



Malaysia

Permanent Mission to the United Nations

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STATEMENT BY HELINA SULAIMAN, REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 79: REPORT OF THE INTERNATIONAL LAW COMMISSION (ILC) ON THE WORK OF ITS SIXTY-SECOND SESSION; CLUSTER 1: RESERVATION TO TREATIES AT THE SIXTH COMMITTEE OF THE 65TH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 26 OCTOBER 2010

Madam Chair,

Malaysia records its appreciation of the efforts made by the International Law Commission (ILC) in preparing and presenting reports on the matters relating to the work of ILC at its Sixty-second session.

2. Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties (1969 Vienna Convention), the 1978 Vienna Convention on Succession of States in Respect of Treaties (1978 Vienna Convention) and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (1986 Vienna Convention) which set out the core principles concerning reservations to treaties, are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the ILC to clarify and develop further guidance on these matters.

3. In this regard, Malaysia supports the ILC's work on the "Guide to Practice on Reservations to Treaties". Notwithstanding the fact the many issues remained unresolved at the Sixty-second session, the crystallizing draft articles already show promise to be useful guides to assist States in their formulation of reservation to treaties. We note that at the Sixty-second session of the ILC, some draft guidelines were provisionally adopted by the Drafting Committee.

Madam Chair,

4. Malaysia follows the development in the work of ILC closely and would like to express its views and concerns on the draft guidelines 3.4, 3.5 and 3.6 on "Permissibility of reactions to reservations", "Permissibility of an interpretative declaration" and "Permissibility of reactions to interpretative declarations" respectively.

5. Malaysia notes that draft guidelines 3.4, 3.4.1 and 3.4.2 need to be read together. In this regard, Malaysia is of the view that the said draft guidelines seem intended to give legal effect to reservations through the test of permissibility of an acceptance or an objection. We are concerned that if such is the intention, the sovereign right of states in expressing their opinion will be curtailed. Thus, Malaysia is of the view that this matter requires further clarification in addressing such concern.

6. Malaysia also supports the effort of the ILC to address issues regarding the formulation of interpretative declarations through draft guidelines 3.5, 3.5.1, 3.5.2 and 3.5.3. The draft guidelines need to be read in its entirety.

Madam Chair,

7. Malaysia is of the view that with regard to draft guideline 3.5 as a whole, the condition of permissibility of interpretative declarations should only be imposed where interpretative declarations are “expressly prohibited by treaty” similar to when addressing reservations as in draft guideline 3.1.1 on “*Reservations expressly prohibited by the treaty*”. This is to avoid wide interpretations by states. Further, Malaysia wishes to stress that the proposed conditions of permissibility should be applied with caution, particularly in the circumstances where a treaty prohibits the formulation of a reservation. In such circumstances, unless a conclusive determination, which renders the statement as a reservation, is reached, conditions of permissibility under draft guidelines 3.5.1 and 3.5.2 should not be imposed. This is on the basis of a well-established general principle of law that a state is presumed to do a permitted act rather than an act prohibited by treaty. Consequently, the conditions of permissibility of a reservation will be applied to a unilateral statement intended to be an interpretative declaration by the author state as provided under those draft guidelines, which are stricter than the conditions of permissibility of an interpretative declaration.

8. On draft guideline 3.5.3, Malaysia would like to reiterate its position expressed during the 64th United Nations General Assembly session on draft guideline 3.2.1, particularly on the legal effect of assessment made by the treaty monitoring body established under the respective treaty. We believe that this draft guideline is intended to allow for a treaty monitoring body’s participation in providing guidance to States in crafting its interpretative declaration to render it valid for permissibility. However, it is felt that the extent and the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained in indisputable terms, and agreed by all the relevant member states to such treaty.

9. With regard to draft guideline 3.6, Malaysia notes that the draft guideline now have been reformulated to include draft guidelines 3.6.1 and 3.6.2 with modifications and have been adopted by the Commission. In this regard, Malaysia wishes to maintain that reactions to interpretative declarations should not be subjected to conditions for permissibility as States should be able to maintain their freedom to express their views. It is felt that interpretative declarations, regardless of whether they are prohibited or not and approvals by other States on the same, should be viewed as agreements between States exclusively in their relation to each other. In addition, Malaysia is of the view that while an opposition made by way of proposing an alternative interpretation is treated as an interpretative declaration by itself, a simple opposition to interpretative declarations should not be treated as such.

10. Malaysia will also submit its comments and concerns on the said draft guidelines to the ILC for its consideration.

11. Malaysia wishes to draw the attention of the ILC to the fact that States only have the benefit of studying the draft guidelines within the context of what has now been provided by the ILC. It is in Malaysia's view that the entire draft guidelines on the matter should be read in its entirety to ensure that all concerns has been addressed as a whole since they are interrelated to one another. For this reason, we reserve the right to make further statements on all the draft guidelines once the entire draft guidelines have been formulated and completed.

12. Malaysia further recalls the invitations previously made to States to provide views and information regarding their States' practices on this topic in Chapter III of the 2008 Report of the ILC (A/63/10) and also in the United Nations General Assembly, Resolution 63/123 of 15 January 2009. Malaysia thus believes that a universally acceptable set of draft guidelines can only be developed by the ILC if States play their part by providing comments and practical examples of the effects of the draft guidelines to State practice.

Thank you, Madam Chair