



# MALAYSIA

PERMANENT MISSION TO THE UNITED NATIONS

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STATEMENT BY  
MS.INTAN DIYANA AHAMAD, DELEGATE OF MALAYSIA  
ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON  
THE WORK OF ITS SIXTY-NINTH SESSION

CLUSTER 3  
CHAPTER VIII: PEREMPTORY NORMS OF GENERAL INTERNATIONAL LAW (*JUS  
COGENS*)  
CHAPTER X: PROTECTION OF THE ENVIRONMENT IN RELATION TO ARMED  
CONFLICTS

AT THE SIXTH COMMITTEE OF THE 72<sup>nd</sup> SESSION OF THE UNITED NATIONS  
GENERAL ASSEMBLY, NEW YORK, 27 OCTOBER 2017

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Mr. Chairman,

1. Malaysia welcomes the inclusion of the topic "*jus cogens*" into the programme of work of the International Law Commission (ILC). We are of the view that the study of "*jus cogens*" spearheaded by Special Rapporteur, Mr. Tladi will bring much needed clarity to this principle which is integral to the progressive development of international law.

2. Malaysia observes that the Draft Conclusions as proposed by the Special Rapporteur are based on the principles of article 53 of the Vienna Convention on the Law of Treaties (VCLT). While Malaysia supports the Special Rapporteur's efforts to clarify the



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topic, Malaysia encourages a thorough analysis of article 53 of the VCLT as it is noted that the element of modification which existed under the provision has not been expounded under the Second Report by the Special Rapporteur.

3. In relation to draft Conclusion 5, Malaysia is of the view that further explanation on the use of article 38(1) of the Statute of the International Court of Justice could serve as a basis for determining *jus cogens* norms of international law. We look forward to further clarification on whether recognition of the whole international community of States be required.

4. Further, with regard to Draft Conclusion 9, Malaysia would like to stress that the work of expert bodies and scholarly writings as secondary means in identifying norm of general international law as norm of *jus cogens*, must be subjected to recognition of the whole international community of States.

5. Malaysia also looks forward to the work of the Special Rapporteur in relation to the doctrine of persistent objector and on the application of *jus cogens* on regional or bilateral basis.



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Mr. Chairman,

6. Malaysia would like to express its appreciation to the former Special Rapporteur, Ms. Marie G. Jacobsson for her third report on "Protection of the Environment in relation to Armed Conflicts" which had been considered by the Commission at its 68<sup>th</sup> Session.

7. We take note of the establishment of the Working Group on this topic chaired by Mr. Marcelo Vázquez-Bermúdez, which focused its discussion on the 'way forward' and which had put recommendation to the Commission for the appointment of a new Special Rapporteur, Ms Marja Lehto. In this regard, Malaysia would like to congratulate Ms. Lehto as the new Special Rapporteur for this topic, and wish her every success towards a successful and effective conclusion of her work.

Mr. Chairman,

8. Malaysia believes in the importance of this topic, noting in particular the continued interest by other Member States as well as other international bodies, such as the United Nations Environment Program and the International Committee of the Red Cross. We take note of the substantial work already undertaken on the topic and look forward to the completion of the draft principles by the Special Rapporteur. Nevertheless, Malaysia understands that the question of the final form of the draft principles will be subjected to further consideration at a later stage. In this respect, Malaysia would like to recapitulate its position concerning this topic relating to the structure of the topic, the scope of the





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topic, the use of terms, the methodology of the topic as well as rights of indigenous peoples as expressed during the Seventy-First Session of the United Nations General Assembly.

9. Malaysia looks forward to the furthering of efforts to address gaps in the draft principles. Indeed, the protection of the environment in armed conflicts should not be viewed in a narrow perspective exclusively through the lens of the laws of warfare. The protective elements envisioned for the draft principles should therefore provide an analysis and a clarification of the applicability of and the relationship between International Humanitarian Law, International Criminal Law, International Environmental Law, Human Rights Law and, of course Treaty Law. To that end, we strongly believe that references in the drafting process must continue to be made particularly to issues of complementarity with other relevant branches of international law.

I thank you, Mr. Chairman.