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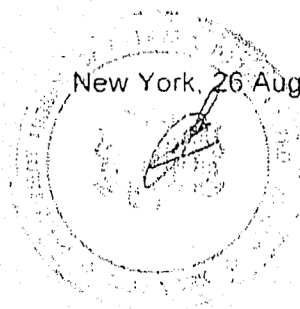
The Permanent Mission of Malaysia to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to transmit the following responses by the Government of Malaysia to questions posed by the International Law Commission regarding the following topics:

- a) Practice of States with regard to the Expulsion of Aliens.
- b) Protection of person in the event of disasters and
- c) State practices on shared natural resources.

The Permanent Mission of Malaysia would appreciate it if these responses could be recorded as the official response of the Government of Malaysia.

The Permanent Mission of Malaysia avails itself of this opportunity to renew to the Secretary-General to the United Nations the assurances of its highest consideration.

New York, 26 August 2009



Office of the Secretary-General
Of the United Nations
New York

Annex A

Expulsion of Aliens – Malaysia's response to legal and institutional problems encountered with or responding to aliens

2 (a) State practice with regard to the expulsion of nationals. Is it allowed under domestic legislation? Is it permissible under international law?

Article 9 of the Federal Constitution makes provision for the prohibition of banishment and freedom of movement where no citizen shall be banished or excluded from the Federation. The FC does not provide against expulsion of non-citizen.

3 (b) The manner in which persons having two or more nationalities are dealt with under expulsion legislation. Can such persons be considered aliens in the context of expulsion?

Malaysia laws do not recognize dual citizenships. Article 24 (1) the Federal Constitution provides that if the Federal Government is satisfied that any citizen has acquired by registration, naturalization or other voluntary and formal act the citizenship of any country outside of the Federation, the Federal Government may by order deprive that person of his citizenship.

Before an order for deprivation of citizenship can be made, the Federal Government is required pursuant to Article 27 to provide a notice in writing to the person against whom the order is proposed to be made informing him of the ground on which the order is proposed and of his right to have the case referred to a committee of inquiry.

4 (c) The question of deprivation of nationality as a possible precondition for a person's expulsion. Is such a measure allowed under domestic legislation? Is it permissible under international law?

First and foremost, it must be noted that Article 9 of the Federal Constitution prohibits the banishment of a citizen. In addition, the Banishment Act 1959 (Act 79) is an Act relating to the banishment and expulsion from Malaysia of persons other than citizens.

Section 5 of Act 79 provides that where the Minister is satisfied after such inquiry or such written information that the banishment from Malaysia of any person not being a citizen or an exempted person would be conducive to the good of Malaysia, the Minister may make an order that the person be banished from Malaysia either for the term of his natural life or for such other term as may be

specified in the order. Furthermore, section 8 provides that the Minister may, if he thinks fit, in place of issuing a warrant of arrest and detention or in place of making a banishment order, make an order requiring any person who he is satisfied is not citizen or an exempted person to leave Malaysia before the expiration of a period of fourteen days from the date of service under subsection (4) of a copy of the order.

Since the law prohibits the banishment or expulsion of a citizen, the deprivation of nationality is a possible precondition for a person's expulsion. Malaysian laws allow for the deprivation of nationality under certain specific conditions, namely, Articles 24 – 26A of FC. However, it is emphasized that only under these specific conditions a citizen may be deprived of this citizenship.

Article 24(1) of FC provides that if the Federal Government is satisfied that any citizen has acquired by registration, naturalization or other voluntary and formal act the citizenship of any country outside the Federation, the Federal Government may by order deprive that person of his citizenship. Furthermore, Article 24(2) provides that if the Federal Government is satisfied that any citizen has voluntarily claimed and exercised in any country outside the Federation any rights available to him under the law of that country, being rights accorded exclusively to its citizens, the Federal Government may by order deprive that person of his citizenship. In addition, as provided under Article 24(4), if the Federal Government is satisfied that any woman who is a citizen by registration under Article 15 "Citizenship by registration (wives and children of citizens)" has acquired the citizenship of any country outside the Federation by virtue of her marriage to a person who is not a citizen, the Federal Government may by order deprive her of her citizenship.

