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STATEMENT BY MR. A.K.S. VIJAYAN, MEMBER OF PARLIAMENT AND MEMBER OF THE INDIAN DELEGATION, ON AGENDA ITEM 78: REPORT OF THE INTERNATIONAL LAW COMMISSION CHAPTER VI: SHARED NATURAL RESOURCES AND CHAPTER VII: RESPONSIBILITY OF INTERNATIONAL ORGANISATIONS AT THE SIXTH COMMITTEE OF THE 61ST SESSION OF THE UN GENERAL ASSEMBLY ON OCTOBER 31, 2006

Mr. Chairman,

On the topic of "Shared Natural Resources", we welcome the completion, on first reading, of the set of 19 draft articles and commentaries on the law of transboundary aquifers. We commend the Special Rapporteur, Ambassador Yamada, for the progress achieved by the International Law Commission. We also appreciate the contribution of the Working Group on Shared Natural Resources under the Chairmanship of Mr. Enrique Candioti.

The work of the Commission in this field is important, as this is an area in which international practice is still evolving. Despite the abundant treaties and other legal documents that have been concluded in this area, which provided useful inputs to the work of the ILC, it may be noted that considerable growth in the international practice and scientific knowledge concerning transboundary aquifers has only taken place in recent years, we therefore welcome the caution exhibited by the Commission in taking the view that it was still premature to reach a conclusion on the question of the final form the Draft Articles should take.

My delegation reiterates its support for the inclusion in Draft Article 3, of an express affirmation of the principle of the State's sovereignty over the portion of a transboundary aquifer or aquifer system located within its territory. This is consistent with the principle of sovereignty of States over natural resources within their territories.

The principle of "equitable and reasonable utilization", set out in Article 4, needs to be considered together with Draft Article 5 on "factors relevant to equitable and reasonable utilization". The phrase "accrual of benefits" contained

in Article 4 (a) requires clarification, since the title of the Article as well as Article 5 refer to "utilization".

In Draft Article 11, India supports the inclusion of the "precautionary" approach. However, this principle needs to be more clearly specified and the clause "In view of uncertainty" should be deleted, as this is not suitable for inclusion in a legal text.

Draft article 16 deals with the obligations of States in responding to actual emergency situations that are related to transboundary aquifers. However, the commentary recognizes the lack of adequate knowledge regarding the type and extent of emergencies that could occur, or the response action that could be undertaken by the concerned States.

India supports the general obligation to cooperate, as contained in the Draft Articles. However, there appear to be some overlapping areas, as this obligation is referred to in different Articles. Thus, Article 4 requires the aquifer States to "establish individually or jointly an overall utilization plan", Article 7 stipulates that they "should establish joint mechanisms of cooperation", Article 13 requires that "A joint management mechanism shall be established, wherever appropriate", while Article 17 provides for bilateral or regional agreements or arrangements. The functions of these various mechanisms provided for and their inter-relationship needs to be more clearly established.

These are the preliminary observations of my delegation on the Draft Articles. As desired by the Commission, we would also be submitting further comments separately.

Mr. Chairman,

We would also like to convey our appreciation to the Special Rapporteur Professor Gaja on his fourth Report on the Responsibility of International Organizations as well as for presenting the set of draft 13 articles including commentaries adopted by the ILC this year.

Articles 17 to 24 on circumstances precluding wrongfulness follow the general pattern of the relevant articles on State Responsibility as, according to the Rapporteur, the principles contained in the Chapter on 'circumstances precluding wrongfulness' are equally applicable to international organisations with minor adjustments to fit the nature of the organisation. We had earlier sounded a note of caution in this regard. First, the attributes of a State and an international organization are not the same. Second, given the diversity of international organizations and differences in their objectives and functions, it would be difficult to assess which of the circumstances precluding wrongfulness listed in Chapter V of Part One of the articles on the responsibility of States could be applicable to

international organizations, especially given the absence of definitive practice in this area.

Article 18 on self defence is a good example in this regard. This article provides that wrongfulness of an act of an international organisation is precluded if the act constitutes a lawful measure of self defence. Since international organisations are not members of the United Nations, the reference to the Charter of the UN is replaced by "principles of international law embodied in the Charter of the United Nations. However this comparison overlooks the essential difference between a state and an international organisation, namely a circumstance such as self-defence is by its very nature only applicable to the actions of a State, it could be questioned whether the international obligations usually attributable to international organizations may be such that could reasonably lead to a breach of a peremptory norm of general international law under article 26 of the articles on State responsibility.

In the same vein, we are not sure whether the concept of necessity should be extended to international organisations. States are entitled to invoke necessity to safeguard their essential interests, but under what circumstances the same right should extend to international organizations is difficult to envisage due to lack of specific practice in the area. The application of this concept to Peace Missions also raises some difficulties as those Missions have to follow very clear rules of engagement. Therefore, we would prefer deletion of this article so that this concept may not be invoked as a pretext for non-compliance with international obligations or for infringement of the rights of any third State.

These are our preliminary comments on Draft Articles 18 and 22. We would submit comments on other articles later.

Thank You, Mr. Chairman

[BACK TO TABLE OF CONTENTS](#)