



**INDIA**  
**भारत**

**STATEMENT BY**

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**ON**

**AGENDA ITEM 82**

**“REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE  
WORK OF ITS SEVENTIETH SESSION”**

**AT THE**

**SIXTH COMMITTEE OF THE 73<sup>rd</sup> SESSION OF THE  
UNITED NATIONS GENERAL ASSEMBLY**

**NEW YORK**

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**Mr. Chairman,**

At the outset, India would like to thank Mr. Eduardo Valencia-Ospina (Colombia) Chairman of the seventieth session of the International Law Commission, for comprehensive introduction of the Report of the Commission and for guiding its work at this session. We also thank all Members of the Commission for their valuable contribution to the work of the Commission.

Taking stock of the volume of work, the Report reveals that the Commission has been able to complete work on two topics, namely, “Subsequent agreements and subsequent practice in relation to the interpretation of treaties” and; “Identification of customary international law.” Eight topics are remaining on the programme of work of the Commission and the work on them is in progress namely, Provisional application of treaties; Peremptory norms of general international law (*jus cogens*); General principles of law; Succession of States in respect of State responsibility; Immunity of State officials from foreign criminal jurisdiction; Crimes against humanity; Protection of environment in relation to armed conflicts and; Protection of the atmosphere. Except the topic of “crimes against humanity”, draft articles of which are under consideration of the States for comments, all topics were debated in the Commission’s current session.

**Mr. Chairman,**

Following the Clusters’ arrangement of topics and among the topics of Cluster 1, our focus will be on the topics “Subsequent agreements and subsequent practice in relation to the interpretation of treaties” and; “Identification of customary international law.”

**Mr. Chairman,**

Mr. Georg Nolte deserves appreciation for his hard work since 2009 as Chairman of the Study Group in the name of the topic “Treaties over time”, based on the recommendations of which in 2012, the Commission renamed the topic as “Subsequent agreements and subsequent practice in relation to the interpretation of treaties” appointing Mr. Georg Nolte himself as the Special Rapporteur. As a result of the consideration by the Commission, of four reports by the Special Rapporteur, in 2016 a set of 13 draft conclusions with commentaries thereto was adopted. At its current year’s session, the Commission considered the fifth report of the Special Rapporteur along with the observations of Governments and adopted the entire set of draft Conclusions and commentaries thereto, recommending for the General Assembly to take note of the draft Conclusions in a resolution and commend the same to the attention of States and others for use in interpretation of treaties.

**Mr. Chairman,**

This work, in the form of draft Conclusions, includes extensive analysis of article 31 and 32 of the Vienna Convention on the Law of Treaties, 1969. Paragraph 1 of Conclusion 2 mentions that these articles of the Vienna Convention are reflective of the customary international law. In an attempt to bring clarity to the meaning and scope of interpretation of these articles, paragraph 2 of Conclusion 5 states that the conduct of non-State actors does not constitute subsequent practice under articles 31 and 32. Paragraph 1 of Conclusion 6 has stipulated that a mere agreement of the parties not to apply a treaty temporarily or to establish a practical arrangement does not amount to taking a position regarding the interpretation of the treaty. Paragraph 3 of Conclusion 7 of this work reflects the presumption that the subsequent

agreement or practice cannot amend or modify the treaty. Further, according to an observation in paragraph 1 of Conclusion 10, such agreements or practice may, but need not be legally binding. We agree with these observations.

This work would certainly be useful for States and other in need of guidance as to the import of articles 31 and 32 of the Vienna Convention on the Law of Treaties.

**Mr. Chairman,**

Coming to the topic “**Identification of customary international law**”, which the Commission took over as “Formation and evidence of customary international law” in 2012, and later changed as the “Identification of customary international law” has also been completed in the current year’s session, with the adoption of a set of sixteen draft Conclusions along with the commentaries. We would like to congratulate the Commission in general and Sir Michael Wood the Special Rapporteur for the topic in particular in this context.

We have been giving our views on this topic and the resulted Conclusions during the process of their consideration in the Sixth Committee. Customary international law is a formal source of international law having been recognized in the Statute of the International Court of Justice, though unlike the treaty provisions, it may not be sometimes so easy to find out that what the applicable customary international law may be in a given case or situation. We are hopeful that in the absence of authentic guidance or methods by which the evidence of the existence or the process of formation of a customary international law principle could be appreciated and identified, the Conclusions adopted by the Commission would be of relevance to help fill this gap.

We once again congratulate the Commission as a whole and both the Special Rapporteur in particular for the completion work on their respective topics and support the recommendations of the Commission relating thereto.

**Mr. Chairman,**

Finally we would also like to congratulate the Commission for having celebrated its seventieth anniversary this year, both in New York and Geneva. I (Dr. Vishnu Dutt Sharma) was fortunate enough to be part of the event in Geneva on 5<sup>th</sup> and 6<sup>th</sup> July. The event was a unique opportunity to exchange and share views with the fellow Legal Advisers of the UN member States, the Commission Members and other international law experts focusing on issues concerning international law and also the matters concerning the Commission itself.

**Thank you Mr. Chairman.**