



Malaysia

Permanent Mission to the United Nations

STATEMENT BY MS. SUZILAH MOHD SIDEK, REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 82: STATUS OF THE PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 1949 AND RELATING TO THE PROTECTION OF VICTIMS OF ARMED CONFLICTS AT THE SIXTH COMMITTEE OF THE 65th SESSION OF THE UNITED NATIONS, NEW YORK, 18 OCTOBER 2010

Madam Chair,

Malaysia takes note of the Report of the Secretary General as contained in A/65/138 which was prepared pursuant to paragraph 11 of General Assembly resolution 63/125 of 11 December 2008. The informative Report which succinctly summarized the information received from Member States and the International Committee of the Red Cross (ICRC) demonstrates the commitment of the international community to strengthen and disseminate International Humanitarian Law (IHL).

Madam Chair,

2. Although Malaysia acknowledges the significance of achieving universal adherence to the Protocols Additional to the Geneva Conventions, Malaysia believes that true inroads against impunity for breaches of IHL can only be achieved if the international community stands firmly and acts decisively against all breaches of IHL without concern for creed or kind. This has been amply demonstrated in the case of the attacks by the Israel Defence Forces (IDF) on the MV Mavi Marmara and its five accompanying vessels in the early morning hours of 31 May 2010. The global condemnation against the unprovoked and disproportionate use of armed force against unarmed civilian vessels carrying humanitarian aid to a people under various levels of continuous occupation since 1948 produced immediate results in securing the release of all the passengers from the six vessels, the transportation of the humanitarian cargo of the vessels on to Gaza and the issuance of a more transparent revised list of prohibited items.

3. The perseverance of the international community to seek accountability for the attacks also saw the establishment of the Human Rights Council's international fact-finding mission which reported its findings on 22 September 2010 and the United Nations Secretary-General's international investigation committee (the Palmer-Uribe committee). These independent international inquiries will augment Israel's own internal inquiries through the Eiland Team of Experts and the Turkel Commission and serve as the basis for other possible measures such as a reference to the International Court of Justice on legal issues arising out of the attacks. Malaysia looks forward to the elucidation of accurate facts of the incident by the said panels to enable an in-depth legal analysis to be undertaken into the possible breaches of IHL arising from the actions taken in establishing, maintaining and enforcing the maritime blockade off the coast of Gaza, and specifically in the 31 May 2010 attacks.

4. In this regard, Malaysia notes that the laws of naval warfare as practised by States incorporate the fundamental principles of IHL, including necessity and proportionality. This is also reflected in widely used references such as the San Remo Manual on International Law Applicable to Armed Conflicts at Sea (12 June 1994), the International Law Association's Helsinki Principles on the Law of Maritime Neutrality (1996) and the International Committee of the Red Cross (ICRC) Model Manual of the Law of Armed Conflict for Armed Forces (1999): Fight It Right.

Madam Chair,

5. Malaysia reiterates its view that the passengers and crew of the MV Mavi Marmara and its accompanying vessels are entitled to the protections accorded under the Fourth Geneva Convention (“Relative to the Protection of Civilian Persons in Time of War”) and the indiscriminate attacks against them should therefore be considered a serious violation of IHL.

6. Malaysia also reiterates that the courses of action taken in maintaining and enforcing the maritime blockade off the coast of Gaza need to be further examined against the legal premise on which the said blockade was established. Under the established laws of naval blockade, the declaration or establishment of a blockade is supposed to be prohibited if the sole purpose is to starve the civilian population or to deny it other objects essential for survival or if the damage to the civilian population is or may be expected to be excessive in relation to the concrete and direct military advantage anticipated from the blockade (paragraph 102 San Remo Manual). Further, a blockade may not be used to prevent passage of relief consignments which has to be free according to the applicable rules of IHL, in particular Articles 23, 59 and 61 and generally Articles 55 – 63 of the Fourth Geneva Convention as well as Articles 69 and 71 of Additional Protocol I.