Article 25(1) of the FC provides that the Federal Government may by order deprive of his citizenship any person who is a citizen by registration under Article 16A Citizenship by registration (persons resident in States of Sabah and Sarawak on Malaysia Day)" or a citizen by naturalization if satisfied—

(a) that he has shown himself by act or speech to be disloyal or disaffected towards the Federation;

(b) that he has, during any war in which the Federation is or was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business which to his knowledge was carried on in such manner as to assist an enemy in that war; or

(c) that he has, within the period of five years beginning with the date of the registration or the grant of the certificate, been sentenced in any country to imprisonment for a term of not less than twelve months or to a fine of not less than five thousand ringgit or the equivalent in the currency

of that country, and has not received a free pardon in respect of the offence for which he was so sentenced

Article 25(1A) of FC provides that the Federal Government may by order deprive of his citizenship any person who is a citizen by registration under Article 16A or a citizen by naturalization if satisfied that without the Federal Government's approval, he has accepted, served in, or performed the duties of any office, post or employment under the Government of any country outside the Federation or any political subdivision thereof, or under any agency of such a Government, in any case where an oath, affirmation or declaration of allegiance is required in respect of the office, post or employment

Provided that a person shall not be deprived of citizenship under this Clause by reason of anything done before the beginning of October 1962, in relation to a foreign country, and before the beginning of January 1977, in relation to a Commonwealth country, notwithstanding that he was at the time a citizen.

Article 25(2) of FC provides that the Federal Government may by order deprive of his citizenship any person who is a citizen by registration under Article 16A or a citizen by naturalization if satisfied that he has been ordinarily resident in countries outside the Federation for a continuous period of five years and during that period has neither --

(a) been at any time in the service of the Federation or of an international organization of which the Federal Government was a member; nor

(b) registered annually at a consulate of the Federation his intention to retain his citizenship.

Provided that this Clause shall not apply to any period of residence in any Commonwealth country before the beginning of January 1977.

Article 26(1) provides that the Federal Government may by order deprive of his citizenship any citizen by registration or by naturalization if satisfied that the registration or certificate of naturalization was obtained by means of fraud, false representations or the concealment of any material fact, or was effected or granted by mistake. Article 26(2) further provides that the Federal Government may by order deprive of her citizenship any woman who is a citizen by registration under Article 15 if satisfied that the marriage by virtue of which she was registered has been dissolved, otherwise than by death, within the period of two years beginning with the date of the marriage

Article 26A provides that where a person has renounced his citizenship or has been deprived thereof under Article 24(1) or Article 26(1)(a), the Federal Government may by order deprive the citizenship of any child of that person

under the age of 21 who has been registered as a citizen, or was so registered as being the child of that person or of that person's wife or husband

5 (d) The question of the collective expulsion of aliens who are nationals of a State involved in an armed conflict with the host State. In such a situation, should a distinction be drawn between aliens living peacefully in the host State and those involved in activities hostile to it?

Malaysia is studying and following conscientiously the discussion on this issue and at this juncture would like to associate itself with the view that there is presently no universal rule prohibiting the collective expulsion of aliens.

Furthermore, the question of collective expulsion in cases of armed conflicts is not addressed by national legislation in Malaysia. It must also be noted that, legally there is no distinction between the aliens living peacefully in Malaysia and those involved in activities hostile to it

If an alien is involved in activities hostile to Malaysia, he or she may be prosecuted under the relevant criminal laws and may be convicted if successful.

