



MALAYSIA

PERMANENT MISSION TO THE UNITED NATIONS

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STATEMENT BY
WAN MOHD ASNUR WAN JANTAN , REPRESENTATIVE OF
MALAYSIA

ON AGENDA ITEM 78: REPORT OF THE INTERNATIONAL
LAW COMMISSION ON THE WORK OF ITS SIXTY -SIXTH
SESSION AT THE 6TH COMMITTEE OF THE 69TH SESSION
OF THE UNITED NATIONS GENERAL ASSEMBLY

NEW YORK, 31 OCTOBER 2014

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

Mr. Chairman,

Malaysia would like to record her appreciation to the Special Rapporteur, Mr. Georg Nolte, for his work on the draft Conclusions together with commentaries which were provisionally adopted by the ILC at its 66th Session.

2. At the previous session, Malaysia has submitted her preliminary views on draft Conclusions 1 to 5 which still stand at the moment and will continue to submit her preliminary views on the subsequent draft Conclusions 6 to 10.

Mr. Chairman,

3. In relation to draft Conclusion 6 (Identification of subsequent agreements and subsequent practice), Malaysia notes the prevailing position that there is a need to carefully identify and interpret subsequent agreements and subsequent practice, in particular to ask whether the parties assume a position regarding the interpretation of a treaty or whether they are motivated by other considerations. In this regard, Malaysia agrees that subsequent agreement and subsequent practice by a State should be a basis for the interpretation of a treaty only if the said subsequent agreement and subsequent practice are motivated by the treaty and not by other external considerations.

4. As regards draft Conclusion 7 (Possible effects of subsequent agreements and subsequent practice in interpretation), Malaysia notes the opposing views of the WTO

Appellate Body and the European Court of Human Rights. While Malaysia agrees that whether a subsequent practice has a modifying effect should revolve around the treaty provisions, Malaysia is concerned with the position that subsequent practice

the modification or amendment of a treaty should only be done in line with Articles 39-41 of the 1969 Vienna Convention on the Law of Treaties (VCLT). In light of this draft Conclusion, Malaysia is also concerned that certain

comment

some

process of interpretation. While Malaysia appreciates the importance of the criteria specified in the draft Conclusion, Malaysia is of the view that the criteria should be subjected to other rules on treaty interpretation contained in the VCLT, in

that the adoption of a decision by consensus cannot represent a subsequent agreement under Article 31(3)(a) of VCLT when there exists an objection by a State, Malaysia is of the view that the intention of the Special Rapporteur has not been clearly translated into paragraph 3.

CHAPTER VIII: PROTECTION OF THE ATMOSPHERE

Mr. Chairman,

8. Malaysia would like to thank the Special Rapporteur, Dr. Shinya Murase, on his successful presentation on the topic Sixty-sixth Session of the International Law Commission (ILC), Dr.

further notes that the expected outcome of the work of Dr. Shinya Murase will be a set of draft guidelines which will not seek to impose legal rules and legal principles on current treaty regimes.

9. Malaysia observes that the First Report lays down three draft
Article

our internal consultations particularly with our scientific experts to ensure the acceptability of the definition.

10.

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substances and energy into the atmosphere. In this regard, Malaysia is hopeful that the Special Rapporteur would elucidate under the draft guidelines. This is to ensure that the activities pr existing international regime on environmental protection. Further, proposed in the First Report. Hence, Malaysia is hopeful that the Special Rapporteur would provide clarifications on the usage of particularly, on the differences of these terms with the common

11. Further, o
is analysing the five concepts highlighted in the First Report namely the airspace, shared or common natural resources, common property, common heritage and common concern. We are of the view that detailed understanding of these five (5) concepts could lead to the determination of the legal status of the atmosphere which we are not in the position to comment at this juncture.

CHAPTER IX: IMMUNITY OF STATE OFFICIALS FROM FOREIGN CRIMINAL JURISDICTION

Mr. Chairman,

12. Malaysia notes that the Third Report of the Special Sixty Sixth session. Malaysia is particularly interested in the matter as the Special Rapporteur has proposed two (2) draft articles which capture the key issues pertaining to the immunity of State officials from foreign criminal jurisdiction.

13. Malaysia has been studying and closely following the development of the subject since the inclusion of the topic at the Com he Sixth Committee of the Sixty-Third Session of the United Nations General Assembly, New York in 2008, Malaysia made intervention as regards its stand on the Preliminary Report prepared by the previous Special Rapporteur, Mr. Roman Kolodkin. In this regard, Malaysia would like to reiterate its position at the Sixth Committee in 2008 that the topic should focus on the immunities accorded under international law, in particular customary international law and not under domestic law. There is also no necessity to re-examine previously codified areas such as the immunities of diplomatic agents, consular officials, members of special missions and representatives of States to international organizations, these categories of persons purpose of this study.

14. Malaysia welcomes the proposed draft Articles and will continue to conduct an in-depth study of the draft Articles. Meanwhile, Malaysia notes that draft Article 2 (e) deals with definition of the State officials to be immune from the criminal jurisdiction. It was drafted to set clear the individuals who are

considered to perform official acts in the context of the immunity from foreign criminal jurisdiction. Malaysia fully supports the

categories of persons should be excluded from the definition of

Mr Chairman,

17. Malaysia further notes the adoption of draft Article 5 by the Drafting Committee which provides the State officials with Immunity *ratione materiae* the definition

scope of the immunity and the exception to immunity from foreign criminal jurisdiction will be addressed in the next report.

I thank you, Mr. Chairman.