

ARTICLES ON THE LAW OF TRANSBOUNDARY AQUIFERS

At its fifty-second session, in 2000, the International Law Commission decided to include the topic “Shared natural resources of States” in its programme of work, following the recommendation of a Working Group on the long-term programme of work (A/55/10). On 12 December 2000, the General Assembly, in resolution 55/152, took note of the report of the Commission on the work of its fifty-second session with regard to its long-term programme of work. At its fifty-sixth session, in 2001, the General Assembly adopted resolution 56/82 of 12 December 2001, by which it requested the Commission to give further consideration to the topics to be included in its long-term programme of work, having regard to comments made by Governments, either in the Sixth Committee or in written form.

At its fifty-fourth session, in 2002, the Commission decided to include the topic “Shared natural resources” in its programme of work, to appoint Chusei Yamada as Special Rapporteur for the topic, and to establish a Working Group to assist the Special Rapporteur (Report of the International Law Commission on the work of its fifty-fourth session, A/57/10). The General Assembly, at its fifty-seventh session, in 2002, adopted resolution 57/21 on 19 November, by which it took note of the Commission’s decision to include the topic in its programme of work.

At its fifty-fifth session, in 2003, the Commission considered the first report of the Special Rapporteur (A/CN.4/533 and Add.1). The report sought to provide the background of the topic and general guidance from the Commission on the course of the future study, as well as provide a tentative timetable for the endeavour. The Special Rapporteur also proposed to limit the scope of the topic to the study of confined transboundary groundwaters, oil and gas, with work proceeding initially on the study of confined transboundary groundwaters. The Commission had an informal briefing by experts on groundwaters from the Food and Agriculture Organization and the International Association of Hydrogeologists (Report of the International Law Commission on the work of its fifty-fifth session, A/58/10). The General Assembly, in resolution 58/77 of 9 December 2003, invited Governments to provide information to the Commission regarding national legislation, bilateral and other agreements and arrangements with regard to the use and management of transboundary groundwaters, in particular those governing quality and quantity of such waters, relevant to the topic.

At its fifty-sixth session, in 2004, the Commission had before it the second report of the Special Rapporteur (A/CN.4/539 and Add.1). The report provided a general framework for the topic and covered the scope of a possible convention, use of terms, principles governing uses of aquifer system, the obligation not to cause harm, the general obligation to cooperate, regular exchange of data and information and different kinds of use, together with several aquifer models and selected case studies. The Commission established an open-ended Working Group on Transboundary Groundwaters, chaired by the Special Rapporteur. The Commission also had two informal briefings by experts on groundwaters from the Economic Commission for Europe, the United Nations Educational, Scientific and Cultural Organization, the Food and Agriculture Organization and the International Association of Hydrogeologists on 24 and 25 May 2004. At the request of the Special Rapporteur, the Commission agreed that a questionnaire, prepared by the Special Rapporteur, be circulated to Governments and relevant intergovernmental organizations asking for their views and information regarding groundwaters (Report of the International Law Commission on the work of its fifty-sixth session, A/59/10).

At its fifty-ninth session, in 2004, the General Assembly adopted resolution 59/41 on 2 December, in which it drew the attention of Governments to the importance for the

Commission of having their views on the various aspects involved in the topics on the agenda of the Commission.

At its fifty-seventh session, in 2005, the Commission considered the third report of the Special Rapporteur (A/CN.4/551 and Add.1) as well as comments and observations received from 20 Governments and three relevant inter-governmental organizations (A/CN.4/555 and Add. 1). In his third report, the Special Rapporteur proposed a complete set of 25 draft articles of a draft convention on the law of transboundary aquifers, together with an addendum setting out provisions of legal instruments relevant to some of the draft articles. The Commission once again established a Working Group. The Working Group reviewed and revised eight draft articles. The Commission subsequently took note of the report of the Group (A/CN.4/L.681), as well as of its proposal that it be reconvened at the 2006 session in order that it may complete its work (A/60/10). At its sixtieth session, in 2005, the General Assembly invited Governments to provide information to the Commission on the topic by resolution 60/22 of 23 November 2005.

