



Malaysia

Permanent Mission to the United Nations

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STATEMENT BY THE HONOURABLE MR. HENRY SUM AGONG, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 80: DIPLOMATIC PROTECTION AT THE SIXTH COMMITTEE OF THE 65th SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 20 OCTOBER 2010

Madam Chair

Malaysia commends the International Law Commission for its work on diplomatic protection and its adoption of the draft articles and commentary. Malaysia further commends the work of the Special Rapporteur, Mr. John Duggard for his work on this topic.

2. Malaysia notes with appreciation that its views and comments concerning the recommendation by the Commission to elaborate a convention on the basis of the Commission's draft articles were incorporated in the Report of the Secretary-General (A/65/182) on this topic.

Madam Chair,

3. Malaysia is consistent in its commitment to ensure its nationals are humanely treated abroad and upholds its entitlement to guard its nationals from injuries suffered from the international wrongful acts of other States. However, it is Malaysia's position that the exercise of diplomatic protection shall remain within the sovereign prerogative and integral discretion of a State.

4. In relation to the recommendation to elaborate a convention on the basis of the draft articles on diplomatic protection, Malaysia notes the divergent views expressed by other States. In this regard, as per Malaysia's earlier written comments submitted to the Secretary General dated 28 June 2010, Malaysia wishes to reiterate its views that it would be premature to elaborate an international convention on this topic when there is an absence of a consensus on the elaboration of a convention on the responsibility of States for internationally wrongful acts. This view stems from the understanding that the drafting of the articles on diplomatic protection originally belonged to the study of the responsibility of States for internationally wrongful acts. On this note, Malaysia concurs with the observation of the Special Rapporteur, Mr. John Duggard that the fate of the draft articles on diplomatic protection was closely bound up with that of the draft articles on the responsibility of States for internationally wrongful act.

5. Additionally, Malaysia is of the view that any attempt to elaborate a convention at this stage would risk undermining the important work that has been undertaken by the Commission, particularly if a significant number of States do not ratify the resulting convention.

6. Based on the aforementioned considerations, Malaysia aligns herself with similar positions taken by other States that it would be neither necessary nor desirable to commence discussions and negotiations on the articles on diplomatic protection prior to consensus on the elaboration of a convention on the responsibility of States for internationally wrongful acts.

Thank you, Madam Chair.