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**STATEMENT BY
MS. INTAN DIYANA AHAMAD, DELEGATE OF MALAYSIA
ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON
THE WORK OF ITS SIXTY-NINTH SESSION**

**CLUSTER 2
CHAPTER VI: PROTECTION OF THE ATMOSPHERE
CHAPTER VII: IMMUNITY OF STATE OFFICIALS FROM FOREIGN CRIMINAL
JURISDICTION**

**AT THE SIXTH COMMITTEE OF THE 72nd SESSION OF THE UNITED NATIONS
GENERAL ASSEMBLY, NEW YORK, 25-27 OCTOBER 2017**

Mr. Chairman,

1. Malaysia wishes to record its earnest appreciation to the Special Rapporteur, Mr. Shinya Murase for his report "Protection of the Atmosphere" which reflects the outcome of his research on the protection of atmosphere and the contemporary practice on the topic. Malaysia understands that the task of clarifying the scope of this topic and its subsequent components is indeed a challenge, and the conscientious efforts in examining the basic principles and in drawing up treaty practices and judicial decisions on the same requires sheer determination.



MALAYSIA

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2. Malaysia notes that the three new preambular paragraphs to the draft guidelines addresses the inter-relationship between the protection of atmosphere and other branches of international law. In relation to the new fourth preambular paragraph, Malaysia observes that this preambular paragraph acknowledges the close interaction that arises from the physical relationship between the atmosphere and the oceans.

3. In this context, it should be noted that the United Nations Convention on the Law of the Sea (UNCLOS) only addresses atmosphere-related issues only if they are within the territorial airspace and affects the marine environment. UNCLOS does not address the atmosphere itself or circumstances where oceans may affect the atmosphere. The inter-relationship between the oceans and the atmosphere covered by UNCLOS is therefore limited and unilateral, thus requiring further efforts by the international community to overcome the gaps within the relevant international law. In this regard, Malaysia is of the view that the inclusion of the new preambular paragraph four is necessary to coordinate the laws on protection of atmosphere and the oceans.

4. With reference to the new preambular paragraph 6, and drawing particular attention to the special situation of low-lying coastal areas and small islands developing states, Malaysia notes that this paragraph addresses one of the most profound impacts of global warming-caused atmospheric degradation on the rise of sea-level. It is observed that this paragraph is drafted in furtherance to preambular paragraph 4, to link the inter-relationship between the protection of atmosphere and the oceans. Malaysia supports the new preambular paragraph 6 in this Guidelines as it is important to consider the



MALAYSIA

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disadvantaged geographical positions of the affected States especially those in the low-lying coastal areas and those of the small islands.

5. Next, upon scrutinizing the commentary to the new preambular paragraph 8 as expounded in the Special Rapporteur's fourth report, Malaysia observes that this paragraph emphasizes the interest of future generation, which put particular focus on the need to protect the rights of people vulnerable to the impact of atmospheric pollution and degradation namely, the indigenous community and those living in small island developing states. In this regard, Malaysia calls on the Special Rapporteur to consider various factors that are important in balancing the interest of the present and future generations.

Mr. Chairman,

6. The new draft guideline 9 touches on inter-relationships with other relevant rules of international law. This guideline seeks to reflect the inter-linkages between international law relating to the protection of the atmosphere and other branches of international law such as trade and investment law, the law of the sea and human rights law. Malaysia is of the view that the list of laws should not be exhaustive as there might be other fields of law that are equally relevant. Be that as it may, any proposal to expand the linkages between protection of atmosphere and the other branches of international law should be considered on its merits and on case-by-case basis.



MALAYSIA

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7. Overall, Malaysia views that the draft guidelines should work towards providing clear guiding principles and approaches, for states to take appropriate steps to protect the atmosphere.

Mr. Chairman,

8. Turning to the topic of immunity of state officials from foreign criminal jurisdiction, Malaysia notes that the Commission had continued its consideration of the fifth report on the subject matter at its sixty ninth session and voted to adopt draft article 7 and annex to the draft articles and the footnote to two of its headings, together with the commentaries thereto.

9. On this point, Malaysia would like to take this opportunity to recapitulate its position expressed at the seventy first session of United Nations General Assembly concerning the limitations and exceptions to the immunity of state officials from foreign criminal jurisdiction, of which Malaysia had agreed with the view expressed by the Special Rapporteur in his fifth report that there are discrepancies in the characterization of a particular act as a limitation, especially in the case of international crimes in each state.

10. Malaysia would also like to reiterate its position that the formulation of draft article 7 should be dealt with cautiously by the Commission. Based on the fifth report, the scope and parameter of the crimes committed that cause harm to persons in the territory of the forum state is still unclear as it has yet to be defined and has not attained the status of



MALAYSIA

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customary law. In addition, Malaysia had highlighted that the application of functional immunity (*ratione materiae*) and personal immunity (*ratione personae*) in paragraphs 1 and 2 of draft Article 7 respectively need to be addressed clearly.

11. Due to the aforesaid reasons, Malaysia views that draft article 7 (1) should be studied and deliberated further since the existing states' practices vary on the definition and characterization of the offences, in particular torture and enforced disappearances. Therefore, Malaysia maintains its reservations on these offences as an exception to immunity.

Mr. Chairman,

12. Malaysia notes that cooperation between states and international organizations or tribunal under draft article 7(3)(ii) plays a vital role in resolving criminal cases that involve two or more states. Therefore, further studies and deliberation should be done since states and international organizations have different legal status.

13. Finally, Malaysia takes note that the Commission will consider the procedural provisions and safeguards applicable to the present draft articles at its seventieth session. Malaysia records its support to the Commission's effort to continue its deliberation on all the aforementioned draft articles and Malaysia looks forward to the relevant commentaries to enable a better understanding of the purpose and intention of the draft articles. Malaysia also looks forward to the sixth report by the Special Rapporteur.



MALAYSIA

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I thank you, Mr. Chairman.