMBER 2015**

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1. Mr. Chairman, Singapore thanks the Commission for its comprehensive report on the work of its sixty-seventh session. My delegation appreciates the Commission for its dedication to the progressive development and codification of international law, which contributes to the advancement of the rule of law. This year's topic for the Sixth Committee's consideration of the agenda item on the rule of law at the national and international levels gave us an opportunity to reflect on the Commission's contribution to multilateral treaty processes. As the Commission has highlighted in its report, the Commission's work on different topics has become subject to multilateral treaty processes. This was a theme that was similarly highlighted at a side event that my delegation worked with others in organising earlier this year, on "Multilateral Treaty-Making: Perspectives on Small States and the Rule of Law".

2. My delegation would also like to thank the Secretariat for the establishment of the new website for the Commission. We agree with the Commission that the website contributes to the teaching, dissemination, study and wider appreciation of international law, especially as it is a resource that is accessible electronically, and without charge. The website in its previous form was already an important resource for keeping ourselves

informed of the work of the Commission. The new website has up-to-date information on the topics on the agenda of the Commission, and its interface is more user-friendly.

*The Most-Favoured-Nation clause*

3. Turning to Chapter IV of the Commission's report on the most-favoured-nation clause ("MFN clause"), my delegation wishes to express our appreciation for the Study Group for its work, over the years, on the topic.

4. We welcome the final report of the Study Group. The report is systematic, comprehensive and is updated with references to relevant recent cases. We note that the report also contains pertinent observations of the rationale for MFN treatment and the contemporary practice regarding MFN clauses, a survey of the interpretative issues relating to MFN provisions as well as the considerations that are applicable in the interpretation of MFN clauses.

5. We are appreciative of the Study Group's intent in setting out a framework and guidance for the proper application of the principles of treaty interpretation to MFN clauses. The Study Group's conclusions that (a) the interpretation of MFN clauses is to be undertaken on the basis of the rules for the interpretation of treaties as set out in the Vienna Convention on the Law of Treaties; and (b) the scope and nature of the benefit that can be obtained under an MFN provision depends on the interpretation of the MFN provision itself, are valuable statements which my delegation agrees with.

6. Further, my delegation believes that the report will be useful, not only for practitioners and treaty negotiators, but also as an additional resource in questions concerning the interpretation and application of MFN provisions. We hope that the report will, in accordance with its objectives, help to safeguard against the fragmentation of international law and enable greater coherence in the approaches taken in the arbitral decisions on MFN provisions.

## *Protection of the Atmosphere*

7. On the topic of “Protection of the Atmosphere”, my delegation notes the Commission’s consideration of the second report of the Special Rapporteur, and the provisional adoption of draft guidelines 1, 2 and 5, the four preambular paragraphs, as well as their accompanying commentaries.

8. Regarding the definitions of terms for the purposes of the draft guidelines, we appreciate the efforts of the Commission to ensure that they are consistent with the approach of scientists. My delegation may provide our comments on the definitions when we have the benefit of more of the guidelines before us.

9. In respect of the “common concern of mankind”, we note the Commission’s view that the legal consequences of the concept currently remains unclear in the context of international law relating to the atmosphere. We agree with the Commission’s decision to deal with the concept as a preambular matter. This approach achieves the expression of concern over pollution of the atmosphere, which is an essential natural resource that mankind shares, while avoiding the difficulties of filling in the normative content of the concept of the “common concern of mankind”.

10. Mr. Chairman, my delegation has reviewed draft guideline 5 on international cooperation with great interest. As the Commission has recognised in its report, international cooperation is at the core of the draft guidelines. Undeniably, atmospheric pollution is a negative externality that is not bounded by limits of national jurisdiction. It is also often part of a multi-faceted problem that is not confined to a single pathway for resolution. As such, it is essential to have cooperation among countries involved.

11. We note that the Commission has recognised in draft guideline 5 the obligation on the part of States to cooperate. Specifically, the obligation is “to cooperate, as appropriate”. The commentary to draft guideline 5 explains how the phrase “as

appropriate” is intended to capture the flexibility and latitude for States to carry out the obligation to cooperate. Flexibility and latitude are important. However, there is room in the guidelines for further elaboration of the principles that should guide international cooperation. It appears to my delegation that there is a common thread of cooperation at least on the basis of sovereign equality and good faith. It would be useful for these and any other important principles of international cooperation in respect of the protection of the atmosphere to be distilled and reflected at least in the commentaries. For instance, in respect of the principle of good faith, my delegation notes that, in the Statement of the Chairman of the Drafting Committee, it is stated that good faith was considered as implicit for any international obligation and was therefore deleted. This understanding is important and should be articulated in the commentaries.

12. My delegation also welcomes the explanation in the commentary to draft guideline 5 of how, under the rubric of international cooperation, States may individually take appropriate action. We think that this is an important aspect of international cooperation to highlight. In our own experience, we have found individual State action to be an important part of demonstrating our commitment to international cooperation for the protection of the atmosphere. For instance, Singapore recently enacted the Transboundary Haze Pollution Act to regulate behaviour that causes or contributes to transboundary haze pollution in Singapore. The Act applies the principle of *sic utere tuo ut alienum non laedas* and, in keeping with the principle of international cooperation, seeks to complement the efforts of other countries to hold companies that burn forests and otherwise engage in unsustainable land clearing practices to account, even if such companies have no geographical or other connection to Singapore.

13. As for draft guideline 5, paragraph 2, my delegation has concerns over how it has been framed. The focus on enhancing scientific knowledge seems to qualify the obligation to cooperate. The obligation to cooperate, including exchange of information and joint monitoring which are enumerated in paragraph 2, applies to more than just the enhancing of scientific knowledge. For example, in our region we have concluded the

ASEAN Agreement on Transboundary Haze Pollution. Under that Agreement, the Parties have agreed to cooperate in developing and implementing measures to prevent and monitor transboundary haze pollution, and to control sources of fires, including by the identification of fires, development of monitoring, assessment and early warning systems, exchange of information and technology, and the provision of mutual assistance. Indeed, cooperation can be for a number of different purposes, including monitoring the activities which cause or contribute to the pollution of the atmosphere, analysing data to inform response efforts, and managing the impacts of the pollution of the atmosphere. Cooperation can also include technical cooperation, such as the exchange of experiences and capacity building.

14. My delegation recognises the importance of the enhancement of scientific knowledge. Nevertheless, we are interested in why the Commission has singled out the enhancement of scientific knowledge above all other forms of cooperation. The commentary merely states that the Commission considers the enhancement of scientific knowledge as key, without further elaboration. This has been done even though, in the preceding paragraphs of the commentary, reference is made to instruments that seek to promote cooperation in other areas such as to strengthen regulatory institutions, and for the coordination of international emergency actions and communications. We look forward to the Commission's further consideration of the draft guideline on international cooperation with these comments in mind.

### ***Concluding remarks***

15. Mr. Chairman, my delegation thanks the Commission for engaging Member States. We have noted with appreciation the references in the reports of the Special Rapporteurs to comments made by Member States during the Sixth Committee debates. In addition to delivering statements on all three clusters of the Commission's report, my delegation will be responding to the Commission's invitation to provide comments on the specific issues of particular interest to the Commission.

16. Thank you, Mr. Chairman.

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