



MALAYSIA

PERMANENT MISSION TO THE UNITED NATIONS



CANDIDATE
to the
UNITED NATIONS
SECURITY COUNCIL
for the term 2015-2016

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**STATEMENT BY
MS. NURASHIKIN ISMAIL, REPRESENTATIVE OF MALAYSIA
ON AGENDA ITEM 83 ENTITLED
“THE SCOPE AND APPLICATION OF THE PRINCIPLE OF UNIVERSAL
JURISDICTION”
AT THE SIXTH COMMITTEE OF
THE SIXTY-NINTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY
NEW YORK, 15 OCTOBER 2014**

Mr. Chairman,

1. Malaysia records its appreciation to the Secretary-General for preparing the Report on the “Scope and Application of Universal Jurisdiction” (“the Report”), pursuant to the General Assembly resolution 68/117. In this regard, we look forward to more insightful exchange of laws and practices in this forum. In addition Malaysia wishes to align itself with the statement made by the Islamic Republic of Iran on behalf of Non-Aligned Movement (NAM).
2. With regard to the Working Group that has been contributing to our understanding on this topic, my delegation notes and commends its effort in framing a clearer and better concept on the scope and application of universal jurisdiction, notwithstanding the many differing standards of practice of Member States. Malaysia emphasizes that clear criteria which defines the concept of universal jurisdiction must be first agreed by the Member States before this matter could be progressed further. In this matter, Malaysia notes and appreciates the efforts of Member States in submitting their comments and observations in regard to the principle.
3. However, Malaysia notes with concern the lack of constructive discussion on the ultimate goal of this principle once enforced. We firmly believe that a uniform view of this concept is imperative to avoid differing standards among Member States in applying the said principle. Without proper understanding and legal and judicial safeguards, the principle of universal jurisdiction may be a form of encroachment into the sovereignty of

other States. Further, at all times, international due process norms to protect the persons accused must not be disregarded.

4. Although Malaysia is concern with an international regulation on the exercise of universal jurisdiction, Malaysia is of the view that States' should exercise care and caution when exercising or legislating universal jurisdiction.

5. For Malaysia, any exercise of extra-territorial criminal jurisdiction must be based on enabling domestic law. For example –

- in relation to terrorism offences, section 4 of the Penal Code of Malaysia established the extra-territorial application of the offences while section 22 (1)(b) of the Court of Judicature Act 1964 empowers the courts to take jurisdiction over those offences
- in relation to other offences such as trafficking in person (section 4 of the Anti-Trafficking In Persons and Anti-Smuggling of Migrants Act 2007), computer crimes (section 9 of the Computer Crimes Act 1997), aviation offences (sections 3, 7, 8 and 9 of the Aviation Offences Act 1984), money laundering (section 82 of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001), communication and multimedia offences (section 4 of the Communications and Multimedia Act 1998) and trade of strategic items (section 4 of the Strategic Trade Act 2010), the provisions of the relevant enabling domestic laws provide such extra-territorial jurisdiction to Malaysia.

6. Malaysia also wishes to highlight that the exercise of extra-territorial criminal jurisdiction is applied in section 127A of the Criminal Procedure Code (CPC) which among others, confers the power to the Attorney General of Malaysia to certify whether an offence under any Malaysian laws which is committed out of Malaysia has threatened Malaysia's security in order to confer extra-territorial jurisdiction to deal with such offence as if it had been committed at any place within Malaysia.

Mr. Chairman,

7. My delegation notes that while the common aim of Member States is to combat impunity to ensure accountability for the most serious crimes, the exercise of extra-territorial criminal jurisdiction inevitably gives rise to a number of challenges and issues in its implementation.

8. For Malaysia, the lack of appropriate implementing legislations in States remains a practical concern. In particular, the acquisition of evidence from other States poses a substantial challenge that may impede prosecution at its national courts. In many States, its domestic legal system lacks the means to investigate or prosecute on the cases of extra-territorial criminal jurisdiction, therefore making the process lengthy and challenging. Hence, for purposes of prosecuting crimes committed elsewhere (whether on the basis of universal jurisdiction or extra-territorial jurisdiction), States must first have in place effective mutual legal assistance in criminal matters and extradition regimes.

9. Notwithstanding the above, States must also take into consideration the issues of competing jurisdiction between States and the immunity of state officials.

Mr. Chairman,

10. Last but not least, in consideration that the study on the scope and application of universal jurisdiction is a legal and technical subject matter, which requires careful examination and a thorough analysis, Malaysia has consistently proposed that a further in-depth study should be entrusted to the legal experts of the International Law Commission (ILC) as permitted under the General Assembly resolution 65/33. However, Malaysia notes that this proposal has not materialized at this juncture.

11. While Malaysia remains hopeful for this study to be taken up by the ILC at the near future, Malaysia would like to put forward its suggestion for a concrete proposal on the outcome of this study to be drawn, and that discussions at the Working Group should be guided as such. Malaysia believes that such a proposal will unite the common aim of each Member State and will further contribute to this study by the ILC in the future.

Thank you.