

**Statement by
DELEGATION OF VIET NAM
at the 73rd Session of the Sixth Committee of UNGA , October 2018**

***on Agenda Item 82: “Report of the International Law Commission”
Cluster I (Chapters I, II, III, IV, V, XII and XIII)***

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Mr. Chair,

Distinguished delegates,

My Delegation would like to express our sincere thanks to the International Law Commission for the comprehensive report on the work of its seventieth session. Viet Nam highly appreciates all members of the Commission at present and in the past for their noble and hard work and dedication to the progressive development and codification of international law during the past 70 years. Viet Nam has joined with other countries and international organizations in commemorating the 70th anniversary of the ILC. The Commission’s tireless efforts have provided my country and this Committee with valuable information and analysis on many important areas of international law.

In the first cluster, our Delegation would like to touch upon some remaining issues concerning the topics discussed by the ILC, i.e. "*Subsequent Agreements and subsequent Practice in relation to the Interpretation of Treaties*" and "*Identification of Customary International Law*".

Mr. Chairman,

1. First, regarding the topic of **Subsequent Agreements and subsequent Practice in relation to the Interpretation of Treaties**, my Delegation is pleased to learn that the Commission has adopted the draft Conclusions in its

entirety by consensus. In this regard, my Delegation would like to have the following comments.

- At this point, we would like to reiterate that subsequent practice as the authentic means of treaty interpretation stipulated in paragraph 3 Article 31 of the Vienna Convention on the Law of Treaties 1969 must be the one that reflects the parties' true and common intention. Other subsequent practice may only be a supplementary means of treaty interpretation in Article 32 of the Vienna Convention 1969.

- In the earlier draft of the Conclusion, my Delegation had voiced our concern regarding the treatment of "silence" on part of the States with regard to the pronouncement of expert treaty bodies. In the final draft Conclusions, the Special Rapporteur has rightly pointed out that silence by a party should not be presumed to constitute subsequent practice under article 31, paragraph 3(b), accepting an interpretation of a treaty as expressed in a pronouncement of an expert body. We share the view that any *ultra vires* decisions by these expert treaty bodies would bear no legal significance as noted in the commentary.

- We, therefore, congratulate the Special Rapporteur of this topic, Prof. Georg Nolte from Germany for all his hard work and dedication in formulating 5 reports and the adopted Conclusions.

Mr. Chairman,

2. Second, turning next to the topic of **Identification of Customary International Law**, my Delegation take note that the Special Rapporteur, Sir. Michael Woods, at the 70th session of the Commission, has submitted his fifth report on the topic with 16 Conclusions as revised upon comments and observations from Member States.

The Delegation of Viet Nam supports and commend efforts of the Special Rapporteur and the Commission to work on a comprehensive report on this important and difficult as well as high-theoretical topic of general international law.

In principle, we support a rigorous and systematic approach in examining the State practice in order to identify customary international law. Therefore, a selective identification and lowering of the threshold of identification should be discouraged. The ILC report on the topic should be improved.

In this regards, my Delegation would like to have some comments as follows:

- With regard to draft Conclusion 4 on Requirement of Practice, in paragraph 8 of its Commentary, the Commission mentioned that actions to be taken as State practice in formulating customary international law must be actions that such State has endorsed or reacted to. This is, indeed, a correct approach as States should have acknowledged and reacted to actions that may be directly or indirectly legally binding on them. We, therefore, believe the Special Rapporteur should reflect this approach by adding "*subject to the extent that States have endorsed or reacted to them*" at the end of paragraph 3 of draft Conclusion 4.

- With regard to draft Conclusion 8 "The Practice must be general" and Conclusion 15 "Persistent Objector", we notice that while draft Conclusion 8 mentioned that no particular duration is required, even a short duration may suffice, such formulation may cause difficulty for a persistent objector when the specific timing for a customary international rule to arise is disputable.

In addition, paragraph 2 Conclusion 15 provides that "*2. The objection must be clearly expressed, made known to other States, and maintained persistently*". We take note of paragraph 8 in the Commentary of Conclusion 15 which reads "*The requirement that the objection be made known to other States means that the objection must be communicated internationally; it cannot simply be voiced internally. It is for the objecting State to ensure that the objection is indeed made known to other States.*" At the same time, its paragraph 9 states that "*It is clear, however, that States cannot be expected to react on every occasion, especially where their position is already well known.*" In fact, the Special Rapporteur has not clarified the "maintained" requirement and these two statements may send confusing signals to States whether their objection must be communicated directly to the States concerned on every occasion or a objection mentioned by the Spokesperson at the Foreign Ministry or contained in a Diplomatic Note would suffice.

My Delegation, therefore, look forward to further elaboration by the Special Rapporteur on this matter.

Thank you, Mr. Chair.