



# MALAYSIA

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**STATEMENT BY  
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DELEGATE OF MALAYSIA TO THE UNGA 73<sup>RD</sup>**



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2. Malaysia notes the insertion of three new draft guidelines to address matters relating to the implementation of and compliance with obligations under international law as well as issues concerning the resolution and settlement of disputes relating to the protection of the atmosphere.

3. Malaysia acknowledges that draft guideline 10 deals with national implementation of obligations under international law relating to the protection of the atmosphere from atmospheric pollution and atmospheric

is used in the present draft guideline to refer to measures that States may take to make treaty provisions effective at the national level, including implementation in their respective national laws. National implementation may take many forms, which includes, but is not limited to legislative, administrative, judicial and other actions. Malaysia is of the view that the draft guideline 10 can be given due consideration.

4. Further, Malaysia observes that compliance under draft guideline 11 reflects the principle *pacta sun servanda*. This guideline also refers to the mechanics and procedures to assist States in adhering to their obligations under the relevant international law. In lieu of this, Malaysia would like to stress on the importance to recognize the challenges that faced by developing and least developed countries in the discharge of their international environmental protection obligations. In this regard, Malaysia would like to highlight that capacity building in this area is important. In light of the above, Malaysia is of the view that the facilitative and enforcement procedures can be deployed to foster compliance and should be given due consideration.



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5. On draft guideline 12, Malaysia acknowledges its purpose to refer any disputes related to the protection of atmosphere to peaceful means of dispute settlement. The draft guideline also emphasizes on the increasingly important role of scientific and factual evidence in international dispute resolution. In line with the current trend in States bringing atmosphere protection related disputes to international courts and tribunals, Malaysia opines that draft guideline 12 should be given due consideration.

6. In general, Malaysia has no objection to the insertion of the three new draft guidelines for our consideration. In this regard, Malaysia looks forward to receiving the draft guidelines on the protection of the atmosphere and will endeavour to submit our comments on the same within the timeline as prescribed.

## CHAPTER VII: PROVISIONAL APPLICATION OF TREATIES

7. Malaysia commends the efforts of the Special Rapporteur in preparing the Fifth Report on the provisional application of treaties. In this regard, Malaysia wishes to reflect its preliminary view on the topic as the

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Nevertheless, Malaysia notes that previous study of this topic has confirmed that provisional application of a treaty produces legal effects as if the treaty were actually in force and that obligations arise therefrom must be performed under the *pacta sunt servanda* principle. Therefore, the formulation of this draft guideline 8 *bis* should refer to the States or international organizations that had negotiated the treaty and agreed to provisionally apply it.

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8. Last but not least, Malaysia reiterates its view that it is crucial to discern the provisional application of the treaties from the source of obligations as provided by the treaty provision itself. Otherwise, if recourse to alternative sources should be had, the analysis of legal effect should be guided and determined by the result of an unequivocal indication by the State that it accepts provisional application of treaty, as expressed via a clear mode of consent. Thus, for a further comprehensive analysis of the topic, Malaysia would like to suggest that the topic be further elaborated having peculiarities and contextual differences embedded in the treaty provisions, and how State practices so far have responded to such variations.

## CHAPTER VIII: PEREMPTORY NORMS OF GENERAL INTERNATIONAL LAW (*JUS COGENS*)

Mr. Chairman,

9. Malaysia welcomes the inclusion of the topic into the spearheaded by Special Rapporteur, Mr. Tladi will bring much needed clarity to this principle which is integral to the progressive development of international law.

10. Malaysia appreciates the work done so far by the Special Rapporteur and observes that the discussions on *jus cogens* have progressed from considering the criteria of *jus cogens* to the validity of international instruments being in conflict with *jus cogens*.



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11. Malaysia notes the issue on whether non-State Parties to a treaty could invalidate such treaty on the basis that it is in conflict with a particular *jus cogens* norm. Malaysia is of the view that considering the relevant international laws relating to treaties, parties should be allowed to self-determine the content of the treaty bearing in mind that it should be in line with peremptory norms of general international law. Hence, Malaysia is of the view that any question on the validity of a treaty on this reason should be done by the international community as a whole since it relates to peremptory norms of general international law.

12. Malaysia also would like to request the Special Rapporteur to further provide clarity on the issue of the sources of *jus cogens* and a thorough analysis on the element of modification under article 53 of the VCLT.

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

14. Malaysia looks forward to further discussion on application of regional *jus cogens*. We note that such application may not be consistent with *jus cogens* in terms of its acceptance and recognition by the community of States as a whole. Regional *jus cogens* may create confusion in terms of application and therefore should be avoided. We also would like to request the Special Rapporteur to undertake study on state practices on how States deal with *jus cogens* vis-à-vis a treaty.

I, thank you Mr. Chairman.