At its fifty-eighth session, in 2006, the Commission decided to reconvene the Working Group. The Working Group held five meetings (Second report of the Working Group on Shared natural resources, A/CN.4/L.683) and completed the review of the draft articles submitted by the Special Rapporteur in his third report. The Commission subsequently adopted, on first reading, 19 draft articles on the law of transboundary aquifers and commentaries thereto (A/CN.4/L.688 and Add.1). It decided, in accordance with articles 16 to 21 of its statute, to transmit the draft articles through the Secretary General for comments and observations, with the request that such comments and observations be submitted to the Secretary General by 1 January 2008 (Report of the International Law Commission on the work of its fifty-eighth session, A/61/10).

At its sixty-first session, in 2006, the General Assembly adopted resolution 61/34 of 4 December 2006, by which it expressed its appreciation for the completion of the first reading of the draft articles on the law of transboundary aquifers.

At its fifty-ninth session, in 2007, the Commission considered the fourth report of the Special Rapporteur (A/CN.4/580), which focused on the relationship between the work on transboundary aquifers and any future work on oil and gas and recommended the Commission to proceed with the second reading of the draft articles on the law of transboundary aquifers independently of any future consideration of oil and gas. The Commission also re-established the Working Group on Shared Natural Resources which addressed (a) the substance of the draft articles on the law of transboundary aquifers adopted on first reading; and (b) the final form that the draft articles should take (Third report of the Working Group on Shared natural resources, A/CN.4/L.717; Report of the International Law Commission on the work of its fifty-ninth session, A/62/10).

At its sixty-second session, in 2007, the General Assembly adopted resolution 62/66 of 6 December, by which it invited Governments to provide information to the Commission on the topic and drew the attention of Governments to the importance for the Commission of having their comments and observations by 1 January 2008 on the draft articles and commentaries on the law of transboundary aquifers adopted on first reading by the Commission at its fifty-eighth session.

At its sixtieth session, in 2008, the Commission had before it the fifth report of the Special Rapporteur comprising a set of 20 draft articles on the law of transboundary aquifers for the consideration of the Commission on second reading (A/CN.4/591). The Commission also considered the comments and observations received from Governments on the draft articles adopted on first reading (A/CN.4/595 and Add.1). The debate focused primarily on the substantive consideration of the draft articles proposed by the Special Rapporteur, as well as on the form of the draft articles, taking into account draft article 20

on the relation to other conventions and international agreements proposed by the Special Rapporteur, as well as his recommendation that a two-step approach be followed with regard to the draft articles, consisting in the General Assembly (a) taking note of the draft articles, to be annexed to its resolution and recommending that appropriate action by States be taken; and (b) deciding at a later stage on the possibility of concluding a convention on the topic (Report of the International Law Commission on the work of its sixtieth session, A/63/10). The Commission subsequently adopted, on second reading, a preamble and a set of 19 draft articles on the law of transboundary aquifers, with commentaries thereto (A/CN.4/L.724). The Commission also decided, in accordance with article 23 of its statute, to recommend to the General Assembly: (a) To take note of the draft articles on the law of transboundary aquifers in a resolution, and to annex these articles to the resolution; (b) To recommend to States concerned to make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers on the basis of the principles enunciated in these articles; (c) To also consider, at a later stage, and in view of the importance of the topic, the elaboration of a convention on the basis of the draft articles.

At its sixty-third session, in 2008, the General Assembly adopted resolutions 63/123 and 63/124 on 11 December, by which it expressed, *inter alia*, its appreciation to the Commission for the work accomplished at its sixtieth session, and it took note of the Articles on the Law of Transboundary Aquifers presented by the Commission and commended them to the attention of Governments without prejudice to the question of their future adoption or other appropriate action. The General Assembly also encouraged the States concerned to make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers.

At its sixty-second session, in 2010, the Commission decided once more to establish a Working Group on Shared Natural Resources. The Working Group considered all aspects of the matter and recommended that the Commission should not take up the consideration of the transboundary oil and gas aspects of the topic. The Commission took note of the oral report of the Chairman of the Working Group and endorsed that recommendation (A/65/10, paragraph 384).

At its sixty-sixth session, in 2011, the General Assembly adopted resolution 66/104 on 9 December 2011, by which it decided, *inter alia*, to include in the provisional agenda of its sixty-eighth session (2013) the item entitled “The law of transboundary aquifers” and, in the light of written comments of Governments, as well as views expressed in the debates of the Sixth Committee held at its sixty-third and sixty-sixth sessions, to continue to examine, *inter alia*, the question of the final form that might be given to the draft articles.