



Malaysia

Permanent Mission to the United Nations

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**STATEMENT BY
WAN AIMA NADZIHAN WAN SULAIMAN, REPRESENTATIVE OF MALAYSIA**

**ON AGENDA ITEM 78 ENTITLED
REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS
SIXTY-SIXTH SESSION”
(PART I)**

**AT THE SIXTH COMMITTEE OF THE SIXTY-EIGHTH SESSION
OF THE UNITED NATIONS GENERAL ASSEMBLY
NEW YORK, 28 OCTOBER 2014**

CHAPTER IV: EXPULSION OF ALIENS

Mr. Chairman,

On the topic of Expulsion of Aliens, at the outset, Malaysia wishes to extend its deep appreciation to the Special Rapporteur on the topic, Professor Maurice Kamto for his outstanding work in the elaboration of the draft articles in relation to the topic.

2. Malaysia notes that the Commission adopted on second reading a set of 31 draft articles together with commentaries thereto, on the expulsion of aliens at its 66th Session. In accordance with article 23 of its statute, the Commission recommended to the General Assembly to take note of the draft articles on the expulsion of aliens in a resolution, to annex the articles to the resolution, and to encourage its widest possible dissemination, and to consider, at a later stage, the elaboration of a convention on the basis of the draft articles.

3. Malaysia takes note of the specific issues as highlighted in the Special Rapporteur's Ninth 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 Ninth Report in relation to comments made by States including Malaysia which were made during the discussion in the Sixth Committee at the 67th session of the General Assembly in November 2012 as well as written comments and observations by States which were forwarded to the Special Rapporteur through the secretariat of the International Law Commission (ILC).

Mr. Chairman,

4. Malaysia notes with appreciation that the Special Rapporteur had duly noted that Malaysia did not recognize refugee status as it was not a party to the Convention relating to the Status of Refugees or the Protocol relating to the Status of Refugees.

5. In respect of Malaysia's request for the Draft Article 20 (Obligation to respect the right to family life) to be rejected, Malaysia takes note that the Special Rapporteur is of the view that such request is based on national considerations and not on arguments from positive international law or trends confirmed by practice. Nonetheless, it is observed that the new formulation of this Article had addressed Malaysia's previous concern and Malaysia concurs with the new formulation.

6. Lastly, as regards the issue on the final form of the draft articles, Malaysia is of the view that given the fact that the issue of expulsion of aliens is mainly governed by national laws and the complexity of the issue, Malaysia maintains its earlier position, which was noted by the Special Rapporteur in his Ninth report that the final form of the ILC's work on the topic should be determined at a later stage.

CHAPTER V: PROTECTION OF PERSONS IN THE EVENT OF DISASTERS

Mr. Chairman,

7. Turning now to the topic of the Protection of Persons in the Event of Disasters, Malaysia expressed its deepest appreciation for the outstanding contribution of the Special Rapporteur, Mr. Eduardo Valencia-Ospina, which had enabled the Commission to bring to a successful conclusion its first reading of the draft articles on the protection of persons in the event of disasters.

8. Malaysia wishes to reiterate its position on the Draft Articles which the Commission has provisionally adopted namely draft articles 1 (Scope), 2 (Purpose), 3 (Definition of disaster), 4 (Relationship with international humanitarian law), 5 (Duty to cooperate), articles 6 (Humanitarian principles in disaster response), 7 (Human dignity), 8 (Human rights), 9 (Role of the affected State), 10 (Duty of the affected State to seek assistance), 11 (Consent of the affected State to external assistance), draft articles 5 bis (Forms of cooperation), 5 ter (Cooperation for disaster risk reduction), 12 (Offers of assistance), 13 (Conditions on the provision of external assistance), 14 (Facilitation of external assistance), 15 (Termination of external assistance) and 16 (Duty to reduce the risk of disasters). These draft articles were subsequently renumbered and adopted including draft articles 3 bis, 14 bis, 17, 18 and 19.

Mr Chairman,

9. Further thereto, in relation to Draft Article 11 which is now has been renumbered to Draft Article 14, Malaysia notes that the paragraph focuses on the importance of the

grant of consent by the affected State on any provision of external assistance which is in line with the international law principle of the sovereignty of States.

10. Nevertheless, the ambiguities highlighted in the observations of the Drafting Committee merit further consideration. The Draft Article should definitely not allow for consent to be implied or the need for it to be dispensed with completely in certain situations with reference to the two cases identified by the Drafting Committee where a lack of consent would not bar the provision of assistance, firstly, where there is no functioning Government to provide consent and secondly, where consent is being withheld arbitrarily in the face of a manifest need for external assistance.

11. Malaysia finds the former situation may be acceptable from a humanitarian standpoint since no consent could be given when a government is not in existence. However, it does raise questions as to who is to decide on whether there is effectively a government in existence and functioning or otherwise.

12. Malaysia also particularly seeks clarification as to the application of this Draft Article as understood by the Drafting Committee in the latter situation where there is a government in existence and it is alleged that consent is being withheld arbitrarily in the face of manifest need. Clarification is sought as to who is to decide on the seriousness of the situation requiring assistance and who is to decide on whether there is arbitrary refusal of consent.

Mr Chairman,

13. In relation to Draft Article 3 bis which is now has been renumbered to Draft Article 4, Malaysia notes that it is a common practice for the inclusion of an article streamlining the use of terms in a particular international legal instrument to ensure a clear and consistent interpretation of the terms in the instrument. This is crucial since areas of international law are diverse and varied in nature. Therefore, Malaysia is agreeable with sub-paragraphs (a), (b), (c), (d) and (f) of the proposed Draft Article 4.

14. However, Malaysia has reservations for the proposed provision stipulated in sub-paragraph (e) pertaining to the coverage of "relief personnel" to also include military personnel as armed presence in a State may be interpreted as an encroachment of the sovereignty of an independent State which is in contravention with the international law principle of sovereignty of State.

15. Malaysia understands that in certain situations where there may be on-going armed conflict in a location struck disasters, the presence of military will be essential for purposes of safety and security of the victims, relief personnel and even the equipment and goods. Additionally, Malaysia also takes note of the Draft Article 17 whereby the affected State shall take necessary measures, within its national law in facilitation of any relief personnel, including military men which might include, inter alia, legislative, executive or administrative measures.

16. Hence, Malaysia is of the view that the affected State shall have overall direction, control, coordination and supervision of assistance within its territory.

Mr. Chairman,

17. In relation to Draft Article 14 bis which is now has been renumbered to Draft Article 18, Malaysia notes that the qualifier “all” was deleted and the phrase “necessary measures” has been replaced to “appropriate measures” to allow for a margin of discretion for the affected State in deciding which action to take.

18. Malaysia further proposes for the words “subject to the available resources and capabilities” to be inserted after the words “The affected State shall,” as the standard of care or due diligence may vary depending on circumstances, inter alia, the economic situations of the affected State, the availability of technical expertise and resources as well as the magnitude of the disaster.

Mr. Chairman,

19. In relation to Draft Article 17 and 18 which are now renumbered to Draft Article 20, Malaysia notes that the Commission is taking a simpler approach, by incorporating ideas expressed in both draft articles.

20. Lastly, Malaysia is favourable with the Draft Article 20 as it upholds the general principles of international law in governing the sovereignty, territorial integrity and political independence of the affected State and shall remain sacrosanct.

Thank you, Mr. Chairman.