



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

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**STATEMENT BY MR. LIONEL YEE WOON CHIN, SENIOR COUNSEL,
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SINGAPORE, ON AGENDA ITEM 81 ON THE REPORT OF THE
INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-
NINTH SESSION (CLUSTER 1: CHAPTERS I-V AND XI OF A/72/10), SIXTH
COMMITTEE, 23 OCTOBER 2017**

[Please check against delivery]

Mr. Chairman,

1. I would like to begin by thanking the Commission for the comprehensive report on the work of its sixty-ninth session (A/72/10). My delegation strongly supports the work of the Commission and recognises the many contributions which it has made to the rule of law over the years. We would also like to take this opportunity to recognise the outstanding support provided to the Commission by the Secretariat, namely the Codification Division of the UN Office of Legal Affairs.

Mr Chairman,

2. As regards the substantive work of the Commission, my delegation would like to offer views on the following parts of the report – Chapter IV: “Crimes against humanity”, Chapter V: “Provisional application of treaties” and Chapter XI: “Other decisions and conclusions of the Commission”.

3. On the topic of “Crimes against humanity”, we thank the Special Rapporteur, Mr Sean Murphy, for his third report on the topic, and for bringing his workshop on the Drafting of a Convention on the Prevention and Punishment of Crimes against Humanity

to Singapore in 2016. We commend the Commission for adopting on first reading a preamble, fifteen draft articles and an annex, as well as the commentaries thereto.

4. Singapore has closely followed the Commission's work on the topic for the past three years. We note from Governments' written comments to the Commission and the debates in this Committee that States have varying views on the precise scope and ambit of key draft articles on the topic. Given this range of views, and the complexity and sensitivity of the subject matter, we are of the view that the topic would stand to benefit from further detailed consideration and we are undertaking such consideration.

5. It is clear that the final outcome of the Commission's work on this topic should be produced taking into account States' views on the draft articles. On this note, our delegation notes and appreciates the Commission's request for Governments to provide comments on the draft articles on crimes against humanity. We will respond to this request before the requested deadline of 1 December 2018.

Mr. Chairman,

6. I now turn to the topic "Provisional application of treaties". As the Special Rapporteur's reports, the Commission's debates, and the excellent studies by the Secretariat have already shown, provisional application is a tool of immense practical value in modern international life. Singapore continues to support the Commission's work.

7. In this context, we would like to make three points for the Commission's consideration.

8. First, on the key topics of legal effects, termination, and the relation between internal law and provisional application, the Commission's draft guideline 6 can be more definitively stated. Draft guideline 6 is entitled "Legal effects of provisional application", and it states: "The provisional application of a treaty or a part of a treaty produces the same legal effects as if the treaty were in force between the States or international organizations

concerned, unless the treaty provides otherwise or it is otherwise agreed”. With respect to the use of the words “same legal effects” in the guideline, we have noted that in the Commission’s earlier syllabus for this topic in Annex C of the document A/66/10, the term “legal effects” was in fact used as an umbrella term encompassing four possible meanings of provisional application. However, from the Commission’s debates and having read draft guideline 6 with the benefit of its commentary, it is clear that the Commission has, with respect to this guideline, settled on the first of those four possible “legal effects”, namely that in the provisional application phase, the parties are “bound by the agreement to apply the treaty in the same way as if the treaty had entered into force”. This is confirmed by paragraph (2) of the commentary to draft guideline 6, where the Commission states: “a treaty or a part of a treaty that is provisionally applied is considered as binding on the parties provisionally applying it...”. We therefore suggest that the Commission consider recasting draft guideline 6 in terms of an explicit reference to the “binding” character of provisional application, instead of using the term “legal effects”, which had been used earlier to encompass several possible meanings. This would put the Commission’s conclusion on the meaning of provisional application beyond doubt.

9. Second, still on draft guideline 6, the Commission should, in its commentary, elaborate upon the exception to the default position contained in the proviso “unless the treaty provides otherwise or it is otherwise agreed”. We have noted that a wealth of information on treaty practice has been amassed by the Secretariat, particularly in its excellent third Memorandum (A/CN.4/707) and I would, on behalf of my delegation, express our appreciation for the assistance the Secretariat has rendered in this regard. The Secretariat’s Memorandum is currently cited in general terms in footnote 657 in the Commission’s commentary on draft guideline 6. When the Commission considers this Memorandum in detail in 2018, we suggest that the Commission consider citing specific examples of clauses that, in the Commission’s view, would fall within the proviso “unless the treaty provides otherwise or it is otherwise agreed”. This will provide a useful reference point for States and international organizations when the guidelines are eventually finalised.

10. Third, on termination of provisional application: Termination is dealt with in paragraph (5) of the commentary to draft guideline 6, as well as in draft guideline 8, which is entitled “Termination upon notification of intention not to become a party”. In paragraph (5) of the commentary to draft guideline 6, the Commission states that the termination rule is reflected in article 25, paragraph 2 of the 1969 Vienna Convention, and is “without prejudice” to issues of responsibility for breach arising in the provisional application phase. Singapore’s view is that a more definitive statement can be made that in the absence of express treaty language or agreement to the contrary, termination of provisional application can only have prospective effect. In other words, the position in the provisional application phase mirrors that currently articulated in article 70 of the 1969 Vienna Convention. As a matter of practical guidance, it would be helpful for the Commission to set this out not just in the commentary but in the draft guidelines themselves.

11. Finally, I come to “Other decisions and conclusions of the Commission”.

12. Singapore is happy to note that the Commission has added “General principles of international law” to its long-term programme of work. My delegation has read the syllabus with interest and welcomes the robust and integrated approach taken therein.

13. As for the second addition to the long-term programme of work, which is “Evidence before international courts and tribunals”, our view is that this topic, while useful, may be less pressing for the Commission to address. As the syllabus describes, this topic is already the subject of past and ongoing study by other bodies. It is also our view that, by virtue of their character, there will necessarily have to be some degree of latitude for the development of evidential rules according to judicial and arbitral practice.

14. In closing, Mr. Chair, Singapore looks forward to the Commission’s celebration of its seventieth anniversary, and supports the programme recommended for associated commemorative events. As we approach this critical date, it is more important than ever that the Commission’s work output should not only “reflect the needs of States”, but also

“reflect new developments in international law and pressing concerns of the international community as a whole”. Delegations will recognise these as two of the four criteria that the Commission itself recommended in 1996 as criteria that should guide the identification of topics to be considered.

15. In this respect, Singapore notes that several other important topics, including “The fair and equitable treatment standard in international investment law”, remain on the Commission’s long-term programme of work as of 2017. Mr. Chair, my delegation has previously spoken at length on the significant impact of international economic law on governmental activity, and the amount of legal work that it generates for government legal advisers on a daily basis.¹ This is a reality that cannot be ignored. We therefore would be interested in learning more about the Commission’s plans to address the other topics on its long-term programme of work, perhaps at a suitable juncture during the commemorative events planned for 2018.

16. I thank you for your attention.

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¹ A/C.6/66/SR.21, paras. 77-80.