



*Permanent Mission of*  
**Malaysia**  
*to the United Nations*

*(Full Version)*

**STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.**

Mr. Chairman,

On the subject of **Responsibility of International Organizations**, Malaysia commends the International Law Commission for successfully adopting a set of 66 draft articles on the responsibility of international organizations on its first reading. Malaysia would also like to extend its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

2. Malaysia congratulates the Commission for elaborating further the details and mechanism pertaining to countermeasures. However, Malaysia takes note that the current draft does not examine the conditions for countermeasures to be lawful when they are taken by an injured international organization against a responsible state. In relation to this, the Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. In this regard, Malaysia reiterates its position that although similar restrictions or conditions imposed on countermeasures as in articles on state responsibility may be applied to an international organization, they should not be applied by analogy. In addition, careful consideration should be made by the Commission taking into account the special character of an international organization as opposed to a State.

3. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

4. Malaysia takes note the comments of the Commission that certain issues concerning international responsibility between States and international organizations have not been expressly covered either in the articles on the responsibility of States for internationally wrongful acts or in the draft articles on the responsibility of international organizations. The Commission also stated that one could argue that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either in the form of draft articles to be included in the draft articles on the responsibility of international organizations or alternatively, the Commission may wish to prepare a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international

organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. As to question on when is consent given by an international organization to the commission of a given act by a State a circumstance precluding wrongfulness of that State’s conduct, Malaysia is of the view that the Commission should deliberate on mechanisms to determine the validity of the consent given by the international organization or by the person or agent acting on behalf of the organization. There is also the pertinent question on whether the international organization could validly give its consent to the commission of a given act by a State. The reference to a “valid consent” in article 20 of the articles on the responsibility of States for internationally wrongful acts highlights the need to consider these issues in certain cases. In addition, clear and comprehensive mechanism and principles must also be deliberated on the question of when is an international organization entitled to invoke the responsibility of a state.

7. It cannot be overemphasised the fact that there is danger in stating that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts bearing in mind the special character of an international organization as opposed to a state. As such, careful consideration needs to be made by the Commission on these outstanding issues.

Mr. Chairman,

8. On the subject of **Reservation to Treaties**, Malaysia records its appreciation of the efforts made by the Commission in preparing and presenting reports on the matters relating to the work of Commission at its Sixty-first Session. Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

9. In this regard, Malaysia supports the Commission’s work on the “Guide to Practice on Reservations to Treaties”. Notwithstanding the many issues which remained unresolved at the Sixty-first Session, the crystallizing draft guidelines already show promise to be useful guides to assist States in their formulation of reservation to treaties. Malaysia notes that at the Sixty-first session of the Commission, some draft guidelines were provisionally adopted by the Drafting Committee and wishes to express its views as in the following.

10. Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Malaysia notes that draft guideline 2.9.8 should be read in conjunction with draft guideline 2.9.9 which relates to the role that may be played by the silence of a State or an international organization with regard to an interpretative declaration. Nevertheless, paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as “the exceptional cases” as well as “the relevant circumstances” where an approval of an interpretative declaration or an opposition may be inferred. The lack of clarity in the draft guideline could potentially lead to problems in interpretation. Therefore, Malaysia is of the view that the wording of paragraph 2 of draft guideline 2.9.8 should be given greater consideration before it is finalised by the Drafting Committee.

11. On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. However, in Malaysia’s view, the phrase “*through its conduct and taking account of the circumstances*” requires further clarification. In Malaysia’s view, if these guidelines are to serve as a practical guide to States, there should also be clear guidance on the types of conduct or circumstances that would be effectively taken as approval of interpretative declaration in the absence of a clear statement to that effect.

12. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound; and the efficacy of the treaty monitoring bodies' roles lies in the extent to which they serve this objective. The spirit of this guideline is understood to not let the decision of the treaty monitoring body deprive the reserving state to make its reservations, but rather to assist them to craft its reservation to render it valid for permissibility. Nevertheless, the intention for the effect of the findings of treaty monitoring bodies in the draft guideline should be left open for the contracting parties or contracting organization to decide and be reflected in the treaty.

13. Malaysia also supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. However, Malaysia feels that this issue requires further research as it calls for greater considerations on the interplay of different branches of law, that is the law of treaty and the law on state responsibility. In Malaysia's view, clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the "law of reservations" on establishing the principles of whether an impermissible reservation is an "internationally wrongful act" which could potentially later be a basis or parts of the elements for a decision in a dispute.

14. Since the power to make treaties by international organizations largely depends on the terms of the constituent instrument of the international organization and the mandate granted to the international organization, international organizations do not necessarily have similar authority or responsibility as States. Thus, Malaysia is of the view that a separate regime for international organizations should be developed to address these entities and they should not be made part of the draft guidelines at this juncture.

Mr. Chairman,

15. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation wishes to state the following.

16. In recent months, the world has witnessed a flurry of disasters. Ranging from typhoons, flash floods to earthquakes and tsunamis, it is facing the challenge of both to protect as well as to provide assistance to those affected by these disasters. In this regard, my delegation wishes to convey its heartfelt condolences and deepest sympathies to countries and communities that have been affected by these tragedies. Post-disaster efforts to bring assistance and comfort to those affected by these events prove yet again that no single measure against such catastrophes can be truly successful unless countries work together.

17. To this end, Malaysia extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia is also grateful for the outstanding contribution of the Commission in continuing the progressive development of international law and its codification, and in particular, for its work on this topic.

18. Malaysia notes the texts of draft articles 1 to 5 as provisionally adopted by the Drafting Committee (as contained in document A/CN.4/L.758) and looks forward to the Commission's discussions and debate on these draft articles in the next session. Pending the outcome of the Commission's discussions, Malaysia would like to make the following preliminary observations.

19. Malaysia notes the Statement of the Chairman of the Drafting Committee that the phrase "in the event of disasters" in draft article 1 is to be understood to include all phases of disasters, including the pre-disaster phase. However Malaysia requests further clarification from the Commission as to the applicability of the draft articles to the pre-disaster phase *vis-a-vis* draft article 3 which seems to centre on, an event or series of events that have taken place as described in the draft article.

20. On the purpose of the draft articles, Malaysia supports the emphasis placed on the needs of the persons affected by the disasters concerned. While the notion of “needs” and “rights” are sometimes addressed interchangeably, Malaysia is of the view that the needs of a person must necessarily take predominance over their rights in situations of calamity. It is therefore commendable that the draft article seeks to meet the essential needs of the person concerned first, rather than focus primarily on the realization of their rights. Nevertheless, whilst Malaysia is committed to ensuring that the rights of each and every person is protected, the phrase “full respect for their rights” in draft article 2 seems to suggest that a State must go all the way to fulfil the rights of a person, contradicting the idea of “needs” over “rights”.

21. As for the phrase “adequate and effective response”, Malaysia is of the view that the level of adequacy and effectiveness of the response required should be further deliberated by the Commission so as to give States a better indication of the threshold applicable for those terms in the draft article.

22. Malaysia would favour a definition of disaster which is limited to natural disaster and that the event causes either loss of life, property damage or environmental degradation. Malaysia notes that the magnitude of the loss must be severe enough to be categorised as a disaster under the draft articles. Malaysia supports that these draft articles are meant to cover events which are extreme in nature and not just any other acute crisis. Severe riots, civil unrest, demonstration or destruction deliberately caused by mankind should be expressly excluded from the definition.

23. On the relationship with international humanitarian law, Malaysia is of the view that illustrations on different scenarios, i.e. when a disaster strikes before, during, or after an armed conflict, giving rise to the application of the draft articles will be helpful to discern the correlation between the two regimes. It remains unclear at what stage the draft articles will apply or cease to apply.

24. With respect to the duty to cooperate, further clarification on the extent of co-operation between the donor State, the affected State and other relevant stakeholders is vital. The responsibilities of the affected State should be clearly delineated to enable the State to understand the fullest extent of their duty. Malaysia wishes to highlight that the duty of non-intervention is also owed to legitimately sovereign governments. A sovereign State and its Government retain the discretion to receive or not to receive humanitarian assistance according to its own national interests and priorities.

Mr. Chairman,

25. On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles.

26. With regard to whether the draft Articles on transboundary aquifers should be adopted into a convention, Malaysia is of the view that various considerations should be carefully weighed in making that decision. Malaysia also notes the lack of consensus between States on this matter and the fact that this area is largely regulated by bilateral and regional arrangements between States.

27. With the completion of the second reading of the law on transboundary aquifers, the Commission is to proceed with the consideration of the codification of the law on transboundary oil and gas. In this respect, the Commission has circulated a questionnaire on State practice relating to transboundary oil and gas; and responses from 17 States were received as at 31 January 2009. Subsequently, the Special Rapporteur on Shared Natural Resources had further encouraged further responses from other States. In this regard, Malaysia had submitted its response to the questionnaire to the ILC with regard to its State practice regarding transboundary oil and gas.

28. With respect to the decision of the Working Group that a study should be submitted at the 62nd Session of the Commission on the feasibility of any future work on oil and gas, Malaysia notes that a majority of States which have responded gave some indication on their stand against the Commission proceeding with the

codification of the law on transboundary oil and gas. In this regard, we would like to emphasize that the issue of transboundary oil and gas naturally involves highly technical data and politically sensitive issues as well as the issue of sovereignty of States. Therefore, Malaysia is of the view that the Commission should not proceed with the codification of law on transboundary oil and gas as the topic is best dealt with on a case-by-case basis through bilateral or regional arrangements by the relevant States.

Thank you, Mr. Chairman.

*(Statement as delivered)*

**STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.**

Mr. Chairman,

***In the interests of time, allow me to present a shortened version of Malaysia’s statement, the full text of which is being distributed in the room.***

2. On the subject of Responsibility of International Organizations, Malaysia commends the International Law Commission for the adoption of the draft articles on this subject. Malaysia extends its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

3. Malaysia takes note that in the Commission’s elaboration of further details and mechanisms pertaining to countermeasures, there is no examination of the conditions for lawful countermeasures when they are taken by an injured international organization against a responsible state. The Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. Malaysia believes that such restrictions or conditions imposed on countermeasures should not be applied by analogy, and that the Commission should carefully consider the special character of an international organization as opposed to a State.

4. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either:

5.1 in the form of draft articles to be included in the draft articles on the responsibility of international organizations; or

5.2 through the preparation of a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. If an international organisation permit’s a State to commit an act, does that preclude the wrongfulness of that act committed by the State? In this case, Malaysia believes that the Commission should look to the validity of the consent so given by the international organisation or its agent. More important perhaps, is whether an IO can give such consent to a State. In this regard, Article 20 of the articles on the responsibility of States for internationally wrongful acts needs to be referred to.

Mr. Chairman,

7. On the subject of **Reservation to Treaties**, Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

8. In this regard, Malaysia supports the Commission's work on the "Guide to Practice on Reservations to Treaties", and has the following views on the draft guidelines which were provisionally adopted by the Drafting Committee:

8.1 Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as "the exceptional cases" as well as "the relevant circumstances" where an approval of an interpretative declaration or an opposition may be inferred. In the interests of clarity, Malaysia would urge that greater consideration be given to the wording of this paragraph before its finalization by the Drafting Committee.

8.2 On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. Further clarification must be given to the phrase "*through its conduct and taking account of the circumstances*" and clear guidance provided.

9. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound.

10. Malaysia supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. But further research must be done on this subject and clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the law of reservations and an internationally wrongful act. The different character of international organizations means that it should be dealt with separately from States.

11. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia looks forward to the Commission's discussions and debate on draft articles 1 to 5 in the next session. Malaysia has the following preliminary observations:

11.1 the phrase "in the event of disasters" should also include the pre-disaster phase. In this regard, further clarification must be made on Article 3's applicability;

11.2 the needs of a person must take predominance over their rights in situations of calamity, therefore draft article 2 must be clarified in this respect;

11.3 the phrase "adequate and effective response" should be further deliberated so that a better indication of the threshold applicable can be determined and agreed upon;

- 11.4 Malaysia favours a definition of disaster which is limited to natural disasters, and causes either the loss of lives, causes damage to property, or results in environmental degradation;
- 11.5 with regard to international humanitarian law, illustrations on different scenarios when the draft articles will apply, will be beneficial;
- 11.6 on the duty to cooperate, further clarification is needed. Malaysia emphasises that the duty of non-intervention should be maintained, with States retaining discretion on whether or not to receive humanitarian assistance.

Mr. Chairman,

12 On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles. Malaysia has submitted its response to the ILC questionnaire in this instance.

13 Malaysia would like to emphasize that the issue of transboundary oil and gas involves highly technical data and politically sensitive issues, and questions relating to the sovereignty of States. Because of this, this topic is best dealt with through bilateral or regional arrangements, and a codification of law by the ILC would not be desirable.

Thank you, Mr. Chairman.





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2. Malaysia congratulates the Commission for elaborating further the details and mechanism pertaining to countermeasures. However, Malaysia takes note that the current draft does not examine the conditions for countermeasures to be lawful when they are taken by an injured international organization against a responsible state. In relation to this, the Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. In this regard, Malaysia reiterates its position that although similar restrictions or conditions imposed on countermeasures as in articles on state responsibility may be applied to an international organization, they should not be applied by analogy. In addition, careful consideration should be made by the Commission taking into account the special character of an international organization as opposed to a State.

3. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

4. Malaysia takes note the comments of the Commission that certain issues concerning international responsibility between States and international organizations have not been expressly covered either in the articles on the responsibility of States for internationally wrongful acts or in the draft articles on the responsibility of international organizations. The Commission also stated that one could argue that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either in the form of draft articles to be included in the draft articles on the responsibility of international organizations or alternatively, the Commission may wish to prepare a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international

organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. As to question on when is consent given by an international organization to the commission of a given act by a State a circumstance precluding wrongfulness of that State’s conduct, Malaysia is of the view that the Commission should deliberate on mechanisms to determine the validity of the consent given by the international organization or by the person or agent acting on behalf of the organization. There is also the pertinent question on whether the international organization could validly give its consent to the commission of a given act by a State. The reference to a “valid consent” in article 20 of the articles on the responsibility of States for internationally wrongful acts highlights the need to consider these issues in certain cases. In addition, clear and comprehensive mechanism and principles must also be deliberated on the question of when is an international organization entitled to invoke the responsibility of a state.

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11. On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. However, in Malaysia’s view, the phrase “*through its conduct and taking account of the circumstances*” requires further clarification. In Malaysia’s view, if these guidelines are to serve as a practical guide to States, there should also be clear guidance on the types of conduct or circumstances that would be effectively taken as approval of interpretative declaration in the absence of a clear statement to that effect.

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14. Since the power to make treaties by international organizations largely depends on the terms of the constituent instrument of the international organization and the mandate granted to the international organization, international organizations do not necessarily have similar authority or responsibility as States. Thus, Malaysia is of the view that a separate regime for international organizations should be developed to address these entities and they should not be made part of the draft guidelines at this juncture.

Mr. Chairman,

15. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation wishes to state the following.

16. In recent months, the world has witnessed a flurry of disasters. Ranging from typhoons, flash floods to earthquakes and tsunamis, it is facing the challenge of both to protect as well as to provide assistance to those affected by these disasters. In this regard, my delegation wishes to convey its heartfelt condolences and deepest sympathies to countries and communities that have been affected by these tragedies. Post-disaster efforts to bring assistance and comfort to those affected by these events prove yet again that no single measure against such catastrophes can be truly successful unless countries work together.

17. To this end, Malaysia extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia is also grateful for the outstanding contribution of the Commission in continuing the progressive development of international law and its codification, and in particular, for its work on this topic.

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20. On the purpose of the draft articles, Malaysia supports the emphasis placed on the needs of the persons affected by the disasters concerned. While the notion of “needs” and “rights” are sometimes addressed interchangeably, Malaysia is of the view that the needs of a person must necessarily take predominance over their rights in situations of calamity. It is therefore commendable that the draft article seeks to meet the essential needs of the person concerned first, rather than focus primarily on the realization of their rights. Nevertheless, whilst Malaysia is committed to ensuring that the rights of each and every person is protected, the phrase “full respect for their rights” in draft article 2 seems to suggest that a State must go all the way to fulfil the rights of a person, contradicting the idea of “needs” over “rights”.

21. As for the phrase “adequate and effective response”, Malaysia is of the view that the level of adequacy and effectiveness of the response required should be further deliberated by the Commission so as to give States a better indication of the threshold applicable for those terms in the draft article.

22. Malaysia would favour a definition of disaster which is limited to natural disaster and that the event causes either loss of life, property damage or environmental degradation. Malaysia notes that the magnitude of the loss must be severe enough to be categorised as a disaster under the draft articles. Malaysia supports that these draft articles are meant to cover events which are extreme in nature and not just any other acute crisis. Severe riots, civil unrest, demonstration or destruction deliberately caused by mankind should be expressly excluded from the definition.

23. On the relationship with international humanitarian law, Malaysia is of the view that illustrations on different scenarios, i.e. when a disaster strikes before, during, or after an armed conflict, giving rise to the application of the draft articles will be helpful to discern the correlation between the two regimes. It remains unclear at what stage the draft articles will apply or cease to apply.

24. With respect to the duty to cooperate, further clarification on the extent of co-operation between the donor State, the affected State and other relevant stakeholders is vital. The responsibilities of the affected State should be clearly delineated to enable the State to understand the fullest extent of their duty. Malaysia wishes to highlight that the duty of non-intervention is also owed to legitimately sovereign governments. A sovereign State and its Government retain the discretion to receive or not to receive humanitarian assistance according to its own national interests and priorities.

Mr. Chairman,

25. On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles.

26. With regard to whether the draft Articles on transboundary aquifers should be adopted into a convention, Malaysia is of the view that various considerations should be carefully weighed in making that decision. Malaysia also notes the lack of consensus between States on this matter and the fact that this area is largely regulated by bilateral and regional arrangements between States.

27. With the completion of the second reading of the law on transboundary aquifers, the Commission is to proceed with the consideration of the codification of the law on transboundary oil and gas. In this respect, the Commission has circulated a questionnaire on State practice relating to transboundary oil and gas; and responses from 17 States were received as at 31 January 2009. Subsequently, the Special Rapporteur on Shared Natural Resources had further encouraged further responses from other States. In this regard, Malaysia had submitted its response to the questionnaire to the ILC with regard to its State practice regarding transboundary oil and gas.

28. With respect to the decision of the Working Group that a study should be submitted at the 62nd Session of the Commission on the feasibility of any future work on oil and gas, Malaysia notes that a majority of States which have responded gave some indication on their stand against the Commission proceeding with the

codification of the law on transboundary oil and gas. In this regard, we would like to emphasize that the issue of transboundary oil and gas naturally involves highly technical data and politically sensitive issues as well as the issue of sovereignty of States. Therefore, Malaysia is of the view that the Commission should not proceed with the codification of law on transboundary oil and gas as the topic is best dealt with on a case-by-case basis through bilateral or regional arrangements by the relevant States.

Thank you, Mr. Chairman.

*(Statement as delivered)*

**STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.**

Mr. Chairman,

***In the interests of time, allow me to present a shortened version of Malaysia’s statement, the full text of which is being distributed in the room.***

2. On the subject of Responsibility of International Organizations, Malaysia commends the International Law Commission for the adoption of the draft articles on this subject. Malaysia extends its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

3. Malaysia takes note that in the Commission’s elaboration of further details and mechanisms pertaining to countermeasures, there is no examination of the conditions for lawful countermeasures when they are taken by an injured international organization against a responsible state. The Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. Malaysia believes that such restrictions or conditions imposed on countermeasures should not be applied by analogy, and that the Commission should carefully consider the special character of an international organization as opposed to a State.

4. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either:

5.1 in the form of draft articles to be included in the draft articles on the responsibility of international organizations; or

5.2 through the preparation of a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. If an international organisation permit’s a State to commit an act, does that preclude the wrongfulness of that act committed by the State? In this case, Malaysia believes that the Commission should look to the validity of the consent so given by the international organisation or its agent. More important perhaps, is whether an IO can give such consent to a State. In this regard, Article 20 of the articles on the responsibility of States for internationally wrongful acts needs to be referred to.

Mr. Chairman,

7. On the subject of **Reservation to Treaties**, Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

8. In this regard, Malaysia supports the Commission's work on the "Guide to Practice on Reservations to Treaties", and has the following views on the draft guidelines which were provisionally adopted by the Drafting Committee:

8.1 Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as "the exceptional cases" as well as "the relevant circumstances" where an approval of an interpretative declaration or an opposition may be inferred. In the interests of clarity, Malaysia would urge that greater consideration be given to the wording of this paragraph before its finalization by the Drafting Committee.

8.2 On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. Further clarification must be given to the phrase "*through its conduct and taking account of the circumstances*" and clear guidance provided.

9. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound.

10. Malaysia supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. But further research must be done on this subject and clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the law of reservations and an internationally wrongful act. The different character of international organizations means that it should be dealt with separately from States.

11. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia looks forward to the Commission's discussions and debate on draft articles 1 to 5 in the next session. Malaysia has the following preliminary observations:

11.1 the phrase "in the event of disasters" should also include the pre-disaster phase. In this regard, further clarification must be made on Article 3's applicability;

11.2 the needs of a person must take predominance over their rights in situations of calamity, therefore draft article 2 must be clarified in this respect;

11.3 the phrase "adequate and effective response" should be further deliberated so that a better indication of the threshold applicable can be determined and agreed upon;

- 11.4 Malaysia favours a definition of disaster which is limited to natural disasters, and causes either the loss of lives, causes damage to property, or results in environmental degradation;
- 11.5 with regard to international humanitarian law, illustrations on different scenarios when the draft articles will apply, will be beneficial;
- 11.6 on the duty to cooperate, further clarification is needed. Malaysia emphasises that the duty of non-intervention should be maintained, with States retaining discretion on whether or not to receive humanitarian assistance.

Mr. Chairman,

12 On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles. Malaysia has submitted its response to the ILC questionnaire in this instance.

13 Malaysia would like to emphasize that the issue of transboundary oil and gas involves highly technical data and politically sensitive issues, and questions relating to the sovereignty of States. Because of this, this topic is best dealt with through bilateral or regional arrangements, and a codification of law by the ILC would not be desirable.

Thank you, Mr. Chairman.





*Permanent Mission of*  
**Malaysia**  
*to the United Nations*

*(Full Version)*

**STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.**

Mr. Chairman,

On the subject of **Responsibility of International Organizations**, Malaysia commends the International Law Commission for successfully adopting a set of 66 draft articles on the responsibility of international organizations on its first reading. Malaysia would also like to extend its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

2. Malaysia congratulates the Commission for elaborating further the details and mechanism pertaining to countermeasures. However, Malaysia takes note that the current draft does not examine the conditions for countermeasures to be lawful when they are taken by an injured international organization against a responsible state. In relation to this, the Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. In this regard, Malaysia reiterates its position that although similar restrictions or conditions imposed on countermeasures as in articles on state responsibility may be applied to an international organization, they should not be applied by analogy. In addition, careful consideration should be made by the Commission taking into account the special character of an international organization as opposed to a State.

3. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

4. Malaysia takes note the comments of the Commission that certain issues concerning international responsibility between States and international organizations have not been expressly covered either in the articles on the responsibility of States for internationally wrongful acts or in the draft articles on the responsibility of international organizations. The Commission also stated that one could argue that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either in the form of draft articles to be included in the draft articles on the responsibility of international organizations or alternatively, the Commission may wish to prepare a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international

organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. As to question on when is consent given by an international organization to the commission of a given act by a State a circumstance precluding wrongfulness of that State’s conduct, Malaysia is of the view that the Commission should deliberate on mechanisms to determine the validity of the consent given by the international organization or by the person or agent acting on behalf of the organization. There is also the pertinent question on whether the international organization could validly give its consent to the commission of a given act by a State. The reference to a “valid consent” in article 20 of the articles on the responsibility of States for internationally wrongful acts highlights the need to consider these issues in certain cases. In addition, clear and comprehensive mechanism and principles must also be deliberated on the question of when is an international organization entitled to invoke the responsibility of a state.

7. It cannot be overemphasised the fact that there is danger in stating that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts bearing in mind the special character of an international organization as opposed to a state. As such, careful consideration needs to be made by the Commission on these outstanding issues.

Mr. Chairman,

8. On the subject of **Reservation to Treaties**, Malaysia records its appreciation of the efforts made by the Commission in preparing and presenting reports on the matters relating to the work of Commission at its Sixty-first Session. Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

9. In this regard, Malaysia supports the Commission’s work on the “Guide to Practice on Reservations to Treaties”. Notwithstanding the many issues which remained unresolved at the Sixty-first Session, the crystallizing draft guidelines already show promise to be useful guides to assist States in their formulation of reservation to treaties. Malaysia notes that at the Sixty-first session of the Commission, some draft guidelines were provisionally adopted by the Drafting Committee and wishes to express its views as in the following.

10. Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Malaysia notes that draft guideline 2.9.8 should be read in conjunction with draft guideline 2.9.9 which relates to the role that may be played by the silence of a State or an international organization with regard to an interpretative declaration. Nevertheless, paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as “the exceptional cases” as well as “the relevant circumstances” where an approval of an interpretative declaration or an opposition may be inferred. The lack of clarity in the draft guideline could potentially lead to problems in interpretation. Therefore, Malaysia is of the view that the wording of paragraph 2 of draft guideline 2.9.8 should be given greater consideration before it is finalised by the Drafting Committee.

11. On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. However, in Malaysia’s view, the phrase “*through its conduct and taking account of the circumstances*” requires further clarification. In Malaysia’s view, if these guidelines are to serve as a practical guide to States, there should also be clear guidance on the types of conduct or circumstances that would be effectively taken as approval of interpretative declaration in the absence of a clear statement to that effect.

12. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound; and the efficacy of the treaty monitoring bodies' roles lies in the extent to which they serve this objective. The spirit of this guideline is understood to not let the decision of the treaty monitoring body deprive the reserving state to make its reservations, but rather to assist them to craft its reservation to render it valid for permissibility. Nevertheless, the intention for the effect of the findings of treaty monitoring bodies in the draft guideline should be left open for the contracting parties or contracting organization to decide and be reflected in the treaty.

13. Malaysia also supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. However, Malaysia feels that this issue requires further research as it calls for greater considerations on the interplay of different branches of law, that is the law of treaty and the law on state responsibility. In Malaysia's view, clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the "law of reservations" on establishing the principles of whether an impermissible reservation is an "internationally wrongful act" which could potentially later be a basis or parts of the elements for a decision in a dispute.

14. Since the power to make treaties by international organizations largely depends on the terms of the constituent instrument of the international organization and the mandate granted to the international organization, international organizations do not necessarily have similar authority or responsibility as States. Thus, Malaysia is of the view that a separate regime for international organizations should be developed to address these entities and they should not be made part of the draft guidelines at this juncture.

Mr. Chairman,

15. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation wishes to state the following.

16. In recent months, the world has witnessed a flurry of disasters. Ranging from typhoons, flash floods to earthquakes and tsunamis, it is facing the challenge of both to protect as well as to provide assistance to those affected by these disasters. In this regard, my delegation wishes to convey its heartfelt condolences and deepest sympathies to countries and communities that have been affected by these tragedies. Post-disaster efforts to bring assistance and comfort to those affected by these events prove yet again that no single measure against such catastrophes can be truly successful unless countries work together.

17. To this end, Malaysia extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia is also grateful for the outstanding contribution of the Commission in continuing the progressive development of international law and its codification, and in particular, for its work on this topic.

18. Malaysia notes the texts of draft articles 1 to 5 as provisionally adopted by the Drafting Committee (as contained in document A/CN.4/L.758) and looks forward to the Commission's discussions and debate on these draft articles in the next session. Pending the outcome of the Commission's discussions, Malaysia would like to make the following preliminary observations.

19. Malaysia notes the Statement of the Chairman of the Drafting Committee that the phrase "in the event of disasters" in draft article 1 is to be understood to include all phases of disasters, including the pre-disaster phase. However Malaysia requests further clarification from the Commission as to the applicability of the draft articles to the pre-disaster phase *vis-a-vis* draft article 3 which seems to centre on, an event or series of events that have taken place as described in the draft article.

20. On the purpose of the draft articles, Malaysia supports the emphasis placed on the needs of the persons affected by the disasters concerned. While the notion of “needs” and “rights” are sometimes addressed interchangeably, Malaysia is of the view that the needs of a person must necessarily take predominance over their rights in situations of calamity. It is therefore commendable that the draft article seeks to meet the essential needs of the person concerned first, rather than focus primarily on the realization of their rights. Nevertheless, whilst Malaysia is committed to ensuring that the rights of each and every person is protected, the phrase “full respect for their rights” in draft article 2 seems to suggest that a State must go all the way to fulfil the rights of a person, contradicting the idea of “needs” over “rights”.

21. As for the phrase “adequate and effective response”, Malaysia is of the view that the level of adequacy and effectiveness of the response required should be further deliberated by the Commission so as to give States a better indication of the threshold applicable for those terms in the draft article.

22. Malaysia would favour a definition of disaster which is limited to natural disaster and that the event causes either loss of life, property damage or environmental degradation. Malaysia notes that the magnitude of the loss must be severe enough to be categorised as a disaster under the draft articles. Malaysia supports that these draft articles are meant to cover events which are extreme in nature and not just any other acute crisis. Severe riots, civil unrest, demonstration or destruction deliberately caused by mankind should be expressly excluded from the definition.

23. On the relationship with international humanitarian law, Malaysia is of the view that illustrations on different scenarios, i.e. when a disaster strikes before, during, or after an armed conflict, giving rise to the application of the draft articles will be helpful to discern the correlation between the two regimes. It remains unclear at what stage the draft articles will apply or cease to apply.

24. With respect to the duty to cooperate, further clarification on the extent of co-operation between the donor State, the affected State and other relevant stakeholders is vital. The responsibilities of the affected State should be clearly delineated to enable the State to understand the fullest extent of their duty. Malaysia wishes to highlight that the duty of non-intervention is also owed to legitimately sovereign governments. A sovereign State and its Government retain the discretion to receive or not to receive humanitarian assistance according to its own national interests and priorities.

Mr. Chairman,

25. On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles.

26. With regard to whether the draft Articles on transboundary aquifers should be adopted into a convention, Malaysia is of the view that various considerations should be carefully weighed in making that decision. Malaysia also notes the lack of consensus between States on this matter and the fact that this area is largely regulated by bilateral and regional arrangements between States.

27. With the completion of the second reading of the law on transboundary aquifers, the Commission is to proceed with the consideration of the codification of the law on transboundary oil and gas. In this respect, the Commission has circulated a questionnaire on State practice relating to transboundary oil and gas; and responses from 17 States were received as at 31 January 2009. Subsequently, the Special Rapporteur on Shared Natural Resources had further encouraged further responses from other States. In this regard, Malaysia had submitted its response to the questionnaire to the ILC with regard to its State practice regarding transboundary oil and gas.

28. With respect to the decision of the Working Group that a study should be submitted at the 62nd Session of the Commission on the feasibility of any future work on oil and gas, Malaysia notes that a majority of States which have responded gave some indication on their stand against the Commission proceeding with the

codification of the law on transboundary oil and gas. In this regard, we would like to emphasize that the issue of transboundary oil and gas naturally involves highly technical data and politically sensitive issues as well as the issue of sovereignty of States. Therefore, Malaysia is of the view that the Commission should not proceed with the codification of law on transboundary oil and gas as the topic is best dealt with on a case-by-case basis through bilateral or regional arrangements by the relevant States.

Thank you, Mr. Chairman.

*(Statement as delivered)*

**STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.**

Mr. Chairman,

***In the interests of time, allow me to present a shortened version of Malaysia’s statement, the full text of which is being distributed in the room.***

2. On the subject of Responsibility of International Organizations, Malaysia commends the International Law Commission for the adoption of the draft articles on this subject. Malaysia extends its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

3. Malaysia takes note that in the Commission’s elaboration of further details and mechanisms pertaining to countermeasures, there is no examination of the conditions for lawful countermeasures when they are taken by an injured international organization against a responsible state. The Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. Malaysia believes that such restrictions or conditions imposed on countermeasures should not be applied by analogy, and that the Commission should carefully consider the special character of an international organization as opposed to a State.

4. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either:

5.1 in the form of draft articles to be included in the draft articles on the responsibility of international organizations; or

5.2 through the preparation of a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. If an international organisation permit’s a State to commit an act, does that preclude the wrongfulness of that act committed by the State? In this case, Malaysia believes that the Commission should look to the validity of the consent so given by the international organisation or its agent. More important perhaps, is whether an IO can give such consent to a State. In this regard, Article 20 of the articles on the responsibility of States for internationally wrongful acts needs to be referred to.

Mr. Chairman,

7. On the subject of **Reservation to Treaties**, Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

8. In this regard, Malaysia supports the Commission's work on the "Guide to Practice on Reservations to Treaties", and has the following views on the draft guidelines which were provisionally adopted by the Drafting Committee:

8.1 Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as "the exceptional cases" as well as "the relevant circumstances" where an approval of an interpretative declaration or an opposition may be inferred. In the interests of clarity, Malaysia would urge that greater consideration be given to the wording of this paragraph before its finalization by the Drafting Committee.

8.2 On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. Further clarification must be given to the phrase "*through its conduct and taking account of the circumstances*" and clear guidance provided.

9. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound.

10. Malaysia supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. But further research must be done on this subject and clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the law of reservations and an internationally wrongful act. The different character of international organizations means that it should be dealt with separately from States.

11. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia looks forward to the Commission's discussions and debate on draft articles 1 to 5 in the next session. Malaysia has the following preliminary observations:

11.1 the phrase "in the event of disasters" should also include the pre-disaster phase. In this regard, further clarification must be made on Article 3's applicability;

11.2 the needs of a person must take predominance over their rights in situations of calamity, therefore draft article 2 must be clarified in this respect;

11.3 the phrase "adequate and effective response" should be further deliberated so that a better indication of the threshold applicable can be determined and agreed upon;

- 11.4 Malaysia favours a definition of disaster which is limited to natural disasters, and causes either the loss of lives, causes damage to property, or results in environmental degradation;
- 11.5 with regard to international humanitarian law, illustrations on different scenarios when the draft articles will apply, will be beneficial;
- 11.6 on the duty to cooperate, further clarification is needed. Malaysia emphasises that the duty of non-intervention should be maintained, with States retaining discretion on whether or not to receive humanitarian assistance.

Mr. Chairman,

12 On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles. Malaysia has submitted its response to the ILC questionnaire in this instance.

13 Malaysia would like to emphasize that the issue of transboundary oil and gas involves highly technical data and politically sensitive issues, and questions relating to the sovereignty of States. Because of this, this topic is best dealt with through bilateral or regional arrangements, and a codification of law by the ILC would not be desirable.

Thank you, Mr. Chairman.





*Permanent Mission of*  
**Malaysia**  
*to the United Nations*

*(Full Version)*

**STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.**

Mr. Chairman,

On the subject of **Responsibility of International Organizations**, Malaysia commends the International Law Commission for successfully adopting a set of 66 draft articles on the responsibility of international organizations on its first reading. Malaysia would also like to extend its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

2. Malaysia congratulates the Commission for elaborating further the details and mechanism pertaining to countermeasures. However, Malaysia takes note that the current draft does not examine the conditions for countermeasures to be lawful when they are taken by an injured international organization against a responsible state. In relation to this, the Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. In this regard, Malaysia reiterates its position that although similar restrictions or conditions imposed on countermeasures as in articles on state responsibility may be applied to an international organization, they should not be applied by analogy. In addition, careful consideration should be made by the Commission taking into account the special character of an international organization as opposed to a State.

3. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

4. Malaysia takes note the comments of the Commission that certain issues concerning international responsibility between States and international organizations have not been expressly covered either in the articles on the responsibility of States for internationally wrongful acts or in the draft articles on the responsibility of international organizations. The Commission also stated that one could argue that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either in the form of draft articles to be included in the draft articles on the responsibility of international organizations or alternatively, the Commission may wish to prepare a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international

organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. As to question on when is consent given by an international organization to the commission of a given act by a State a circumstance precluding wrongfulness of that State’s conduct, Malaysia is of the view that the Commission should deliberate on mechanisms to determine the validity of the consent given by the international organization or by the person or agent acting on behalf of the organization. There is also the pertinent question on whether the international organization could validly give its consent to the commission of a given act by a State. The reference to a “valid consent” in article 20 of the articles on the responsibility of States for internationally wrongful acts highlights the need to consider these issues in certain cases. In addition, clear and comprehensive mechanism and principles must also be deliberated on the question of when is an international organization entitled to invoke the responsibility of a state.

7. It cannot be overemphasised the fact that there is danger in stating that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts bearing in mind the special character of an international organization as opposed to a state. As such, careful consideration needs to be made by the Commission on these outstanding issues.

Mr. Chairman,

8. On the subject of **Reservation to Treaties**, Malaysia records its appreciation of the efforts made by the Commission in preparing and presenting reports on the matters relating to the work of Commission at its Sixty-first Session. Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

9. In this regard, Malaysia supports the Commission’s work on the “Guide to Practice on Reservations to Treaties”. Notwithstanding the many issues which remained unresolved at the Sixty-first Session, the crystallizing draft guidelines already show promise to be useful guides to assist States in their formulation of reservation to treaties. Malaysia notes that at the Sixty-first session of the Commission, some draft guidelines were provisionally adopted by the Drafting Committee and wishes to express its views as in the following.

10. Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Malaysia notes that draft guideline 2.9.8 should be read in conjunction with draft guideline 2.9.9 which relates to the role that may be played by the silence of a State or an international organization with regard to an interpretative declaration. Nevertheless, paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as “the exceptional cases” as well as “the relevant circumstances” where an approval of an interpretative declaration or an opposition may be inferred. The lack of clarity in the draft guideline could potentially lead to problems in interpretation. Therefore, Malaysia is of the view that the wording of paragraph 2 of draft guideline 2.9.8 should be given greater consideration before it is finalised by the Drafting Committee.

11. On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. However, in Malaysia’s view, the phrase “*through its conduct and taking account of the circumstances*” requires further clarification. In Malaysia’s view, if these guidelines are to serve as a practical guide to States, there should also be clear guidance on the types of conduct or circumstances that would be effectively taken as approval of interpretative declaration in the absence of a clear statement to that effect.

12. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound; and the efficacy of the treaty monitoring bodies' roles lies in the extent to which they serve this objective. The spirit of this guideline is understood to not let the decision of the treaty monitoring body deprive the reserving state to make its reservations, but rather to assist them to craft its reservation to render it valid for permissibility. Nevertheless, the intention for the effect of the findings of treaty monitoring bodies in the draft guideline should be left open for the contracting parties or contracting organization to decide and be reflected in the treaty.

13. Malaysia also supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. However, Malaysia feels that this issue requires further research as it calls for greater considerations on the interplay of different branches of law, that is the law of treaty and the law on state responsibility. In Malaysia's view, clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the "law of reservations" on establishing the principles of whether an impermissible reservation is an "internationally wrongful act" which could potentially later be a basis or parts of the elements for a decision in a dispute.

14. Since the power to make treaties by international organizations largely depends on the terms of the constituent instrument of the international organization and the mandate granted to the international organization, international organizations do not necessarily have similar authority or responsibility as States. Thus, Malaysia is of the view that a separate regime for international organizations should be developed to address these entities and they should not be made part of the draft guidelines at this juncture.

Mr. Chairman,

15. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation wishes to state the following.

16. In recent months, the world has witnessed a flurry of disasters. Ranging from typhoons, flash floods to earthquakes and tsunamis, it is facing the challenge of both to protect as well as to provide assistance to those affected by these disasters. In this regard, my delegation wishes to convey its heartfelt condolences and deepest sympathies to countries and communities that have been affected by these tragedies. Post-disaster efforts to bring assistance and comfort to those affected by these events prove yet again that no single measure against such catastrophes can be truly successful unless countries work together.

17. To this end, Malaysia extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia is also grateful for the outstanding contribution of the Commission in continuing the progressive development of international law and its codification, and in particular, for its work on this topic.

18. Malaysia notes the texts of draft articles 1 to 5 as provisionally adopted by the Drafting Committee (as contained in document A/CN.4/L.758) and looks forward to the Commission's discussions and debate on these draft articles in the next session. Pending the outcome of the Commission's discussions, Malaysia would like to make the following preliminary observations.

19. Malaysia notes the Statement of the Chairman of the Drafting Committee that the phrase "in the event of disasters" in draft article 1 is to be understood to include all phases of disasters, including the pre-disaster phase. However Malaysia requests further clarification from the Commission as to the applicability of the draft articles to the pre-disaster phase *vis-a-vis* draft article 3 which seems to centre on, an event or series of events that have taken place as described in the draft article.

20. On the purpose of the draft articles, Malaysia supports the emphasis placed on the needs of the persons affected by the disasters concerned. While the notion of “needs” and “rights” are sometimes addressed interchangeably, Malaysia is of the view that the needs of a person must necessarily take predominance over their rights in situations of calamity. It is therefore commendable that the draft article seeks to meet the essential needs of the person concerned first, rather than focus primarily on the realization of their rights. Nevertheless, whilst Malaysia is committed to ensuring that the rights of each and every person is protected, the phrase “full respect for their rights” in draft article 2 seems to suggest that a State must go all the way to fulfil the rights of a person, contradicting the idea of “needs” over “rights”.

21. As for the phrase “adequate and effective response”, Malaysia is of the view that the level of adequacy and effectiveness of the response required should be further deliberated by the Commission so as to give States a better indication of the threshold applicable for those terms in the draft article.

22. Malaysia would favour a definition of disaster which is limited to natural disaster and that the event causes either loss of life, property damage or environmental degradation. Malaysia notes that the magnitude of the loss must be severe enough to be categorised as a disaster under the draft articles. Malaysia supports that these draft articles are meant to cover events which are extreme in nature and not just any other acute crisis. Severe riots, civil unrest, demonstration or destruction deliberately caused by mankind should be expressly excluded from the definition.

23. On the relationship with international humanitarian law, Malaysia is of the view that illustrations on different scenarios, i.e. when a disaster strikes before, during, or after an armed conflict, giving rise to the application of the draft articles will be helpful to discern the correlation between the two regimes. It remains unclear at what stage the draft articles will apply or cease to apply.

24. With respect to the duty to cooperate, further clarification on the extent of co-operation between the donor State, the affected State and other relevant stakeholders is vital. The responsibilities of the affected State should be clearly delineated to enable the State to understand the fullest extent of their duty. Malaysia wishes to highlight that the duty of non-intervention is also owed to legitimately sovereign governments. A sovereign State and its Government retain the discretion to receive or not to receive humanitarian assistance according to its own national interests and priorities.

Mr. Chairman,

25. On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles.

26. With regard to whether the draft Articles on transboundary aquifers should be adopted into a convention, Malaysia is of the view that various considerations should be carefully weighed in making that decision. Malaysia also notes the lack of consensus between States on this matter and the fact that this area is largely regulated by bilateral and regional arrangements between States.

27. With the completion of the second reading of the law on transboundary aquifers, the Commission is to proceed with the consideration of the codification of the law on transboundary oil and gas. In this respect, the Commission has circulated a questionnaire on State practice relating to transboundary oil and gas; and responses from 17 States were received as at 31 January 2009. Subsequently, the Special Rapporteur on Shared Natural Resources had further encouraged further responses from other States. In this regard, Malaysia had submitted its response to the questionnaire to the ILC with regard to its State practice regarding transboundary oil and gas.

28. With respect to the decision of the Working Group that a study should be submitted at the 62nd Session of the Commission on the feasibility of any future work on oil and gas, Malaysia notes that a majority of States which have responded gave some indication on their stand against the Commission proceeding with the

codification of the law on transboundary oil and gas. In this regard, we would like to emphasize that the issue of transboundary oil and gas naturally involves highly technical data and politically sensitive issues as well as the issue of sovereignty of States. Therefore, Malaysia is of the view that the Commission should not proceed with the codification of law on transboundary oil and gas as the topic is best dealt with on a case-by-case basis through bilateral or regional arrangements by the relevant States.

Thank you, Mr. Chairman.

*(Statement as delivered)*

**STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.**

Mr. Chairman,

***In the interests of time, allow me to present a shortened version of Malaysia’s statement, the full text of which is being distributed in the room.***

2. On the subject of Responsibility of International Organizations, Malaysia commends the International Law Commission for the adoption of the draft articles on this subject. Malaysia extends its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

3. Malaysia takes note that in the Commission’s elaboration of further details and mechanisms pertaining to countermeasures, there is no examination of the conditions for lawful countermeasures when they are taken by an injured international organization against a responsible state. The Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. Malaysia believes that such restrictions or conditions imposed on countermeasures should not be applied by analogy, and that the Commission should carefully consider the special character of an international organization as opposed to a State.

4. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either:

5.1 in the form of draft articles to be included in the draft articles on the responsibility of international organizations; or

5.2 through the preparation of a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. If an international organisation permit’s a State to commit an act, does that preclude the wrongfulness of that act committed by the State? In this case, Malaysia believes that the Commission should look to the validity of the consent so given by the international organisation or its agent. More important perhaps, is whether an IO can give such consent to a State. In this regard, Article 20 of the articles on the responsibility of States for internationally wrongful acts needs to be referred to.

