



Malaysia

Permanent Mission to the United Nations

STATEMENT BY

MR. PEH SUAN YONG
REPRESENTATIVE OF MALAYSIA
ON

AGENDA ITEM 144:
REPORT OF THE INTERNATIONAL LAW COMMISSION
ON
CHAPTER V:
RESPONSIBILITY OF INTERNATIONAL ORGANISATION
AND
CHAPTER VI:
SHARED NATURAL RESOURCES
AT

THE SIXTH COMMITTEE DURING THE 59TH SESSION
OF THE UNITED NATIONS GENERAL ASSEMBLY
NEW YORK

ON

MONDAY, 8 NOVEMBER 2004

[Please check against delivery]

Mr. Chairman,

On behalf of the Malaysian delegation, I would like to thank the Chairman of the International Law Commission for his introduction of the report of the Commission as contained in document A/59/10. We congratulate the Commission for its excellent work and commend the Chairman of the Working Groups and the Special Rapporteurs on the progress achieved on the various topics before the Commission. Our statement will focus on the topics of "Responsibility of International Organizations" and "Shared National Resources".

2. On the work on Responsibility of International Organisations, Malaysia would like to thank the Drafting Committee and the Special Rapporteur, Mr. Giorgio Gaja, for their work on the draft Articles 1 to 7 and commends them for the good work carried out thus far.

3. The formulation of the draft Articles on the Responsibility of International Organizations is timely bearing in mind the increasing activities of International Organizations in matters relating to international affairs which may have legal implications. In this regard, Malaysia is supportive of the efforts of the Drafting Committee and the Special Rapporteur on the draft Articles.

Mr. Chairman,

4. Having studied the draft Articles, Malaysia would like to make the following observations:

(i) Malaysia understands Article 1(2) to mean that a State may be responsible for a wrongful act of an International Organization of which that State is a member. In this regard, Malaysia would like to propose a re-formulation of Article 1(2) as follows:

"The present draft articles also apply to the responsibility of a State for the internationally wrongful act of an international organization of which the State is a member".

(ii) With regard to the phrase "other entities" in draft Article 2, Malaysia is of the view that the said phrase is open-ended and thus the application thereof will not be clearly understood, which may give rise to the implication that all entities may qualify as members of International Organization. For the purpose of clarity and certainty, Malaysia proposes for the phrase "other entities" to be clearly defined or at the very minimum certain criteria to be specified.

(iii) Reference is also made to Article 6, which deals with ultra vires conduct of organs or agents of an International Organization although the conduct of the organs or agents exceeds the authority of those organs or agents or contravenes instructions. Under the said Article, the

International Organization would be responsible for such ultra vires conduct of its organs or agents. Malaysia proposes for the said formulation to be further considered as Malaysia is of the view that due consideration should be given to the validity of the conduct of the organs or the agents of the International Organization prior to attributing the said conduct of the organs or agents to the International Organization. In particular, Malaysia feels that it would be unjust to attribute the conduct of the organs or agents to the International Organization when such conduct has clearly exceeded the authority of the organs or agents or when such conduct clearly contravenes the instructions of the International Organization.

Mr. Chairman,

5. Malaysia would also like to thank the Special Rapporteur, Mr. Chusei Yamada, for his work on, *inter alia*, the draft articles relating to the topic of "shared natural resources" as contained in document A/CN.4/539 entitled "Second Report on Shared Natural Resources: Transboundary Groundwaters". Malaysia commends him for the excellent work carried out thus far.

6. Malaysia notes that due to the sensitivity expressed both in the Commission and the Sixth Committee on the use of the term "shared resources", which might refer to the common heritage of mankind or to the notion of shared ownership, the focus of the said draft articles was on the sub-topic of "transboundary groundwaters" without using the term "shared". In this respect, Malaysia also notes that although the term "groundwater" is used in the report of the Special Rapporteur, the term "aquifer" was preferred in the draft articles.

7. Malaysia further notes that the draft articles are not to be construed as indicative of the final form the Commission's endeavour would take and that the draft articles were formulated so as to generate comments, to receive more concrete proposals and also to identify additional areas that should be addressed.

Mr. Chairman,

8. The formulation of the draft articles is an attempt to regulate the uses of transboundary aquifer systems and other activities, which have or are likely to have an impact on those systems and to regulate measures of protection, preservation and management of those systems. Malaysia has studied the draft articles and would like to make the following comments:

(i) In relation to draft Article 2 on the "use of terms", Malaysia would like to propose the following:

- a) That the term "aquifer" be defined to mean "a permeable water-bearing rock formation, sand, gravel, or soil capable of yielding exploitable quantities of water";
- b) That the term "aquifer system" be defined to mean "an aquifer or a series of aquifers, each associated with specific rock formations, sand, gravel, or soil that are hydraulically connected".

The above proposals are made with the intention of providing a comprehensive definition to the terms "aquifer" and "aquifer system".

(ii) With regard to draft Article 4, Malaysia would like to seek clarification on the concept of "significant harm" envisaged under the said draft Article and the criteria for determining when "harm" constitutes "significant harm".

(iii) In relation to draft Article 6 on the "regular exchange of data and information", Malaysia notes that the regular exchange of data and information is to be made pursuant to draft Article 5 which, *inter alia*, states that co-operation amongst the aquifer system States shall be on the basis of mutual benefit. Malaysia however is of the view that certain exchange of data and information amongst the aquifer system States may not be appropriate as it may have adverse implications on the national interest of an aquifer system State. Hence, Malaysia proposes that the exchange of data and information between aquifer system States be made subject to considerations of national interest including security interest.

Thank you, Mr.Chairman.