



MALAYSIA

PERMANENT MISSION TO THE UNITED NATIONS

STATEMENT BY
MS. NORIZAN CHE MEH
DELEGATE OF MALAYSIA

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

CHAPTER VII:
SUCCESSION OF STATES IN RESPECT OF STATE RESPONSIBILITY

CHAPTER IX:
GENERAL PRINCIPLES OF LAW

AT THE SIXTH COMMITTEE OF THE
74TH GENERAL ASSEMBLY

NEW YORK, 6 NOVEMBER 2019

Mr. Chairman,

SUCCESSION OF STATES IN RESPECT OF STATE RESPONSIBILITY

1. Malaysia records its appreciation and gratitude to the Commission for its comprehensive report on its seventieth session and to Mr. Pavel Šturma, the Special Rapporteur for the well-organized second report on the topic Succession on States in respect of State responsibility.
2. At the outset, Malaysia notes that the third report of the Special Rapporteur has considered the comments made by the members of the Commission and delegates in the Sixth Committee Meeting in 2018. In this respect, Malaysia views that the third report encompasses sufficient information and analysis on draft articles seven (7) new draft articles namely draft articles 2(f), X, Y, 12, 13, 14 and 15.

3. Malaysia also expresses its gratitude to the Secretariat for the preparation of a memorandum which provides information on treaties that is relevant to the future work of the Commission on this topic (A/CN.4/730).

Mr. Chairman,

4. Malaysia supports the general view expressed by the Special Rapporteur at paragraph 20 of his third report that "the question of separate or joint treatment of responsibility obligations and rights in the context of succession depends on an analysis of all relevant elements. In this context, such analysis should precede the decision on the structure of draft articles, which is mostly a technical or drafting issue". Malaysia also agrees with the Special Rapporteur that the draft articles on this topic are subsidiary in nature and thus, agreements between the States concerned should be given a priority.

Mr. Chairman,

5. In relation to draft article 2(f), Malaysia notes that thus far, the term "States concerned" only appears in draft article 10(3) (Uniting of States) and draft article 13(2) (Uniting of States). Thus, Malaysia is of the view that the definition of "State concerned" is not necessary to be included under draft article 2(f) as this term has been not used throughout all substantive articles on succession of States in respect of State responsibility. However, for the purpose of clarity, this term could be inserted in the commentary to the draft articles 10(3) and 13(2).
6. Concerning draft articles X and Y, Malaysia views that the language in these additional provisions are generally acceptable and therefore can be given due consideration.
7. In respect of draft Article 12, Malaysia views that this draft could be accepted. However, the wording of "special circumstances" in paragraph 2 seemed to be vague and should be clarified further by the Special Rapporteur.

Mr. Chairman,

8. Malaysia observes that draft article 13(1) stipulates that the successor State may request for reparation from the responsible State when two or more States merged as one successor State. Article 13(2) further provides that draft article 13(1) is applicable unless the State concerned otherwise agree. In this regard, Malaysia supports the inclusion of draft article 13 as it clearly states the right for reparation for the unification of States as one successor State and it gives priority to the agreement entered into between the States concerned before the date of succession.

Mr. Chairman,

9. In general, Malaysia could support the inclusion of draft article 14 but at the same time also acknowledges the challenges regarding its content. It is pertinent that cautious approach should be employed in deliberating this article considering that cases cited in the third report demonstrated the succession of State that resulted from agreements between the interested parties rather than the principle of international law in succession of state responsibility itself.
10. Apart from that, Malaysia observes that the title of draft article 14 is "Dissolution of States". Nonetheless, draft article 14(1) makes reference to the separation of parts of a State. Thus, for the purpose of clarity and consistency with article draft article 11(1) on Dissolution of a State, Malaysia recommends for draft article 14(1) to be revised to include the words "When a State dissolves and ceases to exist and the parts of its territory form two or more successor States...".
11. Furthermore, Malaysia is of the view that there is a disparity between draft article 14(1) and 14(2) in relation to the words "such claims and agreements" used in article 14(2). Draft article 14(1) does not make any reference to the "such claims and agreements" entered into between successor States". However, these words subsequently appears in draft article 14(2). Furthermore, the terms "a nexus" and "other relevant factors" in draft article 14(2) are ambiguous. Thus, Malaysia recommends for these ambiguities to be clarified further by the Special Rapporteur.