Mr. Chairman,

7. On the subject of **Reservation to Treaties**, Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

8. In this regard, Malaysia supports the Commission's work on the "Guide to Practice on Reservations to Treaties", and has the following views on the draft guidelines which were provisionally adopted by the Drafting Committee:

8.1 Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as "the exceptional cases" as well as "the relevant circumstances" where an approval of an interpretative declaration or an opposition may be inferred. In the interests of clarity, Malaysia would urge that greater consideration be given to the wording of this paragraph before its finalization by the Drafting Committee.

8.2 On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. Further clarification must be given to the phrase "*through its conduct and taking account of the circumstances*" and clear guidance provided.

9. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound.

10. Malaysia supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. But further research must be done on this subject and clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the law of reservations and an internationally wrongful act. The different character of international organizations means that it should be dealt with separately from States.

11. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia looks forward to the Commission's discussions and debate on draft articles 1 to 5 in the next session. Malaysia has the following preliminary observations:

11.1 the phrase "in the event of disasters" should also include the pre-disaster phase. In this regard, further clarification must be made on Article 3's applicability;

11.2 the needs of a person must take predominance over their rights in situations of calamity, therefore draft article 2 must be clarified in this respect;

11.3 the phrase "adequate and effective response" should be further deliberated so that a better indication of the threshold applicable can be determined and agreed upon;

- 11.4 Malaysia favours a definition of disaster which is limited to natural disasters, and causes either the loss of lives, causes damage to property, or results in environmental degradation;
- 11.5 with regard to international humanitarian law, illustrations on different scenarios when the draft articles will apply, will be beneficial;
- 11.6 on the duty to cooperate, further clarification is needed. Malaysia emphasises that the duty of non-intervention should be maintained, with States retaining discretion on whether or not to receive humanitarian assistance.

Mr. Chairman,

12 On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles. Malaysia has submitted its response to the ILC questionnaire in this instance.

13 Malaysia would like to emphasize that the issue of transboundary oil and gas involves highly technical data and politically sensitive issues, and questions relating to the sovereignty of States. Because of this, this topic is best dealt with through bilateral or regional arrangements, and a codification of law by the ILC would not be desirable.

Thank you, Mr. Chairman.





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Mr. Chairman,

On the subject of **Responsibility of International Organizations**, Malaysia commends the International Law Commission for successfully adopting a set of 66 draft articles on the responsibility of international organizations on its first reading. Malaysia would also like to extend its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

2. Malaysia congratulates the Commission for elaborating further the details and mechanism pertaining to countermeasures. However, Malaysia takes note that the current draft does not examine the conditions for countermeasures to be lawful when they are taken by an injured international organization against a responsible state. In relation to this, the Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. In this regard, Malaysia reiterates its position that although similar restrictions or conditions imposed on countermeasures as in articles on state responsibility may be applied to an international organization, they should not be applied by analogy. In addition, careful consideration should be made by the Commission taking into account the special character of an international organization as opposed to a State.

3. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

4. Malaysia takes note the comments of the Commission that certain issues concerning international responsibility between States and international organizations have not been expressly covered either in the articles on the responsibility of States for internationally wrongful acts or in the draft articles on the responsibility of international organizations. The Commission also stated that one could argue that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either in the form of draft articles to be included in the draft articles on the responsibility of international organizations or alternatively, the Commission may wish to prepare a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international

organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. As to question on when is consent given by an international organization to the commission of a given act by a State a circumstance precluding wrongfulness of that State’s conduct, Malaysia is of the view that the Commission should deliberate on mechanisms to determine the validity of the consent given by the international organization or by the person or agent acting on behalf of the organization. There is also the pertinent question on whether the international organization could validly give its consent to the commission of a given act by a State. The reference to a “valid consent” in article 20 of the articles on the responsibility of States for internationally wrongful acts highlights the need to consider these issues in certain cases. In addition, clear and comprehensive mechanism and principles must also be deliberated on the question of when is an international organization entitled to invoke the responsibility of a state.

7. It cannot be overemphasised the fact that there is danger in stating that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts bearing in mind the special character of an international organization as opposed to a state. As such, careful consideration needs to be made by the Commission on these outstanding issues.

Mr. Chairman,

8. On the subject of **Reservation to Treaties**, Malaysia records its appreciation of the efforts made by the Commission in preparing and presenting reports on the matters relating to the work of Commission at its Sixty-first Session. Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

9. In this regard, Malaysia supports the Commission’s work on the “Guide to Practice on Reservations to Treaties”. Notwithstanding the many issues which remained unresolved at the Sixty-first Session, the crystallizing draft guidelines already show promise to be useful guides to assist States in their formulation of reservation to treaties. Malaysia notes that at the Sixty-first session of the Commission, some draft guidelines were provisionally adopted by the Drafting Committee and wishes to express its views as in the following.

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14. Since the power to make treaties by international organizations largely depends on the terms of the constituent instrument of the international organization and the mandate granted to the international organization, international organizations do not necessarily have similar authority or responsibility as States. Thus, Malaysia is of the view that a separate regime for international organizations should be developed to address these entities and they should not be made part of the draft guidelines at this juncture.

Mr. Chairman,

15. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation wishes to state the following.

16. In recent months, the world has witnessed a flurry of disasters. Ranging from typhoons, flash floods to earthquakes and tsunamis, it is facing the challenge of both to protect as well as to provide assistance to those affected by these disasters. In this regard, my delegation wishes to convey its heartfelt condolences and deepest sympathies to countries and communities that have been affected by these tragedies. Post-disaster efforts to bring assistance and comfort to those affected by these events prove yet again that no single measure against such catastrophes can be truly successful unless countries work together.

17. To this end, Malaysia extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia is also grateful for the outstanding contribution of the Commission in continuing the progressive development of international law and its codification, and in particular, for its work on this topic.

18. Malaysia notes the texts of draft articles 1 to 5 as provisionally adopted by the Drafting Committee (as contained in document A/CN.4/L.758) and looks forward to the Commission's discussions and debate on these draft articles in the next session. Pending the outcome of the Commission's discussions, Malaysia would like to make the following preliminary observations.

19. Malaysia notes the Statement of the Chairman of the Drafting Committee that the phrase "in the event of disasters" in draft article 1 is to be understood to include all phases of disasters, including the pre-disaster phase. However Malaysia requests further clarification from the Commission as to the applicability of the draft articles to the pre-disaster phase *vis-a-vis* draft article 3 which seems to centre on, an event or series of events that have taken place as described in the draft article.

20. On the purpose of the draft articles, Malaysia supports the emphasis placed on the needs of the persons affected by the disasters concerned. While the notion of “needs” and “rights” are sometimes addressed interchangeably, Malaysia is of the view that the needs of a person must necessarily take predominance over their rights in situations of calamity. It is therefore commendable that the draft article seeks to meet the essential needs of the person concerned first, rather than focus primarily on the realization of their rights. Nevertheless, whilst Malaysia is committed to ensuring that the rights of each and every person is protected, the phrase “full respect for their rights” in draft article 2 seems to suggest that a State must go all the way to fulfil the rights of a person, contradicting the idea of “needs” over “rights”.

21. As for the phrase “adequate and effective response”, Malaysia is of the view that the level of adequacy and effectiveness of the response required should be further deliberated by the Commission so as to give States a better indication of the threshold applicable for those terms in the draft article.

22. Malaysia would favour a definition of disaster which is limited to natural disaster and that the event causes either loss of life, property damage or environmental degradation. Malaysia notes that the magnitude of the loss must be severe enough to be categorised as a disaster under the draft articles. Malaysia supports that these draft articles are meant to cover events which are extreme in nature and not just any other acute crisis. Severe riots, civil unrest, demonstration or destruction deliberately caused by mankind should be expressly excluded from the definition.

23. On the relationship with international humanitarian law, Malaysia is of the view that illustrations on different scenarios, i.e. when a disaster strikes before, during, or after an armed conflict, giving rise to the application of the draft articles will be helpful to discern the correlation between the two regimes. It remains unclear at what stage the draft articles will apply or cease to apply.

24. With respect to the duty to cooperate, further clarification on the extent of co-operation between the donor State, the affected State and other relevant stakeholders is vital. The responsibilities of the affected State should be clearly delineated to enable the State to understand the fullest extent of their duty. Malaysia wishes to highlight that the duty of non-intervention is also owed to legitimately sovereign governments. A sovereign State and its Government retain the discretion to receive or not to receive humanitarian assistance according to its own national interests and priorities.

Mr. Chairman,

25. On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles.

26. With regard to whether the draft Articles on transboundary aquifers should be adopted into a convention, Malaysia is of the view that various considerations should be carefully weighed in making that decision. Malaysia also notes the lack of consensus between States on this matter and the fact that this area is largely regulated by bilateral and regional arrangements between States.

27. With the completion of the second reading of the law on transboundary aquifers, the Commission is to proceed with the consideration of the codification of the law on transboundary oil and gas. In this respect, the Commission has circulated a questionnaire on State practice relating to transboundary oil and gas; and responses from 17 States were received as at 31 January 2009. Subsequently, the Special Rapporteur on Shared Natural Resources had further encouraged further responses from other States. In this regard, Malaysia had submitted its response to the questionnaire to the ILC with regard to its State practice regarding transboundary oil and gas.

28. With respect to the decision of the Working Group that a study should be submitted at the 62nd Session of the Commission on the feasibility of any future work on oil and gas, Malaysia notes that a majority of States which have responded gave some indication on their stand against the Commission proceeding with the

codification of the law on transboundary oil and gas. In this regard, we would like to emphasize that the issue of transboundary oil and gas naturally involves highly technical data and politically sensitive issues as well as the issue of sovereignty of States. Therefore, Malaysia is of the view that the Commission should not proceed with the codification of law on transboundary oil and gas as the topic is best dealt with on a case-by-case basis through bilateral or regional arrangements by the relevant States.

Thank you, Mr. Chairman.

*(Statement as delivered)*

**STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.**

Mr. Chairman,

***In the interests of time, allow me to present a shortened version of Malaysia’s statement, the full text of which is being distributed in the room.***

2. On the subject of Responsibility of International Organizations, Malaysia commends the International Law Commission for the adoption of the draft articles on this subject. Malaysia extends its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

3. Malaysia takes note that in the Commission’s elaboration of further details and mechanisms pertaining to countermeasures, there is no examination of the conditions for lawful countermeasures when they are taken by an injured international organization against a responsible state. The Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. Malaysia believes that such restrictions or conditions imposed on countermeasures should not be applied by analogy, and that the Commission should carefully consider the special character of an international organization as opposed to a State.

4. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either:

5.1 in the form of draft articles to be included in the draft articles on the responsibility of international organizations; or

5.2 through the preparation of a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. If an international organisation permit’s a State to commit an act, does that preclude the wrongfulness of that act committed by the State? In this case, Malaysia believes that the Commission should look to the validity of the consent so given by the international organisation or its agent. More important perhaps, is whether an IO can give such consent to a State. In this regard, Article 20 of the articles on the responsibility of States for internationally wrongful acts needs to be referred to.

Mr. Chairman,

7. On the subject of **Reservation to Treaties**, Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

8. In this regard, Malaysia supports the Commission's work on the "Guide to Practice on Reservations to Treaties", and has the following views on the draft guidelines which were provisionally adopted by the Drafting Committee:

8.1 Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as "the exceptional cases" as well as "the relevant circumstances" where an approval of an interpretative declaration or an opposition may be inferred. In the interests of clarity, Malaysia would urge that greater consideration be given to the wording of this paragraph before its finalization by the Drafting Committee.

8.2 On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. Further clarification must be given to the phrase "*through its conduct and taking account of the circumstances*" and clear guidance provided.

9. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound.

10. Malaysia supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. But further research must be done on this subject and clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the law of reservations and an internationally wrongful act. The different character of international organizations means that it should be dealt with separately from States.

11. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia looks forward to the Commission's discussions and debate on draft articles 1 to 5 in the next session. Malaysia has the following preliminary observations:

11.1 the phrase "in the event of disasters" should also include the pre-disaster phase. In this regard, further clarification must be made on Article 3's applicability;

11.2 the needs of a person must take predominance over their rights in situations of calamity, therefore draft article 2 must be clarified in this respect;

11.3 the phrase "adequate and effective response" should be further deliberated so that a better indication of the threshold applicable can be determined and agreed upon;

- 11.4 Malaysia favours a definition of disaster which is limited to natural disasters, and causes either the loss of lives, causes damage to property, or results in environmental degradation;
- 11.5 with regard to international humanitarian law, illustrations on different scenarios when the draft articles will apply, will be beneficial;
- 11.6 on the duty to cooperate, further clarification is needed. Malaysia emphasises that the duty of non-intervention should be maintained, with States retaining discretion on whether or not to receive humanitarian assistance.

Mr. Chairman,

12 On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles. Malaysia has submitted its response to the ILC questionnaire in this instance.

13 Malaysia would like to emphasize that the issue of transboundary oil and gas involves highly technical data and politically sensitive issues, and questions relating to the sovereignty of States. Because of this, this topic is best dealt with through bilateral or regional arrangements, and a codification of law by the ILC would not be desirable.

Thank you, Mr. Chairman.





*Permanent Mission of*  
**Malaysia**  
*to the United Nations*

*(Full Version)*

STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.

Mr. Chairman,

On the subject of **Responsibility of International Organizations**, Malaysia commends the International Law Commission for successfully adopting a set of 66 draft articles on the responsibility of international organizations on its first reading. Malaysia would also like to extend its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

2. Malaysia congratulates the Commission for elaborating further the details and mechanism pertaining to countermeasures. However, Malaysia takes note that the current draft does not examine the conditions for countermeasures to be lawful when they are taken by an injured international organization against a responsible state. In relation to this, the Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. In this regard, Malaysia reiterates its position that although similar restrictions or conditions imposed on countermeasures as in articles on state responsibility may be applied to an international organization, they should not be applied by analogy. In addition, careful consideration should be made by the Commission taking into account the special character of an international organization as opposed to a State.

3. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

4. Malaysia takes note the comments of the Commission that certain issues concerning international responsibility between States and international organizations have not been expressly covered either in the articles on the responsibility of States for internationally wrongful acts or in the draft articles on the responsibility of international organizations. The Commission also stated that one could argue that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either in the form of draft articles to be included in the draft articles on the responsibility of international organizations or alternatively, the Commission may wish to prepare a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international

organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. As to question on when is consent given by an international organization to the commission of a given act by a State a circumstance precluding wrongfulness of that State’s conduct, Malaysia is of the view that the Commission should deliberate on mechanisms to determine the validity of the consent given by the international organization or by the person or agent acting on behalf of the organization. There is also the pertinent question on whether the international organization could validly give its consent to the commission of a given act by a State. The reference to a “valid consent” in article 20 of the articles on the responsibility of States for internationally wrongful acts highlights the need to consider these issues in certain cases. In addition, clear and comprehensive mechanism and principles must also be deliberated on the question of when is an international organization entitled to invoke the responsibility of a state.

7. It cannot be overemphasised the fact that there is danger in stating that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts bearing in mind the special character of an international organization as opposed to a state. As such, careful consideration needs to be made by the Commission on these outstanding issues.

Mr. Chairman,

8. On the subject of **Reservation to Treaties**, Malaysia records its appreciation of the efforts made by the Commission in preparing and presenting reports on the matters relating to the work of Commission at its Sixty-first Session. Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

9. In this regard, Malaysia supports the Commission’s work on the “Guide to Practice on Reservations to Treaties”. Notwithstanding the many issues which remained unresolved at the Sixty-first Session, the crystallizing draft guidelines already show promise to be useful guides to assist States in their formulation of reservation to treaties. Malaysia notes that at the Sixty-first session of the Commission, some draft guidelines were provisionally adopted by the Drafting Committee and wishes to express its views as in the following.

10. Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Malaysia notes that draft guideline 2.9.8 should be read in conjunction with draft guideline 2.9.9 which relates to the role that may be played by the silence of a State or an international organization with regard to an interpretative declaration. Nevertheless, paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as “the exceptional cases” as well as “the relevant circumstances” where an approval of an interpretative declaration or an opposition may be inferred. The lack of clarity in the draft guideline could potentially lead to problems in interpretation. Therefore, Malaysia is of the view that the wording of paragraph 2 of draft guideline 2.9.8 should be given greater consideration before it is finalised by the Drafting Committee.

11. On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. However, in Malaysia’s view, the phrase “*through its conduct and taking account of the circumstances*” requires further clarification. In Malaysia’s view, if these guidelines are to serve as a practical guide to States, there should also be clear guidance on the types of conduct or circumstances that would be effectively taken as approval of interpretative declaration in the absence of a clear statement to that effect.

12. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound; and the efficacy of the treaty monitoring bodies' roles lies in the extent to which they serve this objective. The spirit of this guideline is understood to not let the decision of the treaty monitoring body deprive the reserving state to make its reservations, but rather to assist them to craft its reservation to render it valid for permissibility. Nevertheless, the intention for the effect of the findings of treaty monitoring bodies in the draft guideline should be left open for the contracting parties or contracting organization to decide and be reflected in the treaty.

13. Malaysia also supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. However, Malaysia feels that this issue requires further research as it calls for greater considerations on the interplay of different branches of law, that is the law of treaty and the law on state responsibility. In Malaysia's view, clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the "law of reservations" on establishing the principles of whether an impermissible reservation is an "internationally wrongful act" which could potentially later be a basis or parts of the elements for a decision in a dispute.

14. Since the power to make treaties by international organizations largely depends on the terms of the constituent instrument of the international organization and the mandate granted to the international organization, international organizations do not necessarily have similar authority or responsibility as States. Thus, Malaysia is of the view that a separate regime for international organizations should be developed to address these entities and they should not be made part of the draft guidelines at this juncture.

Mr. Chairman,

15. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation wishes to state the following.

16. In recent months, the world has witnessed a flurry of disasters. Ranging from typhoons, flash floods to earthquakes and tsunamis, it is facing the challenge of both to protect as well as to provide assistance to those affected by these disasters. In this regard, my delegation wishes to convey its heartfelt condolences and deepest sympathies to countries and communities that have been affected by these tragedies. Post-disaster efforts to bring assistance and comfort to those affected by these events prove yet again that no single measure against such catastrophes can be truly successful unless countries work together.

17. To this end, Malaysia extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia is also grateful for the outstanding contribution of the Commission in continuing the progressive development of international law and its codification, and in particular, for its work on this topic.

18. Malaysia notes the texts of draft articles 1 to 5 as provisionally adopted by the Drafting Committee (as contained in document A/CN.4/L.758) and looks forward to the Commission's discussions and debate on these draft articles in the next session. Pending the outcome of the Commission's discussions, Malaysia would like to make the following preliminary observations.

19. Malaysia notes the Statement of the Chairman of the Drafting Committee that the phrase "in the event of disasters" in draft article 1 is to be understood to include all phases of disasters, including the pre-disaster phase. However Malaysia requests further clarification from the Commission as to the applicability of the draft articles to the pre-disaster phase *vis-a-vis* draft article 3 which seems to centre on, an event or series of events that have taken place as described in the draft article.

20. On the purpose of the draft articles, Malaysia supports the emphasis placed on the needs of the persons affected by the disasters concerned. While the notion of “needs” and “rights” are sometimes addressed interchangeably, Malaysia is of the view that the needs of a person must necessarily take predominance over their rights in situations of calamity. It is therefore commendable that the draft article seeks to meet the essential needs of the person concerned first, rather than focus primarily on the realization of their rights. Nevertheless, whilst Malaysia is committed to ensuring that the rights of each and every person is protected, the phrase “full respect for their rights” in draft article 2 seems to suggest that a State must go all the way to fulfil the rights of a person, contradicting the idea of “needs” over “rights”.

21. As for the phrase “adequate and effective response”, Malaysia is of the view that the level of adequacy and effectiveness of the response required should be further deliberated by the Commission so as to give States a better indication of the threshold applicable for those terms in the draft article.

22. Malaysia would favour a definition of disaster which is limited to natural disaster and that the event causes either loss of life, property damage or environmental degradation. Malaysia notes that the magnitude of the loss must be severe enough to be categorised as a disaster under the draft articles. Malaysia supports that these draft articles are meant to cover events which are extreme in nature and not just any other acute crisis. Severe riots, civil unrest, demonstration or destruction deliberately caused by mankind should be expressly excluded from the definition.

23. On the relationship with international humanitarian law, Malaysia is of the view that illustrations on different scenarios, i.e. when a disaster strikes before, during, or after an armed conflict, giving rise to the application of the draft articles will be helpful to discern the correlation between the two regimes. It remains unclear at what stage the draft articles will apply or cease to apply.

24. With respect to the duty to cooperate, further clarification on the extent of co-operation between the donor State, the affected State and other relevant stakeholders is vital. The responsibilities of the affected State should be clearly delineated to enable the State to understand the fullest extent of their duty. Malaysia wishes to highlight that the duty of non-intervention is also owed to legitimately sovereign governments. A sovereign State and its Government retain the discretion to receive or not to receive humanitarian assistance according to its own national interests and priorities.

Mr. Chairman,

25. On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles.

26. With regard to whether the draft Articles on transboundary aquifers should be adopted into a convention, Malaysia is of the view that various considerations should be carefully weighed in making that decision. Malaysia also notes the lack of consensus between States on this matter and the fact that this area is largely regulated by bilateral and regional arrangements between States.

27. With the completion of the second reading of the law on transboundary aquifers, the Commission is to proceed with the consideration of the codification of the law on transboundary oil and gas. In this respect, the Commission has circulated a questionnaire on State practice relating to transboundary oil and gas; and responses from 17 States were received as at 31 January 2009. Subsequently, the Special Rapporteur on Shared Natural Resources had further encouraged further responses from other States. In this regard, Malaysia had submitted its response to the questionnaire to the ILC with regard to its State practice regarding transboundary oil and gas.

28. With respect to the decision of the Working Group that a study should be submitted at the 62nd Session of the Commission on the feasibility of any future work on oil and gas, Malaysia notes that a majority of States which have responded gave some indication on their stand against the Commission proceeding with the

codification of the law on transboundary oil and gas. In this regard, we would like to emphasize that the issue of transboundary oil and gas naturally involves highly technical data and politically sensitive issues as well as the issue of sovereignty of States. Therefore, Malaysia is of the view that the Commission should not proceed with the codification of law on transboundary oil and gas as the topic is best dealt with on a case-by-case basis through bilateral or regional arrangements by the relevant States.

Thank you, Mr. Chairman.

