



MALAYSIA

Permanent Mission to the United Nations, New York

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**STATEMENT BY
MS. NURUL AINY YAHAYA
ATTORNEY GENERAL'S CHAMBERS OF MALAYSIA**

**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 77TH SESSION OF THE GENERAL ASSEMBLY**

NEW YORK, 19 OCTOBER 2022

Mr. Chair,

Malaysia records its appreciation to the Secretary-General for his reports (A/77/148 and A/77/147), which include the compilation of decisions of International Court, tribunals and other bodies on the topic at hand.

2. Malaysia notes the progressive development of international law that is being proposed in the draft "Articles on prevention of transboundary harm from hazardous activities" ('draft Articles') and the "Principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities" ('draft Principles'). We have also followed closely the comments and observations on the topic by various States, as contained in the Secretary-General's reports and expressed in the previous sessions of this Committee.

Mr. Chair,

3. Malaysia's position on this topic has not changed. Recalling our statements in the 65th, 68th, 71st, and 74th sessions of the Assembly, we wish to reiterate, *inter alia*, the need to provide for the definition of the term "significant" in the draft Articles and draft Principles in order to clarify its intended meaning. A proposal from the ILC on this matter would be greatly welcomed to help us move forward.

4. Further, Malaysia views the term "transboundary harm" as very general that would also include various features of environmental damages, among others, the atmosphere, water, soil, hazardous wastes, and biological resources, so long as it causes transboundary harm to persons, property or the environment. In this regard, Malaysia finds that the draft Articles take a "one-size-fits-all" approach to all categories of transboundary harm. Consequently, the current work should continue to be focused on the analysis of developments in State practice.

5. Malaysia notes that the request for the environmental impact assessment by affected State is made on the basis of reasonable grounds. Nevertheless, the State of Origin may refuse to provide the environmental impact assessment based on the ground that they are not "under an obligation to provide" under Article 11(2). Malaysia is of the view that the phrase "it is not under an obligation to provide a notification" should also be on reasonable grounds basis.

6. Finally, Malaysia notes that Principle 5 is silent on the element of knowledge. Malaysia views that it is more appropriate and fairer to impose the respective response measure obligations under the said principle when the incident involving a hazardous activity that results or is likely to result in transboundary damage is within the knowledge of the state concerned.

Thank you.