



MALAYSIA

Permanent Mission to the United Nations, New York

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STATEMENT BY
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ATTORNEY GENERAL'S CHAMBERS OF MALAYSIA

ON AGENDA ITEM 77:
REPORT OF THE INTERNATIONAL LAW COMMISSION
ON THE WORK OF ITS SEVENTY-THIRD 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 77TH SESSION OF THE GENERAL ASSEMBLY

NEW YORK, 28 OCTOBER 2022

Mr. Chair,

CHAPTER VI: IMMUNITY OF STATE OFFICIALS FROM FOREIGN CRIMINAL JURISDICTION

My delegation would like to congratulate Ms. Concepción Escobar Hernández, the Special Rapporteur for the topic of "Immunity of State officials from foreign criminal jurisdiction", for her outstanding contribution towards the Reports submitted to the International Law Commission (ILC).

2. Malaysia understands that the issues discussed in the ILC report pertaining to the draft articles are vital and warrant great consideration in determining and applying immunity of State officials from foreign criminal jurisdiction.

3. Noting that Governments are invited to provide their comments and observations pertaining to the draft articles until 1 December 2023, Malaysia would like to encourage all Member States in giving comments on the said draft articles to ensure a holistic and all-encompassing views.

4. Malaysia's statement on this topic will focus on an issue of importance to Malaysia. With regard to the proposed draft article 7 and its annex, Malaysia is of the view that this proposed provision may pose difficulties for states who are not parties to the Rome Statute of the International Criminal Court, the International Convention on the Suppression and Punishment of the Crime of Apartheid and the International Convention for the Protection of All Persons from Enforced Disappearance. On this aspect, further study needs to be done on the possible inclusion of a provision for states to make reservation on the draft article and its annex.

Mr. Chair,

CHAPTER IX: SEA-LEVEL RISE IN RELATION TO INTERNATIONAL LAW

5. Turning to Chapter IX of the report, my delegation would like to record our appreciation to Ms. Patrícia Galvão Teles and Mr. Juan José Ruda Santolaria, the co-chairs of the Study Group on sea-level rise in relation to international law, for the excellent preparation of the second issues paper focusing on issues relating to statehood and the protection of persons affected by sea-level rise.

6. Malaysia appreciates the in-depth 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.

7. While there have not been any cases of land territory of a State being completely covered by the sea or becoming uninhabitable due to sea-level rise, Malaysia notes that some States, in particular small island States, are currently facing the impact of sea-level rise. Malaysia shares the view of the Special Rapporteur that all States, regardless of whether they are currently facing the impact of sea-level rise or otherwise, should commence deliberations on finding the solution to this issue.

8. With regard to the issue of statehood, Malaysia is of the view that great caution is needed in considering the presumption of continuing Statehood in favour of the States directly affected by sea-level rise. This is in view of the fact that such presumption would ultimately lead to an exclusion of the criteria of the Montevideo Convention on the Rights and Duties of States 1933. On this note, Malaysia recalls the mandate of the Study Group and urges States to proceed on a cautionary 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 despite the construction of artificial islands by some affected States in response to the phenomenon of sea-level rise in order to preserve the statehood of the island States, its effects under the international law remain ambiguous and need to be carefully examined. There is clearly a nexus between the preservation of statehood and the exercise of sovereignty and jurisdiction over the land territory and maritime spaces such as the territorial sea, exclusive economic zone and the continental shelf. This is considering the fact that the exercise of sovereignty is territorial base and therefore continuation of statehood should be very much dependent on the land territory and the maritime spaces generated by such land territory. Hence, it is to be impressed that the exercise of a State's sovereignty could not be based on an artificial territory.

10. With regard to the relevant principles that may be used as guidance for protection of persons affected by sea-level rise, Malaysia shares the same view with the Special Rapporteur that currently, there is no binding international legal instrument which is specific to the protection of persons affected by the adverse effects of sea-level rise. While Malaysia acknowledges that the impact of sea-level rise on the affected persons needs to be considered, Malaysia is of the view that any future obligations in terms of protection and assistance to the persons affected by sea-level rise should be based on the principle of common but differentiated responsibilities, the national capacity of the non-affected States, humanitarian principles and case-by-case basis. In this regard, Malaysia will offer assistance or protection to persons affected by sea-level rise in accordance with its sovereign responsibility as recognized by international law, and this includes protecting national security, public order (*ordre public*), morals, rights and freedom of her citizens.

Thank you.