



MALAYSIA

STATEMENT BY

MR. AHMAD GHAZALI BIN MUHAMAD NADZRI

**REPRESENTATIVE OF MALAYSIA TO THE SIXTH COMMITTEE OF THE
79TH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY**

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

**CLUSTER I - CHAPTERS I, II, III, VII (IMMUNITY OF STATE OFFICIALS FROM
FOREIGN CRIMINAL JURISDICTION) AND X (SEA-LEVEL RISE IN RELATION TO
INTERNATIONAL LAW)**

**AT THE SIXTH COMMITTEE OF
THE 79TH SESSION OF THE GENERAL ASSEMBLY**

NEW YORK, 23 OCTOBER 2024

Mr. Chair,

law formed within the international legal system. As such, this may be construed that even though the principle has not been recognised as intrinsic to the international legal system by the community of nations, the principles may also be considered as general principles of law.

14. 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.

15. In deciding which general principles of law that may be formed within the international legal system, the relevant criteria such as a ca-3(n)6(ed-3()-171(s)-3(itv12(e)-3(rs)5

Mr. Chair,

CHAPTER VII: IMMUNITY OF STATE OFFICIALS FROM FOREIGN CRIMINAL JURISDICTION

19. Malaysia wishes to express its appreciation to the Commission for the work accomplished, whereby proposals were made for consideration on the second reading in relation to Draft Articles 1 to 6 in furtherance of comments and observations made by States as well as the Sixth Committee. In light of the recent request by the Commission for Governments to submit their comments and observations on draft articles 7 to 18 and the draft annex of this topic, we wish to share our comments and observations on these draft articles through four (4) key issues.

20. Firstly, immunity *ratione materiae* protects State officials from being prosecuted in foreign courts for acts performed in an official capacity. Although draft article 7 provides the exception to this rule, definitions such as genocide, war crimes, and crimes against humanity are enumerated in the Rome Statute of the International Criminal Court, in which not all States are signatories. The same applies to the International Convention on the Suppression and Punishment of the Crime of Apartheid (“Apartheid Convention”) and the International Convention for the Protection of All Persons from Enforced Disappearance (“ICCPED”). Thus, Malaysia opines that clarifications must be sought from the Commission on how best to invoke draft article 7 in respect of such circumstances, including the possible inclusion of provisions on reservations made by the state parties.

21. Secondly, there is a necessity for the Commission to provide clear and coherent explanation on the application of the procedural provisions *vis-à-vis* the two types of immunity namely immunity *ratione personae* and immunity *ratione materiae*. This took into account that no distinction was made to the procedure of invoking the two different types of immunity by the State of the official, particularly on draft articles 9,11 and 14.

22. Thirdly, on the application of draft article 13 in relation to the immunity of State officials from foreign criminal jurisdiction, we believe that it may be prudent to incorporate elements of confidentiality at a starting point for the examination of any request for information, taking into consideration the potential sensitivities of information that may be requested and/or exchanged between States on the application or invocation of immunity. Apart from that, Malaysia opines that the draft article itself is silent on the ability of the requested State to assess whether to formulate conditions as part of the process of “considering in good faith” a request for information that could facilitate the transmission of such information.

23. Fourthly, Malaysia notes that the Commission omitted the initially proposed provision in draft Article 18, which would have required the suspension of jurisdiction by the forum State when a dispute is referred to arbitration or the International Court of Justice, due to a lack of supporting precedents. While the Commission recognized that this procedural safeguard could encounter serious difficulties in some State legal

systems, Malaysia believes that suspending domestic proceedings should be carefully negotiated between parties to ensure fairness and balance in the treatment of State officials under foreign criminal jurisdiction.

24. Malaysia has submitted our full written comments on these four (4) keys issues to the Commission on 27 November 2023 and hope that these issues will be taken due consideration towards the final end product of the draft articles. In this regard, Malaysia would like to seek guidance from the Commission on whether states who had submitted its comments and observations concerning draft articles 7 to 18 and the draft annex of the draft articles on immunity of state officials from foreign criminal jurisdiction is required to submit the same by 15 November 2024.

Mr. Chair,

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

level rise, for instance, to freeze its baselines or prevent any factors that could contribute to the loss its statehood due to sea level rise.

29. At this juncture, Malaysia wishes to impress that the Study Group should exercise caution in its analysis that may potentially be perceived as going beyond the traditional criterion for statehood under the Montevideo Convention or intended to create a new framework for the Member States affected by sea level rise. In this regard, the creation of a new framework could possibly allude towards an exemption to the Montevideo Convention and, as such, could potentially undermine the efforts which had or may be undertaken by certain States to achieve the recognition of its statehood. In this respect, Malaysia recalls the mandate of the Study Group and underscores the importance for the study to be pursued on a precautionary basis so as not to modify existing international law.

30. In this respect, Malaysia encourages the Study Group to explore precautionary solutions for States directly affected by sea-level rise to preserve statehood as a paramount priority in its study and address gaps, if any, for the im1 223(l lemS)-2ndteonaa 610(u)-3