



Permanent Mission of
Malaysia
to the United Nations

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STATEMENT BY MR. KAMAL BAHARIN OMAR, REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 83: DIPLOMATIC PROTECTION AT THE SIXTH COMMITTEE OF THE SIXTY SECOND SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, FRIDAY, 19 OCTOBER 2007

Mr. Chairman,

On behalf of my delegation, allow me to extend our appreciation to the International Law Commission (ILC), particularly the Special Rapporteur, Mr. John Dugard, for their efforts on this subject-matter. Malaysia welcomes the successful adoption by the ILC of the draft Articles on "Diplomatic Protection" during its 58th session.

2. We acknowledge that the draft Articles has codified some of the existing established rules of customary international law and practice of States, which had been referred to and considered in the international courts as evident in a dictum of the Permanent Court of International Justice in the *Mavrommatis Palestine Concessions* case in 1924.

Mr. Chairman,

3. In the past, we had expressed our support with regard to the submission of the draft Articles on "Diplomatic Protection" to the General Assembly on the elaboration of an international convention on the basis of the draft Articles on Diplomatic Protection. This was largely premised on our constant commitment in ensuring that our nationals abroad are humanely treated, as well as upholding our natural right to protect and safeguard our nationals from injuries suffered as a result of internationally wrongful acts of other States. At the same time, the exercise of diplomatic protection shall remain within the sovereign prerogative and integral discretion of a State.

4. We have studied the recommendation by the ILC to elaborate a convention on the basis of the draft Articles on Diplomatic Protection, and had the opportunity to reflect on the mixed reactions of some Member States. In this regard, Malaysia would again reiterate our paramount assurance in working together with the international community on any issues including this noble effort, which aims to enhance legal clarity and predictability in this important field of law.

Mr. Chairman,

5. Malaysia appreciates and understands the concerns of some States with regard to the manner and timing of developing a legally binding convention relating to diplomatic protection. At this juncture, we reiterate the importance of taking into account the diverging views of all States, particularly that of the developing nations, in any undertaking or any compromise taken and ultimately in developing a legally binding convention.

6. Malaysia also aligns itself with the position taken by many Member States pertaining to the issue of the close connection between the present draft Articles and that of the Articles on Responsibility of States for Internationally Wrongful Acts. It is recalled that the drafting of the draft Articles on diplomatic protection began as part of the study on the responsibility of States for Internationally Wrongful Acts. However it was ultimately decided to keep this subsidiary area separate. The present draft Articles therefore focus on two topics central to diplomatic protection. These are nationality of claims and the exhaustion of local remedies. They also seek to elaborate on draft Article 44 of the Articles on Responsibility of States for Internationally Wrongful Acts. Nevertheless, the close links remain and the two sets of draft Articles will necessarily remain inter-linked. Therefore, the decision on the elaboration of an international convention on one or both topics should be considered in tandem.

Mr. Chairman,

7. In addition, Malaysia notes with concern the provision of draft Article 8 relating to the right of a State to afford diplomatic protection to stateless persons and refugees. Malaysia is not a party to any treaty relating to stateless persons and refugees and therefore is not bound by those treaties to accord them such status. Further, Malaysia does not have specific national legislation to deal with refugees and such persons are dealt with in accordance with Malaysia's immigration laws.

8. Finally, we think it fair to envisage that the draft Articles on Diplomatic Protection has not been fully and truly considered by many States for the reason that the text was only presented to the States fairly recently. In view of the above, Malaysia concurs with the view that the further development of diplomatic protection would be best served by a period of further reflection on the text of the draft Articles.

Thank you, Mr. Chairman.