



MALAYSIA

Permanent Mission to the United Nations, New York

**STATEMENT BY
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**ON AGENDA ITEM 79:
REPORT OF THE INTERNATIONAL LAW COMMISSION
ON THE WORK OF ITS SEVENTY-FOURTH SESSION**

CLUSTER I – CHAPTERS I, II, III, IV (GENERAL PRINCIPLES OF LAW), VIII (SEA-LEVEL RISE IN RELATION TO INTERNATIONAL LAW) AND X (OTHER DECISIONS AND CONCLUSIONS)

**AT THE SIXTH COMMITTEE OF
THE 78TH SESSION OF THE GENERAL ASSEMBLY**

NEW YORK, 27 OCTOBER 2023

Mr. Chair,

At the outset, allow me to thank Dr. Nilufer Oral and Professor Patricia Galvao Teles, Chairs of the International Law Commission (ILC) for their briefings to this Committee, and congratulate both Chairs as well as other members of the Commission for their exceptional work at the seventy-fourth session. My delegation also notes with appreciation the Report of the Commission of the recent session (A/78/10).

CHAPTER IV: GENERAL PRINCIPLES OF LAW

2. Malaysia wishes to express its deep appreciation to Mr. Marcelo Vazquez – Bermudez for his outstanding contribution as the Special Rapporteur on the topic of “General principles of law” that has led to a successful adoption of the draft conclusions on general principles of law at its first reading.

3. Malaysia also notes that the Commission decided, in accordance with articles 16 to 21 of its statute, to transmit the draft conclusions, through the Secretary-General, to Governments for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 1 December 2024. Nevertheless,

it is my delegation's considered view that there are several preliminary propositions that Malaysia wishes to put forward on the draft conclusions as follows:

Draft Conclusion 6: Compatibility test should be in relation to norms that were universally accepted and that could be considered as a reflection of the basic structure of the international legal system

4. On Draft Conclusion 6, Malaysia notes the compatibility test is important to determine the principle *in foro domestico* to be transposed into the international legal system. Malaysia views that in deciding which general principles of law (derived from domestic court or tribunal) may be transposed to the international legal system, relevant criteria such as variety and diversity must be considered. The test should be carried out with caution to identify the issues raised and discussed by States involved in the context of the community of nations, any particular treaty, customary rules or other international instruments.

Draft Conclusion 8: Decisions of courts and tribunals; Draft Conclusion 9: Teachings

5. On the Drafts Conclusion 8 and 9, Malaysia supports the adoption of these two draft conclusions.

Draft Conclusion 10: General principles of the law fulfilled the same functions as the other sources of international law and not being necessarily limited to gap-filling

6. On Draft Conclusion 10, Malaysia opined that though there was consensus by Member States that general principles of law fulfilled the same functions as the other sources of international law, caution must be applied whilst determining the nature of principles and their applicability to the issues presented before the international courts and tribunal.

Draft Conclusion 11: General principle of law could exist in parallel with a rule of customary international law

7. On Draft Conclusion 11, Malaysia supports the proposition that the possibility of a parallel exists between general principles of law and rules of customary international law. However, it is important to acknowledge that the emergence of a general principle of law is dependent on its compatibility with every single treaty and customary rule in the context in which it is to be applied.

8. Malaysia takes note of the official deadline, set for States to submit their written comments and observations on the draft conclusions, which is 1 December 2024. We are committed to contributing our written input as part of this crucial process. In this context,

we respectfully request the Secretary-General to take the necessary steps to compile and circulate a comprehensive document of comments and observations well in advance of the forthcoming sessions in 2024, enabling early consideration.

9. Malaysia's dedication to active engagement in the forthcoming sessions remains steadfast. We are determined to provide substantive insights into the future and substance of the draft conclusions. Our contributions will be anchored in Malaysia's established position on this matter, with the overarching objective of advancing constructive comments and achieving meaningful outcomes. Therefore, we reiterate our view to reserve the right to make further statements on all the draft conclusions and will provide the necessary comments and observations within the stipulated deadline.

Mr. Chair,

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

10. Turning to Chapter VIII of the report, Malaysia would like to record our appreciation to the co-chairs of the Study Group on sea-level rise in relation to international law for the comprehensive preparation of the first issues paper as well as its additional paper focusing on issues relating to the law of the sea.

11. Malaysia appreciates the in-depth analysis and constructive discussions of the topic as well as the views on this issue as expressed by members of the Study Group and Member States. Malaysia shares the view of several Member States that there is no provision in the United Nations Convention on the Law of the Sea 1982 (UNCLOS) imposing Member States to update their baselines or prohibiting the freezing of baselines to address sea-level rise.

12. However, since the question on whether baselines are permanent or ambulatory is still debatable, Malaysia recommends for the Study Group to explore the possibility of coordinates or charts which had been deposited with the Secretary General by the Member States directly affected by sea level rise to be regarded as one of the practical solutions for those Member States to freeze their baselines.

13. In this context, Malaysia is of the view that analysis on the legal or practical implications of Member States wishing to rely on the coordinates or charts deposited with the Secretary General as well as pre-existing coastlines to ensure legal stability of the maritime zones should also be further addressed by the Study Group. The analysis may include the question on whether the Member States would be entitled to rely on the continuity of its baselines or justify any measures undertaken to address sea-level rise without any action being taken such as to publish its coordinates or charts with the Secretary General or conclude boundary agreements.

14. It is important to note that Malaysia does not underestimate the challenges posed by climate change against the coastlines of Member States directly affected by sea-level rise. However, Malaysia believes that climate change cannot be used to legitimise measures to preserve maritime space without credible scientific assessment that justifies the sea-level risks faced by the Member States.

15. In such instances where the scientific evidence with regard to the risks posed by sea-level are lacking, the question of the legality of the measures undertaken by the Member States to address sea-level risks should also be a concern considering its potential impacts towards the continuity of maritime zones. Malaysia views that measures undertaken by such Member States to preserve its coastlines must be proportionate and seek to address urgent climate change risks. In this respect, any measures designed to enlarge the coastlines under the pretext of sea-level rise also poses risks to the legal stability of the maritime zones and could create conflict, particularly for areas which are yet to be delimited.

16. In this regard, Malaysia wishes to impress that consideration on the legality of the measures undertaken for preservation of coastlines should be addressed by the Study Group in the interest of legal stability of the maritime zones. For this purpose, Malaysia supports the need for the Study Group to prepare concrete solutions to practical problems for States directly affected by sea-level rise instead of any consideration being given to interpreting the UNCLOS or proposal for amendments to it as such approach is not mandated by the Commission.

Mr. Chair,

17. To conclude, Malaysia looks forward with keen interest on development in the subtopics of statehood and the protection of persons affected by sea-level rise and will continue to cooperate in terms of sharing of knowledge and exchange of information.

Thank you.