

MALAYSIA

Permanent Mission to the United Nations, New York



Mr. Chair,

On

13.

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20. As regards draft guideline 13, Malaysia is agreeable with the Commission that it is unnecessary to make explicit in the provision reference to an internationally wrongful act that occurred before the date of succession as in a situation of unification of State, the predecessor State had ceased to exist on the date of succession.

21. Concerning draft guideline 13 bis which provides for the scenario where an injured predecessor State becomes part of another whose legal personality continues, Malaysia is agreeable that the term “wrongdoing State” is a concise way of indicating the State that was responsible for the internationally wrongful act. Therefore, Malaysia is of the view that this draft guideline is generally acceptable.

22. With regard to draft guideline 14, Malaysia is of the view that the proposed formulation is clear and hence, has no objection to such proposal.

23. Further, although Malaysia could support the inclusion of draft guideline 15, Malaysia recommends that the Commission could provide further clarification on situations where exception to the general requirements of continues nationality in the commentary for clarity purposes and implementation of the present guidelines.

24. Concerning draft guideline 15 bis, Malaysia can support the views of the Commission to have a separate paragraph for each scenario.

Mr. Chair,

25. Finally, as stated earlier, Malaysia notes that this is the Special Rapporteur’s last report and that no new draft articles were proposed. With regard to the future programme of work for the topic, it will be up to the new composition of the Commission to decide in 2023. Malaysia welcomes the suggestion made by some Members to establish a working group for the topic to draft the commentaries to the draft guidelines to be transmitted to States for their comments.

Mr. Chair,

CHAPTER VIII: GENERAL PRINCIPLES OF LAW

26. Turning to Chapter VIII of the report, my delegation would like to acknowledge with appreciation the efforts undertaken by the Commission and the Special Rapporteur, Mr. Marcelo Vázquez-Bermúdez, on the topic of “General principles of law”, particularly the third report of the Special Rapporteur (A/CN.4/753), which discussed the issue of transposition, general principles of law formed within the international legal system, and

that the Commission decided to refer draft conclusions 10, 11, 12, 13 and 14, as

33. Thus, Malaysia is of the view that subparagraph (2) of draft conclusion 7 widens the scope of the general principle of law and may render the condition of having the community of nations to recognize the principle as intrinsic to the international legal system ultimately irrelevant.

34. In deciding which general principles of law that may be formed within the international legal system, the relevant criteria such as variety and diversity must be considered. The analysis should be carried out with caution in order to identify the issues raised and discussed by States involved in the context of that particular treaties, customary rules or other international instruments. A comparative analysis between the identification of the existing general principles of law that are derived from national legal system and that are formed within the international legal system should be conducted.

35. In this regard, Malaysia supports the efforts of the Commission and the Special Rapporteur to continue their works on this particular issue of concern with a view, among others, to identify whether there was sufficient State practice in the international legal system to determine whether a particular principle formed within the international legal system might be considered a general principle of law.

36. Irrespective of the foregoing, Malaysia wishes to reiterate its general stance that States only have the benefit of studying the draft conclusions within the context of what has now been provided by the Commission. Therefore, all the draft conclusions should be read in its entirety to ensure that all concerns have been addressed as a whole since they are interrelated to one another. For this reason, Malaysia would like to reserve the right to make further statements on all the draft conclusions once the entire draft is completed.

Thank you.