Besides that, an alien will also be subjected to sections 9 and 15 of the Immigration Act 1959/63 (Act 155). Section 9 provides that the Director General may in his absolute discretion cancel any Pass at any time by writing under his hand, or cancel any Permit at any time by writing under his hand, if he is satisfied that the presence in Malaysia of the holder of any Permit is or would be, prejudicial to public order, public security, public health or morality in Malaysia. Besides that, section 15 provides that a person shall not remain in Malaysia after the cancellation of any Permit or Certificate, after the making of a declaration, after the expiration of the period of any Pass relating to or issued, or after the notification to him, in such manner as may be prescribed, of the cancellation, under any regulations made under this Act, of any Pass relating to or issued to him, unless he is otherwise authorized to remain in Malaysia under this Act

6 (e) The question of whether an alien who has had to leave the territory of a State under an expulsion order that is subsequently found by a competent authority to be unlawful has the right of return

In Malaysia, the Banishment Act 1959 [Act 79] (Revised 1972) is an Act relating to the banishment and expulsion from Malaysia of persons other than citizens. Section 8 of Act 79 provides that the Minister may, if he thinks fit, in place of issuing a warrant of arrest and detention or in place of making a banishment order make an order requiring any person who he is satisfied is not a citizen or an exempted person to leave Malaysia before the expiration of a period of fourteen days from the date of service of the order. Section 8(4) of Act 79 further provides that a copy of the expulsion order shall be served on the person against

whom it is made by a senior police officer, or by any other person authorized by the Minister to serve the order and shall be served personally on that person in the same manner as a summons is required to be served under the Criminal Procedure Code [Act 593], and the officer or person serving the copy shall notify the person against whom it is made that he may at any time within fourteen days of the service apply to the High Court for an order that the expulsion order be set aside on the ground that he is a citizen or an exempted person.

Section 10 of Act 79 provides that any person in respect of whom a expulsion order has been made may within 14 days of the service of a copy of the expulsion order under section 8(4) apply to the High Court for an order that the expulsion order be set aside on the ground that he is a citizen or an exempted person; and if it be proved on that application that the person is a citizen or an exempted person the High Court shall set aside the expulsion order, as the case may be, and direct that the applicant be set at liberty.

It must be noted that the above situation applies when the person is actually still in Malaysia at the moment when he succeeds in setting aside the expulsion order and eventually set at liberty.

However, it must be noted that when a person is banished and leaves Malaysia, even if he manages to set aside the expulsion order within 14 days of the order, he does not have the right of return to Malaysia. This is because he will now be subjected to section 6 of the Immigration Act 1959/63 (Act 155). In other words, he will only be allowed to enter Malaysia if he possesses a valid Entry Permit or Pass.

Note "exempted person" means a person exempted from sections 5 and 8 by any order made under section 12. Section 12 provides that the Minister may by order direct that any particular person, or persons of any specified class, shall be exempt, either unconditionally or subject to such conditions as the Minister may impose, from sections 5 and 8.

7 (f) Criteria that could be used to distinguish between the expulsion of an alien and the question of non-admission, more specifically, determining the point at which the removal of an illegal immigrant is governed by the expulsion procedure and not by the non-admission procedure.

A main criterion for drawing a distinction between these two procedures seems to be the "territorial" one, since it is not feasible to expel a person who is not present in the territory of the expelling State. Such a person can only be denied admission. Thus non-admission means preventing a person who is actually

outside the territory of a State from entering that State, while expulsion means forcing a person who is actually in the territory of a State to leave that territory

With regard to the non-admission of an alien, it is governed under sections 6 and 9 of the Immigration Act 1959/63 (Act 155). Section 6(1) provides that no person other than a citizen shall enter Malaysia unless he is in possession of valid Entry Permit or Pass. In addition to that, section 9 provides that the Director General may where he deems it expedient to do so in the interests of public security or by reason of any economic, industrial, social, educational or other conditions in Malaysia, by order, prohibit the entry or re-entry into Malaysia of any person or class of persons.