Mr. Chairman,

12. In general, Malaysia notes that the term "may request reparation" has been used in draft articles 12(1) and (2), article 13(1) and article 14(1) in cases of succession of States when the predecessor State continues to exist, or ceases to exist respectively. This term only denotes the discretion of the particular State to request for reparation from the responsible State, and not the legal rights of either the predecessor State or successor State/States to request for such reparation. As such, Malaysia recommends for this ambiguity to be clarified further by the Special Rapporteur.

Mr. Chairman,

13. Malaysia is of the view that draft article 15 is in line with article 5(2) of the articles on diplomatic protection, thus it could be supported for further deliberation. However, Malaysia wishes to underscore that draft article 15 should not be in conflict with the articles on diplomatic protection which have been drafted based on the fundamental principle that the exercise of diplomatic protection shall remain within the sovereign prerogative and integral discretion of a State.
14. Malaysia also notes that there is an ambiguity in draft article 15(1) in which the earlier sentence refers to the word "a person". However, the proviso to article 15(1) refers to the words "the persons or the corporation". Thus, Malaysia seeks clarification on whether draft article 15 intends to cover both natural and legal persons. Furthermore, for the purpose of clarity, Malaysia views that draft articles 15(1) and (2) should differentiate clearly between situations when the predecessor State continued to exist after the date of succession and when the predecessor State ceased to exist.

Mr. Chairman,

15. Malaysia notes that there are some significant challenges to the work of the Commission on this topic, such as the complexity of the subject of succession of States under international law, rare occasion of cases of State succession as well as diverse, context-specific and politically sensitive State practice in this area. In light of this, Malaysia wishes to reiterate its views that the Commission and Special Rapporteur should have more proactive consultations with the States on this topic and take into consideration more geographically diverse sources of State practice not only from the European sources, but from Asian and African regions for the purposes of codification and progressive development of international law relating to succession of States responsibility in the future.
16. Finally, Malaysia would like to share its views that when the programme of work on this topic has been entirely accomplished, all draft articles in this topic should be considered holistically so that all States including Malaysia would be in a better position to advance their views on this topic.

GENERAL PRINCIPLES OF LAW

Mr. Chairman,

17. Malaysia acknowledges and appreciates the efforts undertaken by the Commission and the Special Rapporteur, Mr. Marcelo Vázquez-Bermúdez, in guiding us through the development of general principles of law as a source of international law. Malaysia notes the first report of the Special Rapporteur (A/CN.4/732) that was presented at the 71st Session of the Commission. Malaysia also notes the three (3) draft conclusions proposed by the Special Rapporteur in his first report.
18. It is Malaysia's view that the inclusion of this topic in the Commission's long-term programme of work is crucial in the progressive development of international law and will carry substantive effect as one of the sources of international law. Therefore, this topic requires much detailed analysis by Member States in arriving at a consensus position acceptable at the international level.

19. From the language used and the travaux préparatoires of Article 38, paragraph 1, of the Statute of the International Court of Justice, Malaysia observes that the primary intention of the drafters was to refer to principles of national legal systems which could be used to fill gaps or to meet deficiencies in international law, with a view to meet the possibility of a non-liquet – the possibility that a case could not be decided because of a gap in the law.
20. Based on Malaysia's preliminary observation on the draft conclusions particularly on draft conclusion 3 pertaining to the categories of general principles of law, Malaysia wishes to highlight that the role that the general principles play in the two very different legal systems i.e. national legal system and international legal system differs greatly. It would be prudent to take into consideration the differences in political ideologist, structure of States and dualist/monist character of a State in deriving general principles of law from national legal systems. Thus, a cautious approach must be adopted by the Commission in deliberating this topic.
21. Malaysia observes that the references and application of Article 38, paragraph 1(c), of the Statute of the International Court of Justice by the International Court of Justice are mainly concern issues of procedure or evidence, and not as a direct source of rights and obligations. Thus, this point of view must be considered and addressed accordingly by the Commission and Special Rapporteur in deliberating this topic.
22. In conclusion, Malaysia acknowledges the importance of this area of study and Malaysia remains committed to further engaging in the development of this topic in a supportive and constructive manner.

Thank you.