



the topic. Most importantly, immunity of state officials allows the country's representative to carry out its functions and responsibilities without hindrance.

4. With regard to the issue of perceiving the topic *lex lata* or *lex ferenda*, Malaysia is of the view that the topic is still at a preliminary stage, and as various issues are still being debated and unresolved, it is paramount to look at the topic *lex lata*. Nevertheless, Malaysia is of the view that this topic cannot be addressed in isolation, either *lex lata* or *lex ferenda*. The appropriate approach would be to take into account *lex lata* considerations and to include an analysis of *de lege ferenda* of some topics. The simultaneous approach is consistent with the Commission's mandate to pursue simultaneously the codification and progressive development of international law.

Mr. Chairman,

5. With regard to immunity *ratione materiae*, the most prominent issue would be the definition of "official acts" and "official capacity" to act in an official capacity. Article 17.3 (d)

Mr. Chairman,

9. Malaysia understands that the effective exercise of foreign criminal jurisdiction over State officials occurs during judicial proceedings. However, the preparatory phase of those proceedings may also be raised. Malaysia supports the view that immunity of State officials from foreign criminal jurisdiction should, in principle, be considered at an early stage of the judicial proceedings, or earlier still, at the pre-trial stage, when a State exercising jurisdiction takes a decision on adopting criminal procedure measures precluded by immunity against an official. Otherwise, it would result in a violation of the obligations arising from immunity by the State exercising. Malaysia looks forward to the further discussions on this topic.

#### CHAPTER VII: FORMATION AND EVIDENCE OF CUSTOMARY INTERNATIONAL LAW

Mr. Chairman,

10. In respect of the topic of Formation and evidence of customary international law,