On the other hand, in relation to the expulsion of an alien, as mentioned above, it will only be applicable to an alien who is actually in Malaysia. In this regard, section 31 of Act 155 makes provisions for the removal of prohibited immigrants from Malaysia, where if during the examination of any person arriving in Malaysia or after such enquiry as may be necessary the person is found to be a prohibited immigrant, the Director General shall, subject to any regulations made under this Act, prohibit the person from disembarking or may in his discretion detain him at an immigration depot or other place designated by the Director General until an opportunity arises to return him to his place of embarkation or to the country of his birth or citizenship.

Furthermore, section 32 provides for removal of illegal immigrants where any person who is convicted of an offence under section 5, 6, 8 or 9 shall be liable to be removed from Malaysia by order of the Director General, provided that no citizen convicted of an offence under section 5 shall be ordered to be removed from Malaysia under this subsection.

Last but not least, section 33 provides for the removal of persons unlawfully remaining in Malaysia by reason of section 9, 15 or 60 the person shall, whether or not any proceedings are taken against him in respect of any offence against this Act, be removed from Malaysia by order of the Director General.

8 (g) The legal status of illegal immigrants located in the territorial sea or in internal waters, or in the frontier zone excluding port and airport areas. Specifically, apart from port and airport areas, is there an international zone within which an alien would be considered as not having yet entered the territory of the State? If so, how is the extent and breadth of such a zone determined?

Apart from port and airport areas, there is no international zone within Malaysia within which an alien would be considered as not having yet entered its territory.

It must be noted that section 6 of Act 155 provides that no person, unless he is a citizen, shall enter Malaysia unless he is in possession of valid Entry Permit or

Pass Besides that, section 15 of Act 155 elaborates on unlawful entry or presence in Malaysia. Therefore, any non-citizen who enters Malaysia without a valid Entry Permit or Pass will be considered an "illegal immigrant".

Reference as to the meaning of "entry" can be made to the Immigration Act 1959/63 (Act 155). Section 2 of Act 155 defines "entry" as –

- (a) in the case of a person arriving by sea, disembarking in Malaysia from the vessel in which he arrives,
- (b) in the case of a person arriving by air at an authorized airport, leaving the precincts of the airport
- (c) in the case of a person entering by land and proceeding to an immigration control post in accordance with section 26 leaving the precincts of the post for any purpose other than that of departing from Malaysia by an approved route, and
- (d) in any other case, any entry into Malaysia by land, sea or air

Provided that it shall not include in any case an entry made for the purpose of complying with this Act or an entry expressly or impliedly sanctioned by an immigration officer for the purpose of any enquiry or detention under this Act."

Nevertheless, an "illegal immigrant" who is within the territorial sea or in internal waters but has not disembarked onto the land, would still be considered under domestic laws as being unlawfully present in the territory.

9 (h) State practice in relation to grounds for expulsion, and the question of whether and, where appropriate, the extent to which such grounds are restricted by international law.

Section 5 of Banishment Act 1959 allows the Minister to make an order to banish a person if he is "satisfied after such inquiry or on such written information as he may deem necessary or sufficient that the banishment from Malaysia [of a non-citizen] would be conducive to the good of Malaysia".

In addition, non-citizens who entered Malaysia not in compliance with the provisions of the Immigration Act 1959/63 (Act 155) are regarded as illegal immigrants and are punishable under the Act. Likewise, illegal immigrants are subject to deportation in accordance with the provisions of the Act.

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PROTECTION OF PERSONS IN THE EVENT OF DISASTERS**INTERNATIONAL LAW COMMISSION (SIXTY-FIRST SESSION)****(4 MAY – 6 JUNE AND 6 JULY – 7 AUGUST 2009)**

In the report of the International Law Commission (ILC) at its sixtieth session (A/63/10) it is noted that the ILC would welcome any information concerning the practice of States under this topic, including examples of domestic legislation. The ILC would also welcome in particular information and comments on specific legal and institutional problems encountered in dealing with or responding to disasters.

Hence, the following is Malaysia's response to the above questionnaire.

A. Malaysia's domestic legislation

1. Currently Malaysia does not have a specific legislation dealing with the protection of persons in the event of disasters.

