



**SOCIALIST REPUBLIC OF VIETNAM
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866 UNITED NATIONS PLAZA
SUITE 435
NEW YORK, NY 10017

**Statement by Mr. Vu Minh Nguyen
Director General, Department of International Law & Treaties
Viet Nam Ministry of Foreign Affairs
at the 70th Session of the Sixth Committee of UNGA
on Agenda Item 83: “Report of the International Law Commission”
Cluster II
Chapter VI – Identification of customary international law
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Thank you, Mr. Chair,

As noted in our previous statement, Viet Nam acknowledges the work of the Commission over the past years on a range of topics, many of which are fundamental in international law. On this occasion, I would like to comment on the topic of Identification of customary international law.

I note that in his third report, the Special Rapporteur supplements conclusions on the relationship between two elements of customary international law, the role of treaties, resolutions and other subsidiary means in the formation and identification of customary international law and the issue of particular customary international law and persistent objector. I wish to thank Sir Michael Woods for his excellent work and dedication to the topic.

I have some observations in this regard.

First, we reiterate our full support for the two element approach in identifying customary international law, namely general state practice and the acceptance as law (*opinio juris*). We are appreciative of the report’s emphasis

that each elements must be ascertained separately and the evidence for both elements be verified regardless of their temporal order.

Second, in draft conclusion 14, we have no doubt that the work of the International Law Commission should deserve a particular position rather than being equated with teachings of the most highly qualified publicists of the various nations in being a subsidiary means for determination of customary international law. In many occasions, the work of the Commission should be a primary evidence of customary international law.

Third, this delegation is unwilling to promote the recognition and promotion of particular customary international law among states having no particular geographical nexus for fear of further fragmenting international law. We concur with the report that strict criteria must be applied to particular customs, such as by identifying clearly which states have participated in the practice and accepted it as law.

For future plan, the Commission indicated that it would ask the Secretariat to prepare a memorandum concerning the role of decisions of national courts in the case law of international courts and tribunals of universal jurisdiction for the purpose of the determination of customary international law. This is a very pertinent question as "judicial decision" in the words of Article 38 of the Statute of the International Court of Justice may include decisions of national and international courts. However, strict caution must be taken in addressing the role of national courts' decisions due to their country-specific constitutional constraints and the doctrine of precedent in domestic law.

We are also very much supportive of the Special Rapporteur's future programme of work in the next report. An examination of practical means of enhancing the availability of materials that may be used as evidence to determine customary international law would be of immense practical use for states. We expect the commentaries to fully explain various nuances in the conclusions and provide detailed guidance on how to identify customary norms on a case by case basis.

I thank you, Mr. Chairman.