



MALAYSIA

PERMANENT MISSION TO THE UNITED NATIONS

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STATEMENT BY
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DELEGATE OF MALAYSIA TO THE UNGA 73RD SESSION

AGENDA ITEM 82:
REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE
WORK OF ITS OF ITS SEVENTIETH SESSION

CHAPTER IV:
SUBSEQUENT AGREEMENTS AND SUBSEQUENT PRACTICE IN
RELATION TO THE INTERPRETATION OF TREATIES

CHAPTER V:
IDENTIFICATION OF CUSTOMARY INTERNATIONAL LAW

22-24 OCTOBER 2018

Mr. Chairman,

1. As this is the first time my delegation is taking the floor in the international law weeks at the seventy-third session of the General Assembly, allow me to congratulate Mr. Eduardo Valencia-Ospina, the Chair of the International Law Commission, as well as other officers and members of the Commission for your exceptional work at the seventieth session. Malaysia notes with appreciation the Report of the Commission of its seventieth session.



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SUBSEQUENT AGREEMENTS AND SUBSEQUENT PRACTICE IN RELATION TO THE INTERPRETATION OF TREATIES

2. Malaysia wishes to record its appreciation to the Special Rapporteur, Mr. Georg Nolte, for his fifth Report on the topic “Subsequent agreements and subsequent practice in relation to the interpretation of treaties” which had been considered by the Commission at its seventieth session. Malaysia also wishes to echo the Commission’s acclamation by expressing its congratulations for the outstanding contribution he has made to the preparation of the draft conclusions and for the results achieved in the elaboration of the draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties.

3. Malaysia notes the recommendations of the Commission to the General Assembly to:

- (a) take note in a resolution of the draft conclusions, annex the draft conclusions to the resolution, and ensure their widest dissemination; and
- (b) commend the draft conclusions, together with the commentaries thereto, to the attention of States and all who may be called upon to interpret treaties.

4. Malaysia is of the view that the draft conclusions and their commentaries will definitely serve as useful guidance for interpreter of treaties in line with the rules on treaty interpretation contained therein the 1969 Vienna Convention on the Law of Treaties.



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5. As such, Malaysia expresses its paramount support towards the recommendation of the Commission to ensure the widest dissemination of the draft conclusions and commend the draft conclusions, together with the commentaries thereto to the attention of interpreter of treaties.

IDENTIFICATION OF CUSTOMARY INTERNATIONAL LAW

6. Allow me to extend my delegation's utmost gratitude and heartiest congratulations to the Commission, particularly to the Special Rapporteur, Sir Michael Wood, for his persistent determination and efforts on this topic. Malaysia supports the 16 draft conclusions and their commentaries which were adopted at the first reading during the sixty-eighth session of the Commission.

7. Malaysia maintains its view that this topic is crucial to the development of international law as it carries substantive effect on one of the main sources of international law. Malaysia appreciates that most of its concerns raised during the previous sessions of the General Assembly have been considered and addressed in the commentaries.

8. Nevertheless, with reference to draft conclusion 5 "Conduct of the State as State Practice", Malaysia wishes to caution that when the draft conclusion is used to identify the rule of international customary law, the relevant party must also consider the differences in political ideologist, structure of States and dualist/monist character of a State when taking into account the "conduct of a State".



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Mr. Chairman,

9. Malaysia recalls that when this topic was first introduced, our aim was not for the codification of the rules for the identification of customary international law, but rather to produce a guidance for those called upon to identify customary international law. In this regard, it is important for us to maintain the flexible nature of the formation of customary law. In the commentaries, it is again emphasized that the draft conclusions intends to “offer practical guidance on how the existence of rules of customary international law, and their content, are to be determined”. Accordingly, Malaysia is of the view that the draft conclusions should purely serve as guidelines or reference points.

10. Malaysia highly appreciates the commentaries and would like to emphasize that the draft conclusions must be read together with the commentaries so as to ensure a comprehensive understanding of the document.

11. Lastly, on the Secretariat memorandum (A/CN.4/710), Malaysia wishes to record its appreciation to the Secretariat for its works and the publication of its Memorandum on ways and means for making the evidence of customary international law more readily available. Malaysia is of the view that the Memorandum will definitely serve as a useful guidance and reference to the availability of customary international law.

Thank you.