



# MALAYSIA

Permanent Mission to the United Nations, New York

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STATEMENT BY  
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ATTORNEY GENERAL'S CHAMBERS OF MALAYSIA

ON AGENDA ITEM 77:  
REPORT OF THE INTERNATIONAL LAW COMMISSION  
ON THE WORK OF ITS SEVENTY-THIRD SESSION

CLUSTER I - CHAPTERS I, II, III, IV (PEREMPTORY NORMS OF GENERAL  
INTERNATIONAL LAW (JUS COGENS)), V (PROTECTION OF THE ENVIRONMENT  
IN RELATION TO ARMED CONFLICTS) AND X (OTHER DECISIONS)

AT THE SIXTH COMMITTEE OF  
THE 77TH SESSION OF THE GENERAL ASSEMBLY

NEW YORK, 25 OCTOBER 2022

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Mr. Chair,

At the outset, allow me to thank Prof. Dire D. Tladi, Chair of the International Law Commission (ILC) for his briefing to this Committee, and congratulate him as well as other members of the Commission for the exceptional work at the seventy-third session. My delegation also notes with appreciation the Report of the Commission of the recent session (A/77/10).

## **CHAPTER V: PROTECTION OF THE ENVIRONMENT IN RELATION TO ARMED CONFLICT**

2. We thank the Special Rapporteur, Ms. Marja Lehto, for her reports on the topic of protection of the environment in relation to armed conflicts, and welcome the adoption of the draft principles in the second reading. My delegation continues to follow the work of the Commission on this topic closely, given its significance in addressing the effective protection and management of the environment, before, during or after an armed conflict.

3. Malaysia's statement on this topic will focus on selected issues of importance to Malaysia, as well as on the draft principles most recently adopted on provisional basis by the Commission.

### "Binding" and "Non-Binding"

4. Malaysia is well aware that the draft principles are not intended to be binding. However, Malaysia notes that several of the draft principles indicates mandatory wordings. Malaysia therefore suggests that the wording and form of the document be reviewed, so that the draft principles be drafted using formulations that do not imply binding obligations. Malaysia wishes to emphasize that absence of a commitment to the relevant international instruments has not hindered Malaysia's dedication towards assisting vulnerable persons.

Martens Clause with respect to the protection of the environment in relation to armed conflicts (draft Principle 12)

5. Malaysia notes that there are States who have found it difficult to agree on the meaning and application of the principles of humanity and public conscience in the context of the application of the Martens Clause. As observed by the ICJ in the Advisory Opinion on Nuclear Weapons, the Martens Clause provides authority for treating the principles of humanity and dictates of public conscience as principles of international law but leaves the precise content of the standard implied by these principles of international law to be ascertained "in light of changing conditions, inclusive of changes in the means and methods of warfare and the outlook and tolerance levels of the international community." Thus, it is crucial for the Commission to take into consideration differing views and practices of States concerning the Martens Clause principle to ensure its effective application within the context of environmental protection related to armed conflict.

"Environment" (draft principles 4, 5 and 13)

6. Malaysia notes that the term "environment" has been adopted consistently in all draft principles. Malaysia finds that this is the appropriate use of the term "environment" as it provides a broader context of given principles including "social factor of aesthetics" as according to Malaysia's domestic legislations.

7. Further, Malaysia supports the views of ILC that the term "cultural" in draft principle 4 may be used to indicate the existence of a close linkage to the "environment" in draft principles 5 and 13 which can be related to the rights of indigenous peoples that may warrant special protection to be given to them under the said draft principles.

Mr. Chair,

**CHAPTER X: OTHER DECISIONS**

8. Turning to Chapter X of the report, Malaysia welcomes and supports the inclusion of the topic "Prevention and repression of piracy and armed robbery at sea" into the Commission's programme of work. We are of the view that the study of this topic spearheaded by Special Rapporteur, Mr. Yacouba Cissé will bring much needed clarity to this issue which is integral to the progressive development of international law.

9. Malaysia appreciates the introduction of the subject matter and views that giving it the due attention it deserves has been long overdue. This considering the fact that maritime piracy or armed robbery at sea is one of the pressing global issues of the present

century and the magnitude of these crimes and the profound impact they have not only on the shipping industry but on the international community as a whole.

10. It is duly noted that the study on the topic will address a number of matters including the definition of piracy, punishment of piracy, cooperation in the suppression of piracy, as well as the exercise of jurisdiction over the said crime. Malaysia is also aware of the arguments and debate that the current international framework for suppressing piracy has also been considered as insufficient to curb piracy in the sense that it does not provide any mechanism for the successful prosecution of pirates by states. Additionally, Malaysia is in agreement with Mr. Yacouba Cissé that there is a need for further clarification on a number of related issues for the better understanding of the definition of piracy and the application of universal jurisdiction related to the crime of piracy. In this regard, Malaysia is of the view that the Commission's works on this topic would provide the much-added value to address all these issues. My delegation looks forward to the outcome of this endeavour.

Mr. Chair,

11. Malaysia also welcomes the inclusion of the topic "Subsidiary means for the determination of rules of international law", recommended by the Working Group on the long-term programme of work during the Commission's seventy-second session. My delegation appreciates the work done by Mr. Charles C. Jalloh in preparing the comprehensive syllabus of the topic, which will be the foremost source of reference in developing the discussions on this new topic.

12. Malaysia observes that Article 38 of the Statute of International Court Justice ("ICJ Statute") has long been applied in the development of international law. Nevertheless, Malaysia is of the view that further clarity is needed on the phrase "subsidiary means" as stipulated under Article 38(1)(d) of the ICJ Statute to provide assistance on the application of the provision.

13. It is also worth noting that the Commission was established after the formation of the International Court of Justice. Malaysia is of the view that a close review of the drafting history of Article 38(1)(d) of the ICJ Statute could prove useful to clarify the intended role and current place of subsidiary means in the determination of rules of international law.

14. On this note, Malaysia supports the work of the Commission to initiate studies under this agenda item and to make recommendations for the purpose of promoting the progressive development of international law and its codification.

Mr. Chair,

15. To conclude, Malaysia wishes to highlight that this topic requires much detailed analysis by the Member States in arriving at a consensus position acceptable at the

international level. Accordingly, Malaysia looks forward to the information from the Member States and a memorandum by the Secretariat for purposes of future work on the topic. We look forward to the next course of action on this subject matter.

Thank you.