



# MALAYSIA

PERMANENT MISSION TO THE UNITED NATIONS

*(Please check against delivery)*

**STATEMENT BY  
MS. SHARIFAH NURUL FARIHEEN  
DELEGATE OF MALAYSIA TO THE UNITED NATIONS  
ON AGENDA ITEM 81:  
REPORT OF 48<sup>TH</sup> SESSION OF THE UNITED NATIONS COMMISSION ON  
INTERNATIONAL TRADE LAW (“UNCITRAL”)**

**AT THE SIXTH COMMITTEE OF THE  
70<sup>TH</sup> SESSION OF THE GENERAL ASSEMBLY**

**NEW YORK, 19 OCTOBER 2015**

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Mr. Chairman,

1. Malaysia appreciates the Report of the United Nations Commission on International Trade Law (UNCITRAL) and notes the reports of various Working Groups on matters under their respective mandates.

Mr. Chairman,

2. The work on the revision of the UNCITRAL Notes on Organising Arbitral Proceedings (“Draft Revised Notes”) as undertaken by UNCITRAL Working Group II (Arbitration and Conciliation) is indeed timely considering the dynamic development of variety of arbitration practices recently. Malaysia supports this productive effort of the Working Group II to ensure that the Draft Revised Notes are continuously updated in line with multitude of practices in organising arbitral proceedings. Whilst noting this on-going work of UNCITRAL, Malaysia remains engaged to study the Draft Revised Notes, and to provide inputs to UNCITRAL Working Group II for consideration and further deliberation.



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3. In that vein, Malaysia respectfully echoes the view of the UNCITRAL Commission that the Draft Revised Notes should remain descriptive and non-directive in reflecting a variety of practices. These hallmark characteristics are crucial to be preserved for purposes of considering provisional approval of the Draft Revised Notes. Preserving the general nature of the Draft Revised Notes would not only cater for its general applicability to any procedural issues that might arise, but also supports to invigorate the universal acceptability of the Draft Revised Notes irrespective of the types of arbitration.

4. In this connection, Malaysia notes that one of the suggestions for the Draft Revised Notes is Note 6 which is on the area of “agreement on confidentiality” and “information relating to the arbitration, possible agreement on confidentiality, and transparency in treaty-based investor-State arbitration”. Malaysia wishes to highlight that there is no uniform approach in considering the balance that need to be struck in preserving confidentiality and transparency in arbitral proceedings. In light of the differing types of arbitration, the revision works to balance these two paradigms should be moulded and drafted according to circumstances of each case, depending also on the cardinal principle of “party autonomy”. This Note 6 should be discussed in further detail by UNCITRAL Working Group II with great caution having regard to sensitive and confidential information which cannot be disclosed in arbitration proceedings.

5. Apart from that, Malaysia notes Draft Revised Note 18 which intends to address the issue on multi-party arbitration. Divergent interests remain alive as an unresolved issue which prompts parties to join arbitrations whereas disputing parties could in fact seek different forms of relief. Malaysia is of the view that more discussion should be held on this issue alongside the consideration of another



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pertinent issue in Draft Revised Note 19, i.e. joinder and consolidation of claims which requires consent of all parties.

Mr. Chairman,

6. Last but not least, Malaysia is of the view that for the purposes of deliberation of the Draft Revised Notes, it is important that UNCITRAL Working Group II deliberates both the substance and the drafting of the Draft Revised Notes so as to ensure that the content is properly reflected alongside the accurate elaboration of a range of issues and practices in organising arbitral proceedings. Inputs from UNCITRAL Members would be fruitful so as to assist in producing Draft Revised Notes that are not only current, but also pragmatic for all types of arbitration.

I thank you, Mr Chairman.