



Permanent Mission of
Malaysia
to the United Nations

(PLEASE CHECK AGAINST DELIVERY)

STATEMENT BY
HON DATUK WAN JUNAIDI TUANKU JAAFAR
REPRESENTATIVE OF MALAYSIA
ON
AGENDA ITEM 80
REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FIFTY-
SEVENTH SESSION
SHARED NATURAL RESOURCES

AT
THE SIXTH COMMITTEE OF THE GENERAL ASSEMBLY
WEDNESDAY, 26 OCTOBER 2005

Mr. Chairman,

Malaysia would like to thank the Special Rapporteur, Mr. Chusei Yamada, for his work on the topic of shared natural resources and the draft Articles on the law of transboundary aquifers as contained in document A/CN.4/551 entitled "Third Report on Shared Natural Resources: Transboundary Groundwaters". Malaysia commends him for the excellent work carried out thus far.

Mr. Chairman,

2. Malaysia had put forth its concern during the Sixth Committee Session of the 59th Session of the United Nations General Assembly that the terms "aquifer" and "aquifer system" under draft Article 2 be defined to take into consideration the possibility that an "aquifer" or an "aquifer system" can consist of not only rock formations, but also sand, gravel and soil. In this regard, Malaysia notes that the Special Rapporteur in this Report had included the term "geological formation" when defining these terms under draft Article 2 taking into account the fact that an underground water bearing formation can consist not only of rock but also other naturally occurring materials, either consolidated or unconsolidated, such as gravel and sand.

3. In relation to draft Article 10, Malaysia would like to propose that the term "harmonized" be deleted from paragraph (1) of draft Article 10. Malaysia is of the view that the word "harmonized" may impose too high of an obligation upon aquifer States to establish standards and methodologies for monitoring transboundary aquifer or aquifer systems that are applicable across the board. Though ideal, the practicality of such a requirement should be considered,

taking into account the different and varying systems in relation to the different and varying aquifers and aquifer systems in the respective aquifer States. In this respect, Malaysia shares the view of the Commission that such a requirement more appropriately belongs in bilateral or regional arrangements instead.

4. Further, Malaysia would like to express its support for the use of the word “encouraged” in draft Article 14 in relation to the taking of a precautionary approach by aquifer States in respect to preventing, reducing and controlling the pollution of a transboundary aquifer or aquifer system that may cause significant harm to other aquifer States.

5. Malaysia notes that draft Article 21, amongst others, protects an aquifer State from being compelled to provide data or information under the present draft Articles, which is vital to its national defence or security. Draft Article 21 however does not provide for such a protection on the basis of 'national interest', which in Malaysia's understanding, is a concept encompassing numerous other components including, but not limited to, national defence and security. Be that as it may, Malaysia would also like to express its support to the proposal that the protection under draft Article 21 is extended to industrial secrets and intellectual property.

Thank you, Mr. Chairman.