SHARED NATURAL RESOURCES

[Agenda item 9]

DOCUMENT A/CN.4/533 and Add.1

First report on shared natural resources: outlines, by Mr. Chusei Yamada, Special Rapporteur

[*Original: English*]
[*30 April and 30 June 2003*]

CONTENTS

Multilateral instruments cited in the present report

	Source
Final Act of the Congress (Vienna, 9 June 1815)	*British and Foreign State Papers, 1814–1815*, vol. II, p. 3.
General Treaty for the Re-Establishment of Peace between Austria, France, Great Britain, Prussia, Sardinia and Turkey, and Russia (Paris, 30 March 1856)	*Ibid.*, *1855–1856*, vol. XLVI, p. 8.
Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 17 March 1992)	United Nations, *Treaty Series*, vol. 1936, No. 33207, p. 269.
Convention on the Law of the Non-navigational Uses of International Watercourses (New York, 21 May 1997)	*Official Records of the General Assembly, Fifty-first Session, Supplement No. 49*, vol. III, resolution 51/229, annex.

Works cited in the present report

Almássy, E. and Zs. Buzás

Inventory of Transboundary Groundwaters. Vol. 1. Lelystad, September 1999.

Burke, Jacob J. and Marcus H. Moench

Groundwater and Society: Resources, Tensions And Opportunities. United Nations publication, Sales No. E.99.II.A.1.

Foster, Stephen and others

Utilization of Non-Renewable Groundwater: a Socially-Sustainable Approach to Resource Management. Briefing Note No. 11. GW-MATE Briefing Note Series. Washington, D.C., World Bank, 2002.

Leeden, Frits van der, Fred L. Troise and David Keith Todd

The Water Encyclopedia. 2nd ed. CRC Press, 1990.

Shiklomanov, Igor A.

“Global renewable water resources”, *in* H. Zebedi, *Water: A Looming Crisis?* Proceedings of the International Conference on World Water Resources at the Beginning of the Twenty-First Century, Paris, UNESCO, 3–6 June 1998.

Zaporozec, Alexander and John C. Miller

Ground-Water Pollution. Paris, UNESCO, 2000.

Zektser, Igor S. and Lorne G. Everett

Groundwater and the Environment: Applications for the Global Community. CRC Press, 2000. 192 p.

PART ONE: OUTLINES OF THE TOPIC

Introduction

1. This first report is a very preliminary one, dealing with the outlines of the topic “Shared natural resources”. It consists of the present introduction, the background on how the current topic of shared natural resources has been formulated and a review of the problems that should be addressed concerning “confined transboundary groundwater”.[1]

2. The General Assembly, at its fifty-fourth session in 1999, encouraged the International Law Commission “to proceed with the selection of new topics for its next quinquennium corresponding to the wishes and preoccupations of States and to present possible outlines for new topics and information related thereto in order to facilitate decision thereon” by the Assembly.[2] The Commission, at its fifty-second session in 2000, considered its long-term programme of work and after careful examination of the preliminary studies on the various subjects, agreed that the following topics were appropriate for inclusion in the long-term programme of work:[3]

1. Responsibility of international organizations;
2. Effects of armed conflict on treaties;
3. Shared natural resources of States;
4. Expulsion of aliens;
5. Risks ensuing from fragmentation of international law.

3. At its fifty-fifth session in 2000, the General Assembly only took note of the report of the Commission “with regard to its long-term programme of work, and the syllabuses on new topics”.[4] Subsequently, the Commission, at its fifty-third session in 2001, decided, in order to use the time available more efficiently, “to give priority during the first week of the first part of its fifty-fourth session to the appointment of two Special Rapporteurs on two of the five topics included in its long-term programme of work”.[5] During the debate in the Sixth Committee at the fifty-sixth session of the Assembly in 2001, delegations saw particular merit in the proposed five “new topics in view of the potential need for clarification of the law in areas in which practical problems might arise. Many delegations were of the view that the topic “Responsibility of international organizations” was ripe for codification and that the Commission should give priority to it from among the five recommended topics. Some delegations also expressed support for consideration of the topic “Shared natural resources”.[6] The Assembly thereupon requested the Commission “to begin its work on the topic “Responsibility of international organizations” and to give further consideration to the remaining topics to be included in its long-term programme of work, having due regard to comments made by Governments”.[7]

4. At the first part of its fifty-fourth session in 2002, the Commission decided on the inclusion in the programme of work of the Commission of the item entitled “Shared natural resources”, the appointment of a Special Rapporteur on the item and the establishment of a working group to assist the Special Rapporteur.[8] During the second part of the session, the Special Rapporteur prepared a discussion paper for consideration in informal consultations,[9] in which he described the background underlying the proposal of the topic in the Planning Group of the Commission and indicated his intention to deal with confined transboundary groundwaters, oil and natural gas under the topic. While the Special Rapporteur recognized that a single mineral deposit may exist under the jurisdiction of more than two States, that many marine living resources are also shared resources and that animals on land and birds may also migrate across borders, he was of the view that it was not appropriate to deal with those resources under the present topic as they had characteristics that were far too different from those of groundwaters, oil and gas, and could be and in fact were dealt with more appropriately elsewhere. He also proposed to adopt a step-by-step approach to the study of the topic, first taking up groundwaters. He then proposed the following work programme in the current quinquennium:

2003 First report on outlines

2004 Second report on confined groundwaters

2005 Third report on oil and gas

2006 Fourth report on comprehensive review.

Members of the Commission offered various valuable suggestions and were generally supportive of the approach suggested by the Special Rapporteur.

