



Permanent Mission of
Malaysia
to the United Nations

**STATEMENT BY MR. MOHD RADZI HARUN
REPRESENTATIVE OF MALAYSIA
ON AGENDA ITEM 78: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK
OF ITS FIFTY-EIGHTH SESSION: CHAPTER IV: SHARED NATURAL RESOURCES,
AT THE SIXTH COMMITTEE OF THE 61ST SESSION OF
THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK
30 OCTOBER 2006**

Mr. Chairman,

1. Malaysia would like to record its gratitude to Mr. Chusei Yamada, the Special Rapporteur for the Working Group on Shared Natural Resources, under the chairmanship of Mr. Enrique Candioti, and the experts on groundwaters from UNESCO, FAO, UNECE and IAH for their contributions, thus enabling the Law Commission to bring to a successful conclusion its first reading of the draft articles on the law on transboundary aquifers.
2. Malaysia had the opportunity to listen from Mr. Chusei Yamada, the Special Rapporteur for the Working Group on Shared Natural Resources, on his experience and progress of the work of the ILC relating to shared natural resources. We admire his enthusiasm and perseverance to formulate an acceptable instrument to govern the utilization and protection of shared natural resources.
3. Malaysia notes that the term 'draft articles' has been used without prejudice as to its final form, whether it should be a convention or otherwise, and that the draft articles presented thus do not include provisions of dispute settlement, final clauses and any article which might prejudice the issue of final form.

Mr. Chairman,

4. Malaysia had expressed its concern during the Sixth Committee Session of the 60th Session of the United Nations General Assembly that the word 'harmonized' in draft paragraph 1 of article 10 at that time (the present draft paragraph 2 of article 12) may imposed too high an obligation upon aquifer States to establish standards and methodologies for monitoring transboundary aquifer or aquifer systems that are applicable across the board. In this regard, Malaysia notes that the present draft paragraph 2 of article 12 has replaced the words 'Aquifer States shall agree on harmonized standards and methodology' with the words 'Aquifer States shall use agreed or harmonized standards and methodology'. Malaysia appreciates the additional option of using agreed standards and methodology other than harmonized standards and methodology in the present draft article, as Malaysia is of the view that certain standards and methodology can be agreed to by the aquifer States for expediency without the prior need of harmonizing their existing standards and methodology.
5. Malaysia also notes that, despite Malaysia's support during the previous Sixth Committee Session for the word 'encouraged' in the present draft article 11 (formerly referred to as draft article 14), with regard to the taking of 'precautionary approach', the word 'encouraged' has been replaced by the words 'shall take'. Malaysia understands that this would impose an obligation on the aquifer States to take the precautionary approach. In this regard, Malaysia is of the view that such obligation must be subject to the capabilities of the States concerned, in line with Principle 15 of the Rio Declaration on Environment and Development 1992.
6. With regard to draft article 18 which amongst others, protects an aquifer State from being compelled to provide data and information the confidentiality of which is essential to its national defence or security, Malaysia would like to reiterate its position for the protection under this draft article to be extended to industrial secrets and intellectual property.

Mr. Chairman,

7. Malaysia would also like make the following comments on the draft articles:

i. Malaysia supports the inclusion of 'vital human needs' in draft paragraph 2 of article 5 as a special factor to be taken into account in determining what is equitable and reasonable utilization of transboundary aquifer or aquifers system. Further to that, Malaysia is of the view that the phrase 'vital human needs' should be clarified to avoid uncertainty in its interpretation. In this regard, Malaysia proposed that the statement of understanding taken note of by the Chairman of the Working Group of the Whole during the elaboration of the 1997 Watercourses Convention, i.e. "In determining 'vital human needs', special attention is to be paid to providing sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation" should be included in this draft article. The inclusion of this precise definition would in Malaysia's view avoid uncertainty in its interpretation and minimize the possibility of abuse;

ii. Malaysia also supports the expansion of the scope of draft article 14, to cover any State, including a non-aquifer State, that has reasonable grounds for believing that a planned activity in its territory could affect a transboundary aquifer or aquifers system, and thereby cause a significant adverse effect on another State including a non-aquifer State;

iii. Malaysia further supports the Commission's decision not to address in these draft articles the issue of compensation in circumstances where harm resulted despite efforts to prevent such harm as the issue is covered by other rules of international law, including the draft principles on liability and the polluter-pays principle.

8. Malaysia wishes to inform that under the Malaysian Constitution the legislative powers are divided between the Federal government and State government with regard to shared natural resources in particular land and water. In this regard, Malaysia needs to understand how the proposed principles enunciated in the draft Articles relating to shared natural resources can be applied to a Federation such as Malaysia.

Thank you.