Other Legislation

2. However, Malaysia does have legislation which relate to the area of prevention of disasters, albeit indirectly. These laws are put in place to ensure that the environment is protected and to minimize the

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impact of disasters on life, properties and environment. The said legislation are as follows

- (a) Land Conservation Act 1960,
- (b) Environmental Quality Act 1974;
- (c) Local Government Act 1976, and
- (d) Occupational Safety and Health Act 1994.

3. The Land Conservation Act 1960 (Revised 1989) [Act 385] is an Act relating to the conservation of hill land and the protection of soil from erosion and the inroad of silt. As for the Environmental Quality Act 1974 [Act 127] it is an Act relating to the prevention, abatement, control of pollution and enhancement of the environment and for purposes connected therewith. An example can be seen in Part IV of the Act which stipulates the prohibition and control of pollution.

National Security Council Directive 20 on Policy and Mechanism on National Disaster and Relief Management (Directive 20)

4. The National Security Council (NSC) in the Prime Minister's Department is responsible for coordination of all activities related to man-made and natural disaster management and relief efforts in Malaysia. Their role is also to consolidate the approaches taken by the various agencies and their varied jurisdiction, powers and specialization into one uniformed plan of action. Pursuant thereto, Directive 20 was formulated to provide guidelines on the management of disasters including the responsibilities and functions

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of the various agencies under an integrated emergency management system.

5. To carry out the responsibilities of NSC in coordinating all activities related to disasters, the Disaster Management and Relief Committee (DMRC) was established to undertake the following functions:

- (a) formulation of policies and strategies at the central level and implementation at the state and district levels;
- (b) to ensure sound coordination among agencies;
- (c) to determine principle emergency agencies;
- (d) to activate the Disaster Operation Control Center at the district, state or central level;
- (e) to coordinate and mobilize resources and logistics available both from government agencies and the private sector;
- (f) to coordinate assistance and rehabilitation to disaster victims; and
- (g) to carry out post mortem analysis of the disaster.

6. The management and handling of disasters are undertaken by the DMRC at the Central, State or District Level depending on the seriousness of the disaster. The DMRC undertakes the "Bottom-Up Approach". In the event that there is a shortage of manpower, funds or assets at the District level, the State or Central Levels would provide their assistance. The District Level will operate continuously even when the State Level and Central Level are activated. The

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District Level is vital in order to successfully manage the disaster incident

7 Pursuant to Directive 20, the Standard Operating Procedures (S O P) on preparation prevention response recovery and rehabilitation of natural disasters have been issued. The function of the S O P is to outline the policy on Disaster and Relief Management according to the level and complexity of disaster, and to establish the roles and responsibilities of the various agencies involved in handling the disaster. Some of the major S O P are as follows:

- (a) S O P for flood
- (b) S O P for industrial disasters
- (c) S O P for forest fire/open burning and haze
- (d) S O P for oil, gas and petrochemical disasters
- (e) S O P for Earthquake disaster - in progress
- (f) S O P for Tsunami disaster
- (g) S O P on Pandemic/ Endemic Preparedness Plans
- (h) S O P for Drought disaster

8 The Government has taken the initiatives to implement various projects and activities towards disaster prevention and mitigation in the country. The implementation of these projects involved the cooperation and collaboration from various agencies in the country. For instance, the Stormwater Management and Road Tunnel (SMART), the National Disaster Data and Information Management System (NADCI) and the Tsunami Early Warning System Malaysia

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also established the National Disaster Relief Fund (NDRF), which is maintained through an annual allocation from the Government, public contribution and includes the operating expenditure from various agencies for recovery and reconstruction in the event of a disaster

B. Specific legal and institutional problems encountered in dealing with or responding to disasters

Specific legal problems

9 As highlighted earlier, Malaysia does not have legislation which directly deals with the protection of persons in the event of disasters or one that deals with disasters, in general. The actions taken by Malaysia dealing with disasters and in assisting persons involved in disasters are taken based primarily on Directive 20, which is administrative in nature

