

KUALA LUMPUR WAR CRIMES TRIBUNAL

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS
(INCLUDING NOTES OF PROCEEDINGS)

LEGALITY OF UNILATERAL EXEMPTION FROM COMPLIANCE WITH PROVISIONS OF TREATIES INVOLVING INTERNATIONAL HUMANITARIAN LAW

ADVISORY OPINION OF 31 OCTOBER 2009

Kuala Lumpur Foundation To
CRIMINALISE



WAR IS ABOUT KILLING. MASSIVE KILLING



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PUSTAKA PERDANA



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*Legality of Unilateral Exemption from Compliance with
Provisions of Treaties involving International Humanitarian Law*

ADVISORY OPINION



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KUALA LUMPUR WAR CRIMES TRIBUNAL

YEAR 2009

5

31 October 2009

ADVISORY OPINION

10 **Present:** Abdul Kadir Sulaiman; Francis A. Boyle; Tunku Sofiah
Jewa; Salleh Buang; Niloufer Bhagwat; Shad Saleem Faruqi; Alfred
Lambremont Webre.

15 Concerning a request from the Kuala Lumpur War Crimes
Commission vide Application No. 1 of 2009, for an Advisory
Opinion filed with the Registrar of the Tribunal on the 8th day of
October, 2009 and which reads, after amendments made orally on
31st day of October, 2009, as follows:

20 *Whether a Head of State and/or Government can unilaterally exempt
itself from complying with any provisions of any International
Treaties/Conventions (such as the Geneva Conventions) dealing with
international humanitarian law, and in particular as set out in
Article 7 paragraph (1)(a)-(d) of the Charter of the Kuala Lumpur
25 War Crimes Commission, duly ratified by the State without first
abrogating the relevant treaty/convention.*

THE TRIBUNAL,

30 composed as above,
gives the following Advisory Opinion:

35 On the application for an Advisory Opinion as contained in
Application No. 1 of 2009 submitted to the Tribunal by the Kuala
Lumpur War Crimes Commission, the Tribunal has heard
submissions by the Applicant and deliberated over the matter and
here are its views:

40 1. *On the question of threshold jurisdiction, the Tribunal is unanimous
(7:0) in giving the opinion that this Tribunal has jurisdiction to
consider Application No. 1 of 2009.*

2. *On the question of the substance of the opinion sought, the view of the Tribunal is unanimous (7:0) that a Head of State and/or Government cannot unilaterally exempt itself from complying with any provision of any international treaty/convention (such as the Geneva Conventions) dealing with international humanitarian law, and in particular as set out in Article 7 paragraph (1)(a)-(d) of the Charter of the Kuala Lumpur War Crimes Commission duly ratified by the State without first abrogating the relevant treaty/convention.* 1
5
3. *On the question of whether international humanitarian law can be abrogated, revoked or denounced by such Head of State or Government, the Tribunal is again unanimous (7:0) that international humanitarian law cannot be abrogated, revoked or denounced by such Head of State and/or Government.* 10
15
4. *Ultimately, the Tribunal's advisory opinion sought is by way of unanimous decision that a Head of State and/or Government cannot unilaterally exempt itself from complying with any provision of any international treaty/convention (such as the Geneva Conventions) dealing with international humanitarian law, and in particular as set out in Article 7 paragraph (1)(a)-(d) of the Charter of the Kuala Lumpur War Crimes Commission duly ratified by the State without first abrogating the relevant treaty/convention.* 20

Done in English, in Kuala Lumpur, Malaysia this thirty-first day of October, 2009, in two copies, one of which will be placed in the archives of the Tribunal and the other transmitted to the Secretary-General of the United Nations. 25

(Signed) Abdul Kadir Sulaiman 30
President

(Signed) Nizam Bashir
Registrar

Judges Francis A. Boyle, Salleh Buang, Niloufer Bhagwat, Shad Saleem Faruqi, Alfred Lambremont Webre and Tunku Sofiah Jewa append separate opinions to the Advisory Opinion of the Tribunal. 35

(Initialled) A.K.S. 40
(Initialled) N.B.