*(Statement as delivered)*

**STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.**

Mr. Chairman,

***In the interests of time, allow me to present a shortened version of Malaysia’s statement, the full text of which is being distributed in the room.***

2. On the subject of Responsibility of International Organizations, Malaysia commends the International Law Commission for the adoption of the draft articles on this subject. Malaysia extends its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

3. Malaysia takes note that in the Commission’s elaboration of further details and mechanisms pertaining to countermeasures, there is no examination of the conditions for lawful countermeasures when they are taken by an injured international organization against a responsible state. The Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. Malaysia believes that such restrictions or conditions imposed on countermeasures should not be applied by analogy, and that the Commission should carefully consider the special character of an international organization as opposed to a State.

4. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either:

5.1 in the form of draft articles to be included in the draft articles on the responsibility of international organizations; or

5.2 through the preparation of a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. If an international organisation permit’s a State to commit an act, does that preclude the wrongfulness of that act committed by the State? In this case, Malaysia believes that the Commission should look to the validity of the consent so given by the international organisation or its agent. More important perhaps, is whether an IO can give such consent to a State. In this regard, Article 20 of the articles on the responsibility of States for internationally wrongful acts needs to be referred to.

Mr. Chairman,

7. On the subject of **Reservation to Treaties**, Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

8. In this regard, Malaysia supports the Commission's work on the "Guide to Practice on Reservations to Treaties", and has the following views on the draft guidelines which were provisionally adopted by the Drafting Committee:

8.1 Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as "the exceptional cases" as well as "the relevant circumstances" where an approval of an interpretative declaration or an opposition may be inferred. In the interests of clarity, Malaysia would urge that greater consideration be given to the wording of this paragraph before its finalization by the Drafting Committee.

8.2 On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. Further clarification must be given to the phrase "*through its conduct and taking account of the circumstances*" and clear guidance provided.

9. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound.

10. Malaysia supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. But further research must be done on this subject and clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the law of reservations and an internationally wrongful act. The different character of international organizations means that it should be dealt with separately from States.

11. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia looks forward to the Commission's discussions and debate on draft articles 1 to 5 in the next session. Malaysia has the following preliminary observations:

11.1 the phrase "in the event of disasters" should also include the pre-disaster phase. In this regard, further clarification must be made on Article 3's applicability;

11.2 the needs of a person must take predominance over their rights in situations of calamity, therefore draft article 2 must be clarified in this respect;

11.3 the phrase "adequate and effective response" should be further deliberated so that a better indication of the threshold applicable can be determined and agreed upon;

- 11.4 Malaysia favours a definition of disaster which is limited to natural disasters, and causes either the loss of lives, causes damage to property, or results in environmental degradation;
- 11.5 with regard to international humanitarian law, illustrations on different scenarios when the draft articles will apply, will be beneficial;
- 11.6 on the duty to cooperate, further clarification is needed. Malaysia emphasises that the duty of non-intervention should be maintained, with States retaining discretion on whether or not to receive humanitarian assistance.

Mr. Chairman,

12 On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles. Malaysia has submitted its response to the ILC questionnaire in this instance.

13 Malaysia would like to emphasize that the issue of transboundary oil and gas involves highly technical data and politically sensitive issues, and questions relating to the sovereignty of States. Because of this, this topic is best dealt with through bilateral or regional arrangements, and a codification of law by the ILC would not be desirable.

Thank you, Mr. Chairman.





*Permanent Mission of*  
**Malaysia**  
*to the United Nations*

*(Full Version)*

**STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.**

Mr. Chairman,

On the subject of **Responsibility of International Organizations**, Malaysia commends the International Law Commission for successfully adopting a set of 66 draft articles on the responsibility of international organizations on its first reading. Malaysia would also like to extend its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

2. Malaysia congratulates the Commission for elaborating further the details and mechanism pertaining to countermeasures. However, Malaysia takes note that the current draft does not examine the conditions for countermeasures to be lawful when they are taken by an injured international organization against a responsible state. In relation to this, the Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. In this regard, Malaysia reiterates its position that although similar restrictions or conditions imposed on countermeasures as in articles on state responsibility may be applied to an international organization, they should not be applied by analogy. In addition, careful consideration should be made by the Commission taking into account the special character of an international organization as opposed to a State.

3. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

4. Malaysia takes note the comments of the Commission that certain issues concerning international responsibility between States and international organizations have not been expressly covered either in the articles on the responsibility of States for internationally wrongful acts or in the draft articles on the responsibility of international organizations. The Commission also stated that one could argue that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either in the form of draft articles to be included in the draft articles on the responsibility of international organizations or alternatively, the Commission may wish to prepare a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international

organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. As to question on when is consent given by an international organization to the commission of a given act by a State a circumstance precluding wrongfulness of that State’s conduct, Malaysia is of the view that the Commission should deliberate on mechanisms to determine the validity of the consent given by the international organization or by the person or agent acting on behalf of the organization. There is also the pertinent question on whether the international organization could validly give its consent to the commission of a given act by a State. The reference to a “valid consent” in article 20 of the articles on the responsibility of States for internationally wrongful acts highlights the need to consider these issues in certain cases. In addition, clear and comprehensive mechanism and principles must also be deliberated on the question of when is an international organization entitled to invoke the responsibility of a state.

7. It cannot be overemphasised the fact that there is danger in stating that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts bearing in mind the special character of an international organization as opposed to a state. As such, careful consideration needs to be made by the Commission on these outstanding issues.

Mr. Chairman,

8. On the subject of **Reservation to Treaties**, Malaysia records its appreciation of the efforts made by the Commission in preparing and presenting reports on the matters relating to the work of Commission at its Sixty-first Session. Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

9. In this regard, Malaysia supports the Commission’s work on the “Guide to Practice on Reservations to Treaties”. Notwithstanding the many issues which remained unresolved at the Sixty-first Session, the crystallizing draft guidelines already show promise to be useful guides to assist States in their formulation of reservation to treaties. Malaysia notes that at the Sixty-first session of the Commission, some draft guidelines were provisionally adopted by the Drafting Committee and wishes to express its views as in the following.

10. Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Malaysia notes that draft guideline 2.9.8 should be read in conjunction with draft guideline 2.9.9 which relates to the role that may be played by the silence of a State or an international organization with regard to an interpretative declaration. Nevertheless, paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as “the exceptional cases” as well as “the relevant circumstances” where an approval of an interpretative declaration or an opposition may be inferred. The lack of clarity in the draft guideline could potentially lead to problems in interpretation. Therefore, Malaysia is of the view that the wording of paragraph 2 of draft guideline 2.9.8 should be given greater consideration before it is finalised by the Drafting Committee.

11. On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. However, in Malaysia’s view, the phrase “*through its conduct and taking account of the circumstances*” requires further clarification. In Malaysia’s view, if these guidelines are to serve as a practical guide to States, there should also be clear guidance on the types of conduct or circumstances that would be effectively taken as approval of interpretative declaration in the absence of a clear statement to that effect.

12. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound; and the efficacy of the treaty monitoring bodies' roles lies in the extent to which they serve this objective. The spirit of this guideline is understood to not let the decision of the treaty monitoring body deprive the reserving state to make its reservations, but rather to assist them to craft its reservation to render it valid for permissibility. Nevertheless, the intention for the effect of the findings of treaty monitoring bodies in the draft guideline should be left open for the contracting parties or contracting organization to decide and be reflected in the treaty.

13. Malaysia also supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. However, Malaysia feels that this issue requires further research as it calls for greater considerations on the interplay of different branches of law, that is the law of treaty and the law on state responsibility. In Malaysia's view, clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the "law of reservations" on establishing the principles of whether an impermissible reservation is an "internationally wrongful act" which could potentially later be a basis or parts of the elements for a decision in a dispute.

14. Since the power to make treaties by international organizations largely depends on the terms of the constituent instrument of the international organization and the mandate granted to the international organization, international organizations do not necessarily have similar authority or responsibility as States. Thus, Malaysia is of the view that a separate regime for international organizations should be developed to address these entities and they should not be made part of the draft guidelines at this juncture.

Mr. Chairman,

15. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation wishes to state the following.

16. In recent months, the world has witnessed a flurry of disasters. Ranging from typhoons, flash floods to earthquakes and tsunamis, it is facing the challenge of both to protect as well as to provide assistance to those affected by these disasters. In this regard, my delegation wishes to convey its heartfelt condolences and deepest sympathies to countries and communities that have been affected by these tragedies. Post-disaster efforts to bring assistance and comfort to those affected by these events prove yet again that no single measure against such catastrophes can be truly successful unless countries work together.

17. To this end, Malaysia extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia is also grateful for the outstanding contribution of the Commission in continuing the progressive development of international law and its codification, and in particular, for its work on this topic.

18. Malaysia notes the texts of draft articles 1 to 5 as provisionally adopted by the Drafting Committee (as contained in document A/CN.4/L.758) and looks forward to the Commission's discussions and debate on these draft articles in the next session. Pending the outcome of the Commission's discussions, Malaysia would like to make the following preliminary observations.

19. Malaysia notes the Statement of the Chairman of the Drafting Committee that the phrase "in the event of disasters" in draft article 1 is to be understood to include all phases of disasters, including the pre-disaster phase. However Malaysia requests further clarification from the Commission as to the applicability of the draft articles to the pre-disaster phase *vis-a-vis* draft article 3 which seems to centre on, an event or series of events that have taken place as described in the draft article.

20. On the purpose of the draft articles, Malaysia supports the emphasis placed on the needs of the persons affected by the disasters concerned. While the notion of “needs” and “rights” are sometimes addressed interchangeably, Malaysia is of the view that the needs of a person must necessarily take predominance over their rights in situations of calamity. It is therefore commendable that the draft article seeks to meet the essential needs of the person concerned first, rather than focus primarily on the realization of their rights. Nevertheless, whilst Malaysia is committed to ensuring that the rights of each and every person is protected, the phrase “full respect for their rights” in draft article 2 seems to suggest that a State must go all the way to fulfil the rights of a person, contradicting the idea of “needs” over “rights”.

21. As for the phrase “adequate and effective response”, Malaysia is of the view that the level of adequacy and effectiveness of the response required should be further deliberated by the Commission so as to give States a better indication of the threshold applicable for those terms in the draft article.

22. Malaysia would favour a definition of disaster which is limited to natural disaster and that the event causes either loss of life, property damage or environmental degradation. Malaysia notes that the magnitude of the loss must be severe enough to be categorised as a disaster under the draft articles. Malaysia supports that these draft articles are meant to cover events which are extreme in nature and not just any other acute crisis. Severe riots, civil unrest, demonstration or destruction deliberately caused by mankind should be expressly excluded from the definition.

23. On the relationship with international humanitarian law, Malaysia is of the view that illustrations on different scenarios, i.e. when a disaster strikes before, during, or after an armed conflict, giving rise to the application of the draft articles will be helpful to discern the correlation between the two regimes. It remains unclear at what stage the draft articles will apply or cease to apply.

24. With respect to the duty to cooperate, further clarification on the extent of co-operation between the donor State, the affected State and other relevant stakeholders is vital. The responsibilities of the affected State should be clearly delineated to enable the State to understand the fullest extent of their duty. Malaysia wishes to highlight that the duty of non-intervention is also owed to legitimately sovereign governments. A sovereign State and its Government retain the discretion to receive or not to receive humanitarian assistance according to its own national interests and priorities.

Mr. Chairman,

25. On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles.

26. With regard to whether the draft Articles on transboundary aquifers should be adopted into a convention, Malaysia is of the view that various considerations should be carefully weighed in making that decision. Malaysia also notes the lack of consensus between States on this matter and the fact that this area is largely regulated by bilateral and regional arrangements between States.

27. With the completion of the second reading of the law on transboundary aquifers, the Commission is to proceed with the consideration of the codification of the law on transboundary oil and gas. In this respect, the Commission has circulated a questionnaire on State practice relating to transboundary oil and gas; and responses from 17 States were received as at 31 January 2009. Subsequently, the Special Rapporteur on Shared Natural Resources had further encouraged further responses from other States. In this regard, Malaysia had submitted its response to the questionnaire to the ILC with regard to its State practice regarding transboundary oil and gas.

28. With respect to the decision of the Working Group that a study should be submitted at the 62nd Session of the Commission on the feasibility of any future work on oil and gas, Malaysia notes that a majority of States which have responded gave some indication on their stand against the Commission proceeding with the

codification of the law on transboundary oil and gas. In this regard, we would like to emphasize that the issue of transboundary oil and gas naturally involves highly technical data and politically sensitive issues as well as the issue of sovereignty of States. Therefore, Malaysia is of the view that the Commission should not proceed with the codification of law on transboundary oil and gas as the topic is best dealt with on a case-by-case basis through bilateral or regional arrangements by the relevant States.

Thank you, Mr. Chairman.

*(Statement as delivered)*

**STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.**

Mr. Chairman,

***In the interests of time, allow me to present a shortened version of Malaysia’s statement, the full text of which is being distributed in the room.***

2. On the subject of Responsibility of International Organizations, Malaysia commends the International Law Commission for the adoption of the draft articles on this subject. Malaysia extends its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

3. Malaysia takes note that in the Commission’s elaboration of further details and mechanisms pertaining to countermeasures, there is no examination of the conditions for lawful countermeasures when they are taken by an injured international organization against a responsible state. The Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. Malaysia believes that such restrictions or conditions imposed on countermeasures should not be applied by analogy, and that the Commission should carefully consider the special character of an international organization as opposed to a State.

4. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either:

5.1 in the form of draft articles to be included in the draft articles on the responsibility of international organizations; or

5.2 through the preparation of a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. If an international organisation permit’s a State to commit an act, does that preclude the wrongfulness of that act committed by the State? In this case, Malaysia believes that the Commission should look to the validity of the consent so given by the international organisation or its agent. More important perhaps, is whether an IO can give such consent to a State. In this regard, Article 20 of the articles on the responsibility of States for internationally wrongful acts needs to be referred to.

Mr. Chairman,

7. On the subject of **Reservation to Treaties**, Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

8. In this regard, Malaysia supports the Commission's work on the "Guide to Practice on Reservations to Treaties", and has the following views on the draft guidelines which were provisionally adopted by the Drafting Committee:

8.1 Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as "the exceptional cases" as well as "the relevant circumstances" where an approval of an interpretative declaration or an opposition may be inferred. In the interests of clarity, Malaysia would urge that greater consideration be given to the wording of this paragraph before its finalization by the Drafting Committee.

8.2 On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. Further clarification must be given to the phrase "*through its conduct and taking account of the circumstances*" and clear guidance provided.

9. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound.

10. Malaysia supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. But further research must be done on this subject and clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the law of reservations and an internationally wrongful act. The different character of international organizations means that it should be dealt with separately from States.

11. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia looks forward to the Commission's discussions and debate on draft articles 1 to 5 in the next session. Malaysia has the following preliminary observations:

11.1 the phrase "in the event of disasters" should also include the pre-disaster phase. In this regard, further clarification must be made on Article 3's applicability;

11.2 the needs of a person must take predominance over their rights in situations of calamity, therefore draft article 2 must be clarified in this respect;

11.3 the phrase "adequate and effective response" should be further deliberated so that a better indication of the threshold applicable can be determined and agreed upon;

- 11.4 Malaysia favours a definition of disaster which is limited to natural disasters, and causes either the loss of lives, causes damage to property, or results in environmental degradation;
- 11.5 with regard to international humanitarian law, illustrations on different scenarios when the draft articles will apply, will be beneficial;
- 11.6 on the duty to cooperate, further clarification is needed. Malaysia emphasises that the duty of non-intervention should be maintained, with States retaining discretion on whether or not to receive humanitarian assistance.

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13 Malaysia would like to emphasize that the issue of transboundary oil and gas involves highly technical data and politically sensitive issues, and questions relating to the sovereignty of States. Because of this, this topic is best dealt with through bilateral or regional arrangements, and a codification of law by the ILC would not be desirable.

Thank you, Mr. Chairman.





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Mr. Chairman,

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2. Malaysia congratulates the Commission for elaborating further the details and mechanism pertaining to countermeasures. However, Malaysia takes note that the current draft does not examine the conditions for countermeasures to be lawful when they are taken by an injured international organization against a responsible state. In relation to this, the Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. In this regard, Malaysia reiterates its position that although similar restrictions or conditions imposed on countermeasures as in articles on state responsibility may be applied to an international organization, they should not be applied by analogy. In addition, careful consideration should be made by the Commission taking into account the special character of an international organization as opposed to a State.

3. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

4. Malaysia takes note the comments of the Commission that certain issues concerning international responsibility between States and international organizations have not been expressly covered either in the articles on the responsibility of States for internationally wrongful acts or in the draft articles on the responsibility of international organizations. The Commission also stated that one could argue that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either in the form of draft articles to be included in the draft articles on the responsibility of international organizations or alternatively, the Commission may wish to prepare a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international

organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. As to question on when is consent given by an international organization to the commission of a given act by a State a circumstance precluding wrongfulness of that State’s conduct, Malaysia is of the view that the Commission should deliberate on mechanisms to determine the validity of the consent given by the international organization or by the person or agent acting on behalf of the organization. There is also the pertinent question on whether the international organization could validly give its consent to the commission of a given act by a State. The reference to a “valid consent” in article 20 of the articles on the responsibility of States for internationally wrongful acts highlights the need to consider these issues in certain cases. In addition, clear and comprehensive mechanism and principles must also be deliberated on the question of when is an international organization entitled to invoke the responsibility of a state.

7. It cannot be overemphasised the fact that there is danger in stating that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts bearing in mind the special character of an international organization as opposed to a state. As such, careful consideration needs to be made by the Commission on these outstanding issues.

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9. In this regard, Malaysia supports the Commission’s work on the “Guide to Practice on Reservations to Treaties”. Notwithstanding the many issues which remained unresolved at the Sixty-first Session, the crystallizing draft guidelines already show promise to be useful guides to assist States in their formulation of reservation to treaties. Malaysia notes that at the Sixty-first session of the Commission, some draft guidelines were provisionally adopted by the Drafting Committee and wishes to express its views as in the following.

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16. In recent months, the world has witnessed a flurry of disasters. Ranging from typhoons, flash floods to earthquakes and tsunamis, it is facing the challenge of both to protect as well as to provide assistance to those affected by these disasters. In this regard, my delegation wishes to convey its heartfelt condolences and deepest sympathies to countries and communities that have been affected by these tragedies. Post-disaster efforts to bring assistance and comfort to those affected by these events prove yet again that no single measure against such catastrophes can be truly successful unless countries work together.

17. To this end, Malaysia extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia is also grateful for the outstanding contribution of the Commission in continuing the progressive development of international law and its codification, and in particular, for its work on this topic.

18. Malaysia notes the texts of draft articles 1 to 5 as provisionally adopted by the Drafting Committee (as contained in document A/CN.4/L.758) and looks forward to the Commission's discussions and debate on these draft articles in the next session. Pending the outcome of the Commission's discussions, Malaysia would like to make the following preliminary observations.

19. Malaysia notes the Statement of the Chairman of the Drafting Committee that the phrase "in the event of disasters" in draft article 1 is to be understood to include all phases of disasters, including the pre-disaster phase. However Malaysia requests further clarification from the Commission as to the applicability of the draft articles to the pre-disaster phase *vis-a-vis* draft article 3 which seems to centre on, an event or series of events that have taken place as described in the draft article.

20. On the purpose of the draft articles, Malaysia supports the emphasis placed on the needs of the persons affected by the disasters concerned. While the notion of “needs” and “rights” are sometimes addressed interchangeably, Malaysia is of the view that the needs of a person must necessarily take predominance over their rights in situations of calamity. It is therefore commendable that the draft article seeks to meet the essential needs of the person concerned first, rather than focus primarily on the realization of their rights. Nevertheless, whilst Malaysia is committed to ensuring that the rights of each and every person is protected, the phrase “full respect for their rights” in draft article 2 seems to suggest that a State must go all the way to fulfil the rights of a person, contradicting the idea of “needs” over “rights”.

21. As for the phrase “adequate and effective response”, Malaysia is of the view that the level of adequacy and effectiveness of the response required should be further deliberated by the Commission so as to give States a better indication of the threshold applicable for those terms in the draft article.

22. Malaysia would favour a definition of disaster which is limited to natural disaster and that the event causes either loss of life, property damage or environmental degradation. Malaysia notes that the magnitude of the loss must be severe enough to be categorised as a disaster under the draft articles. Malaysia supports that these draft articles are meant to cover events which are extreme in nature and not just any other acute crisis. Severe riots, civil unrest, demonstration or destruction deliberately caused by mankind should be expressly excluded from the definition.

23. On the relationship with international humanitarian law, Malaysia is of the view that illustrations on different scenarios, i.e. when a disaster strikes before, during, or after an armed conflict, giving rise to the application of the draft articles will be helpful to discern the correlation between the two regimes. It remains unclear at what stage the draft articles will apply or cease to apply.

24. With respect to the duty to cooperate, further clarification on the extent of co-operation between the donor State, the affected State and other relevant stakeholders is vital. The responsibilities of the affected State should be clearly delineated to enable the State to understand the fullest extent of their duty. Malaysia wishes to highlight that the duty of non-intervention is also owed to legitimately sovereign governments. A sovereign State and its Government retain the discretion to receive or not to receive humanitarian assistance according to its own national interests and priorities.

Mr. Chairman,

25. On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles.

26. With regard to whether the draft Articles on transboundary aquifers should be adopted into a convention, Malaysia is of the view that various considerations should be carefully weighed in making that decision. Malaysia also notes the lack of consensus between States on this matter and the fact that this area is largely regulated by bilateral and regional arrangements between States.

27. With the completion of the second reading of the law on transboundary aquifers, the Commission is to proceed with the consideration of the codification of the law on transboundary oil and gas. In this respect, the Commission has circulated a questionnaire on State practice relating to transboundary oil and gas; and responses from 17 States were received as at 31 January 2009. Subsequently, the Special Rapporteur on Shared Natural Resources had further encouraged further responses from other States. In this regard, Malaysia had submitted its response to the questionnaire to the ILC with regard to its State practice regarding transboundary oil and gas.

28. With respect to the decision of the Working Group that a study should be submitted at the 62nd Session of the Commission on the feasibility of any future work on oil and gas, Malaysia notes that a majority of States which have responded gave some indication on their stand against the Commission proceeding with the

codification of the law on transboundary oil and gas. In this regard, we would like to emphasize that the issue of transboundary oil and gas naturally involves highly technical data and politically sensitive issues as well as the issue of sovereignty of States. Therefore, Malaysia is of the view that the Commission should not proceed with the codification of law on transboundary oil and gas as the topic is best dealt with on a case-by-case basis through bilateral or regional arrangements by the relevant States.

Thank you, Mr. Chairman.

