



Malaysia

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Permanent Mission to the United Nations

STATEMENT BY

MR. PEH SUAN YONG
REPRESENTATIVE OF MALAYSIA
ON

AGENDA ITEM 144:
REPORT OF THE INTERNATIONAL LAW COMMISSION
ON
CHAPTER VIII:
UNILATERAL ACTS OF STATES
AND
CHAPTER IX:
RESERVATIONS TO TREATIES
AT

THE SIXTH COMMITTEE DURING THE 59TH SESSION
OF THE UNITED NATIONS GENERAL ASSEMBLY
NEW YORK

ON

TUESDAY, 9 NOVEMBER 2004

[Please check against delivery]

Mr. Chairman,

Malaysia welcomes the report of the Special Rapporteur, Mr. Victor Rodríguez Cedeño's on unilateral acts of States as contained in document A/CN.4/542 and Corr.1, Corr.2 and Corr.3, which was introduced at the 56th Session of the International Law Commission. Malaysia would like to commend the International Law Commission for the progress achieved on this item thus far and would like to reiterate its support for the efforts of the Commission to identify and elaborate clear guidelines on when unilateral acts of States create legal obligations in the interest of furthering legal security.

Mr. Chairman,

2. Malaysia notes that the Commission was of the general view that the seventh report of the Special Rapporteur was missing an in-depth analysis of the examples of State practice in relation to unilateral acts that were cited. The report had also failed to address the questions forwarded in recommendation 6 of the Working Group's set of recommendations, namely-

- i. what were the reasons for the unilateral acts or conduct of the State;
- ii. what the criteria for the validity of the express or implied commitment of the State were; and
- iii. in which circumstances and under which conditions a unilateral commitment could be modified or withdrawn.

3. In this respect, Malaysia notes the request of the Commission for comments by States on their practice vis-à-vis the elements identified in paragraph 31 of the Commission's report. Malaysia understands that the comments are intended to assist the Commission with the process of determining the general rules and principles applicable to unilateral acts, and at the same time, assist in addressing the above outstanding issues. Be that as it may, Malaysia would like to request for further clarification and elaboration from the Commission on the comments expected from States in relation to the said elements.

4. Malaysia notes that the Special Rapporteur in his seventh report had used three generally established categories in order to determine the criteria for the classification of acts and declarations, which are as follows:

- i. acts by which a State assumes obligations (promise and recognition);
- ii. acts by which a States waves a right (waiver);and
- iii. acts by which a State affirms a right or a claim (protest).

In relation to such categorization, Malaysia is in agreement with the views expressed in the Commission that an act may at any one time belong to more than one of the above categories. Such method of categorization of acts may not be the most suitable in this instance.

Mr. Chairman,

5. Malaysia also maintains the view that it is pertinent for States to know when a unilateral expression of their will or intentions will be taken to be legally binding commitments as opposed to mere political statements. In this respect, the determination of the purpose of a particular unilateral act is essential to identify the nature of the act, whether it is in fact, legal or political. Other factors such as the context and circumstances of the unilateral act, its content and form could also be considered in determining the nature of a unilateral act.

6. On the issue of the revocability of unilateral acts, Malaysia supports the proposal expounded in paragraph 228 of the Commission's report that a detailed examination of the revocability of unilateral acts should be undertaken. Such an examination would allow for an in depth analysis of all related aspects which in turn would assist States in better understanding the matter.

7. Malaysia recognises the difficulty and complexity of the task of determining the general rules and principles that might be applicable to the operation of unilateral acts of States. In this respect Malaysia appreciates that the Commission is making concerted efforts to obtain State practice in this area. In any event, until and unless a comprehensive analysis of State practice has been carried out, the formulation of legal rules, if any, should be deferred.

Mr. Chairman,

8. Speaking now on Chapter IX, on the item Reservation to Treaties, Malaysia wishes to commend the Chairman and the members of the Commission for the excellent work carried out on this item thus far and to thank the Special Rapporteur, Professor Alain Pellet for the introduction of his ninth report. Malaysia welcomes the Commission's request for comments and observations of member States on the effect of reservations, vis-à-vis the provisions of Article 19 of the Vienna Convention on the Law of Treaties.

9. On the question of the effect of reservations covered by the provisions of Article 19, namely, reservations contrary to the provisions of a treaty to which they relate or reservations which are contrary to the object and the purpose of a treaty, Malaysia is of the view that such a reservation is ineffective, that is, the reservation is null and void. Such a reservation would therefore not produce the result that is intended by the reserving State. In this respect, the treaty as a whole would continue to govern the reserving State and the existing treaty relationship between the said State and the other State parties to the treaty is not affected in any manner whatsoever. The reserving State therefore should not be able to invoke the said reservation in its treaty relationship with the other State parties.

10. In this regard, Malaysia supports the view that State parties should be encouraged to make objections to "impermissible" reservations in order to make known to the reserving State their positions in relation to the legal status of the said reservation. However, to avoid any unnecessary implications and instead of placing the burden on States to make their objections known, this forum should also attempt to address this issue with certainty by introducing some formulation that notwithstanding the fact that no objection is made, impermissible reservations are in effect of no force.

Mr. Chairman,

11. Malaysia would like to express its support for the current formulation on draft guideline 2.1.8 [2.1.7 bis] on the "Procedure in case of manifestly [impermissible reservations]" which requires the depository to draw to the attention of the author of an "impermissible" reservation of what, in the opinion of the depository constitutes the impermissibility. It also requires the depository to communicate the text of the reservation to the signatory States and international organizations and contracting States and international organizations and, where appropriate, the competent organ of the international organization concerned, indicating the nature of the legal problems raised by the reservation.

12. Malaysia sees the above proposal as a step forward in addressing the issue of "impermissible" reservations. Nevertheless, Malaysia believes that this proposal would require further discussions and comments from member States in particular on the suitability of the depository in taking on the role of analyzing and drawing conclusions on particular reservations which States would be required to act upon.

Thank you, Mr. Chairman.