Specific institutional problems

10 The inadequacy of facilities for monitoring and enforcement of policies and legislation are some of the current problems faced by Malaysia in the efforts to control, prevent or minimize the impacts of natural disasters. Several management and co-ordination problems in the disaster and relief management also pose as a setback and impede the relief efforts at times. This is due to overlapping of functions and duties at the existing different Disaster Management and Relief Committees at three levels, i.e. the District, State and

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Central Levels. In this regard, each Committee will be mobilized according to the magnitude or scale of the disaster.

C. Malaysia's position internationally, regionally and bilaterally

Malaysia's position internationally

The Hyogo Framework for Action 2005-2015 (HFA)

11. The HFA was adopted by Malaysia in 2005. The World Conference on Disaster Reduction was held from 18 to 22 January 2005 in Kobe, Hyogo, Japan, adopted the HFA and issued a "Common Statement of the Special Session on the Indian Ocean Disaster: Risk Reduction for a Safer Future". Malaysia is still in the phase of restructuring, reorganizing the disaster management system to fit in with the HFA. Malaysia is also in the phase of enhancing the coordination of responsibility between the government bodies in terms of the overall disaster management system.

Global tsunami early warning system

12. Currently, the establishment of a global tsunami early warning system is being coordinated by the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organisation (IOC-UNESCO). Malaysia has also contributed to the

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global tsunami early-warning system by placing buoys off the coast of Sumatra and Langkawi.

Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations

13 As for the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations ("the Convention"), Malaysia is not a party to it. The Convention came into force on 8 January 2005 and to date has a record number of 36 States Parties to the Convention. The Convention is by far the convention with the most number of parties on the common subject-matter of disaster reduction.

14 Apart from the above, Malaysia also participates in, amongst others, the United Nations-International Search and Rescue Advisory Groups (UN-INSARAG) which primarily involves humanitarian assistance networking, the Typhoon Committee which involves cooperation on the mitigation, coordination and early warning for typhoons and the United Nations-International Strategy for Disaster Reduction (UN-ISDR).

Regional cooperation in Disaster Management

15 Malaysia supports the various regional fora such as the ASEAN Committee on Disaster Management (ACDM), the ASEAN Regional Forum (ARF), the ASEAN Regional Haze Task Force as well as the

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Sub-Regional Fire Fighting Arrangement Malaysia believes that regional mechanisms are needed to promote exchange of information and sharing of experiences among personnel involved in disaster management in the region. Such regional cooperation is expected to contribute greatly to disaster reduction efforts and enhance national disaster management capabilities in the areas of resource mobilization, communication networks, warning systems, forecasting techniques and training. In regard to this, Malaysia continues to play an expanded role in disaster management in the region.

- a) Malaysia was the Chair of the ASEAN Committee on Disaster Management (ACDM) 2008, which is one of the very few ASEAN mechanisms which gathered together a wide range of humanitarian organisations. These include the International Federation of Red Cross and Red Crescent Societies (IFRC) – which is a component in the Red Cross and Red Crescent Movement, the Asian Disaster Reduction and Response Network (ADRRN), and UN Office for the Coordination of Humanitarian Affairs (OCHA).
- b) Malaysia is a signatory to the ASEAN Agreement on Disaster Management and Emergency Response (AADMER). AADMER was signed by Malaysia in Vientiane, Lao PDR, on 26 July 2005. AADMER was created in response to the 2004 Asian Tsunami. ASEAN Member States had a Special Leaders' Meeting on the Aftermath of the Earthquake and Tsunami on 6 January 2005 which

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agreed to establish a regional early warning system such as a Regional Tsunami Early Warning Centre on the Indian Ocean and South-East Asia Region. This was subsequently followed by the signing of the AADMER on 26 July 2005. The principle purpose of the AADMER is to provide effective mechanisms to achieve substantial reduction of disaster losses in lives and in the social, economic and environmental assets of the Member States, and to jointly respond to disaster emergencies through concerted national efforts and intensified regional and international co-operation. This should be pursued in the overall context of sustainable development and in accordance with the provisions of the AADMER.