*(Statement as delivered)*

**STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.**

Mr. Chairman,

***In the interests of time, allow me to present a shortened version of Malaysia’s statement, the full text of which is being distributed in the room.***

2. On the subject of Responsibility of International Organizations, Malaysia commends the International Law Commission for the adoption of the draft articles on this subject. Malaysia extends its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

3. Malaysia takes note that in the Commission’s elaboration of further details and mechanisms pertaining to countermeasures, there is no examination of the conditions for lawful countermeasures when they are taken by an injured international organization against a responsible state. The Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. Malaysia believes that such restrictions or conditions imposed on countermeasures should not be applied by analogy, and that the Commission should carefully consider the special character of an international organization as opposed to a State.

4. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either:

5.1 in the form of draft articles to be included in the draft articles on the responsibility of international organizations; or

5.2 through the preparation of a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. If an international organisation permit’s a State to commit an act, does that preclude the wrongfulness of that act committed by the State? In this case, Malaysia believes that the Commission should look to the validity of the consent so given by the international organisation or its agent. More important perhaps, is whether an IO can give such consent to a State. In this regard, Article 20 of the articles on the responsibility of States for internationally wrongful acts needs to be referred to.

Mr. Chairman,

7. On the subject of **Reservation to Treaties**, Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

8. In this regard, Malaysia supports the Commission's work on the "Guide to Practice on Reservations to Treaties", and has the following views on the draft guidelines which were provisionally adopted by the Drafting Committee:

8.1 Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as "the exceptional cases" as well as "the relevant circumstances" where an approval of an interpretative declaration or an opposition may be inferred. In the interests of clarity, Malaysia would urge that greater consideration be given to the wording of this paragraph before its finalization by the Drafting Committee.

8.2 On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. Further clarification must be given to the phrase "*through its conduct and taking account of the circumstances*" and clear guidance provided.

9. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound.

10. Malaysia supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. But further research must be done on this subject and clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the law of reservations and an internationally wrongful act. The different character of international organizations means that it should be dealt with separately from States.

11. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia looks forward to the Commission's discussions and debate on draft articles 1 to 5 in the next session. Malaysia has the following preliminary observations:

11.1 the phrase "in the event of disasters" should also include the pre-disaster phase. In this regard, further clarification must be made on Article 3's applicability;

11.2 the needs of a person must take predominance over their rights in situations of calamity, therefore draft article 2 must be clarified in this respect;

11.3 the phrase "adequate and effective response" should be further deliberated so that a better indication of the threshold applicable can be determined and agreed upon;

- 11.4 Malaysia favours a definition of disaster which is limited to natural disasters, and causes either the loss of lives, causes damage to property, or results in environmental degradation;
- 11.5 with regard to international humanitarian law, illustrations on different scenarios when the draft articles will apply, will be beneficial;
- 11.6 on the duty to cooperate, further clarification is needed. Malaysia emphasises that the duty of non-intervention should be maintained, with States retaining discretion on whether or not to receive humanitarian assistance.

Mr. Chairman,

12 On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles. Malaysia has submitted its response to the ILC questionnaire in this instance.

13 Malaysia would like to emphasize that the issue of transboundary oil and gas involves highly technical data and politically sensitive issues, and questions relating to the sovereignty of States. Because of this, this topic is best dealt with through bilateral or regional arrangements, and a codification of law by the ILC would not be desirable.

Thank you, Mr. Chairman.





*Permanent Mission of*  
**Malaysia**  
*to the United Nations*

*(Full Version)*

**STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.**

Mr. Chairman,

On the subject of **Responsibility of International Organizations**, Malaysia commends the International Law Commission for successfully adopting a set of 66 draft articles on the responsibility of international organizations on its first reading. Malaysia would also like to extend its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

2. Malaysia congratulates the Commission for elaborating further the details and mechanism pertaining to countermeasures. However, Malaysia takes note that the current draft does not examine the conditions for countermeasures to be lawful when they are taken by an injured international organization against a responsible state. In relation to this, the Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. In this regard, Malaysia reiterates its position that although similar restrictions or conditions imposed on countermeasures as in articles on state responsibility may be applied to an international organization, they should not be applied by analogy. In addition, careful consideration should be made by the Commission taking into account the special character of an international organization as opposed to a State.

3. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

4. Malaysia takes note the comments of the Commission that certain issues concerning international responsibility between States and international organizations have not been expressly covered either in the articles on the responsibility of States for internationally wrongful acts or in the draft articles on the responsibility of international organizations. The Commission also stated that one could argue that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either in the form of draft articles to be included in the draft articles on the responsibility of international organizations or alternatively, the Commission may wish to prepare a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international

organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. As to question on when is consent given by an international organization to the commission of a given act by a State a circumstance precluding wrongfulness of that State’s conduct, Malaysia is of the view that the Commission should deliberate on mechanisms to determine the validity of the consent given by the international organization or by the person or agent acting on behalf of the organization. There is also the pertinent question on whether the international organization could validly give its consent to the commission of a given act by a State. The reference to a “valid consent” in article 20 of the articles on the responsibility of States for internationally wrongful acts highlights the need to consider these issues in certain cases. In addition, clear and comprehensive mechanism and principles must also be deliberated on the question of when is an international organization entitled to invoke the responsibility of a state.

7. It cannot be overemphasised the fact that there is danger in stating that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts bearing in mind the special character of an international organization as opposed to a state. As such, careful consideration needs to be made by the Commission on these outstanding issues.

Mr. Chairman,

8. On the subject of **Reservation to Treaties**, Malaysia records its appreciation of the efforts made by the Commission in preparing and presenting reports on the matters relating to the work of Commission at its Sixty-first Session. Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

9. In this regard, Malaysia supports the Commission’s work on the “Guide to Practice on Reservations to Treaties”. Notwithstanding the many issues which remained unresolved at the Sixty-first Session, the crystallizing draft guidelines already show promise to be useful guides to assist States in their formulation of reservation to treaties. Malaysia notes that at the Sixty-first session of the Commission, some draft guidelines were provisionally adopted by the Drafting Committee and wishes to express its views as in the following.

10. Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Malaysia notes that draft guideline 2.9.8 should be read in conjunction with draft guideline 2.9.9 which relates to the role that may be played by the silence of a State or an international organization with regard to an interpretative declaration. Nevertheless, paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as “the exceptional cases” as well as “the relevant circumstances” where an approval of an interpretative declaration or an opposition may be inferred. The lack of clarity in the draft guideline could potentially lead to problems in interpretation. Therefore, Malaysia is of the view that the wording of paragraph 2 of draft guideline 2.9.8 should be given greater consideration before it is finalised by the Drafting Committee.

11. On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. However, in Malaysia’s view, the phrase “*through its conduct and taking account of the circumstances*” requires further clarification. In Malaysia’s view, if these guidelines are to serve as a practical guide to States, there should also be clear guidance on the types of conduct or circumstances that would be effectively taken as approval of interpretative declaration in the absence of a clear statement to that effect.

12. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound; and the efficacy of the treaty monitoring bodies' roles lies in the extent to which they serve this objective. The spirit of this guideline is understood to not let the decision of the treaty monitoring body deprive the reserving state to make its reservations, but rather to assist them to craft its reservation to render it valid for permissibility. Nevertheless, the intention for the effect of the findings of treaty monitoring bodies in the draft guideline should be left open for the contracting parties or contracting organization to decide and be reflected in the treaty.

13. Malaysia also supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. However, Malaysia feels that this issue requires further research as it calls for greater considerations on the interplay of different branches of law, that is the law of treaty and the law on state responsibility. In Malaysia's view, clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the "law of reservations" on establishing the principles of whether an impermissible reservation is an "internationally wrongful act" which could potentially later be a basis or parts of the elements for a decision in a dispute.

14. Since the power to make treaties by international organizations largely depends on the terms of the constituent instrument of the international organization and the mandate granted to the international organization, international organizations do not necessarily have similar authority or responsibility as States. Thus, Malaysia is of the view that a separate regime for international organizations should be developed to address these entities and they should not be made part of the draft guidelines at this juncture.

Mr. Chairman,

15. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation wishes to state the following.

16. In recent months, the world has witnessed a flurry of disasters. Ranging from typhoons, flash floods to earthquakes and tsunamis, it is facing the challenge of both to protect as well as to provide assistance to those affected by these disasters. In this regard, my delegation wishes to convey its heartfelt condolences and deepest sympathies to countries and communities that have been affected by these tragedies. Post-disaster efforts to bring assistance and comfort to those affected by these events prove yet again that no single measure against such catastrophes can be truly successful unless countries work together.

17. To this end, Malaysia extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia is also grateful for the outstanding contribution of the Commission in continuing the progressive development of international law and its codification, and in particular, for its work on this topic.

18. Malaysia notes the texts of draft articles 1 to 5 as provisionally adopted by the Drafting Committee (as contained in document A/CN.4/L.758) and looks forward to the Commission's discussions and debate on these draft articles in the next session. Pending the outcome of the Commission's discussions, Malaysia would like to make the following preliminary observations.

19. Malaysia notes the Statement of the Chairman of the Drafting Committee that the phrase "in the event of disasters" in draft article 1 is to be understood to include all phases of disasters, including the pre-disaster phase. However Malaysia requests further clarification from the Commission as to the applicability of the draft articles to the pre-disaster phase *vis-a-vis* draft article 3 which seems to centre on, an event or series of events that have taken place as described in the draft article.

20. On the purpose of the draft articles, Malaysia supports the emphasis placed on the needs of the persons affected by the disasters concerned. While the notion of “needs” and “rights” are sometimes addressed interchangeably, Malaysia is of the view that the needs of a person must necessarily take predominance over their rights in situations of calamity. It is therefore commendable that the draft article seeks to meet the essential needs of the person concerned first, rather than focus primarily on the realization of their rights. Nevertheless, whilst Malaysia is committed to ensuring that the rights of each and every person is protected, the phrase “full respect for their rights” in draft article 2 seems to suggest that a State must go all the way to fulfil the rights of a person, contradicting the idea of “needs” over “rights”.

21. As for the phrase “adequate and effective response”, Malaysia is of the view that the level of adequacy and effectiveness of the response required should be further deliberated by the Commission so as to give States a better indication of the threshold applicable for those terms in the draft article.

22. Malaysia would favour a definition of disaster which is limited to natural disaster and that the event causes either loss of life, property damage or environmental degradation. Malaysia notes that the magnitude of the loss must be severe enough to be categorised as a disaster under the draft articles. Malaysia supports that these draft articles are meant to cover events which are extreme in nature and not just any other acute crisis. Severe riots, civil unrest, demonstration or destruction deliberately caused by mankind should be expressly excluded from the definition.

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24. With respect to the duty to cooperate, further clarification on the extent of co-operation between the donor State, the affected State and other relevant stakeholders is vital. The responsibilities of the affected State should be clearly delineated to enable the State to understand the fullest extent of their duty. Malaysia wishes to highlight that the duty of non-intervention is also owed to legitimately sovereign governments. A sovereign State and its Government retain the discretion to receive or not to receive humanitarian assistance according to its own national interests and priorities.

Mr. Chairman,

25. On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles.

26. With regard to whether the draft Articles on transboundary aquifers should be adopted into a convention, Malaysia is of the view that various considerations should be carefully weighed in making that decision. Malaysia also notes the lack of consensus between States on this matter and the fact that this area is largely regulated by bilateral and regional arrangements between States.

27. With the completion of the second reading of the law on transboundary aquifers, the Commission is to proceed with the consideration of the codification of the law on transboundary oil and gas. In this respect, the Commission has circulated a questionnaire on State practice relating to transboundary oil and gas; and responses from 17 States were received as at 31 January 2009. Subsequently, the Special Rapporteur on Shared Natural Resources had further encouraged further responses from other States. In this regard, Malaysia had submitted its response to the questionnaire to the ILC with regard to its State practice regarding transboundary oil and gas.

28. With respect to the decision of the Working Group that a study should be submitted at the 62nd Session of the Commission on the feasibility of any future work on oil and gas, Malaysia notes that a majority of States which have responded gave some indication on their stand against the Commission proceeding with the

codification of the law on transboundary oil and gas. In this regard, we would like to emphasize that the issue of transboundary oil and gas naturally involves highly technical data and politically sensitive issues as well as the issue of sovereignty of States. Therefore, Malaysia is of the view that the Commission should not proceed with the codification of law on transboundary oil and gas as the topic is best dealt with on a case-by-case basis through bilateral or regional arrangements by the relevant States.

Thank you, Mr. Chairman.

*(Statement as delivered)*

**STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.**

Mr. Chairman,

***In the interests of time, allow me to present a shortened version of Malaysia’s statement, the full text of which is being distributed in the room.***

2. On the subject of Responsibility of International Organizations, Malaysia commends the International Law Commission for the adoption of the draft articles on this subject. Malaysia extends its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

3. Malaysia takes note that in the Commission’s elaboration of further details and mechanisms pertaining to countermeasures, there is no examination of the conditions for lawful countermeasures when they are taken by an injured international organization against a responsible state. The Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. Malaysia believes that such restrictions or conditions imposed on countermeasures should not be applied by analogy, and that the Commission should carefully consider the special character of an international organization as opposed to a State.

4. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either:

5.1 in the form of draft articles to be included in the draft articles on the responsibility of international organizations; or

5.2 through the preparation of a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. If an international organisation permit’s a State to commit an act, does that preclude the wrongfulness of that act committed by the State? In this case, Malaysia believes that the Commission should look to the validity of the consent so given by the international organisation or its agent. More important perhaps, is whether an IO can give such consent to a State. In this regard, Article 20 of the articles on the responsibility of States for internationally wrongful acts needs to be referred to.

Mr. Chairman,

7. On the subject of **Reservation to Treaties**, Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

8. In this regard, Malaysia supports the Commission's work on the "Guide to Practice on Reservations to Treaties", and has the following views on the draft guidelines which were provisionally adopted by the Drafting Committee:

8.1 Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as "the exceptional cases" as well as "the relevant circumstances" where an approval of an interpretative declaration or an opposition may be inferred. In the interests of clarity, Malaysia would urge that greater consideration be given to the wording of this paragraph before its finalization by the Drafting Committee.

8.2 On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. Further clarification must be given to the phrase "*through its conduct and taking account of the circumstances*" and clear guidance provided.

9. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound.

10. Malaysia supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. But further research must be done on this subject and clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the law of reservations and an internationally wrongful act. The different character of international organizations means that it should be dealt with separately from States.

11. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia looks forward to the Commission's discussions and debate on draft articles 1 to 5 in the next session. Malaysia has the following preliminary observations:

11.1 the phrase "in the event of disasters" should also include the pre-disaster phase. In this regard, further clarification must be made on Article 3's applicability;

11.2 the needs of a person must take predominance over their rights in situations of calamity, therefore draft article 2 must be clarified in this respect;

11.3 the phrase "adequate and effective response" should be further deliberated so that a better indication of the threshold applicable can be determined and agreed upon;

- 11.4 Malaysia favours a definition of disaster which is limited to natural disasters, and causes either the loss of lives, causes damage to property, or results in environmental degradation;
- 11.5 with regard to international humanitarian law, illustrations on different scenarios when the draft articles will apply, will be beneficial;
- 11.6 on the duty to cooperate, further clarification is needed. Malaysia emphasises that the duty of non-intervention should be maintained, with States retaining discretion on whether or not to receive humanitarian assistance.

Mr. Chairman,

12 On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles. Malaysia has submitted its response to the ILC questionnaire in this instance.

13 Malaysia would like to emphasize that the issue of transboundary oil and gas involves highly technical data and politically sensitive issues, and questions relating to the sovereignty of States. Because of this, this topic is best dealt with through bilateral or regional arrangements, and a codification of law by the ILC would not be desirable.

Thank you, Mr. Chairman.





*Permanent Mission of*  
**Malaysia**  
*to the United Nations*

*(Full Version)*

**STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.**

Mr. Chairman,

On the subject of **Responsibility of International Organizations**, Malaysia commends the International Law Commission for successfully adopting a set of 66 draft articles on the responsibility of international organizations on its first reading. Malaysia would also like to extend its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

2. Malaysia congratulates the Commission for elaborating further the details and mechanism pertaining to countermeasures. However, Malaysia takes note that the current draft does not examine the conditions for countermeasures to be lawful when they are taken by an injured international organization against a responsible state. In relation to this, the Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. In this regard, Malaysia reiterates its position that although similar restrictions or conditions imposed on countermeasures as in articles on state responsibility may be applied to an international organization, they should not be applied by analogy. In addition, careful consideration should be made by the Commission taking into account the special character of an international organization as opposed to a State.

3. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

4. Malaysia takes note the comments of the Commission that certain issues concerning international responsibility between States and international organizations have not been expressly covered either in the articles on the responsibility of States for internationally wrongful acts or in the draft articles on the responsibility of international organizations. The Commission also stated that one could argue that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either in the form of draft articles to be included in the draft articles on the responsibility of international organizations or alternatively, the Commission may wish to prepare a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international

organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. As to question on when is consent given by an international organization to the commission of a given act by a State a circumstance precluding wrongfulness of that State’s conduct, Malaysia is of the view that the Commission should deliberate on mechanisms to determine the validity of the consent given by the international organization or by the person or agent acting on behalf of the organization. There is also the pertinent question on whether the international organization could validly give its consent to the commission of a given act by a State. The reference to a “valid consent” in article 20 of the articles on the responsibility of States for internationally wrongful acts highlights the need to consider these issues in certain cases. In addition, clear and comprehensive mechanism and principles must also be deliberated on the question of when is an international organization entitled to invoke the responsibility of a state.

7. It cannot be overemphasised the fact that there is danger in stating that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts bearing in mind the special character of an international organization as opposed to a state. As such, careful consideration needs to be made by the Commission on these outstanding issues.

Mr. Chairman,

8. On the subject of **Reservation to Treaties**, Malaysia records its appreciation of the efforts made by the Commission in preparing and presenting reports on the matters relating to the work of Commission at its Sixty-first Session. Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

9. In this regard, Malaysia supports the Commission’s work on the “Guide to Practice on Reservations to Treaties”. Notwithstanding the many issues which remained unresolved at the Sixty-first Session, the crystallizing draft guidelines already show promise to be useful guides to assist States in their formulation of reservation to treaties. Malaysia notes that at the Sixty-first session of the Commission, some draft guidelines were provisionally adopted by the Drafting Committee and wishes to express its views as in the following.

10. Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Malaysia notes that draft guideline 2.9.8 should be read in conjunction with draft guideline 2.9.9 which relates to the role that may be played by the silence of a State or an international organization with regard to an interpretative declaration. Nevertheless, paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as “the exceptional cases” as well as “the relevant circumstances” where an approval of an interpretative declaration or an opposition may be inferred. The lack of clarity in the draft guideline could potentially lead to problems in interpretation. Therefore, Malaysia is of the view that the wording of paragraph 2 of draft guideline 2.9.8 should be given greater consideration before it is finalised by the Drafting Committee.

11. On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. However, in Malaysia’s view, the phrase “*through its conduct and taking account of the circumstances*” requires further clarification. In Malaysia’s view, if these guidelines are to serve as a practical guide to States, there should also be clear guidance on the types of conduct or circumstances that would be effectively taken as approval of interpretative declaration in the absence of a clear statement to that effect.

12. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound; and the efficacy of the treaty monitoring bodies' roles lies in the extent to which they serve this objective. The spirit of this guideline is understood to not let the decision of the treaty monitoring body deprive the reserving state to make its reservations, but rather to assist them to craft its reservation to render it valid for permissibility. Nevertheless, the intention for the effect of the findings of treaty monitoring bodies in the draft guideline should be left open for the contracting parties or contracting organization to decide and be reflected in the treaty.

13. Malaysia also supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. However, Malaysia feels that this issue requires further research as it calls for greater considerations on the interplay of different branches of law, that is the law of treaty and the law on state responsibility. In Malaysia's view, clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the "law of reservations" on establishing the principles of whether an impermissible reservation is an "internationally wrongful act" which could potentially later be a basis or parts of the elements for a decision in a dispute.

14. Since the power to make treaties by international organizations largely depends on the terms of the constituent instrument of the international organization and the mandate granted to the international organization, international organizations do not necessarily have similar authority or responsibility as States. Thus, Malaysia is of the view that a separate regime for international organizations should be developed to address these entities and they should not be made part of the draft guidelines at this juncture.

Mr. Chairman,

15. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation wishes to state the following.

16. In recent months, the world has witnessed a flurry of disasters. Ranging from typhoons, flash floods to earthquakes and tsunamis, it is facing the challenge of both to protect as well as to provide assistance to those affected by these disasters. In this regard, my delegation wishes to convey its heartfelt condolences and deepest sympathies to countries and communities that have been affected by these tragedies. Post-disaster efforts to bring assistance and comfort to those affected by these events prove yet again that no single measure against such catastrophes can be truly successful unless countries work together.

17. To this end, Malaysia extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia is also grateful for the outstanding contribution of the Commission in continuing the progressive development of international law and its codification, and in particular, for its work on this topic.

18. Malaysia notes the texts of draft articles 1 to 5 as provisionally adopted by the Drafting Committee (as contained in document A/CN.4/L.758) and looks forward to the Commission's discussions and debate on these draft articles in the next session. Pending the outcome of the Commission's discussions, Malaysia would like to make the following preliminary observations.

19. Malaysia notes the Statement of the Chairman of the Drafting Committee that the phrase "in the event of disasters" in draft article 1 is to be understood to include all phases of disasters, including the pre-disaster phase. However Malaysia requests further clarification from the Commission as to the applicability of the draft articles to the pre-disaster phase *vis-a-vis* draft article 3 which seems to centre on, an event or series of events that have taken place as described in the draft article.

20. On the purpose of the draft articles, Malaysia supports the emphasis placed on the needs of the persons affected by the disasters concerned. While the notion of “needs” and “rights” are sometimes addressed interchangeably, Malaysia is of the view that the needs of a person must necessarily take predominance over their rights in situations of calamity. It is therefore commendable that the draft article seeks to meet the essential needs of the person concerned first, rather than focus primarily on the realization of their rights. Nevertheless, whilst Malaysia is committed to ensuring that the rights of each and every person is protected, the phrase “full respect for their rights” in draft article 2 seems to suggest that a State must go all the way to fulfil the rights of a person, contradicting the idea of “needs” over “rights”.

21. As for the phrase “adequate and effective response”, Malaysia is of the view that the level of adequacy and effectiveness of the response required should be further deliberated by the Commission so as to give States a better indication of the threshold applicable for those terms in the draft article.

22. Malaysia would favour a definition of disaster which is limited to natural disaster and that the event causes either loss of life, property damage or environmental degradation. Malaysia notes that the magnitude of the loss must be severe enough to be categorised as a disaster under the draft articles. Malaysia supports that these draft articles are meant to cover events which are extreme in nature and not just any other acute crisis. Severe riots, civil unrest, demonstration or destruction deliberately caused by mankind should be expressly excluded from the definition.

