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STATEMENT BY MR PANG KHANG CHAU,
DIRECTOR-GENERAL, INTERNATIONAL AFFAIRS DIVISION,
ATTORNEY-

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and the weight to be accorded given their wide variations, including organisational
structures, mandates, composition of decision-making organs and manner in which
decisions are taken. The distinction drawn in the third report between the practice of
States within international organisations from that of the international organisation is
an important one. Acts of the latter should not generally be assimilated to that of the
States themselves. In that light we appreciate the Special Rapporteur’s proposal to
include a new paragraph 3 in draft conclusion 4[5] stipulating that the conduct by

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reason, we urge caution in ascribing significance to their role in the formation or
identification of customary international law.

6. On draft conclusion 16 on “persistent objector”, we welcome the affirmation of
this important exception. The Special Rapporteur has described its essential elements
as (a) objection must be clearly expressed; (b) objection is made known to other States
and (c) objection must be maintained persistently. Insofar as the third element is
concerned, we urge a pragmatic and balanced approach. In our view, it is unrealistic
and indeed unwise to demand or expect total consistency or complete persistency, or
to adopt a checklist approach. The increasing convergence of distinct disciplines and
subject matter across different fora as well as the complex political considerations that
manifest themselves in the external, observable practice, require a holistic and
contextual approach in the analysis of this element.

Crimes Against Humanity

7. Next, Mr Chairman, on the topic of “Crimes Against Humanity”, my delegation

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determined results and that any outcome would require further study. While the
report seeks to address the potential benefits of developing draft articles that might

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separate legal personality, was created by the parties for specific purposes and not
infrequently, with its own distinct functions and powers vis-à-vis the members of that
organization. Membership of that organization can be fluid, with the subsequent entry
of new member states that were not involved in the negotiations on the constituent
instrument or the formation of the subsequent practice. While we are conscious of the
imperative for flexibility and adaptability to changing circumstances that may
sometimes be required to make the treaty work over time, we do need to proceed
prudently to avoid taking “short-cuts” that inappropriately circumvent the amendment
mechanisms within the constituent instrument. From the perspective of prospective
new members, questions of transparency and legitimate expectations are also
important considerations.

13. In this context, there is a need for robustness and precision as to what conduct
constitutes “subsequent agreement” or “subsequent practice”

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“subsequent practice” under Article 31(3)(a) and Article 31(3)(b) respectively. These
are particularly complex issues that warrant further reflection and we hope that the
Commission will continue to update and compile such examples and the accompanying
commentary, which will serve as a very useful practical guide.

15. Finally, we note that while the draft conclusion specifically does not address the
questions relating to pronouncements by a treaty monitoring body consisting of
independent experts, this is a matter which the Commission may deal with at a later
stage. We would agree that it may be useful for the Commission to return to this
question in the future, and assess if there is a need to address this in the draft
conclusion. There are a range of treaty monitoring bodies with a range of
responsibilities. Further, the effect and weight of pronouncements by such bodies