



MALAYSIA

Permanent Mission to the United Nations, New York

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**STATEMENT BY
MR. LUTFI SHEIKH GHAZALI
DELEGATE OF MALAYSIA
TO THE 76TH SESSION OF THE GENERAL ASSEMBLY**

**ON AGENDA ITEM 82:
REPORT OF THE INTERNATIONAL LAW COMMISSION
ON THE WORK OF ITS SEVENTY-SECOND SESSION**

**CLUSTER II - CHAPTERS VI (IMMUNITY OF STATE OFFICIALS
FROM FOREIGN CRIMINAL JURISDICTION)
AND IX (SEA-LEVEL RISE IN RELATION TO INTERNATIONAL LAW)**

**AT THE SIXTH COMMITTEE OF
THE 76TH SESSION OF THE GENERAL ASSEMBLY**

NEW YORK, 29 OCTOBER 2021

Madam Chair,

IMMUNITY OF STATE OFFICIALS FROM FOREIGN CRIMINAL JURISDICTION

Malaysia thanks Ms. Concepción Escobar Hernández, the Special Rapporteur for the topic “Immunity of State officials from foreign criminal jurisdiction”, for her outstanding contribution that has been made towards the Eighth Report.

2. Malaysia understands that the issues discussed in the Eighth Report, especially the draft articles which have been submitted to the Commission at its seventy-second session, are vital and warrant great consideration in determining and applying immunity of State officials from foreign criminal jurisdiction.
3. My delegation also notes the progress of discussions on this topic, particularly with the provisional adoption of draft articles 1 through 12 by the Commission as of its seventy-second session. Once the full set of draft articles are finalised, Malaysia opines that all

Member States should be allowed to comment on the full set of draft articles to ensure that all Member States are equally informed of them. Today, my delegation wishes to provide our comments specifically on draft articles 17 and 18.

Draft Article 17

4. Regarding the proposed draft article 17, Malaysia is generally agreeable with this draft article. However, we wish to emphasise that there should be an acceptance that the suspension of national proceedings which is pending an international dispute settlement on this matter would be particularly deferential to the State of the official.

5. With reference to paragraph 2 of draft article 17, Malaysia agrees with the Special Rapporteur that having a time limit would be beneficial as a guide to avoid any delays to the dispute settlement process. Be that as it may, in view of the sensitivities and characteristics of the issue of immunity, and to have a clearer perspective on the most appropriate time limit for this draft article, Malaysia proposes for the Special Rapporteur to conduct an in-depth study on the possible pros and cons of both a 6-month time limit and a 12-month time limit for further deliberation.

Draft Article 18

6. Additionally, Malaysia welcomes the inclusion of draft article 18 which acknowledges the need to safeguard the relevance and importance of international criminal tribunals in fighting against impunity for the most serious crimes of international concern. My delegation is flexible about the placement of this draft article, either as draft article 18 or as paragraph 3 in draft article 1.

Madam Chair,

SEA-LEVEL RISE IN RELATION TO INTERNATIONAL LAW

7. Turning now to the topic “Sea-level rise in relation to international law”, Malaysia would like to record her appreciation to Mr. Bogdan Aurescu and Ms. Nilufer Oral, the co-chairs of the Study Group, for the excellent preparation of the first issues paper focusing on issues relating to the law of the sea as well as the subsequent analysis thereto.

8. Malaysia appreciates the analysis of the topic and the views expressed by members of the Study Group as well as Member States that have provided examples of

their practice. At the same time, Malaysia recalls the mandate of the Study Group and urges States to proceed on a cautious basis so as not to modify existing international law, in particular the United Nations Convention on the Law of the Sea 1982.

9. Malaysia wishes to highlight that reclamation activities may have the effect of altering a State's maritime space. Similarly, sea-level rise also poses risks and challenges to the law of the sea, including possible legal effects on the outer limits of a State's maritime space. Although both sea-level rise and reclamation activities pose possibly similar effects on a State's maritime space, both activities should be carefully distinguished so as to avoid any State from taking advantage by enlarging its maritime space under the pretext of sea-level rise. Additionally, Malaysia shares the view with the majority of States that maritime baselines, limits and boundaries should be fixed in perpetuity regardless of sea-level rise.

10. Malaysia looks forward to the second issues paper which will address issues relating to statehood and protection of persons affected by sea-level rise, under the co-chairpersonship of Ms. Patricia Galvao Teles and Mr. Juan Jose Ruda Santolaria.

Thank you.