23. On the relationship with international humanitarian law, Malaysia is of the view that illustrations on different scenarios, i.e. when a disaster strikes before, during, or after an armed conflict, giving rise to the application of the draft articles will be helpful to discern the correlation between the two regimes. It remains unclear at what stage the draft articles will apply or cease to apply.

24. With respect to the duty to cooperate, further clarification on the extent of co-operation between the donor State, the affected State and other relevant stakeholders is vital. The responsibilities of the affected State should be clearly delineated to enable the State to understand the fullest extent of their duty. Malaysia wishes to highlight that the duty of non-intervention is also owed to legitimately sovereign governments. A sovereign State and its Government retain the discretion to receive or not to receive humanitarian assistance according to its own national interests and priorities.

Mr. Chairman,

25. On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles.

26. With regard to whether the draft Articles on transboundary aquifers should be adopted into a convention, Malaysia is of the view that various considerations should be carefully weighed in making that decision. Malaysia also notes the lack of consensus between States on this matter and the fact that this area is largely regulated by bilateral and regional arrangements between States.

27. With the completion of the second reading of the law on transboundary aquifers, the Commission is to proceed with the consideration of the codification of the law on transboundary oil and gas. In this respect, the Commission has circulated a questionnaire on State practice relating to transboundary oil and gas; and responses from 17 States were received as at 31 January 2009. Subsequently, the Special Rapporteur on Shared Natural Resources had further encouraged further responses from other States. In this regard, Malaysia had submitted its response to the questionnaire to the ILC with regard to its State practice regarding transboundary oil and gas.

28. With respect to the decision of the Working Group that a study should be submitted at the 62nd Session of the Commission on the feasibility of any future work on oil and gas, Malaysia notes that a majority of States which have responded gave some indication on their stand against the Commission proceeding with the

codification of the law on transboundary oil and gas. In this regard, we would like to emphasize that the issue of transboundary oil and gas naturally involves highly technical data and politically sensitive issues as well as the issue of sovereignty of States. Therefore, Malaysia is of the view that the Commission should not proceed with the codification of law on transboundary oil and gas as the topic is best dealt with on a case-by-case basis through bilateral or regional arrangements by the relevant States.

Thank you, Mr. Chairman.

*(Statement as delivered)*

**STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.**

Mr. Chairman,

***In the interests of time, allow me to present a shortened version of Malaysia’s statement, the full text of which is being distributed in the room.***

2. On the subject of Responsibility of International Organizations, Malaysia commends the International Law Commission for the adoption of the draft articles on this subject. Malaysia extends its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

3. Malaysia takes note that in the Commission’s elaboration of further details and mechanisms pertaining to countermeasures, there is no examination of the conditions for lawful countermeasures when they are taken by an injured international organization against a responsible state. The Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. Malaysia believes that such restrictions or conditions imposed on countermeasures should not be applied by analogy, and that the Commission should carefully consider the special character of an international organization as opposed to a State.

4. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either:

5.1 in the form of draft articles to be included in the draft articles on the responsibility of international organizations; or

5.2 through the preparation of a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. If an international organisation permit’s a State to commit an act, does that preclude the wrongfulness of that act committed by the State? In this case, Malaysia believes that the Commission should look to the validity of the consent so given by the international organisation or its agent. More important perhaps, is whether an IO can give such consent to a State. In this regard, Article 20 of the articles on the responsibility of States for internationally wrongful acts needs to be referred to.

Mr. Chairman,

7. On the subject of **Reservation to Treaties**, Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

8. In this regard, Malaysia supports the Commission's work on the "Guide to Practice on Reservations to Treaties", and has the following views on the draft guidelines which were provisionally adopted by the Drafting Committee:

8.1 Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as "the exceptional cases" as well as "the relevant circumstances" where an approval of an interpretative declaration or an opposition may be inferred. In the interests of clarity, Malaysia would urge that greater consideration be given to the wording of this paragraph before its finalization by the Drafting Committee.

8.2 On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. Further clarification must be given to the phrase "*through its conduct and taking account of the circumstances*" and clear guidance provided.

9. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound.

10. Malaysia supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. But further research must be done on this subject and clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the law of reservations and an internationally wrongful act. The different character of international organizations means that it should be dealt with separately from States.

11. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia looks forward to the Commission's discussions and debate on draft articles 1 to 5 in the next session. Malaysia has the following preliminary observations:

11.1 the phrase "in the event of disasters" should also include the pre-disaster phase. In this regard, further clarification must be made on Article 3's applicability;

11.2 the needs of a person must take predominance over their rights in situations of calamity, therefore draft article 2 must be clarified in this respect;

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13 Malaysia would like to emphasize that the issue of transboundary oil and gas involves highly technical data and politically sensitive issues, and questions relating to the sovereignty of States. Because of this, this topic is best dealt with through bilateral or regional arrangements, and a codification of law by the ILC would not be desirable.

Thank you, Mr. Chairman.





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Mr. Chairman,

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2. Malaysia congratulates the Commission for elaborating further the details and mechanism pertaining to countermeasures. However, Malaysia takes note that the current draft does not examine the conditions for countermeasures to be lawful when they are taken by an injured international organization against a responsible state. In relation to this, the Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. In this regard, Malaysia reiterates its position that although similar restrictions or conditions imposed on countermeasures as in articles on state responsibility may be applied to an international organization, they should not be applied by analogy. In addition, careful consideration should be made by the Commission taking into account the special character of an international organization as opposed to a State.

3. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

4. Malaysia takes note the comments of the Commission that certain issues concerning international responsibility between States and international organizations have not been expressly covered either in the articles on the responsibility of States for internationally wrongful acts or in the draft articles on the responsibility of international organizations. The Commission also stated that one could argue that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either in the form of draft articles to be included in the draft articles on the responsibility of international organizations or alternatively, the Commission may wish to prepare a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international

organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

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7. It cannot be overemphasised the fact that there is danger in stating that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts bearing in mind the special character of an international organization as opposed to a state. As such, careful consideration needs to be made by the Commission on these outstanding issues.

Mr. Chairman,

8. On the subject of **Reservation to Treaties**, Malaysia records its appreciation of the efforts made by the Commission in preparing and presenting reports on the matters relating to the work of Commission at its Sixty-first Session. Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

9. In this regard, Malaysia supports the Commission’s work on the “Guide to Practice on Reservations to Treaties”. Notwithstanding the many issues which remained unresolved at the Sixty-first Session, the crystallizing draft guidelines already show promise to be useful guides to assist States in their formulation of reservation to treaties. Malaysia notes that at the Sixty-first session of the Commission, some draft guidelines were provisionally adopted by the Drafting Committee and wishes to express its views as in the following.

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11. On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. However, in Malaysia’s view, the phrase “*through its conduct and taking account of the circumstances*” requires further clarification. In Malaysia’s view, if these guidelines are to serve as a practical guide to States, there should also be clear guidance on the types of conduct or circumstances that would be effectively taken as approval of interpretative declaration in the absence of a clear statement to that effect.

12. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound; and the efficacy of the treaty monitoring bodies' roles lies in the extent to which they serve this objective. The spirit of this guideline is understood to not let the decision of the treaty monitoring body deprive the reserving state to make its reservations, but rather to assist them to craft its reservation to render it valid for permissibility. Nevertheless, the intention for the effect of the findings of treaty monitoring bodies in the draft guideline should be left open for the contracting parties or contracting organization to decide and be reflected in the treaty.

13. Malaysia also supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. However, Malaysia feels that this issue requires further research as it calls for greater considerations on the interplay of different branches of law, that is the law of treaty and the law on state responsibility. In Malaysia's view, clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the "law of reservations" on establishing the principles of whether an impermissible reservation is an "internationally wrongful act" which could potentially later be a basis or parts of the elements for a decision in a dispute.

14. Since the power to make treaties by international organizations largely depends on the terms of the constituent instrument of the international organization and the mandate granted to the international organization, international organizations do not necessarily have similar authority or responsibility as States. Thus, Malaysia is of the view that a separate regime for international organizations should be developed to address these entities and they should not be made part of the draft guidelines at this juncture.

Mr. Chairman,

15. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation wishes to state the following.

16. In recent months, the world has witnessed a flurry of disasters. Ranging from typhoons, flash floods to earthquakes and tsunamis, it is facing the challenge of both to protect as well as to provide assistance to those affected by these disasters. In this regard, my delegation wishes to convey its heartfelt condolences and deepest sympathies to countries and communities that have been affected by these tragedies. Post-disaster efforts to bring assistance and comfort to those affected by these events prove yet again that no single measure against such catastrophes can be truly successful unless countries work together.

17. To this end, Malaysia extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia is also grateful for the outstanding contribution of the Commission in continuing the progressive development of international law and its codification, and in particular, for its work on this topic.

18. Malaysia notes the texts of draft articles 1 to 5 as provisionally adopted by the Drafting Committee (as contained in document A/CN.4/L.758) and looks forward to the Commission's discussions and debate on these draft articles in the next session. Pending the outcome of the Commission's discussions, Malaysia would like to make the following preliminary observations.

19. Malaysia notes the Statement of the Chairman of the Drafting Committee that the phrase "in the event of disasters" in draft article 1 is to be understood to include all phases of disasters, including the pre-disaster phase. However Malaysia requests further clarification from the Commission as to the applicability of the draft articles to the pre-disaster phase *vis-a-vis* draft article 3 which seems to centre on, an event or series of events that have taken place as described in the draft article.

20. On the purpose of the draft articles, Malaysia supports the emphasis placed on the needs of the persons affected by the disasters concerned. While the notion of “needs” and “rights” are sometimes addressed interchangeably, Malaysia is of the view that the needs of a person must necessarily take predominance over their rights in situations of calamity. It is therefore commendable that the draft article seeks to meet the essential needs of the person concerned first, rather than focus primarily on the realization of their rights. Nevertheless, whilst Malaysia is committed to ensuring that the rights of each and every person is protected, the phrase “full respect for their rights” in draft article 2 seems to suggest that a State must go all the way to fulfil the rights of a person, contradicting the idea of “needs” over “rights”.

21. As for the phrase “adequate and effective response”, Malaysia is of the view that the level of adequacy and effectiveness of the response required should be further deliberated by the Commission so as to give States a better indication of the threshold applicable for those terms in the draft article.

22. Malaysia would favour a definition of disaster which is limited to natural disaster and that the event causes either loss of life, property damage or environmental degradation. Malaysia notes that the magnitude of the loss must be severe enough to be categorised as a disaster under the draft articles. Malaysia supports that these draft articles are meant to cover events which are extreme in nature and not just any other acute crisis. Severe riots, civil unrest, demonstration or destruction deliberately caused by mankind should be expressly excluded from the definition.

23. On the relationship with international humanitarian law, Malaysia is of the view that illustrations on different scenarios, i.e. when a disaster strikes before, during, or after an armed conflict, giving rise to the application of the draft articles will be helpful to discern the correlation between the two regimes. It remains unclear at what stage the draft articles will apply or cease to apply.

24. With respect to the duty to cooperate, further clarification on the extent of co-operation between the donor State, the affected State and other relevant stakeholders is vital. The responsibilities of the affected State should be clearly delineated to enable the State to understand the fullest extent of their duty. Malaysia wishes to highlight that the duty of non-intervention is also owed to legitimately sovereign governments. A sovereign State and its Government retain the discretion to receive or not to receive humanitarian assistance according to its own national interests and priorities.

Mr. Chairman,

25. On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles.

26. With regard to whether the draft Articles on transboundary aquifers should be adopted into a convention, Malaysia is of the view that various considerations should be carefully weighed in making that decision. Malaysia also notes the lack of consensus between States on this matter and the fact that this area is largely regulated by bilateral and regional arrangements between States.

27. With the completion of the second reading of the law on transboundary aquifers, the Commission is to proceed with the consideration of the codification of the law on transboundary oil and gas. In this respect, the Commission has circulated a questionnaire on State practice relating to transboundary oil and gas; and responses from 17 States were received as at 31 January 2009. Subsequently, the Special Rapporteur on Shared Natural Resources had further encouraged further responses from other States. In this regard, Malaysia had submitted its response to the questionnaire to the ILC with regard to its State practice regarding transboundary oil and gas.

28. With respect to the decision of the Working Group that a study should be submitted at the 62nd Session of the Commission on the feasibility of any future work on oil and gas, Malaysia notes that a majority of States which have responded gave some indication on their stand against the Commission proceeding with the

codification of the law on transboundary oil and gas. In this regard, we would like to emphasize that the issue of transboundary oil and gas naturally involves highly technical data and politically sensitive issues as well as the issue of sovereignty of States. Therefore, Malaysia is of the view that the Commission should not proceed with the codification of law on transboundary oil and gas as the topic is best dealt with on a case-by-case basis through bilateral or regional arrangements by the relevant States.

Thank you, Mr. Chairman.

*(Statement as delivered)*

**STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.**

Mr. Chairman,

***In the interests of time, allow me to present a shortened version of Malaysia’s statement, the full text of which is being distributed in the room.***

2. On the subject of Responsibility of International Organizations, Malaysia commends the International Law Commission for the adoption of the draft articles on this subject. Malaysia extends its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

3. Malaysia takes note that in the Commission’s elaboration of further details and mechanisms pertaining to countermeasures, there is no examination of the conditions for lawful countermeasures when they are taken by an injured international organization against a responsible state. The Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. Malaysia believes that such restrictions or conditions imposed on countermeasures should not be applied by analogy, and that the Commission should carefully consider the special character of an international organization as opposed to a State.

4. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either:

5.1 in the form of draft articles to be included in the draft articles on the responsibility of international organizations; or

5.2 through the preparation of a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. If an international organisation permit’s a State to commit an act, does that preclude the wrongfulness of that act committed by the State? In this case, Malaysia believes that the Commission should look to the validity of the consent so given by the international organisation or its agent. More important perhaps, is whether an IO can give such consent to a State. In this regard, Article 20 of the articles on the responsibility of States for internationally wrongful acts needs to be referred to.

Mr. Chairman,

7. On the subject of **Reservation to Treaties**, Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

8. In this regard, Malaysia supports the Commission's work on the "Guide to Practice on Reservations to Treaties", and has the following views on the draft guidelines which were provisionally adopted by the Drafting Committee:

8.1 Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as "the exceptional cases" as well as "the relevant circumstances" where an approval of an interpretative declaration or an opposition may be inferred. In the interests of clarity, Malaysia would urge that greater consideration be given to the wording of this paragraph before its finalization by the Drafting Committee.

8.2 On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. Further clarification must be given to the phrase "*through its conduct and taking account of the circumstances*" and clear guidance provided.

9. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound.

10. Malaysia supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. But further research must be done on this subject and clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the law of reservations and an internationally wrongful act. The different character of international organizations means that it should be dealt with separately from States.

11. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia looks forward to the Commission's discussions and debate on draft articles 1 to 5 in the next session. Malaysia has the following preliminary observations:

11.1 the phrase "in the event of disasters" should also include the pre-disaster phase. In this regard, further clarification must be made on Article 3's applicability;

11.2 the needs of a person must take predominance over their rights in situations of calamity, therefore draft article 2 must be clarified in this respect;

11.3 the phrase "adequate and effective response" should be further deliberated so that a better indication of the threshold applicable can be determined and agreed upon;

- 11.4 Malaysia favours a definition of disaster which is limited to natural disasters, and causes either the loss of lives, causes damage to property, or results in environmental degradation;
- 11.5 with regard to international humanitarian law, illustrations on different scenarios when the draft articles will apply, will be beneficial;
- 11.6 on the duty to cooperate, further clarification is needed. Malaysia emphasises that the duty of non-intervention should be maintained, with States retaining discretion on whether or not to receive humanitarian assistance.

Mr. Chairman,

12 On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles. Malaysia has submitted its response to the ILC questionnaire in this instance.

13 Malaysia would like to emphasize that the issue of transboundary oil and gas involves highly technical data and politically sensitive issues, and questions relating to the sovereignty of States. Because of this, this topic is best dealt with through bilateral or regional arrangements, and a codification of law by the ILC would not be desirable.

Thank you, Mr. Chairman.





*Permanent Mission of*  
**Malaysia**  
*to the United Nations*

*(Full Version)*

STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.

Mr. Chairman,

On the subject of **Responsibility of International Organizations**, Malaysia commends the International Law Commission for successfully adopting a set of 66 draft articles on the responsibility of international organizations on its first reading. Malaysia would also like to extend its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

2. Malaysia congratulates the Commission for elaborating further the details and mechanism pertaining to countermeasures. However, Malaysia takes note that the current draft does not examine the conditions for countermeasures to be lawful when they are taken by an injured international organization against a responsible state. In relation to this, the Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. In this regard, Malaysia reiterates its position that although similar restrictions or conditions imposed on countermeasures as in articles on state responsibility may be applied to an international organization, they should not be applied by analogy. In addition, careful consideration should be made by the Commission taking into account the special character of an international organization as opposed to a State.

3. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

4. Malaysia takes note the comments of the Commission that certain issues concerning international responsibility between States and international organizations have not been expressly covered either in the articles on the responsibility of States for internationally wrongful acts or in the draft articles on the responsibility of international organizations. The Commission also stated that one could argue that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either in the form of draft articles to be included in the draft articles on the responsibility of international organizations or alternatively, the Commission may wish to prepare a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international

organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. As to question on when is consent given by an international organization to the commission of a given act by a State a circumstance precluding wrongfulness of that State’s conduct, Malaysia is of the view that the Commission should deliberate on mechanisms to determine the validity of the consent given by the international organization or by the person or agent acting on behalf of the organization. There is also the pertinent question on whether the international organization could validly give its consent to the commission of a given act by a State. The reference to a “valid consent” in article 20 of the articles on the responsibility of States for internationally wrongful acts highlights the need to consider these issues in certain cases. In addition, clear and comprehensive mechanism and principles must also be deliberated on the question of when is an international organization entitled to invoke the responsibility of a state.

7. It cannot be overemphasised the fact that there is danger in stating that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts bearing in mind the special character of an international organization as opposed to a state. As such, careful consideration needs to be made by the Commission on these outstanding issues.

Mr. Chairman,

8. On the subject of **Reservation to Treaties**, Malaysia records its appreciation of the efforts made by the Commission in preparing and presenting reports on the matters relating to the work of Commission at its Sixty-first Session. Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

9. In this regard, Malaysia supports the Commission’s work on the “Guide to Practice on Reservations to Treaties”. Notwithstanding the many issues which remained unresolved at the Sixty-first Session, the crystallizing draft guidelines already show promise to be useful guides to assist States in their formulation of reservation to treaties. Malaysia notes that at the Sixty-first session of the Commission, some draft guidelines were provisionally adopted by the Drafting Committee and wishes to express its views as in the following.

10. Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Malaysia notes that draft guideline 2.9.8 should be read in conjunction with draft guideline 2.9.9 which relates to the role that may be played by the silence of a State or an international organization with regard to an interpretative declaration. Nevertheless, paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as “the exceptional cases” as well as “the relevant circumstances” where an approval of an interpretative declaration or an opposition may be inferred. The lack of clarity in the draft guideline could potentially lead to problems in interpretation. Therefore, Malaysia is of the view that the wording of paragraph 2 of draft guideline 2.9.8 should be given greater consideration before it is finalised by the Drafting Committee.

11. On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. However, in Malaysia’s view, the phrase “*through its conduct and taking account of the circumstances*” requires further clarification. In Malaysia’s view, if these guidelines are to serve as a practical guide to States, there should also be clear guidance on the types of conduct or circumstances that would be effectively taken as approval of interpretative declaration in the absence of a clear statement to that effect.

12. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound; and the efficacy of the treaty monitoring bodies' roles lies in the extent to which they serve this objective. The spirit of this guideline is understood to not let the decision of the treaty monitoring body deprive the reserving state to make its reservations, but rather to assist them to craft its reservation to render it valid for permissibility. Nevertheless, the intention for the effect of the findings of treaty monitoring bodies in the draft guideline should be left open for the contracting parties or contracting organization to decide and be reflected in the treaty.

13. Malaysia also supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. However, Malaysia feels that this issue requires further research as it calls for greater considerations on the interplay of different branches of law, that is the law of treaty and the law on state responsibility. In Malaysia's view, clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the "law of reservations" on establishing the principles of whether an impermissible reservation is an "internationally wrongful act" which could potentially later be a basis or parts of the elements for a decision in a dispute.

14. Since the power to make treaties by international organizations largely depends on the terms of the constituent instrument of the international organization and the mandate granted to the international organization, international organizations do not necessarily have similar authority or responsibility as States. Thus, Malaysia is of the view that a separate regime for international organizations should be developed to address these entities and they should not be made part of the draft guidelines at this juncture.

Mr. Chairman,

15. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation wishes to state the following.

16. In recent months, the world has witnessed a flurry of disasters. Ranging from typhoons, flash floods to earthquakes and tsunamis, it is facing the challenge of both to protect as well as to provide assistance to those affected by these disasters. In this regard, my delegation wishes to convey its heartfelt condolences and deepest sympathies to countries and communities that have been affected by these tragedies. Post-disaster efforts to bring assistance and comfort to those affected by these events prove yet again that no single measure against such catastrophes can be truly successful unless countries work together.

17. To this end, Malaysia extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia is also grateful for the outstanding contribution of the Commission in continuing the progressive development of international law and its codification, and in particular, for its work on this topic.

18. Malaysia notes the texts of draft articles 1 to 5 as provisionally adopted by the Drafting Committee (as contained in document A/CN.4/L.758) and looks forward to the Commission's discussions and debate on these draft articles in the next session. Pending the outcome of the Commission's discussions, Malaysia would like to make the following preliminary observations.

19. Malaysia notes the Statement of the Chairman of the Drafting Committee that the phrase "in the event of disasters" in draft article 1 is to be understood to include all phases of disasters, including the pre-disaster phase. However Malaysia requests further clarification from the Commission as to the applicability of the draft articles to the pre-disaster phase *vis-a-vis* draft article 3 which seems to centre on, an event or series of events that have taken place as described in the draft article.

20. On the purpose of the draft articles, Malaysia supports the emphasis placed on the needs of the persons affected by the disasters concerned. While the notion of “needs” and “rights” are sometimes addressed interchangeably, Malaysia is of the view that the needs of a person must necessarily take predominance over their rights in situations of calamity. It is therefore commendable that the draft article seeks to meet the essential needs of the person concerned first, rather than focus primarily on the realization of their rights. Nevertheless, whilst Malaysia is committed to ensuring that the rights of each and every person is protected, the phrase “full respect for their rights” in draft article 2 seems to suggest that a State must go all the way to fulfil the rights of a person, contradicting the idea of “needs” over “rights”.

21. As for the phrase “adequate and effective response”, Malaysia is of the view that the level of adequacy and effectiveness of the response required should be further deliberated by the Commission so as to give States a better indication of the threshold applicable for those terms in the draft article.

