

MALAYSIA

PERMANENT MISSION TO THE UNITED NATIONS



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DRAFT PRINCIPLE 11: CORPORATE LIABILITY

11. Malaysia wishes to highlight that the issue of law enforcement during the time of armed conflict should be addressed adequately by the Commission particularly in situations where either the judicial system of a state is virtually non-existent or the government itself is an accomplice to the alleged violations. In this regard, Malaysia takes note of the example given by the Commission whereby a home state to a corporation may acquire jurisdiction in a situation where the territorial state is unable to exercise jurisdiction.
12. Nevertheless, it should be stressed that jurisdiction is a sensitive and complicated issue in which States need to tread carefully. In this regard, the Commission should give thorough consideration to the procedural aspects of enforcing extra-territorial jurisdiction in such situations.

PRINCIPLE 18: PROHIBITION OF PILLAGE

13. Malaysia notes that the prohibition of pillage that is underlined in this draft principle focuses on the prohibition of pillages to natural resources. Malaysia believes that the act of plugging of natural resources will put an enormous strain on the environment as a result of predatory and exploitative practices which often lead to severe damage and the eventual depletion of resources. This, in turn, can undermine long-term livelihoods, trigger further violence, and lock communities in a vicious cycle of destruction.
14. The above circumstances have been taking place in many war torn States we see today, where the pressure of warfare, combined with the destruction of livelihoods, have resulted in mass displacement of populations, and to this day, have perpetuated tensions. Thus, Malaysia regards this principle as an important one to be incorporated in the body of rules on environmental protection in armed conflicts.

PRINCIPLE 19: ENVIRONMENTAL MODIFICATION TECHNIQUES

15. Malaysia observes that the 1976 Convention on the Prohibition of Military or Any Hostile Use of Environmental Modification Techniques (ENMOD) is not clear on whether the prohibition could be applicable in a non-international armed conflict. However, Malaysia notes that the underlying principles of ENMOD are based on Additional Protocol 1 which is applicable to both international and non-international armed conflicts. As such, Malaysia seeks clarification on the issue of applicability of this draft principle in the latter situation.

16. Malaysia also take notes that ENMOD has to date proven relatively successful and ef - scale environmental modification tactics have been reported since 1976. However, with the advancement of technology and continued development of military capability by States, the future is unpredictable and States must remain guarded against their unimpeded actions when having access to such technology. Thus, Malaysia understands

IMMUNITY OF STATE OFFICIALS FROM FOREIGN CRIMINAL JURISDICTION

Mr. Chairman,

18. Malaysia would like to record its appreciation to the Special Rapporteur for her seventh report which, amongst others, addressed questions on the invocation of immunity and its waiver; further examined various procedural aspects of immunity and its waiver; as well as proposed nine draft articles. Malaysia believes that the work of the Special Rapporteur will go a long way in clarifying important questions of immunity of state officials from foreign criminal jurisdiction.
19. Malaysia remains committed to the rule of law and where demanded by the overriding demands of justice, is prepared to waive immunity of state officials to face foreign criminal prosecution. Malaysia will continue to abide by its international obligations under the Vienna Convention on Diplomatic Relations as well as the Vienna Convention on Consular Relations.

Mr. Chairman,

20. Malaysia considers diplomatic immunity as one of the bedrocks of international law which is developed based on the principle that sovereign equals do not have jurisdiction over each other. In that regard, there should always be a presumption of immunity of state officials until a contrary determination is conclusively made and that any exercise of jurisdiction by a forum State should only be taken when there is clear and definitive proof of the alleged offence. In this regard, Malaysia reiterates its view that international practice has not demonstrated the existence of a custom or consistent trend establishing exceptions to immunity.
21. As regards to draft article 9, Malaysia notes the Special view that it would not be necessary to include a requirement for the State official to be in the territory of the forum State. This view, however, raises complex issues of primacy and conflict of jurisdictions, which if not clarified in the present draft articles, may lead to greater ambiguity in the development of these principles.

22. In relation to procedural safeguards under draft articles 12 to 15, Malaysia agrees that the balance of discretion should at all times lie with the State of the official asserting immunity. In this regard and with specific reference to draft article 14, Malaysia agrees with the Special Rapporteur that the transfer of proceedings to the State of the official will go a long way in striking a balance between the principle of sovereign equality of States and ensuring that there is no impunity for crimes. While noting the explanation of the Special Rapporteur, Malaysia is of the view that draft article 14 as presently drafted, allows for a divergence in interpretation on whether it is the forum State or the State of the official who is to initiate the transfer of proceedings and thus it is necessary that this issue be clarified.
23. Lastly, Mr. Chairman, on the final form of the project, Malaysia agrees with the Special Rapporteur that it would be premature at this juncture

