



# 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  
(PART III)

NEW YORK, 5 NOVEMBER 2014

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CHAPTER X: IDENTIFICATION OF CU





adversely affect water tables, and to observe the safety of populations and to preserve the surrounding environment.

14. The Malaysian Armed Forces further partake in incidental tasks to provide support to civilian enforcement agencies such as the police force, customs, and the security areas are adjacent to or within national wildlife or forest reserves. An example installation in the Layang-Layang Atoll within the South China Sea to maintain the area as a marine reserve for both economic and security objectives.

15. The Malaysian Armed Forces have also reported that there have been a number of cases in which service personnel have been found to have breached certain laws

of the Vienna Convention on The Law of Treaties 39 & / 7 ' VKRXOG E H WKH J point of departure to determine manifestation of the will to be bound by a treaty and hence, the application of the treaty to the States concerned. Should there be no such an express provision in a treaty, recourse to parallel agreement, unilateral declaration, diplomatic exchanges and conduct of States should be examined within the proper context and content as to how the will of the States are actually manifested. With this exercise of care and caution, we should be able to avoid a generalised interpretation and legal analysis that might ipso facto bring the effect of provisional application of treaties legally and technically equivalent to the effect of treaties that are going to be in force or are already in force. Further, in a circumstance where there is an explicit provision that specifies a treaty shall apply provisionally but conditional upon an express consent by the States concerned, legal effect ensuing from such a commitment is subject to the clear expression of intention. This determination of legal effect VKRXOG E H GLVWLQFW IURP D 3VLOHQFH' VFHQDULR E itself into a positive accord to apply the treaty provisionally. Without such a positive undertaking, the question of legal effect, source, rights, obligations and termination thereof should not arise;

(b) Malaysia notes the example highlighted in the Second Report relating to Article 23 of Arms Trade Treaty, which provides a certain level of discretion to States WKDW WKH are to apply provisionally Articles 6 and 7 pending the entry into force of the Treaty for that State, at the time of signature or the deposit of LQVWUXPHQW RI UDWLILFDWLRQ DFFHSWDQFH DSSURV of legal effect on the provisional application of treaties can be ascertained in the light of full or partial application of the treaty, subject also to the declaration by State of its clear intention to apply the treaty provisionally;

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## CRIMES AGAINST HUMANITY

Mr. Chairman,

22. Malaysia notes the ILC Report at its 66<sup>th</sup> Session that the Commission has GHFLGHG WR LQFOXGH WKH WRS L Fts<sup>3</sup> l n g L e P r H v o g D a n D e C V W + X P I work, on the basis of the recommendation of the Working Group on the Long-Term Programme of Work. Malaysia further notes the appointment of Mr. Sean D. Murphy as Special Rapporteur for the topic.

23. From the paper prepared by the Special Rapporteur, Malaysia takes note that the objective of the Commission on this topic is to draft articles for what would become a Convention on the Prevention and Punishment of Crimes against Humanity. Malaysia also notes with appreciation on the elaboration of the relationship of the proposed Convention and the International Criminal Court (ICC) established by the Rome Statute.

24. Malaysia notes that the proposed convention intends to promote general inter-State cooperation on the investigation, apprehension, prosecution, and punishment of persons who commit crimes against humanity. On that note, Malaysia wishes to highlight that, in Malaysia, the international cooperation is governed by Mutual Assistance in Criminal Matters Act 2002 and the Extradition Act 1992. Therefore, in relation to the proposed mechanism in which the Convention would adopt to promote general inter-State cooperation on the investigation, apprehension, prosecution and punishment of perpetrators of crimes against humanity, such mechanism must take into account the divergence of State legislations and practices in these areas.

25.

27. Finally, Malaysia is of the view that the time is not yet ripe at this juncture to consider an elaboration of a new international instrument on the issue of crimes against humanity.

I thank you.