



Malaysia

Permanent Mission to the United Nations

STATEMENT BY MS. SARAH KHALILAH ABDUL RAHMAN, REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 77: NATIONALITY OF NATURAL PERSONS IN RELATION TO THE SUCCESSION OF STATES AT THE SIXTH COMMITTEE OF THE 66TH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 17 OCTOBER 2011

Mr. Chairman,

Malaysia takes note that General Assembly Resolution 63/118 has invited Governments to submit comments concerning the advisability of elaborating a legal instrument on the question of nationality of natural persons in relation to the succession of States. It is recalled that in 2001 when the General Assembly adopted Resolution 55/153 dealing with the International Law Commission's (ILC) Draft Articles on Nationality of Natural Persons in Relation to the Succession of States, the Draft Articles had been intended to "provide a useful guide for practice in dealing with this issue".

2. With reference to Resolution 63/118 on the question concerning the advisability of elaborating a legal instrument on this matter and the encouragement for States to consider, as appropriate, the elaboration of legal instruments regulating the same at the regional or subregional levels, with a view, in particular, to preventing the occurrence of statelessness, Malaysia is of the view that the consideration of a new legal instrument emanating from the draft Articles should only be undertaken once the practice of other States and regions on this issue point towards clearly established custom and there arises a necessity to codify these rules of custom. At this juncture, Malaysia sees the Draft Articles in its present form, as was annexed to Resolution 55/153, to be adequate to serve as guidance for States.

3. Malaysia remains supportive of the work done by the ILC in this area. However, before it can be agreed that the Draft Articles can form a basis for the elaboration of a legal instrument, further clarification is required on several provisions in the Draft Articles, which touch upon complex questions concerning nationality within the realm of public international law namely the attribution, acquisition as well as the right of option to nationality in the event of State succession.

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3. Malaysia remains supportive of the work done by the ILC in this area. However, before it can be agreed that the Draft Articles can form a basis for the elaboration of a legal instrument, further clarification is required on several provisions in the Draft Articles, which touch upon complex questions concerning nationality within the realm of public international law namely the attribution, acquisition as well as the right of option to nationality in the event of State succession.

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6. Malaysia further views that contrary to the purpose of the Draft Articles to deal foremost, with the nationality of concerned persons in relation to the succession of States, one provision identified, namely Article 14 (Habitual residents) seems to have fallen outside the juridical scope of the Draft Articles by attempting to include within their scope the law governing resident aliens. Although Malaysia welcomes the incorporation of a provision in these Draft Articles which is intended to mitigate the problematic consequences of population shifts and displacements as a possible result of a succession, Malaysia is of the view that the question of the status of habitual residents who are in fact aliens to the States concerned goes beyond the object for which the Draft Articles had been intended, namely the protection of those whose citizenship would be directly affected following the event of a succession.

7. On the issue of establishing appropriate linkages between the individual and State as a paramount consideration in the attribution or acquisition of nationality in line with the principles of international law, Malaysia has concerns on the interchangeable use of the terms “effective link”, “appropriate connection” and “appropriate legal connection” in several provisions in the Draft Articles, which creates a certain degree of uncertainty. Malaysia therefore proposes, given the similarity in concept between the three aforementioned terms, that clarification be made on the use and scope of each of such terms in their respective contexts, or alternatively, to adopt a standard term which can be commonly applied within the meaning of the concerned provisions.

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Malaysia

Permanent Mission to the United Nations

STATEMENT BY MS. SARAH KHALILAH ABDUL RAHMAN, REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 77: NATIONALITY OF NATURAL PERSONS IN RELATION TO THE SUCCESSION OF STATES AT THE SIXTH COMMITTEE OF THE 66TH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 17 OCTOBER 2011

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