



# MALAYSIA

PERMANENT MISSION TO THE UNITED NATIONS

(Please check against delivery)

5. Malaysia further notes that Article 5 makes it mandatory for States to cooperate with the United Nations and other competent intergovernmental organizations, the International Federation of the Red Cross and Red Crescent Societies and the International Committee of the Red Cross, and with relevant non-governmental organizations. This cooperation, read together with the measures of implementation stated in draft Article 16 and draft Article 5 ter

Scope of the topic

11. In relation to the change of the title of the topic IURP <sup>3</sup>)RUPDWLRQ DQG HYL FXVWRPDU\ LQWHUQDWLRQDO ~~ORDZFXWRPDU\~~ <sup>3</sup>LQWHUQDWLRQDO WD Malaysia is flexible with this proposition. In essence, even with this change, the topic would still

Court of Justice may be considered the primary source of material on the formation and evidence of rules of customary international law as it is more 'authoritative' than the other range of materials proposed by the Special Rapporteur.

16. Malaysia further agrees that the Commission should carefully scrutinize the manner in which national courts apply customary international law as domestic judges may not be well versed in public international law. However, Malaysia is fully aware and recognizes that domestic judges are at liberty to apply their national laws.

Future work / Outcome of the topic

17. For the outcome of the study of this topic, Malaysia is in agreement that any such outcome should not prejudice the flexibility of the customary process or future developments concerning the formation and evidence of customary international law. In



26. Malaysia takes note of the preliminary debate within the Commission on whether the effects on any specific weapons shall be specifically addressed in relation to the topic. Malaysia notes that the Special Rapporteur has proposed that the effect of particular weapons should not be the emphasis of the study, while some other members are of the view that the matter should be addressed. Malaysia would align itself with the latter view and is of the opinion that the question on the effects of weapons and methods of warfare to the environment is necessary since the various instruments addressing this particular area is integral to the corpus of IHL.

27. In that connection, Malaysia notes the 2009 Report published by UNEP entitled '3URWHFWLQJ WKH HQYLURQPHQW GXULQJ DUPHG FRQÀL LQWHUQDWLRQDO ODZ' ZKLFK FRQWDLQV DQ REVHUYDWLRQ regulating the means and methods of warfare, and restricting the use of particular weapons and military tactics indeed provide indirect protection to the environment, albeit being rarely implemented or enforced effectively.

Mr. Chairman,

28. The foregoing preliminary views by Malaysia on the direction of the study on this topic by the Commission is presented for its consideration, and Malaysia looks forward to further progress on the study to be reflected in the first report by the Special Rapporteur in 2014.

#### CHAPTER X: THE OBLIGATION TO EXTRADITE OR PROSECUTE (AUT DEDERE AUT JUDICARE)

Mr. Chairman,

29. Malaysia would like to record its appreciation to the open-ended Working Group under the Chairmanship of Mr. Kriangsak Kittichaisaree for its report (Annex A to the Report of the Commission) on the obligation to extradite or prosecute (aut dedere aut judicare).

30. Malaysia is agreeable to the comments made in paragraph 18 of the Working \* U R X S P W that owing to the great diversity in the formulation, content, and scope of the obligation to extradite in conventional practice, it would be futile for the Commission to engage in harmonizing the various treaty clauses on the obligation to extradite or prosecute.

31. At this juncture, Malaysia is of the view that the obligation to extradite or prosecute is currently an obligation under general international law arising from treaty, domestic legislation as well as on the basis of reciprocity between Malaysia and other countries. Since there has not been strong evidence to support that this obligation is widely accepted by the majority of states, this obligation falls short of attaining customary international law status. In addition, the principle of aut dedere aut judicare is neither equivalent nor synonymous with the principle of universal jurisdiction. Malaysia has not criminalized offences attracting universal jurisdiction. , Q 0 D O D \ V L D H S V Y L H Z

obligation is not binding upon States unless the State chooses to bind itself either under treaty or domestic legislation.

32. Responding to the major issues highlighted by the Working Group in its report, Malaysia wishes to highlight that the obligation to extradite or prosecute has been incorporated by Malaysia under section 49 of the Extradition Act 1992 [Act 479]. Determination of whether to grant the extradition request or to refer it to the relevant authority for prosecution lies with the Minister.

33. Further, the Minister has the discretion to extradite or refer the fugitive offender to the relevant authority for prosecution based on grounds of nationality or the country of jurisdiction. In doing so, the Minister would take into consideration the nationality of the fugitive offender and whether Malaysia has jurisdiction to try the particular offence.

34. Nevertheless, the obligation to fulfill the doctrine of territoriality also depend on the types of offences committed by the fugitive offender. Under Act 479, only extraditable offences would be considered in determining any extradition request.

35. In this regard, Malaysia is agreeable with the comments made in paragraph 27 of

## CHAPTER XI: THE MOST-FAVOURED-NATION CLAUSE

Mr. Chairman,

40. Malaysia would like to thank the reconstituted Study Group on The Most-Favoured-Nation clause, under the chairmanship of Mr. Donald M. McRae and Mr. Mathias Forteau for its Report.

41. Malaysia acknowledges that the overall objective of the MFN Clause is to provide greater coherence in approaches adopted by tribunals in interpreting the MFN Treatment Clause. It would primarily be useful for the Commission to elaborate a general principle of interpreting the Clause to ascertain whether there is any assimilation of substantive rights and procedural treatments in the first place. Based on the discussion in Daimler and Kilic as highlighted in the working paper on the MFN Clause, it is noted that that the MFN Clause generally cannot extend to dispute resolution provisions. Based on these two cases and other related cases in point, it would be