



MALAYSIA

PERMANENT MISSION TO THE UNITED NATIONS

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STATEMENT BY
MS. FARHANI AHMAD TAJUDDIN
DELEGATE OF MALAYSIA
ON AGENDA ITEM 85:

THE RULE OF LAW AT THE NATIONAL AND INTERNATIONAL LEVELS
AT THE SIXTH COMMITTEE OF THE
70TH SESSION OF THE GENERAL ASSEMBLY

NEW YORK, 14-15 OCTOBER 2015

Mr. Chairman,

Malaysia would like to extend its appreciation to the United Nations (UN) Secretary General for his report on strengthening and coordinating United Nations rule of law activities as contained in document A/70/206.

2. This year's theme, entitled "The role of multilateral treaty processes in promoting and advancing the rule of law" is an important topic of consideration, in relation to which we are keen to share our experiences and views through this statement.

3. Malaysia associates itself with the statements delivered by Laos on behalf of ASEAN and Iran on behalf of NAM.

4. As in our previous statements under this agenda item, we wish to reiterate that Malaysia associates closely with the core values of the UN in promoting and upholding the rule of law at the national and international levels. Respect for the rule of law at the international level is fundamental in achieving durable and sustainable international peace and security. Without the rule of law there can be no stability and therefore no economic development. At the national level, the rule of law in Malaysia is guaranteed, foremost, under the Federal Constitution, and in other Federal and State laws. Under Article 4 of the Federal Constitution of Malaysia, the "*Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.*" Against this fundamental law, the validity of all other laws including State laws is measured.

5. Malaysia is an active and relevant sovereign and regional player in the multilateral treaty making process, the mandate for which the Executive carries out diligently based on the core foundations of the rule of law enshrined in the Federal Constitution. Article 39 of the Federal Constitution provides that: "The executive

authority of the Federation shall be vested in the Yang di-Pertuan Agong and exercisable...by him or by the Cabinet or any Minister authorized by the Cabinet." Further under Article 80(1), the executive authority of the Federation extends to all matters with respect to which Parliament may make laws. By virtue of the 'Federal List', matters with respect to which Parliament may make laws include "external affairs" which in turn include "treaties, agreements and conventions with other countries". The executive authority of the Federation thus extends to the making or conclusion of treaties, agreements and conventions with other countries.

6. States have a legal obligation to abide by international treaties and conventions which it is party to based on the fundamental principle of *pacta sunt servanda* – treaties are binding upon the parties to it and must be performed in good faith. By practising the dualist approach in the adoption and implementation of international treaties, rules of international law and treaty obligations are transformed into Malaysia's domestic laws by means of relevant Acts of Parliament or enabling statutes. This is how we ensure domestic compliance of international treaties and uphold the rule of law.

7. In this regard, Malaysia heeds the Preamble of the UN Charter which underlines the collective resolve of Member States "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained". By embracing the multilateral treaty making process, Malaysia is committed to its role as a global player in contributing towards the enhancement of universality in international law principles, consolidation of international consensus, establishment of accountability of States in their actions and the facilitation of the peaceful settlement of disputes.

8. The reception of international treaties in particular human rights treaties by Courts in Malaysia has shown tremendous progress. In its recent judgement in the case of *Public Prosecutor v Yuneswaran A/L Ramaraj*, the Court of Appeal, whilst deciding whether the requirement of advance notification under the Peaceful Assembly Act 2012 is consistent with international human rights standards, explored the requirements and principles of the European Convention on Human Rights, and the cases decided by the European Court of Human Rights, and adopted the approach of the European Court.

Mr. Chairman,

9. Malaysia recognizes that multilateral treaties play an integral role towards the development of comprehensive international legal frameworks including by ensuring that the rule of law acts as the basis for inter-state relations, be they between developing/emerging and developed States, or States that are large or small. Be that as it may, negotiations on multilateral treaties should not be used as a forum to impose the cultural values of any particular country or group of countries on the rest of the international community. Regard must be had to the purposes and principles contained in the UN Charter, in particular, Article 2, paragraph 7, clearly stipulates that nothing contained in the Charter shall authorise the UN to intervene in matters which are essentially within the domestic jurisdiction of any state.

