



MALAYSIA

PERMANENT MISSION TO THE UNITED NATIONS

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STATEMENT BY
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DELEGATION OF MALAYSIA
TO THE 71ST SESSION OF THE GENERAL ASSEMBLY

ON AGENDA ITEM 80:
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
71TH SESSION OF THE GENERAL ASSEMBLY

NEW YORK, 20 OCTOBER 2017

Mr. Chairman,

1. Malaysia records its appreciation to the Secretariat for the Reports of the Secretary-General on "Consideration of Prevention of Transboundary Harm from Hazardous Activities and Allocation of Loss in the Case of Such Harm" prepared pursuant to General Assembly resolution (68/114).

2. Malaysia would also like to record its appreciation to the compilation of decisions of International Court, tribunals and other bodies together with resolution (A/71/98) comprising comments and observation of governments on the consideration of the prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm.

3. Malaysia notes the progressive development of international law that is being proposed in the draft "Articles on prevention of transboundary harm from hazardous activities" and the "Principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities". Malaysia further notes the latest comments and observations on the topic by various States in the Secretary-General's current report (A/71/136) and previous report (A/68/114).

4. Malaysia wishes to reiterate the position it has taken in the deliberations on this agenda item at the 68th Session of the United Nations General Assembly. Malaysia aligns itself with the cautionary views of States advocating the retention of the draft Articles and Principles in their current and recommendatory form pending further study of developments in State practice. Malaysia also wishes to reiterate the position in the 68th Session of the United Nations General Assembly in welcoming the comprehensive analytical study by the Secretariat of States' responses and their issues and concerns before further action is considered on the draft Articles, Principles and opinion. This is necessary as due consideration must be given to the transboundary harm that may be caused especially to the delicate and irreplaceable ecosystem and the livelihood they support.

Mr. Chairman,

5. Malaysia also wishes to reiterate its statement during the 68th Sessions of the United Nations General Assembly where Malaysia observes that global effort to enhance the regulatory regime against transboundary harm from hazardous activities can be further advanced through a preventive code and principles for the allocation of loss and a creation of a harmonized compensatory scheme at the national level.

6. Further, Malaysia observes the decision had considered Article 7 and 8 of the "Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities" in determining the risk of significant transboundary harm whereby one of the ways in which a State can ascertain whether the proposed activity carries a risk of significant transboundary harm is by conducting a preliminary assessment of the risk posed by an activity.

7. The obligation to conduct an environmental impact assessment is one of the important constituent element of the process that emanates from the International obligation of the States to act with due diligence in order to avoid or mitigate significant transboundary harm, rather than a separate and independent obligation standing on its own under general international law. Consequently, an environmental impact assessment plays an important and crucial role in ensuring that the State acts with due diligence under the general international environmental law.

Mr. Chairman,

8. With regard to some of the specific provisions of the draft Articles and the Principles, Malaysia wishes to recall its statement delivered during the 65th and 68th Sessions of the United Nations General Assembly wherein Malaysia had highlighted several concerns pertaining to the principles which are equally applicable in the context of the draft articles. Malaysia had expressed that the scope of the relevance threshold of “significant” in draft articles 1 to 3 would require further clarification and that such term needed a more precise definition.

9. Malaysia also wishes to reiterate its view in relation to draft Article 9. In particular, Malaysia is concerned that without a compliance mechanism, it remains unclear how States would 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.

10. In this regard, Malaysia is of the view that establishing cooperative networks and joint response measures at the regional level is the key to achieving workable solutions to prevent transboundary harm from hazardous activities, especially between bordering States that would be most affected by such activities. There is therefore, a continuing need to reflect on the application of the draft Articles and Principles in the regional as well as bilateral contexts.

11. On that note, Malaysia will continue to cooperate at the regional level to prevent and monitor transboundary haze pollution through concerted national efforts along with intensified regional and international co-operation.

Thank you, Mr. Chairman.