Consider Plan B to seek justice

RECENTLY, Malaysia presented a draft resolution to the UN Security Council calling for the establishment of an international tribunal that, it said, would guarantee an independent trial for those behind the downing of Malaysian Airlines Flight MH17 over eastern Ukraine on July 17, 2014.

Malaysia has told the UN Security Council that it was ready to move ahead with the proposed tribunal despite resistance from Russia, which has described the move as premature and counterproductive. Thus, there is a strong possibility that Russia will use its veto power against the draft resolution.

The draft resolution calls for establishing an international tribunal under Chapter VII of the United Nations Charter which would provide the highest degree of legitimacy to prosecute those responsible for the carnage.

Chapter VII of the UN Charter, which comprises Articles 39 to 51, sets out the UN Security Council's powers to maintain peace. It allows the UN Security Council to "determine the existence of any threat to the peace, breach of the peace, or act of aggression" and to take military and non-military action to "restore international peace and security".

Currently, the Malaysian Government is working with Australia, Belgium, the Netherlands and Ukraine – member countries of the Joint Investigation Team currently conducting the probe on MH17 – on setting up the international tribunal. It is important for all nations to give their unconditional support for the draft resolution.

No nation in the UN Security Council, including Russia, should use their veto power against the draft resolution as it would send a wrong signal to the world, and especially to the families of the 298 victims.

The crime committed on MH17 is so serious, one even might say it is a crime against humanity. It is crucial for the incident to be investigated thoroughly, according to the due process recognised under the existing international laws.

This call for setting up the international tribunal under the UN Charter is not something new. Since the creation of the United Nations in 1945, Chapter VII of the UN Charter has been invoked in calling for tribunals to investigate crimes in Rwanda, Somalia, Korea, Afghanistan and in other countries.

Enforcement of sanctions or other forms of punishment could send a strong signal to everybody and to all nations that any uncivilised conduct will not be accepted and tolerated. It would also further guarantee the future peace of our world.

While there is a strong possibility that Russia will veto the draft resolution, Malaysia should also have a back-up plan to look into the case. This can be done by putting the issue under the International Criminal Court (ICC), which was created to protect people from genocide, crimes against humanity, war crimes and the crime of aggression.

The ICC has proven to be an effective mechanism to address numerous issues relating to international crime.

Malaysia can discuss the possibility of taking this legal path with the other Joint Investigation Team nations. In this regard, Malaysia also needs to immediately ratify the Rome Statute of the International Criminal Court, which recognises the existence of the ICC.

Since March 2011, Malaysian government officials have expressed their interest in ratifying the Rome Statute.

Regardless of what develops at the UN Security Council in the coming days over the draft resolution, some sort of justice mechanism will still need to be set up to investigate the incident, punish the perpetrators and bring justice to the victims.

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