- c) Malaysia also takes part in the Asian Ministerial Conferences on Disaster Risk Reduction, which have been organized every two years since 2005 at the Governments' initiative. These Conferences provide unique opportunities for Ministers in charge of disaster management from the Asia and Pacific region to reaffirm their commitment to HFA implementation and to exchange valuable experiences on successful practices and innovative approaches in implementing HFA's five priorities for action at the national and local levels. The Conference provides a platform for Asian countries to share and exchange best practices and lessons learned from disaster risk reduction and elaborate priorities for action that may be considered by individual

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countries for implementation in Asia as identified under the HFA.

- d) Malaysia is a member of the Asian Disaster Reduction Center (ADRC). Malaysia supports the efforts of the ADRC in promoting capacity building on disaster risk reduction in the region, the operationalization of the ASEAN Center for Humanitarian Assistance (AHA) for disaster mitigation and response coordination, the development of the Asian Disaster Preparedness Centre (ADPC) to serve as a regional training arm for technical support and capacity building for disaster risk reduction and management, the United Nations Economic Social Commission for Asia and the Pacific (UN ESCAP) as a research arm for the region on disaster risk reduction and disaster management. The ADRC was established in Kobe, Hyogo prefecture, in 1998, with the mission to enhance disaster resilience of the Member Countries, to build safe communities, and to create a society where sustainable development is possible. The Center works to build disaster resilient communities and to establish networks among countries through many programs including personnel exchanges in this field.
- e) Malaysia is also a party to the East Asia Summit (EAS). On 14 December 2005, the first East Asia Summit (EAS) was held in Kuala Lumpur. The leaders of all countries at the summit adopted and signed the Kuala Lumpur Declaration of

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the EAS. The Declaration states that all the countries at the summit will strengthen strategic dialogue and cooperation on political and security issues, promote East Asian development through enhanced technological transfer, infrastructure construction and humanitarian assistance and push for trade and investment expansion and liberalization process. The countries should also strengthen non-governmental exchanges, build up mutual trust and unity and push for cooperation in the areas of environmental protection, communicable disease prevention and disaster reduction. One of the priority areas of cooperation highlighted on the 2nd EAS held in January 2007 was on disaster risk reduction.

Bilateral cooperation and assistance

16. Malaysia has signed Memorandum of Understandings (MoUs) with Thailand, Indonesia and France for disaster cooperation and assistance. Malaysia also has an arrangement with the Singapore Civil Defense Force (SCDF) for bilateral networking and disaster cooperation and assistance.

Prepared by,

Attorney General's Chambers,

Malaysia

24 August 2009

ANNEXURE A

**MALAYSIA'S RESPONSE TO THE QUESTIONNAIRE ON OIL AND GAS BY THE
WORKING GROUP ON SHARED NATURAL RESOURCES
INTERNATIONAL LAW COMMISSION**

Question 1

Do you have any agreement(s), arrangement(s) or practice with your neighbouring State(s) regarding the exploration and exploitation of transboundary oil and gas resources or for any other cooperation for such oil or gas?

Such agreements or arrangements should include, as appropriate, maritime boundary delimitation agreements, as well as unitization and joint development agreements or other arrangements. Please provide a copy of the agreement(s) or arrangement(s) or describe the practice.

Yes. Malaysia has signed two instruments with the Government of Thailand, namely:

- (a) Memorandum of Understanding between Malaysia and the Kingdom of Thailand on the Establishment of a Joint Authority for the Exploitation of the Resources of the Sea-Bed in a Defined Area of the Continental Shelf of the Two Countries in the Gulf of Thailand, signed on 21 February 1979, and
- (b) Agreement on the Constitution and Other Matters Relating to the Establishment of the Malaysia-Thailand Joint Authority signed by the Government of Malaysia and the Government of the Kingdom of Thailand on 30 May 1990.

