



Malaysia

Permanent Mission to the United Nations

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**STATEMENT BY MS. NORIZAN CHE MEH, REPRESENTATIVE OF MALAYSIA,
ON AGENDA ITEM 79: REPORT OF THE INTERNATIONAL LAW COMMISSION
ON THE WORK OF ITS SIXTY-THIRD AND SIXTY FORTH SESSION AT THE
6TH COMMITTEE OF THE 67TH SESSION
OF THE UNITED NATIONS GENERAL ASSEMBLY,
NEW YORK, 01 NOVEMBER 2012**

**CHAPTER IV: EXPULSION OF ALIENS
CHAPTER V: PROTECTION OF PERSONS IN THE EVENT OF DISASTERS**

Mr. Chairman,

Malaysia wishes to extend its deep appreciation to the Special Rapporteur on the topic of Expulsion of Aliens, Professor Maurice Kamto and the Special Rapporteur on the topic of Protection of Persons in the Event of Disasters, Mr Eduardo Valencia-Ospina for their outstanding work in the elaboration of the draft articles under the two topics respectively.

CHAPTER IV: EXPULSION OF ALIENS

Mr. Chairman,

2. Malaysia takes note of the specific issues concerning this topic as highlighted in the Special Rapporteur's Eighth Report upon which comments by Governments would be of particular interest to the Commission. Malaysia also takes note of the Special Rapporteur's responses in the Eighth Report in relation to the issues raised by the representative from Malaysia in the 6th Committee of the 66th session of the United Nations General Assembly, New York, 27 October 2011.

3. At the previous sessions, Malaysia's comments pertaining to its legal framework on expulsion of persons other than citizens were based upon the Banishment Act 1959 (Revised 1972) [Act79]. In this regard, Malaysia wishes to update that the Banishment Act 1959 (Revised 1972) (Act 79) which governs banishment and expulsion from Malaysia of persons other than citizens was repealed effective from 31 December 2011. The current legislation that regulates the removal of prohibited immigrants, illegal immigrants and persons unlawfully remaining in Malaysia is the Immigration Act 1959/63 [Act 155] and the Immigration Regulations 1963.

4. Malaysia endorses the Special Rapporteur's views that it is premature at this stage to decide on the final form of the work of the Commission on this topic particularly when there are many issues that need clarification and reconsideration. The final form of the work of the Commission on this topic should depend on what is finally adopted.

Mr. Chairman,

5. Malaysia congratulates the Commission for the adoption on first reading a set of 32 draft articles, together with the commentaries thereto, on the expulsion of aliens. Malaysia takes note that during the 64th ILC Session in 2012, the Commission decided, in accordance with Articles 16-21 of its Statute, to transmit the draft articles to Governments for comments and observations through the Secretary-General with the request that such comments and observation be submitted to the Secretary-General by 1 January 2014.

Mr. Chairman,

6. As a general observation on the adopted draft articles, Malaysia notes that a number of the adopted draft articles do not reflect Malaysia's legal framework and current practices with regard to expulsion of aliens as well as Malaysia's views and position provided during the last sessions. In this regard, Malaysia will further study the draft articles and the accompanying commentaries, and will provide more detailed comments and observations in due course. In the meantime, Malaysia wishes to highlight some of its key concerns relating to the draft articles.

7. With respect to draft article 3, Malaysia notes that the exercise of the right of expulsion by a State is to be regulated by the present draft articles and other applicable rules of international law with specific reference to human rights law. In this regard, Malaysia reiterates its earlier position that States should only be obliged to observe and implement its domestic laws and other international rules governing the human rights of aliens arising from instrument to which States are party to. Therefore Malaysia has deep reservation to the formulation of the draft article.

8. In relation to the prohibition of the expulsion of refugees as specified in draft article 6, Malaysia wishes to highlight that it does not recognize the "refugee" status as Malaysia is not a party to the Convention Relating to the Status of Refugees 1951 (Refugee Convention) or the Protocol on the Status of Refugees 1967 (Refugee Protocol).

9. Notwithstanding that, Malaysia has dealt with successive influxes of illegal immigrants claiming to be refugees and asylum seekers through special arrangements with the UNHCR on humanitarian grounds.

10. The National Policy on this matter is on a case-to-case basis and it is not deemed to be as granting official recognition by the Government of Malaysia. In this regard, holders of UNHCR Card are not allowed to seek for the rights provided under the Refugee Convention or the Refugee Protocol or any other international treaties to which Malaysia is not a party to. Hence, this draft article is not amenable to Malaysia.

11. In relation to draft article 20, Malaysia notes that the expelling State is obligated to respect the right to family life of an alien subject to expulsion. In this respect, Malaysia wishes to emphasize the entry and stay of foreigners in Malaysia is governed by the Immigration Act 1959/63 [Act 155]. The Act makes no distinction between refugees, asylum seekers, stateless person or illegal immigrants. However, under section 8(2) of Act 155, no prohibited immigrant who is a member of the prohibited class defined in subsection 8(3) shall enter or remain in Malaysia, unless exempted under section 55 of Act 155 or is in possession of a valid pass.