22. Malaysia would favour a definition of disaster which is limited to natural disaster and that the event causes either loss of life, property damage or environmental degradation. Malaysia notes that the magnitude of the loss must be severe enough to be categorised as a disaster under the draft articles. Malaysia supports that these draft articles are meant to cover events which are extreme in nature and not just any other acute crisis. Severe riots, civil unrest, demonstration or destruction deliberately caused by mankind should be expressly excluded from the definition.

23. On the relationship with international humanitarian law, Malaysia is of the view that illustrations on different scenarios, i.e. when a disaster strikes before, during, or after an armed conflict, giving rise to the application of the draft articles will be helpful to discern the correlation between the two regimes. It remains unclear at what stage the draft articles will apply or cease to apply.

24. With respect to the duty to cooperate, further clarification on the extent of co-operation between the donor State, the affected State and other relevant stakeholders is vital. The responsibilities of the affected State should be clearly delineated to enable the State to understand the fullest extent of their duty. Malaysia wishes to highlight that the duty of non-intervention is also owed to legitimately sovereign governments. A sovereign State and its Government retain the discretion to receive or not to receive humanitarian assistance according to its own national interests and priorities.

Mr. Chairman,

25. On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles.

26. With regard to whether the draft Articles on transboundary aquifers should be adopted into a convention, Malaysia is of the view that various considerations should be carefully weighed in making that decision. Malaysia also notes the lack of consensus between States on this matter and the fact that this area is largely regulated by bilateral and regional arrangements between States.

27. With the completion of the second reading of the law on transboundary aquifers, the Commission is to proceed with the consideration of the codification of the law on transboundary oil and gas. In this respect, the Commission has circulated a questionnaire on State practice relating to transboundary oil and gas; and responses from 17 States were received as at 31 January 2009. Subsequently, the Special Rapporteur on Shared Natural Resources had further encouraged further responses from other States. In this regard, Malaysia had submitted its response to the questionnaire to the ILC with regard to its State practice regarding transboundary oil and gas.

28. With respect to the decision of the Working Group that a study should be submitted at the 62nd Session of the Commission on the feasibility of any future work on oil and gas, Malaysia notes that a majority of States which have responded gave some indication on their stand against the Commission proceeding with the

codification of the law on transboundary oil and gas. In this regard, we would like to emphasize that the issue of transboundary oil and gas naturally involves highly technical data and politically sensitive issues as well as the issue of sovereignty of States. Therefore, Malaysia is of the view that the Commission should not proceed with the codification of law on transboundary oil and gas as the topic is best dealt with on a case-by-case basis through bilateral or regional arrangements by the relevant States.

Thank you, Mr. Chairman.

*(Statement as delivered)*

**STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.**

Mr. Chairman,

***In the interests of time, allow me to present a shortened version of Malaysia’s statement, the full text of which is being distributed in the room.***

2. On the subject of Responsibility of International Organizations, Malaysia commends the International Law Commission for the adoption of the draft articles on this subject. Malaysia extends its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

3. Malaysia takes note that in the Commission’s elaboration of further details and mechanisms pertaining to countermeasures, there is no examination of the conditions for lawful countermeasures when they are taken by an injured international organization against a responsible state. The Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. Malaysia believes that such restrictions or conditions imposed on countermeasures should not be applied by analogy, and that the Commission should carefully consider the special character of an international organization as opposed to a State.

4. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either:

5.1 in the form of draft articles to be included in the draft articles on the responsibility of international organizations; or

5.2 through the preparation of a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. If an international organisation permit’s a State to commit an act, does that preclude the wrongfulness of that act committed by the State? In this case, Malaysia believes that the Commission should look to the validity of the consent so given by the international organisation or its agent. More important perhaps, is whether an IO can give such consent to a State. In this regard, Article 20 of the articles on the responsibility of States for internationally wrongful acts needs to be referred to.

Mr. Chairman,

7. On the subject of **Reservation to Treaties**, Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

8. In this regard, Malaysia supports the Commission's work on the "Guide to Practice on Reservations to Treaties", and has the following views on the draft guidelines which were provisionally adopted by the Drafting Committee:

8.1 Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as "the exceptional cases" as well as "the relevant circumstances" where an approval of an interpretative declaration or an opposition may be inferred. In the interests of clarity, Malaysia would urge that greater consideration be given to the wording of this paragraph before its finalization by the Drafting Committee.

8.2 On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. Further clarification must be given to the phrase "*through its conduct and taking account of the circumstances*" and clear guidance provided.

9. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound.

10. Malaysia supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. But further research must be done on this subject and clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the law of reservations and an internationally wrongful act. The different character of international organizations means that it should be dealt with separately from States.

11. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia looks forward to the Commission's discussions and debate on draft articles 1 to 5 in the next session. Malaysia has the following preliminary observations:

11.1 the phrase "in the event of disasters" should also include the pre-disaster phase. In this regard, further clarification must be made on Article 3's applicability;

11.2 the needs of a person must take predominance over their rights in situations of calamity, therefore draft article 2 must be clarified in this respect;

11.3 the phrase "adequate and effective response" should be further deliberated so that a better indication of the threshold applicable can be determined and agreed upon;

- 11.4 Malaysia favours a definition of disaster which is limited to natural disasters, and causes either the loss of lives, causes damage to property, or results in environmental degradation;
- 11.5 with regard to international humanitarian law, illustrations on different scenarios when the draft articles will apply, will be beneficial;
- 11.6 on the duty to cooperate, further clarification is needed. Malaysia emphasises that the duty of non-intervention should be maintained, with States retaining discretion on whether or not to receive humanitarian assistance.

Mr. Chairman,

12 On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles. Malaysia has submitted its response to the ILC questionnaire in this instance.

13 Malaysia would like to emphasize that the issue of transboundary oil and gas involves highly technical data and politically sensitive issues, and questions relating to the sovereignty of States. Because of this, this topic is best dealt with through bilateral or regional arrangements, and a codification of law by the ILC would not be desirable.

Thank you, Mr. Chairman.





*Permanent Mission of*  
**Malaysia**  
*to the United Nations*

*(Full Version)*

STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.

Mr. Chairman,

On the subject of **Responsibility of International Organizations**, Malaysia commends the International Law Commission for successfully adopting a set of 66 draft articles on the responsibility of international organizations on its first reading. Malaysia would also like to extend its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

2. Malaysia congratulates the Commission for elaborating further the details and mechanism pertaining to countermeasures. However, Malaysia takes note that the current draft does not examine the conditions for countermeasures to be lawful when they are taken by an injured international organization against a responsible state. In relation to this, the Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. In this regard, Malaysia reiterates its position that although similar restrictions or conditions imposed on countermeasures as in articles on state responsibility may be applied to an international organization, they should not be applied by analogy. In addition, careful consideration should be made by the Commission taking into account the special character of an international organization as opposed to a State.

3. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

4. Malaysia takes note the comments of the Commission that certain issues concerning international responsibility between States and international organizations have not been expressly covered either in the articles on the responsibility of States for internationally wrongful acts or in the draft articles on the responsibility of international organizations. The Commission also stated that one could argue that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either in the form of draft articles to be included in the draft articles on the responsibility of international organizations or alternatively, the Commission may wish to prepare a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international

organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. As to question on when is consent given by an international organization to the commission of a given act by a State a circumstance precluding wrongfulness of that State’s conduct, Malaysia is of the view that the Commission should deliberate on mechanisms to determine the validity of the consent given by the international organization or by the person or agent acting on behalf of the organization. There is also the pertinent question on whether the international organization could validly give its consent to the commission of a given act by a State. The reference to a “valid consent” in article 20 of the articles on the responsibility of States for internationally wrongful acts highlights the need to consider these issues in certain cases. In addition, clear and comprehensive mechanism and principles must also be deliberated on the question of when is an international organization entitled to invoke the responsibility of a state.

7. It cannot be overemphasised the fact that there is danger in stating that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts bearing in mind the special character of an international organization as opposed to a state. As such, careful consideration needs to be made by the Commission on these outstanding issues.

Mr. Chairman,

8. On the subject of **Reservation to Treaties**, Malaysia records its appreciation of the efforts made by the Commission in preparing and presenting reports on the matters relating to the work of Commission at its Sixty-first Session. Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

9. In this regard, Malaysia supports the Commission’s work on the “Guide to Practice on Reservations to Treaties”. Notwithstanding the many issues which remained unresolved at the Sixty-first Session, the crystallizing draft guidelines already show promise to be useful guides to assist States in their formulation of reservation to treaties. Malaysia notes that at the Sixty-first session of the Commission, some draft guidelines were provisionally adopted by the Drafting Committee and wishes to express its views as in the following.

10. Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Malaysia notes that draft guideline 2.9.8 should be read in conjunction with draft guideline 2.9.9 which relates to the role that may be played by the silence of a State or an international organization with regard to an interpretative declaration. Nevertheless, paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as “the exceptional cases” as well as “the relevant circumstances” where an approval of an interpretative declaration or an opposition may be inferred. The lack of clarity in the draft guideline could potentially lead to problems in interpretation. Therefore, Malaysia is of the view that the wording of paragraph 2 of draft guideline 2.9.8 should be given greater consideration before it is finalised by the Drafting Committee.

11. On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. However, in Malaysia’s view, the phrase “*through its conduct and taking account of the circumstances*” requires further clarification. In Malaysia’s view, if these guidelines are to serve as a practical guide to States, there should also be clear guidance on the types of conduct or circumstances that would be effectively taken as approval of interpretative declaration in the absence of a clear statement to that effect.

12. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound; and the efficacy of the treaty monitoring bodies' roles lies in the extent to which they serve this objective. The spirit of this guideline is understood to not let the decision of the treaty monitoring body deprive the reserving state to make its reservations, but rather to assist them to craft its reservation to render it valid for permissibility. Nevertheless, the intention for the effect of the findings of treaty monitoring bodies in the draft guideline should be left open for the contracting parties or contracting organization to decide and be reflected in the treaty.

13. Malaysia also supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. However, Malaysia feels that this issue requires further research as it calls for greater considerations on the interplay of different branches of law, that is the law of treaty and the law on state responsibility. In Malaysia's view, clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the "law of reservations" on establishing the principles of whether an impermissible reservation is an "internationally wrongful act" which could potentially later be a basis or parts of the elements for a decision in a dispute.

14. Since the power to make treaties by international organizations largely depends on the terms of the constituent instrument of the international organization and the mandate granted to the international organization, international organizations do not necessarily have similar authority or responsibility as States. Thus, Malaysia is of the view that a separate regime for international organizations should be developed to address these entities and they should not be made part of the draft guidelines at this juncture.

Mr. Chairman,

15. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation wishes to state the following.

16. In recent months, the world has witnessed a flurry of disasters. Ranging from typhoons, flash floods to earthquakes and tsunamis, it is facing the challenge of both to protect as well as to provide assistance to those affected by these disasters. In this regard, my delegation wishes to convey its heartfelt condolences and deepest sympathies to countries and communities that have been affected by these tragedies. Post-disaster efforts to bring assistance and comfort to those affected by these events prove yet again that no single measure against such catastrophes can be truly successful unless countries work together.

17. To this end, Malaysia extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia is also grateful for the outstanding contribution of the Commission in continuing the progressive development of international law and its codification, and in particular, for its work on this topic.

18. Malaysia notes the texts of draft articles 1 to 5 as provisionally adopted by the Drafting Committee (as contained in document A/CN.4/L.758) and looks forward to the Commission's discussions and debate on these draft articles in the next session. Pending the outcome of the Commission's discussions, Malaysia would like to make the following preliminary observations.

19. Malaysia notes the Statement of the Chairman of the Drafting Committee that the phrase "in the event of disasters" in draft article 1 is to be understood to include all phases of disasters, including the pre-disaster phase. However Malaysia requests further clarification from the Commission as to the applicability of the draft articles to the pre-disaster phase *vis-a-vis* draft article 3 which seems to centre on, an event or series of events that have taken place as described in the draft article.

20. On the purpose of the draft articles, Malaysia supports the emphasis placed on the needs of the persons affected by the disasters concerned. While the notion of “needs” and “rights” are sometimes addressed interchangeably, Malaysia is of the view that the needs of a person must necessarily take predominance over their rights in situations of calamity. It is therefore commendable that the draft article seeks to meet the essential needs of the person concerned first, rather than focus primarily on the realization of their rights. Nevertheless, whilst Malaysia is committed to ensuring that the rights of each and every person is protected, the phrase “full respect for their rights” in draft article 2 seems to suggest that a State must go all the way to fulfil the rights of a person, contradicting the idea of “needs” over “rights”.

21. As for the phrase “adequate and effective response”, Malaysia is of the view that the level of adequacy and effectiveness of the response required should be further deliberated by the Commission so as to give States a better indication of the threshold applicable for those terms in the draft article.

22. Malaysia would favour a definition of disaster which is limited to natural disaster and that the event causes either loss of life, property damage or environmental degradation. Malaysia notes that the magnitude of the loss must be severe enough to be categorised as a disaster under the draft articles. Malaysia supports that these draft articles are meant to cover events which are extreme in nature and not just any other acute crisis. Severe riots, civil unrest, demonstration or destruction deliberately caused by mankind should be expressly excluded from the definition.

23. On the relationship with international humanitarian law, Malaysia is of the view that illustrations on different scenarios, i.e. when a disaster strikes before, during, or after an armed conflict, giving rise to the application of the draft articles will be helpful to discern the correlation between the two regimes. It remains unclear at what stage the draft articles will apply or cease to apply.

24. With respect to the duty to cooperate, further clarification on the extent of co-operation between the donor State, the affected State and other relevant stakeholders is vital. The responsibilities of the affected State should be clearly delineated to enable the State to understand the fullest extent of their duty. Malaysia wishes to highlight that the duty of non-intervention is also owed to legitimately sovereign governments. A sovereign State and its Government retain the discretion to receive or not to receive humanitarian assistance according to its own national interests and priorities.

Mr. Chairman,

25. On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles.

26. With regard to whether the draft Articles on transboundary aquifers should be adopted into a convention, Malaysia is of the view that various considerations should be carefully weighed in making that decision. Malaysia also notes the lack of consensus between States on this matter and the fact that this area is largely regulated by bilateral and regional arrangements between States.

27. With the completion of the second reading of the law on transboundary aquifers, the Commission is to proceed with the consideration of the codification of the law on transboundary oil and gas. In this respect, the Commission has circulated a questionnaire on State practice relating to transboundary oil and gas; and responses from 17 States were received as at 31 January 2009. Subsequently, the Special Rapporteur on Shared Natural Resources had further encouraged further responses from other States. In this regard, Malaysia had submitted its response to the questionnaire to the ILC with regard to its State practice regarding transboundary oil and gas.

28. With respect to the decision of the Working Group that a study should be submitted at the 62nd Session of the Commission on the feasibility of any future work on oil and gas, Malaysia notes that a majority of States which have responded gave some indication on their stand against the Commission proceeding with the

codification of the law on transboundary oil and gas. In this regard, we would like to emphasize that the issue of transboundary oil and gas naturally involves highly technical data and politically sensitive issues as well as the issue of sovereignty of States. Therefore, Malaysia is of the view that the Commission should not proceed with the codification of law on transboundary oil and gas as the topic is best dealt with on a case-by-case basis through bilateral or regional arrangements by the relevant States.

Thank you, Mr. Chairman.

*(Statement as delivered)*

**STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.**

Mr. Chairman,

***In the interests of time, allow me to present a shortened version of Malaysia’s statement, the full text of which is being distributed in the room.***

2. On the subject of Responsibility of International Organizations, Malaysia commends the International Law Commission for the adoption of the draft articles on this subject. Malaysia extends its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

3. Malaysia takes note that in the Commission’s elaboration of further details and mechanisms pertaining to countermeasures, there is no examination of the conditions for lawful countermeasures when they are taken by an injured international organization against a responsible state. The Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. Malaysia believes that such restrictions or conditions imposed on countermeasures should not be applied by analogy, and that the Commission should carefully consider the special character of an international organization as opposed to a State.

4. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either:

5.1 in the form of draft articles to be included in the draft articles on the responsibility of international organizations; or

5.2 through the preparation of a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. If an international organisation permit’s a State to commit an act, does that preclude the wrongfulness of that act committed by the State? In this case, Malaysia believes that the Commission should look to the validity of the consent so given by the international organisation or its agent. More important perhaps, is whether an IO can give such consent to a State. In this regard, Article 20 of the articles on the responsibility of States for internationally wrongful acts needs to be referred to.

Mr. Chairman,

7. On the subject of **Reservation to Treaties**, Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

8. In this regard, Malaysia supports the Commission's work on the "Guide to Practice on Reservations to Treaties", and has the following views on the draft guidelines which were provisionally adopted by the Drafting Committee:

8.1 Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as "the exceptional cases" as well as "the relevant circumstances" where an approval of an interpretative declaration or an opposition may be inferred. In the interests of clarity, Malaysia would urge that greater consideration be given to the wording of this paragraph before its finalization by the Drafting Committee.

8.2 On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. Further clarification must be given to the phrase "*through its conduct and taking account of the circumstances*" and clear guidance provided.

9. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound.

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11. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia looks forward to the Commission's discussions and debate on draft articles 1 to 5 in the next session. Malaysia has the following preliminary observations:

11.1 the phrase "in the event of disasters" should also include the pre-disaster phase. In this regard, further clarification must be made on Article 3's applicability;

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Thank you, Mr. Chairman.





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3. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

4. Malaysia takes note the comments of the Commission that certain issues concerning international responsibility between States and international organizations have not been expressly covered either in the articles on the responsibility of States for internationally wrongful acts or in the draft articles on the responsibility of international organizations. The Commission also stated that one could argue that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either in the form of draft articles to be included in the draft articles on the responsibility of international organizations or alternatively, the Commission may wish to prepare a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international

organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. As to question on when is consent given by an international organization to the commission of a given act by a State a circumstance precluding wrongfulness of that State’s conduct, Malaysia is of the view that the Commission should deliberate on mechanisms to determine the validity of the consent given by the international organization or by the person or agent acting on behalf of the organization. There is also the pertinent question on whether the international organization could validly give its consent to the commission of a given act by a State. The reference to a “valid consent” in article 20 of the articles on the responsibility of States for internationally wrongful acts highlights the need to consider these issues in certain cases. In addition, clear and comprehensive mechanism and principles must also be deliberated on the question of when is an international organization entitled to invoke the responsibility of a state.

7. It cannot be overemphasised the fact that there is danger in stating that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts bearing in mind the special character of an international organization as opposed to a state. As such, careful consideration needs to be made by the Commission on these outstanding issues.

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9. In this regard, Malaysia supports the Commission’s work on the “Guide to Practice on Reservations to Treaties”. Notwithstanding the many issues which remained unresolved at the Sixty-first Session, the crystallizing draft guidelines already show promise to be useful guides to assist States in their formulation of reservation to treaties. Malaysia notes that at the Sixty-first session of the Commission, some draft guidelines were provisionally adopted by the Drafting Committee and wishes to express its views as in the following.

10. Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Malaysia notes that draft guideline 2.9.8 should be read in conjunction with draft guideline 2.9.9 which relates to the role that may be played by the silence of a State or an international organization with regard to an interpretative declaration. Nevertheless, paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as “the exceptional cases” as well as “the relevant circumstances” where an approval of an interpretative declaration or an opposition may be inferred. The lack of clarity in the draft guideline could potentially lead to problems in interpretation. Therefore, Malaysia is of the view that the wording of paragraph 2 of draft guideline 2.9.8 should be given greater consideration before it is finalised by the Drafting Committee.

11. On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. However, in Malaysia’s view, the phrase “*through its conduct and taking account of the circumstances*” requires further clarification. In Malaysia’s view, if these guidelines are to serve as a practical guide to States, there should also be clear guidance on the types of conduct or circumstances that would be effectively taken as approval of interpretative declaration in the absence of a clear statement to that effect.

12. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound; and the efficacy of the treaty monitoring bodies' roles lies in the extent to which they serve this objective. The spirit of this guideline is understood to not let the decision of the treaty monitoring body deprive the reserving state to make its reservations, but rather to assist them to craft its reservation to render it valid for permissibility. Nevertheless, the intention for the effect of the findings of treaty monitoring bodies in the draft guideline should be left open for the contracting parties or contracting organization to decide and be reflected in the treaty.

13. Malaysia also supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. However, Malaysia feels that this issue requires further research as it calls for greater considerations on the interplay of different branches of law, that is the law of treaty and the law on state responsibility. In Malaysia's view, clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the "law of reservations" on establishing the principles of whether an impermissible reservation is an "internationally wrongful act" which could potentially later be a basis or parts of the elements for a decision in a dispute.

14. Since the power to make treaties by international organizations largely depends on the terms of the constituent instrument of the international organization and the mandate granted to the international organization, international organizations do not necessarily have similar authority or responsibility as States. Thus, Malaysia is of the view that a separate regime for international organizations should be developed to address these entities and they should not be made part of the draft guidelines at this juncture.

Mr. Chairman,

15. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation wishes to state the following.

16. In recent months, the world has witnessed a flurry of disasters. Ranging from typhoons, flash floods to earthquakes and tsunamis, it is facing the challenge of both to protect as well as to provide assistance to those affected by these disasters. In this regard, my delegation wishes to convey its heartfelt condolences and deepest sympathies to countries and communities that have been affected by these tragedies. Post-disaster efforts to bring assistance and comfort to those affected by these events prove yet again that no single measure against such catastrophes can be truly successful unless countries work together.

17. To this end, Malaysia extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia is also grateful for the outstanding contribution of the Commission in continuing the progressive development of international law and its codification, and in particular, for its work on this topic.

18. Malaysia notes the texts of draft articles 1 to 5 as provisionally adopted by the Drafting Committee (as contained in document A/CN.4/L.758) and looks forward to the Commission's discussions and debate on these draft articles in the next session. Pending the outcome of the Commission's discussions, Malaysia would like to make the following preliminary observations.

19. Malaysia notes the Statement of the Chairman of the Drafting Committee that the phrase "in the event of disasters" in draft article 1 is to be understood to include all phases of disasters, including the pre-disaster phase. However Malaysia requests further clarification from the Commission as to the applicability of the draft articles to the pre-disaster phase *vis-a-vis* draft article 3 which seems to centre on, an event or series of events that have taken place as described in the draft article.

20. On the purpose of the draft articles, Malaysia supports the emphasis placed on the needs of the persons affected by the disasters concerned. While the notion of “needs” and “rights” are sometimes addressed interchangeably, Malaysia is of the view that the needs of a person must necessarily take predominance over their rights in situations of calamity. It is therefore commendable that the draft article seeks to meet the essential needs of the person concerned first, rather than focus primarily on the realization of their rights. Nevertheless, whilst Malaysia is committed to ensuring that the rights of each and every person is protected, the phrase “full respect for their rights” in draft article 2 seems to suggest that a State must go all the way to fulfil the rights of a person, contradicting the idea of “needs” over “rights”.