The instruments establish cooperation between Malaysia and Thailand for the exploration and exploitation of natural resources in a designated Joint Development Area, which is an overlapping economic zone located offshore between Malaysia and Thailand in the Gulf of Thailand. The exclusive rights, powers, liberties and privileges of exploring and exploiting natural resources in the Joint Development Area is vested in the Malaysia-Thailand Joint Authority ("MTJA").

Question 2

Are there any joint bodies, mechanisms or partnerships (public or private) involving exploration, exploitation or management of the transboundary oil or gas? Please provide information describing the nature and functioning of such arrangements, including governing principles.

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The rights and responsibilities regarding the exploration and exploitation of non living natural resources in the Joint Development Area, particularly petroleum, are vested in the Malaysia Thailand Joint Authority (MTJA). MTJA is a statutory body created under the laws of Malaysia and Thailand in 1991 and is governed by a Board of Members consisting of equal representatives of Malaysian and Thai nationals as appointed by the respective Governments.

The costs and benefits derived from the MTJA from activities carried out in the Joint Development Area are equally borne and shared by the Governments. The Joint Authority shall pay to each of the Governments royalty of the gross production of petroleum on terms as agreed to by the Parties.

Question 3

If the answer to question 1 is yes, please answer the following questions on the content of the agreements or arrangements and regarding the practice:

- (a) Are there any specific principles, arrangements or understandings regarding allocation or appropriation of oil and gas, or other forms of cooperation? Please provide a description of the principles, provisions, arrangements or understandings;
- (b) Are there any arrangements or understandings or is there any practice regarding prevention and control of pollution or regarding other environmental concerns, including mitigation of accidents? Please provide further description.

With regard to Question 3(a), the exploration and exploitation of oil and gas at the Joint Development Area could only be carried out by the MTJA or a person contracted by the MTJA under a production sharing contract, upon approval by the Government of Malaysia and the Government of Thailand. The payments to be made under the said production sharing contract will be made on terms as agreed by the Parties.

With regard to Question 3(b), in the case of the Joint Development Area, provisions on prevention and control of pollution is reflected in the *Malaysia-Thailand Joint Authority Procedures for Production Operations*, which, among others,

- (i) oblige the Contractor to prepare and submit to the MTJA a contingency plan which shall include description of procedure, personnel, chemicals and

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equipment that will be used. In control, clean-up, and reporting of any pollution resulting from spill of oil, which might occur during production operations; and

- (ii) outline the principles which the Contractor is obliged to carry out with regard to the disposal, discharge and emission of wastes from production operations is to be carried out by the Contractor

In addition, in the *Malaysia-Thailand Joint Authority (Standards of Petroleum Operations) Regulations 1997*, the Contractor is obliged to take all necessary precautions in accordance with good petroleum industry practice, including steps to prevent leakage or seepage of petroleum and to prevent spilling of toxic fluids or toxic chemicals.

Question 4

Please provide any further comments or information, including legislation, judicial decisions, which you consider to be relevant or useful to the Commission in the consideration of issues regarding oil and gas.

In Malaysia, all activities regarding oil and gas including exploration and exploitation are governed by the following legislation

- (a) Petroleum Development Act 1974 (Act 144);
- (b) Petroleum Mining Act 1966 (Act 95);
- (c) Petroleum (Safety Measures) Act 1984 (Act 302), and
- (d) Petroleum (Income Tax) Act 1967 (Act 543)

as well as various rules and regulations under those Acts

Question 5

Are there any aspects in this area that may benefit from further elaboration on the context of the Commission's work? Please indicate those aspects.

With regard to the Commission's work in the codification of the laws on transboundary oil and gas, Malaysia is of the view that the Commission should not proceed with the codification. This is because the question of transboundary oil and gas involves highly technical data and revolved around politically sensitive issues as well as the issue of sovereignty of States.