12. In addition to that, the family and dependents of a prohibited immigrant is considered as members of prohibited class under subsection 8(3) of Act 155, and generally would be deported to their country of origin based on the provisions of Act 155 without being prosecuted unless they have committed other unlawful acts. Therefore, Malaysia is unable to agree with the formulation of this draft article since it does not reflect Malaysia's legal framework and practice on this matter.

CHAPTER V: PROTECTION OF PERSONS IN THE EVENT OF DISASTERS

Mr. Chairman,

13. Turning to the topic of Protection of person in the event of disasters, Malaysia notes that the Commission provisionally adopted draft Articles 1 to 11 together with commentaries, at its 62nd and 63rd sessions in 2011 and 2012. Malaysia also takes note that the Drafting Committee provisionally adopted draft articles 5 *bis* and 12 to 15. In this regard, Malaysia wishes to provide comments on those five draft articles.

14. On draft article 5 bis, Malaysia finds that its formulation is acceptable and supports the descriptive formulation adopted by the Committee as being a clear elaboration of the forms in which the assistance in draft article 5 is being contemplated.

15. In relation to draft article 12, Malaysia wishes to highlight that offers of assistance to affected States should not be regarded as an unfriendly act or interference in the affected State's internal affairs. However, Malaysia feels that it is unnecessary to confer a legal right on any third State, the United Nations, other intergovernmental organisations and non-governmental organisations to offer assistance to the affected State as has been prefaced in draft article 12.

16. The guiding principle for receiving disaster aid must always be the consent of the affected State. This is its sovereign right. As such, Malaysia would like to make the following proposals to amend draft article 12. Firstly, the words "Without prejudice to the right of the affected State to consent" be inserted at the beginning of draft Article 12 before the word "In responding". Secondly, it is proposed that the phrase "*have the right to offer*" be substituted with the words "may offer" and the words "if the disaster exceeds its national response capacity" be inserted at the end of the draft article 12. The draft article should then read as follows:

*"Without prejudice to the right of the affected State to consent/ accept offers of assistance, **in responding to disasters, States, the United Nations, other competent intergovernmental organizations and relevant non-governmental organizations may offer assistance to the affected State if the disaster exceeds its national response capacity.**"*

Mr. Chairman,

17. On draft article 13, Malaysia commends the Drafting Committee for its recognition that an affected State can impose conditions on the provision of external assistance within its territory. In this regard, Malaysia reads draft Article 13 as also allowing a State to not only take

into account its national law on disasters, if in existence, when formulating conditions on the provision of external assistance, but also other laws in other areas which are relevant.

18. Malaysia wishes to highlight that not all disasters are addressed by the affected States through the formulation of their national legislation. It could be by way of adopting administrative national framework and policies in its territory due to its own domestic considerations. Hence, Malaysia proposes that the scope of draft article 13 be widened by incorporating that the formulation of conditions to address the provision of external assistance should be in accordance with the national law and applicable national framework and policies of the affected States, apart from being in accordance with the present draft articles and applicable rules of international law as already proposed by the Drafting Committee.

19. As envisaged in the fourth sentence of draft article 13, Malaysia is agreeable to the proposal by the Drafting Committee that it is the affected State which should indicate the scope and type of assistance sought for disasters within its territory. However, Malaysia strongly feels that the identification of scope and type of assistance and subsequently the indication of the same to the external parties providing assistance is an essential step in the processes of disaster handling in an affected State.

20. Malaysia is of the view that the duty/right of the affected State to indicate the scope and type of assistance sought should not be linked to the formulation of conditions only and as such should be treated separately from the draft article 13 and addressed in a separate article.

Mr. Chairman,

21. In respect of draft Article 14, Malaysia notes the understanding by the Drafting Committee that the reference to “take the necessary measures, within its national law”, refers to, inter alia, legislative, executive and administrative measures, which could include actions taken under emergency legislation. It may also extend to non-legal, practical, measures designed to facilitate assistance. In this regard, Malaysia seeks clarification as to whether same understanding applies to the reference to “*national law*” in draft article 13.

22. On draft article 15, Malaysia notes that it preserves the right of any of the mentioned States, including the affected State, or actors to terminate the external assistance, but on the understanding that this is done in consultation with the other States or actors. Malaysia views that whilst termination on a mutual basis may not always be possible, termination of external assistance should in all circumstances be preceded by consultations between all parties involved.

23. Further, Malaysia supports draft article 15 which requires notification before the termination of external assistance and hence agrees to the formulation of the said draft article that allows for the specifics of the notification of termination to be agreed by the actors involved. Malaysia also agrees that the draft article should be read in the context of the entire draft articles so that the termination of external assistance should not adversely affect persons affected by a disaster.

Thank you, Mr. Chairman.