



Permanent Mission of
Malaysia
to the United Nations

**STATEMENT BY
THE HONOURABLE MARKIMAN KOBIRAN
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ON AGENDA ITEM 80: THE RULE OF LAW AT THE NATIONAL
AND INTERNATIONAL LEVELS
AT THE SIXTH COMMITTEE OF THE 61ST SESSION OF
THE UNITED NATIONS GENERAL ASSEMBLY,
TUESDAY, 17 OCTOBER 2006**

Mr. Chairman,

1. My delegation welcomes the proposal submitted by the delegations of Liechtenstein and Mexico by letter dated 11 May 2006 to include the topic “The rule of law at the international and national levels” in the agenda of the General Assembly. We see this as the next practical step following the fruitful work undertaken by the Secretary General and the Secretariat to strengthen the rule of law through the “Strategy for an Era of Application of International Law Action Plan”. Further, as recognized in paragraph 134 of the 2005 World Summit Outcome, there is a pressing “need for universal adherence to and implementation of the rule of law at both national and international levels”. This proposal is also timely as current world events clearly demonstrate a strong need to re-emphasize and re-invigorate awareness, understanding and respect for the rule of law particularly at the international level.

2. The most important aspect of the rule of law is knowledge and respect of it. As stated by Mr. Hans Corell, the former Under-Secretary-General for Legal Affairs and Legal Counsel of the United Nations (1994-2004) at the Conference on “Entering the 21st Century: Towards the Rule of Law in International Relations” in Moscow on 2 November 2000, “Knowledge is power, and a solid knowledge of international law, its principles and its moving spirit, is the best protection that mankind can create against repeating the errors of the past and the best bridge that you can build towards a better world – a world where, in the affairs of men and women of all nations, the rule of law will finally prevail. The commitments we make to strengthen and advance the international rule of law will be a lasting legacy for future generations ...”

3. Therefore the first steps towards the rule of law at the international level must be codification and progressive development of international law so that all States are aware of their international obligations. In this regard, my delegation recognizes the important contributions of the International Law Commission and the Sixth Committee as well as international bodies such as the International Maritime Organization (IMO), the International

Civil Aviation Organization (ICAO), the UN Commission on International Trade Law (UNCITRAL) and the UN Office on Drugs and Crime (UNODC). In fact, these bodies have been so successful in their work that very few aspects of State and individual relations today are not affected by codified international law.

4. However, there is room for improvement, in particular in the degree of participation of States in these law-making efforts. It is acknowledged that developing countries and countries emerging from conflict situations have limited resources to participate fully in this process as much as they realize its value. If emerging principles of international law are to gain global acceptance and adherence, they should be elaborated with full participation and sense of ownership of all States and not just by a few. Thus we hope that the necessary resources and technical assistance could be provided to such countries to encourage their full participation in the elaboration of conventions and other international legal instruments.

Mr. Chairman,

5. The next critical step is national level implementation. As a country that adopts the dualist approach and takes the multilateral treaty regime seriously, Malaysia does not as a rule proceed to the ratification or accession of international treaties unless it has put in place the necessary legal and administrative framework to enable it to fulfil its treaty obligations. In doing so, Malaysia has benefited from the legislative guides issued by the relevant international bodies as well as reference to the legislative approaches of other countries. Therefore, in my delegation's view the elaboration of such legislative implementation guides by the Secretariat of the respective treaties, especially highly technical treaties like the Chemical Weapons Convention, as well as the creation of an easily accessible database of national implementation laws will greatly facilitate and expedite the treaty-adherence process for many States. In addition, technical assistance and educative seminars should continue to be undertaken in collaboration with host countries.

6. Malaysia also emphasizes that any hesitancy to expressly adhere by ratification and accession to certain treaties in no way detracts from Malaysia's recognition of the importance of the international instrument concerned or our commitment. We believe that we should first have a full understanding of the obligations being undertaken. Further, these obligations must be consistent with our constitution, national policies and interests and not derogate from national sovereignty. In many cases, Malaysia is able to comply with most of a treaty's requirements save for certain provisions. Nevertheless, because no reservations are allowed, Malaysia is unable to accede to that treaty as a whole. In such cases, Malaysia takes the practical measure of ensuring that its domestic laws and administrative mechanisms conform to the international norms and standards regardless that we may still not be able to become a party to the treaty concerned. Therefore if the General Assembly and other organs wish to seriously promote adherence to the rule of law, it would be more fruitful to study how countries are implementing their international obligations rather than insisting on mere "paper" adherence to achieve universality. In addition, treaty bodies should focus on facilitating compliance instead of biased fault-finding.

7. My delegation emphasizes that the rule of law is the cornerstone to trust in the international legal order and international legal framework. It is the foundation of continued

friendly international relations among nations and peoples and the maintenance of international peace and security. If States cannot trust in other States compliance with their international legal obligations, then it renders their own compliance nugatory and redundant and may well lead to further impunity. If the rule of law is to prevail, States must be assured of a level playing field. There must also be due accountability for transgressions of international law and order. Such a system of accountability should incorporate at its core clear principles of separation of powers and transparency.

Mr. Chairman,

8. My delegation has the deepest regard for the international judicial bodies tasked with promoting and achieving the peaceful settlement of international disputes, such as the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea (ITLOS), the Permanent Court of Arbitration and the World Trade Organization. Indeed Malaysia has had recourse to the good offices of these institutions in recent years. However these third-party dispute settlement mechanisms should not pre-empt the use of bilateral negotiations through diplomatic channels to resolve treaty-related or other disputes. Nor should the use of bilateral dispute settlement mechanisms be misconstrued as a desire to avoid impartial third-party evaluation of the disputing parties conduct in terms of the applicable rules of international law. The reality is that in most cases, it is the more practical, flexible and cheaper dispute settlement mechanism. Further, parties are still able to agree to bring the dispute for third-party adjudication if the need arises. We only emphasize that if such referrals of international as well as internal situations that are or could be a threat to international peace and security are to be made, then they should be made expeditiously. This will enable utilization of ancillary powers available to such bodies in terms of advisory opinions and interim measures which can prevent the escalation of the dispute, in addition to final adjudication of disputed issues.

Mr. Chairman,

9. In conclusion, my delegation supports the proposal in the Explanatory memorandum submitted by the sponsor delegations that the Secretary General be tasked to prepare a comprehensive report to facilitate future debates on this topic. We also agree that this report should address the areas highlighted by the sponsor delegation as a matter of priority. My delegation also supports the proposal that different sub-topics be chosen for annual deliberations to facilitate a focused study and consideration of this wide and multi-tiered subject. In terms of the framework, structure and elements in the Secretary-General's analytical report, the International Law Commission approach should be an invaluable guide. On the choice of sub-topic, it should be prioritized according to the realities of current world situations. In addition, my delegation hopes that decisions will be made in full consultation with the Members.

Thank you, Mr. Chairman.