Mr. Chairman,

10. Malaysia's participation in multilateral treaty making forums as a developing nation however, has not come without its challenges. These challenges include limitations to manpower and financial resources, and at times expertise in the relevant treaty fields or subject matters.

11. As a small but committed negotiating partner, Malaysia has learned to overcome some of these challenges through participation in effective regional groupings which have allowed for considerable influence over the multilateral negotiations in which Malaysia engages. Malaysia has also participated in inter-regional networks involving the interaction among different regional groups to resolve issues and further achieve like-minded positions. In addition, Malaysia continues to pursue capacity building opportunities for its legal experts and treaty negotiators, especially in highly specialised legal areas of treaty coverage.

Mr. Chairman,

12. In terms of the substantive aspects of treaty negotiations, the interaction of multifaceted areas of law in traditional subject-matter treaties has also posed as a challenge for Malaysia. The negotiation of trade and investment instruments or FTAs is a notable example on point. Malaysia recognizes that the global trade and investment regime has a profound impact on human rights, given that the promotion of economic growth in itself may not lead to the desired equitable outcomes.

13. Malaysia recalls General Assembly resolution 67/171 which affirms human rights as a guiding consideration for multilateral trade negotiations. The resolution calls for mainstreaming of the right to development and strengthening of the global partnership for development within international trade institutions.

14. Notwithstanding that, Malaysia is mindful that trade and investment regimes have increasingly developed overlaps with non-traditional areas in trade instruments such as human rights and the environment. These added elements to trade and investment entail the consideration of how Malaysia's obligations under trade and investment law agreements might impact on its ability to fulfil other additional obligations, what measures Malaysia should be taking to ensure positive impacts and avoid negative impacts and consideration of action to mitigate those negative impacts.

Mr. Chairman,

15. The recently concluded negotiations on the Trans-Pacific Partnership Agreement by 12 Pacific Rim nations, including Malaysia represents a progressive development in the linkage between the rule of law and trade. Malaysia is ever mindful that global trade rules do not operate in a vacuum, but instead co-habit a world of pre-existing human rights laws – articulated most often by demands of the labour and environment sectors.

16. Hence, Malaysia recognises that absolute focus only on the traditional areas under international trade and investment agreements which include trade in goods, trade in services and investment, is becoming less of a norm. Malaysia is facing head on, the pressures in trade negotiations which promote liberalization, namely to open its borders for goods and services, to create a “business-friendly” environment for foreign direct investment and to strengthen intellectual property rights, among others. However, in the context of Free Trade Agreements (FTAs) for example, States have now moved beyond these traditional areas, particularly FTAs that are entered into with developed States, expanding upon non-traditional areas on environment and labour, which generally covers issues on protection of human rights.

17. FTAs linked to the human rights agenda are more complicated to negotiate and to conclude. From Malaysia’s experience, the inclusion of human rights elements complicates the negotiation and conclusion of FTAs. A human rights-based approach is not yet a mature concept and there is no consensus about how it might function. This is particularly, in case, where such an inclusion is mandated by the domestic requirement of the negotiating partner. It leaves the parties with little room to manoeuvre in the negotiations. While the motivation behind linking trade and human rights issues may be understandable, FTAs are, first and foremost, a tool for trade liberalisation. Inclusion of human rights and other non-traditional elements may complicate the negotiation and conclusion of the FTA, and may even lead to failure of the negotiations.

18. Malaysia has observed that the inclusion of human rights elements, such as labour and environmental standards in FTAs between a developed nation and a developing nation largely revolves around the issue of whose standard should be adopted? Would the negotiating parties negotiate to progressively lower the standards in the FTA until they reach a common, acceptable, albeit lower, level?

19. Malaysia will continue to find answers to these questions through experience and dialogue with its existing and future treaty partners in its continued attempt to uphold national interests and the rule of law in the conclusion of international treaties.

I thank you.