21. As for the phrase “adequate and effective response”, Malaysia is of the view that the level of adequacy and effectiveness of the response required should be further deliberated by the Commission so as to give States a better indication of the threshold applicable for those terms in the draft article.

22. Malaysia would favour a definition of disaster which is limited to natural disaster and that the event causes either loss of life, property damage or environmental degradation. Malaysia notes that the magnitude of the loss must be severe enough to be categorised as a disaster under the draft articles. Malaysia supports that these draft articles are meant to cover events which are extreme in nature and not just any other acute crisis. Severe riots, civil unrest, demonstration or destruction deliberately caused by mankind should be expressly excluded from the definition.

23. On the relationship with international humanitarian law, Malaysia is of the view that illustrations on different scenarios, i.e. when a disaster strikes before, during, or after an armed conflict, giving rise to the application of the draft articles will be helpful to discern the correlation between the two regimes. It remains unclear at what stage the draft articles will apply or cease to apply.

24. With respect to the duty to cooperate, further clarification on the extent of co-operation between the donor State, the affected State and other relevant stakeholders is vital. The responsibilities of the affected State should be clearly delineated to enable the State to understand the fullest extent of their duty. Malaysia wishes to highlight that the duty of non-intervention is also owed to legitimately sovereign governments. A sovereign State and its Government retain the discretion to receive or not to receive humanitarian assistance according to its own national interests and priorities.

Mr. Chairman,

25. On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles.

26. With regard to whether the draft Articles on transboundary aquifers should be adopted into a convention, Malaysia is of the view that various considerations should be carefully weighed in making that decision. Malaysia also notes the lack of consensus between States on this matter and the fact that this area is largely regulated by bilateral and regional arrangements between States.

27. With the completion of the second reading of the law on transboundary aquifers, the Commission is to proceed with the consideration of the codification of the law on transboundary oil and gas. In this respect, the Commission has circulated a questionnaire on State practice relating to transboundary oil and gas; and responses from 17 States were received as at 31 January 2009. Subsequently, the Special Rapporteur on Shared Natural Resources had further encouraged further responses from other States. In this regard, Malaysia had submitted its response to the questionnaire to the ILC with regard to its State practice regarding transboundary oil and gas.

28. With respect to the decision of the Working Group that a study should be submitted at the 62nd Session of the Commission on the feasibility of any future work on oil and gas, Malaysia notes that a majority of States which have responded gave some indication on their stand against the Commission proceeding with the

codification of the law on transboundary oil and gas. In this regard, we would like to emphasize that the issue of transboundary oil and gas naturally involves highly technical data and politically sensitive issues as well as the issue of sovereignty of States. Therefore, Malaysia is of the view that the Commission should not proceed with the codification of law on transboundary oil and gas as the topic is best dealt with on a case-by-case basis through bilateral or regional arrangements by the relevant States.

Thank you, Mr. Chairman.

*(Statement as delivered)*

**STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.**

Mr. Chairman,

***In the interests of time, allow me to present a shortened version of Malaysia’s statement, the full text of which is being distributed in the room.***

2. On the subject of Responsibility of International Organizations, Malaysia commends the International Law Commission for the adoption of the draft articles on this subject. Malaysia extends its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

3. Malaysia takes note that in the Commission’s elaboration of further details and mechanisms pertaining to countermeasures, there is no examination of the conditions for lawful countermeasures when they are taken by an injured international organization against a responsible state. The Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. Malaysia believes that such restrictions or conditions imposed on countermeasures should not be applied by analogy, and that the Commission should carefully consider the special character of an international organization as opposed to a State.

4. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either:

5.1 in the form of draft articles to be included in the draft articles on the responsibility of international organizations; or

5.2 through the preparation of a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. If an international organisation permit’s a State to commit an act, does that preclude the wrongfulness of that act committed by the State? In this case, Malaysia believes that the Commission should look to the validity of the consent so given by the international organisation or its agent. More important perhaps, is whether an IO can give such consent to a State. In this regard, Article 20 of the articles on the responsibility of States for internationally wrongful acts needs to be referred to.

Mr. Chairman,

7. On the subject of **Reservation to Treaties**, Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

8. In this regard, Malaysia supports the Commission's work on the "Guide to Practice on Reservations to Treaties", and has the following views on the draft guidelines which were provisionally adopted by the Drafting Committee:

8.1 Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as "the exceptional cases" as well as "the relevant circumstances" where an approval of an interpretative declaration or an opposition may be inferred. In the interests of clarity, Malaysia would urge that greater consideration be given to the wording of this paragraph before its finalization by the Drafting Committee.

8.2 On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. Further clarification must be given to the phrase "*through its conduct and taking account of the circumstances*" and clear guidance provided.

9. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound.

10. Malaysia supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. But further research must be done on this subject and clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the law of reservations and an internationally wrongful act. The different character of international organizations means that it should be dealt with separately from States.

11. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia looks forward to the Commission's discussions and debate on draft articles 1 to 5 in the next session. Malaysia has the following preliminary observations:

11.1 the phrase "in the event of disasters" should also include the pre-disaster phase. In this regard, further clarification must be made on Article 3's applicability;

11.2 the needs of a person must take predominance over their rights in situations of calamity, therefore draft article 2 must be clarified in this respect;

11.3 the phrase "adequate and effective response" should be further deliberated so that a better indication of the threshold applicable can be determined and agreed upon;

- 11.4 Malaysia favours a definition of disaster which is limited to natural disasters, and causes either the loss of lives, causes damage to property, or results in environmental degradation;
- 11.5 with regard to international humanitarian law, illustrations on different scenarios when the draft articles will apply, will be beneficial;
- 11.6 on the duty to cooperate, further clarification is needed. Malaysia emphasises that the duty of non-intervention should be maintained, with States retaining discretion on whether or not to receive humanitarian assistance.

Mr. Chairman,

12 On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles. Malaysia has submitted its response to the ILC questionnaire in this instance.

13 Malaysia would like to emphasize that the issue of transboundary oil and gas involves highly technical data and politically sensitive issues, and questions relating to the sovereignty of States. Because of this, this topic is best dealt with through bilateral or regional arrangements, and a codification of law by the ILC would not be desirable.

Thank you, Mr. Chairman.





*Permanent Mission of*  
**Malaysia**  
*to the United Nations*

*(Full Version)*

**STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.**

Mr. Chairman,

On the subject of **Responsibility of International Organizations**, Malaysia commends the International Law Commission for successfully adopting a set of 66 draft articles on the responsibility of international organizations on its first reading. Malaysia would also like to extend its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

2. Malaysia congratulates the Commission for elaborating further the details and mechanism pertaining to countermeasures. However, Malaysia takes note that the current draft does not examine the conditions for countermeasures to be lawful when they are taken by an injured international organization against a responsible state. In relation to this, the Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. In this regard, Malaysia reiterates its position that although similar restrictions or conditions imposed on countermeasures as in articles on state responsibility may be applied to an international organization, they should not be applied by analogy. In addition, careful consideration should be made by the Commission taking into account the special character of an international organization as opposed to a State.

3. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

4. Malaysia takes note the comments of the Commission that certain issues concerning international responsibility between States and international organizations have not been expressly covered either in the articles on the responsibility of States for internationally wrongful acts or in the draft articles on the responsibility of international organizations. The Commission also stated that one could argue that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either in the form of draft articles to be included in the draft articles on the responsibility of international organizations or alternatively, the Commission may wish to prepare a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international

organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. As to question on when is consent given by an international organization to the commission of a given act by a State a circumstance precluding wrongfulness of that State’s conduct, Malaysia is of the view that the Commission should deliberate on mechanisms to determine the validity of the consent given by the international organization or by the person or agent acting on behalf of the organization. There is also the pertinent question on whether the international organization could validly give its consent to the commission of a given act by a State. The reference to a “valid consent” in article 20 of the articles on the responsibility of States for internationally wrongful acts highlights the need to consider these issues in certain cases. In addition, clear and comprehensive mechanism and principles must also be deliberated on the question of when is an international organization entitled to invoke the responsibility of a state.

7. It cannot be overemphasised the fact that there is danger in stating that these questions are regulated by analogy in the articles on the responsibility of States for internationally wrongful acts bearing in mind the special character of an international organization as opposed to a state. As such, careful consideration needs to be made by the Commission on these outstanding issues.

Mr. Chairman,

8. On the subject of **Reservation to Treaties**, Malaysia records its appreciation of the efforts made by the Commission in preparing and presenting reports on the matters relating to the work of Commission at its Sixty-first Session. Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

9. In this regard, Malaysia supports the Commission’s work on the “Guide to Practice on Reservations to Treaties”. Notwithstanding the many issues which remained unresolved at the Sixty-first Session, the crystallizing draft guidelines already show promise to be useful guides to assist States in their formulation of reservation to treaties. Malaysia notes that at the Sixty-first session of the Commission, some draft guidelines were provisionally adopted by the Drafting Committee and wishes to express its views as in the following.

10. Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Malaysia notes that draft guideline 2.9.8 should be read in conjunction with draft guideline 2.9.9 which relates to the role that may be played by the silence of a State or an international organization with regard to an interpretative declaration. Nevertheless, paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as “the exceptional cases” as well as “the relevant circumstances” where an approval of an interpretative declaration or an opposition may be inferred. The lack of clarity in the draft guideline could potentially lead to problems in interpretation. Therefore, Malaysia is of the view that the wording of paragraph 2 of draft guideline 2.9.8 should be given greater consideration before it is finalised by the Drafting Committee.

11. On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. However, in Malaysia’s view, the phrase “*through its conduct and taking account of the circumstances*” requires further clarification. In Malaysia’s view, if these guidelines are to serve as a practical guide to States, there should also be clear guidance on the types of conduct or circumstances that would be effectively taken as approval of interpretative declaration in the absence of a clear statement to that effect.

12. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound; and the efficacy of the treaty monitoring bodies' roles lies in the extent to which they serve this objective. The spirit of this guideline is understood to not let the decision of the treaty monitoring body deprive the reserving state to make its reservations, but rather to assist them to craft its reservation to render it valid for permissibility. Nevertheless, the intention for the effect of the findings of treaty monitoring bodies in the draft guideline should be left open for the contracting parties or contracting organization to decide and be reflected in the treaty.

13. Malaysia also supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. However, Malaysia feels that this issue requires further research as it calls for greater considerations on the interplay of different branches of law, that is the law of treaty and the law on state responsibility. In Malaysia's view, clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the "law of reservations" on establishing the principles of whether an impermissible reservation is an "internationally wrongful act" which could potentially later be a basis or parts of the elements for a decision in a dispute.

14. Since the power to make treaties by international organizations largely depends on the terms of the constituent instrument of the international organization and the mandate granted to the international organization, international organizations do not necessarily have similar authority or responsibility as States. Thus, Malaysia is of the view that a separate regime for international organizations should be developed to address these entities and they should not be made part of the draft guidelines at this juncture.

Mr. Chairman,

15. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation wishes to state the following.

16. In recent months, the world has witnessed a flurry of disasters. Ranging from typhoons, flash floods to earthquakes and tsunamis, it is facing the challenge of both to protect as well as to provide assistance to those affected by these disasters. In this regard, my delegation wishes to convey its heartfelt condolences and deepest sympathies to countries and communities that have been affected by these tragedies. Post-disaster efforts to bring assistance and comfort to those affected by these events prove yet again that no single measure against such catastrophes can be truly successful unless countries work together.

17. To this end, Malaysia extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia is also grateful for the outstanding contribution of the Commission in continuing the progressive development of international law and its codification, and in particular, for its work on this topic.

18. Malaysia notes the texts of draft articles 1 to 5 as provisionally adopted by the Drafting Committee (as contained in document A/CN.4/L.758) and looks forward to the Commission's discussions and debate on these draft articles in the next session. Pending the outcome of the Commission's discussions, Malaysia would like to make the following preliminary observations.

19. Malaysia notes the Statement of the Chairman of the Drafting Committee that the phrase "in the event of disasters" in draft article 1 is to be understood to include all phases of disasters, including the pre-disaster phase. However Malaysia requests further clarification from the Commission as to the applicability of the draft articles to the pre-disaster phase *vis-a-vis* draft article 3 which seems to centre on, an event or series of events that have taken place as described in the draft article.

20. On the purpose of the draft articles, Malaysia supports the emphasis placed on the needs of the persons affected by the disasters concerned. While the notion of “needs” and “rights” are sometimes addressed interchangeably, Malaysia is of the view that the needs of a person must necessarily take predominance over their rights in situations of calamity. It is therefore commendable that the draft article seeks to meet the essential needs of the person concerned first, rather than focus primarily on the realization of their rights. Nevertheless, whilst Malaysia is committed to ensuring that the rights of each and every person is protected, the phrase “full respect for their rights” in draft article 2 seems to suggest that a State must go all the way to fulfil the rights of a person, contradicting the idea of “needs” over “rights”.

21. As for the phrase “adequate and effective response”, Malaysia is of the view that the level of adequacy and effectiveness of the response required should be further deliberated by the Commission so as to give States a better indication of the threshold applicable for those terms in the draft article.

22. Malaysia would favour a definition of disaster which is limited to natural disaster and that the event causes either loss of life, property damage or environmental degradation. Malaysia notes that the magnitude of the loss must be severe enough to be categorised as a disaster under the draft articles. Malaysia supports that these draft articles are meant to cover events which are extreme in nature and not just any other acute crisis. Severe riots, civil unrest, demonstration or destruction deliberately caused by mankind should be expressly excluded from the definition.

23. On the relationship with international humanitarian law, Malaysia is of the view that illustrations on different scenarios, i.e. when a disaster strikes before, during, or after an armed conflict, giving rise to the application of the draft articles will be helpful to discern the correlation between the two regimes. It remains unclear at what stage the draft articles will apply or cease to apply.

24. With respect to the duty to cooperate, further clarification on the extent of co-operation between the donor State, the affected State and other relevant stakeholders is vital. The responsibilities of the affected State should be clearly delineated to enable the State to understand the fullest extent of their duty. Malaysia wishes to highlight that the duty of non-intervention is also owed to legitimately sovereign governments. A sovereign State and its Government retain the discretion to receive or not to receive humanitarian assistance according to its own national interests and priorities.

Mr. Chairman,

25. On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles.

26. With regard to whether the draft Articles on transboundary aquifers should be adopted into a convention, Malaysia is of the view that various considerations should be carefully weighed in making that decision. Malaysia also notes the lack of consensus between States on this matter and the fact that this area is largely regulated by bilateral and regional arrangements between States.

27. With the completion of the second reading of the law on transboundary aquifers, the Commission is to proceed with the consideration of the codification of the law on transboundary oil and gas. In this respect, the Commission has circulated a questionnaire on State practice relating to transboundary oil and gas; and responses from 17 States were received as at 31 January 2009. Subsequently, the Special Rapporteur on Shared Natural Resources had further encouraged further responses from other States. In this regard, Malaysia had submitted its response to the questionnaire to the ILC with regard to its State practice regarding transboundary oil and gas.

28. With respect to the decision of the Working Group that a study should be submitted at the 62nd Session of the Commission on the feasibility of any future work on oil and gas, Malaysia notes that a majority of States which have responded gave some indication on their stand against the Commission proceeding with the

codification of the law on transboundary oil and gas. In this regard, we would like to emphasize that the issue of transboundary oil and gas naturally involves highly technical data and politically sensitive issues as well as the issue of sovereignty of States. Therefore, Malaysia is of the view that the Commission should not proceed with the codification of law on transboundary oil and gas as the topic is best dealt with on a case-by-case basis through bilateral or regional arrangements by the relevant States.

Thank you, Mr. Chairman.

*(Statement as delivered)*

**STATEMENT BY THE HONOURABLE SENATOR MDM. SHARIFAH AMINAH SYED MOHAMED, MEMBER OF PARLIAMENT AND REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SIXTY-FIRST SESSION ON THE TOPIC OF “RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS”; “RESERVATION TO TREATIES”; “PROTECTION OF PERSONS IN THE EVENT OF DISASTERS”; “SHARED NATURAL RESOURCES” AT THE SIXTH COMMITTEE OF THE SIXTY FOURTH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 30 OCTOBER 2009.**

Mr. Chairman,

***In the interests of time, allow me to present a shortened version of Malaysia’s statement, the full text of which is being distributed in the room.***

2. On the subject of Responsibility of International Organizations, Malaysia commends the International Law Commission for the adoption of the draft articles on this subject. Malaysia extends its deep appreciation for the outstanding work of the Special Rapporteur, Mr. Giorgio Gaja who has made substantive contribution to the topic through his scholarly research and vast experience.

3. Malaysia takes note that in the Commission’s elaboration of further details and mechanisms pertaining to countermeasures, there is no examination of the conditions for lawful countermeasures when they are taken by an injured international organization against a responsible state. The Commission had suggested that such situation may be applied by analogy the conditions that are set out in articles 49 to 54 on the draft articles on the responsibility of States for internationally wrongful acts. Malaysia believes that such restrictions or conditions imposed on countermeasures should not be applied by analogy, and that the Commission should carefully consider the special character of an international organization as opposed to a State.

4. Malaysia also urges the Commission to take a cautious approach and calls for further clarification with respect to countermeasures by international organizations due to the scarcity in practice, the uncertainty surrounding their legal regime and the risk of abuse that they would entail. It is hoped that the Commission would be able to elaborate on circumstances that would constitute countermeasures by distinguishing countermeasures against sanctions, retaliations, reprisals and other types or measures taken in the event of a material breach of a treaty obligation.

5. On the question of whether the Commission should address these issues expressly and in what form, Malaysia is of the view that these outstanding issues should ideally be dealt with by the Commission either:

5.1 in the form of draft articles to be included in the draft articles on the responsibility of international organizations; or

5.2 through the preparation of a comprehensive report which could discuss these outstanding issues. The report could highlight, among others, actual examples of situations where the conduct of an organ of an international organization placed at the disposal of a State was deemed under international law to be attributable to the latter. This is because the determination of whether conduct of an organ of an international organization was carried out “under direction or control” of a state is a very complex issue and must be given the comprehensive treatment that it deserves.

6. If an international organisation permit’s a State to commit an act, does that preclude the wrongfulness of that act committed by the State? In this case, Malaysia believes that the Commission should look to the validity of the consent so given by the international organisation or its agent. More important perhaps, is whether an IO can give such consent to a State. In this regard, Article 20 of the articles on the responsibility of States for internationally wrongful acts needs to be referred to.

Mr. Chairman,

7. On the subject of **Reservation to Treaties**, Malaysia recognises that the 1969 Vienna Convention on the Law of Treaties, the 1978 Vienna Convention on Succession of States in Respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations set out the core principles concerning reservations to treaties are silent on the effect of reservations on the entry into force of treaties, problems pertaining to the particular object of some treaties, reservations to codification treaties and problems resulting from particular treaty techniques. Therefore, Malaysia appreciates the work being undertaken by the Commission to clarify and develop further guidance on these matters.

8. In this regard, Malaysia supports the Commission's work on the "Guide to Practice on Reservations to Treaties", and has the following views on the draft guidelines which were provisionally adopted by the Drafting Committee:

8.1 Malaysia supports the contention that an approval of, or an opposition to, an interpretative declaration shall not be presumed. Paragraph 2 of draft guideline 2.9.8 does not provide further guidance as to what are considered as "the exceptional cases" as well as "the relevant circumstances" where an approval of an interpretative declaration or an opposition may be inferred. In the interests of clarity, Malaysia would urge that greater consideration be given to the wording of this paragraph before its finalization by the Drafting Committee.

8.2 On draft guideline 2.9.9, Malaysia supports the contention that as a general rule, approval of an interpretative declaration should never be automatically inferred from the mere silence of a State. Nevertheless as indicated in draft guideline 2.9.9, in exceptional cases, there may be occasions where the silence of a state may be relevant in determining its approval of an interpretative declaration. Further clarification must be given to the phrase "*through its conduct and taking account of the circumstances*" and clear guidance provided.

9. With regard to draft guideline 3.2.1, it is generally felt that allowing treaty monitoring bodies to assess the permissibility of reservations that are formulated by a State may be able to ensure certainty of the validity and permissibility of a reservation made by a state and minimize the issue of reservations being contested in the future. However, the extent of the legal effect of the conclusion or assessment of the treaty monitoring body should be clearly explained. States should be able to make public statements without fear that they may inadvertently be creating binding obligations under international law. States should only be bound by unilateral public declarations when they intend to be bound.

10. Malaysia supports the intention of the framing of draft guideline 3.3.1 to remove any remaining ambiguity on the effects of the invalidity of a reservation. But further research must be done on this subject and clarification is required as to the application of law on state responsibility to the obligations imposed by the law of treaties, particularly on the law of reservations and an internationally wrongful act. The different character of international organizations means that it should be dealt with separately from States.

11. On the topic concerning the **Protection of Persons In The Event Of Disasters**, my delegation extends its sincere appreciation to the Special Rapporteur of this topic, Mr. Eduardo Valencia-Ospina, for his second report. Malaysia looks forward to the Commission's discussions and debate on draft articles 1 to 5 in the next session. Malaysia has the following preliminary observations:

11.1 the phrase "in the event of disasters" should also include the pre-disaster phase. In this regard, further clarification must be made on Article 3's applicability;

11.2 the needs of a person must take predominance over their rights in situations of calamity, therefore draft article 2 must be clarified in this respect;

11.3 the phrase "adequate and effective response" should be further deliberated so that a better indication of the threshold applicable can be determined and agreed upon;

- 11.4 Malaysia favours a definition of disaster which is limited to natural disasters, and causes either the loss of lives, causes damage to property, or results in environmental degradation;
- 11.5 with regard to international humanitarian law, illustrations on different scenarios when the draft articles will apply, will be beneficial;
- 11.6 on the duty to cooperate, further clarification is needed. Malaysia emphasises that the duty of non-intervention should be maintained, with States retaining discretion on whether or not to receive humanitarian assistance.

Mr. Chairman,

12 On the topic on **Shared Natural Resources**, Malaysia notes that the second reading of the draft Articles on the law of transboundary aquifers had been adopted in the 60th Session of the ILC, without prejudice to the final form of the text. The two-step approach taken is appropriate, considering the different views expressed by States regarding the final form of the draft Articles. Malaysia has submitted its response to the ILC questionnaire in this instance.

13 Malaysia would like to emphasize that the issue of transboundary oil and gas involves highly technical data and politically sensitive issues, and questions relating to the sovereignty of States. Because of this, this topic is best dealt with through bilateral or regional arrangements, and a codification of law by the ILC would not be desirable.

Thank you, Mr. Chairman.