



Malaysia

Permanent Mission to the United Nations

STATEMENT BY MS. FARHANI AHMAD TAJUDDIN, REPRESENTATIVE OF MALAYSIA ON AGENDA: 75 RESPONSIBILITIES OF STATES FOR INTERNATIONALLY WRONGFUL ACTS, AT THE SIXTH COMMITTEE OF THE 65th SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 19 OCTOBER 2010

Madam Chair,

Malaysia records its appreciation for the efforts taken by the Secretariat in preparing the report and also the compilation of decisions of international courts, tribunals and other bodies pursuant to the General Assembly Resolution 62/61 of 6 December 2007.

2. In this regard, Malaysia notes the ILC Articles which was adopted by the General Assembly in 2001 and is generally supportive of the efforts undertaken by the Drafting Committee and the Special Rapporteur on the said topic. However, in 2005, Malaysia had highlighted concerns and observations on certain articles such as the issue of ultra vires conduct given in Article 7 of the ILC Articles.

3. In relation to the request for Governments to submit information of this practice regarding the decisions of the international courts, tribunals and bodies, as far as Malaysia is concern, there seem to be no reference of the ILC Articles in any of the international cases where Malaysia is a party to.

Madam Chair,

4. Malaysia would also like to extend its gratitude to the Secretariat for the preparation of the Compilation of Comments and Information received from the Governments pursuant to the note verbale dated 6 March 2009 which was sent by the Secretary-General. Malaysia further takes notes of the views on the future action of the draft Articles provided by the States.

5. Malaysia shares the views of those Member States which recommend that negotiations on the draft Articles to develop a convention should not be initiated at this moment. Such move may unravel the fragile balance in the text of the articles. We could also anticipate that such Convention may find non-universal or at least quasi-universal participation that result in negative effect and defeating its purpose of inception.

The articles are the product of intense negotiation and compromise. Therefore, it may result in no State wholly satisfied with every aspect of the text. On the basis that the articles have continued in the process of naturally developing the fabric of international law through its influences on certain courts, tribunals and State practice, Malaysia remains strongly of the view that attempting to negotiate a convention is unnecessary and undesirable at this point of time.

6. The articles have shown themselves to be useful in their current, non-binding form, as a guide for States, international courts and tribunals.

Madam Chair,

7. Malaysia is of the view that in-depth consideration on the draft Articles is needed before decision is made as to whether to adopt the Articles and negotiate a convention. Malaysia has reviewed with interest the Draft ILC Articles and notes that as comprehensive as they may set out to be, they can only be considered as guidelines.

8. In addition, Malaysia proposes that the Secretariat conducts a through study on the practice of international courts and tribunals. Based on the report marked as A/65/76 submitted by the Secretary General, Malaysia is of the view that the international courts and tribunals regard the ILC Articles as customary international law. However, it is proposed that the Secretariat conducts an in-depth study for consistencies of the use of the ILC Articles that is referred by international courts and arbitral tribunals in a manner not to side with any international courts or tribunals.

9. Malaysia believes that States should continue to acquire even wider experience with the application of the articles in practice. Therefore, Malaysia shares the same views as the Netherlands and would like to consider the question of the adoption of or other appropriate action on the articles again, in particular in the light of further practice of States as well as decisions of international courts, arbitral tribunals and other bodies.

Thank you.