7. Malaysia emphasizes that it is only if a maritime blockade has been legally and effectively established that the blockading power may exercise the prescribed rights, powers and duties for the purpose of the enforcement of the blockade. Nevertheless the laws of naval blockade require that in conducting hostilities on the high seas, the parties to the conflict give due regard to the exercise of the freedom of the high seas by neutral States (Principle 3.1 Helsinki Principles). In addition, naval forces are under an obligation to distinguish between civilians or other protected persons and combatants and between civilian or exempt objects and military objectives. Attacks must be limited to military objectives and prescribed precautions must be taken in the event of any attack.

8. Malaysia notes that under the laws of naval warfare neutral vessels believed on reasonable and probable grounds to be breaching a legally established blockade may be stopped and captured and if such vessels, after prior warning, clearly resist capture, they may be attacked (Principle 5.2.10 Helsinki Principles). However, the mere fact that a neutral vessel is armed (e.g. as defence against pirate attacks) is no grounds for attacking it. Therefore clear justification should be provided for unprovoked attacks on neutral vessels. The laws of naval warfare also clearly advocate measures short of attack such as interception, visit, search and diversion and use of force/attacks should be the last resort. Where vessels are interdicted or captured, the specific rules provided under the laws of naval warfare do not oust or depart from the provisions of the Second and Fourth Geneva Conventions of 1949 and Additional Protocol I and thus those protections continue to apply and protect persons on board the interdicted or captured vessels. Such persons must therefore be respected and protected. Nationals of neutral States must be released. In particular, civilians must be treated in accordance with the Fourth Geneva Convention.

9. Thus in the context of this Agenda Item, Malaysia believes that respect for and adherence to IHL as codified in the four Geneva Conventions and Additional Protocols I and II and under customary international law can only be achieved if these well-entrenched IHL principles and practices are strenuously upheld by the global community.

Madam Chair,

10. At the domestic level, Malaysia remains committed in its effort to ensuring respect and adherence to IHL. Malaysia's National IHL Committee (JUKAM) serves as the focal point for the effective implementation of IHL in Malaysia. In this regard, JUKAM works through its four specialized Sub-Committees namely the Ratification of Treaties and Legislative Measures Sub-Committee, the Methods of Warfare Sub-Committee, the Protection of Cultural Property Sub-Committee and the Dissemination of IHL Sub-Committee.

11. As the Chair for the Sub-Committee on Ratification of Treaties and Legislative Measures, the Attorney General's Chambers of Malaysia bears primary responsibility to study and to make recommendations on Malaysia's adherence to the IHL legal framework as well as necessary implementing laws. In carrying out this task, the Attorney General's Chambers has worked in collaboration with the ICRC's Kuala Lumpur Regional Delegation since 2007 to firstly identify gaps in its IHL legislative framework through a Compatibility Study as well as to develop a comprehensive legal framework for the implementation of the Geneva Conventions 1949, in particular the criminalization of the grave breaches of the Geneva Conventions and other international crimes of serious concern.

12. In addition, the Attorney General's Chambers of Malaysia had collaborated with the ICRC in organizing five IHL workshops from 2007 to 2010.¹ These workshops aimed to disseminate IHL at the inter-agency level and to equip the relevant agencies with the basic knowledge of IHL in order for them to understand their roles in the implementation of IHL at the national level. These workshops were timely and essential as they enabled relevant legal officers and officials to engage in discussions in the area of IHL as Malaysia embarked on a systematic review of its IHL domestic legal framework. Furthermore, our Education Ministry too in collaboration with ICRC has incorporated IHL into the secondary school syllabus.

13. In conclusion, Malaysia reiterates its strongest support for the United Nations-led efforts to seek clarification and accountability for the MV Mavi Marmara attacks.

Thank you, Madam Chair.

¹ The following is the list of workshops carried out by the Attorney General's Chambers of Malaysia in collaboration with the ICRC:

- (i) Basic IHL Workshop from 5 – 8 March 2007;
- (ii) Advanced IHL Workshop from 8 – 10 May 2007;
- (iii) Basic IHL Workshop from 24 – 26 February 2009;
- (iv) Advanced IHL Workshop from 17 – 18 March 2009; and
- (v) Protection of Cultural Property in the Event of Armed Conflict Workshop from 11 – 12 March 2010.