



# Malaysia

Permanent Mission to the United Nations

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**STATEMENT BY MS. FARHANI AHMAD TAJUDDIN, REPRESENTATIVE OF MALAYSIA ON AGENDA ITEM 81: CONSIDERATION OF PREVENTION OF TRANSBOUNDARY HARM FROM HAZARDOUS ACTIVITIES AND ALLOCATION OF LOSS IN THE CASE OF SUCH HARM, AT THE SIXTH COMMITTEE OF THE 65<sup>th</sup> SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, NEW YORK, 21 OCTOBER 2010**

Madam Chair,

Malaysia records its appreciation to the Secretariat for the Report of the Secretary-General on this topic A/65/184 and A/65/184/ Add.1, which was prepared in pursuance of resolution 62/68.

2. We note the progressive development in international law that is being proposed in the draft “Articles on prevention of transboundary harm from hazardous activities” and eight (8) “Principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities”. Malaysia also notes that both have been commended for the further attention of Governments by the General Assembly through its resolutions 61/36 and 62/68 respectively. Malaysia further notes the responses of several States in the Secretary General’s Report [A/65/184 and A/65/184 Add. 1].

Madam Chair,

3. Malaysia supports in principle the international effort to strengthen the regulatory regime against transboundary harm from hazardous activities, in particular through a preventive code and principles for the allocation of loss and a creation of a harmonized compensatory scheme at the national level. We align ourselves, however, with the cautionary views of States, which advocate retaining the draft articles and principles in their current form pending further study of developments in State practice.

4. In this regard, Malaysia notes that the draft articles are being generally welcomed and used as an important source of reference of international legal practice in this field. Further, several States have reported reference to and incorporation of the eight (8) guiding principles with environmental liability law at the national level, as advocated by General Assembly resolution 61/36. Malaysia believes that progressive acceptance of clear and practical rules will more easily follow through the current non-binding form of these draft articles and principles. Malaysia therefore calls on the Secretariat to carry out a comprehensive analytical study of State’s responses and their issues and concerns before further action is considered on the draft articles and principles.

5. Turning specifically to the draft articles and the principles, we wish to recall Malaysia’s statement delivered during the 62<sup>nd</sup> Session of the United Nations General Assembly wherein several concerns had been highlighted pertaining to the principles which are equally applicable in the context of the draft articles. With regard to draft articles 1 to 3, Malaysia is of the view that the scope of the

relevance threshold of “significant” requires further clarification and a more precise definition. These are issues, which would benefit from understanding the threshold being adopted in State practice. With regard to draft article 2, Malaysia aligns itself with the proposal expressed by Germany that the broad wording requires further examination.

6. Further, in relation to draft Article 9, Malaysia welcomes the innovative approach but notes that without a compliance mechanism, it remains unclear how far States will comply with the proposed mandatory requirement for preventive consultations, much less the exhortation in draft article 9(3) that in the event consultations fail to produce an agreed solution, “the State of origin shall nevertheless take into account the interests of the State likely to be affected” if it decides to proceed to authorize the transboundary harm activity concerned. Malaysia would be interested to understand how other States expect this obligation to be implemented.

7. In conclusion, Malaysia emphasizes that though the principle of permanent sovereignty of States over natural resources within their territory, or otherwise under their jurisdiction or control, grants States freedom to exploit them as deemed appropriate, this freedom is not unlimited. Due consideration must be given to transboundary harm that will, or may be caused, especially to delicate and irreplaceable ecosystem and the livelihood they support.

Thank you, Madam Chair.