



Malaysia

Permanent Mission to the United Nations

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STATEMENT BY MS. DOMINIQUE FERNANDES, REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 79: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS FORTY-FORTH SESSION AT THE SIXTH COMMITTEE OF THE 66TH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 10 OCTOBER 2011

Mr. Chairman,

Malaysia appreciates the Report of the United Nations Commission on International Trade Law (UNCITRAL) and notes that the previous 44th UNCITRAL Commission session held in New York from 27 June 2011 – 8 July 2011, considered the progress reports of various Working Groups on matters under their respective mandates.

2. Malaysia takes this opportunity to congratulate and extend its appreciation for the work achieved by the Commission on the finalization and adoption of the UNCITRAL Model Law on Public Procurement and the UNCITRAL Model Law on Cross-Border Insolvency: the judicial perspective. Malaysia believes that all member states would give positive and favourable consideration to both these UNCITRAL Model Laws.

3. Malaysia has participated in the work of some of these Working Groups, and will continue to work together with other member states in respect of the issues raised in the discussions in the Working Groups.

4. With regard to the previous outcome from UNCITRAL Working Group II resulting in the Revised UNCITRAL Arbitration Rules 2010, Malaysia would once again like to implore the Commission's Member States and the various Arbitration Centres to study the Revised UNCITRAL Arbitration Rules for future implementation within their arbitral systems in order to stay relevant with the progress and development in the resolution of disputes.

Mr. Chairman,

5. Malaysia would like to express its support for the work of UNCITRAL Working Group II but emphasises that certain reservations should be in place. In this regard, any provision on transparency in investor – State arbitration should be subject to the parties' will or conditions as appropriate. Malaysia further views that the application of the rules on transparency should not extend to existing treaties, neither should it affect State's sovereignty. Malaysia also contends that a concluded investment treaty or chapter is an outcome of negotiation between the Contracting States, including matters with regard to transparency. The legitimacy of investor-State dispute settlement mechanism is therefore derived from the consent of the Contracting Parties, and thus the rules on transparency developed in UNCITRAL Working

Group II should not be automatically applied to existing treaties at this forum, without an express consent of the Contracting Parties.

6. Malaysia is not in favour of amicus curiae submissions and intervention by a non-disputing State as such submissions may not always be accommodating for the arbitral tribunal in resolving the dispute. Such dispute is a private matter between the parties, and any intervention by a third party or State would be subjected to the consent of both parties to the dispute.

Mr. Chairman,

7. Malaysia has considered with much interest the discussions in the UNCITRAL Working Group III pertaining to the preparation of legal standards on online dispute resolution for cross-border electronic commerce transactions. At this juncture Malaysia looks forward to the progressive formulation of a new online mechanism but is nonetheless of the view that the new mechanism should only be introduced after a thorough evaluation by States to determine its acceptability and advantages. Malaysia is also of the view that all efforts to enhance the current mechanism should be supported to provide the necessary choices or options for parties to resolve disputes.

Thank you.