5. During the debate in the Sixth Committee at the fifty-seventh session of the General Assembly in 2002, very few delegations commented on the topic of “Shared natural resources”. Those delegations that did so generally supported the study of the topic. A concern was expressed with regard to the appropriateness of the title of the topic. According to another view, the topic should be limited to the issue of groundwater as a complement to the past work of the Commission on transboundary waters. Other areas of transboundary resources were not ripe for consideration. Apart from the area of transboundary watercourses, real conflicts rarely arose between States, and

[1] *Yearbook ... 1994*, vol. II (Part Two), p. 135.

[2] General Assembly resolution 54/111 of 2 February 2000, para. 8.

[3] *Yearbook ... 2000*, vol. II (Part Two), p. 131, para. 729.

[4] General Assembly resolution 55/152 of 19 January 2001, para. 8.

[5] *Yearbook ... 2001*, vol. II (Part Two), p. 206, para. 259.

[6] Topical summary of the discussion held in the Sixth Committee of the General Assembly during its fifty-sixth session (A/CN.4/521), para. 122.

[7] General Assembly resolution 56/82 of 18 January 2002, para. 8.

[8] *Yearbook ... 2002*, vol. II (Part Two), p. 100, para. 518 (*a*).

[9] ILC (LIV)/IC/SNR/WP.1 (8 August 2002).

when they did, practical accommodations suitable to the specific situation had been reached. According to this view, an effort to extrapolate customary international law from that divergent practice would not be a productive exercise.[10] The Assembly at its fifty-seventh session only took note of the decision of the Commission to include in its programme of work the topic "Shared natural resources".[11] In view of the very limited responses from States so far, the Special Rapporteur intends to proceed along the lines suggested in paragraph 4 above at least for the time being, although the study on groundwaters might require much longer time than envisaged there.

[10] Topical summary of the discussion held in the Sixth Committee of the General Assembly during its fifty-seventh session (A/CN.4/529), para. 236.

[11] General Assembly resolution 57/21 of 21 January 2003, para. 2.

Chapter I

Background of the topic

6. The first time that the Commission dealt with the problem of shared natural resources was when it deliberated on the law of the non-navigational uses of international watercourses. A brief review of its codification would be useful for the work. The legal regime of international rivers was first taken up at the Congress of Vienna in 1815 where the principle of free navigation on the international rivers in Europe was proclaimed.[12] The Danube was of special importance in the development of the European law on international rivers. The European Danube Commission established by the Peace Treaty of Paris of 1856[13] regulated through international cooperation the navigation on the Danube and set the examples for other river commissions to follow. The development of international law on rivers was at first almost totally concerned with the rights of free navigation.

7. It later also became necessary to deal with such other uses of international rivers as for the production of energy, irrigation, industrial processes, transportation other than navigation (logging), and recreation. In most major river systems, downstream States utilize waters to the full extent. New uses of waters by upstream States are bound to affect in some way the historically acquired interest of the downstream States. Such uses of waters also pose environmental concerns by their attendant risks of pollution. There exists a fundamental difference between the navigational regime and the non-navigational use regime. The aim of the navigational regime is to provide the concerted administrative measures to guarantee free navigation on the river system. The non-navigational use regime must focus on providing an equitable balance of interests to the States concerned and to safeguard against adverse effects on the environment.

8. In 1970 the General Assembly recommended that the Commission should "take up the study of the law on the non-navigational uses of international watercourses with a view to its progressive development and codification".[14] The work in the Commission began in 1971 and continued until 1994 with five successive Special Rapporteurs, Messrs. Richard D. Kearney, Stephen M. Schwebel, Jens Evensen, Stephen C. McCaffrey and Robert Rosenstock. From the outset of the work, the Commission received ample input from States: almost half of the States made their positions known to the Commission. The draft articles prepared by the Commission on its first reading in 1991[15] received hardly any criticism. The final draft articles,[16] incorporating only minor changes to the 1991 draft, were formulated and presented to the Assembly in 1994 by the Commission. The Assembly thereupon decided to set aside two years for reflection by States and to convene a Working Group of the Whole of the Sixth Committee in 1996 to elaborate a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles formulated by the Commission.

9. The Working Group of the Whole of the Sixth Committee was convened in 1996 and 1997 and succeeded in the elaboration of the Convention on the Law of the Non-navigational Uses of International Watercourses on 4 April 1997. Upon the recommendation of the Working Group, the General Assembly adopted the Convention on 21 May 1997 by a vote of 103 to 3, with 27 abstentions.[17] The Convention has not yet received the 35 ratifications required for it to enter into force.

10. The main feature of the Convention on the Law of the Non-navigational Uses of International Watercourses is that it was conceived as a framework convention which would provide residual rules. The general principles it embodies are equitable and reasonable utilization and participation by States in the uses of international water resources on the one hand, and the obligation of States, in utilizing international watercourses in their territories, to take all appropriate measures not to cause significant harm to other watercourse States, on the other. These principles are to be put into effect through cooperation among the watercourse States concerned, in particular through the system of notification of planned measures. Before a watercourse State implements or permits the implementation of planned measures that may have a significant adverse effect upon other watercourse States, it should provide those States with timely notification thereof. The exchange of relevant information, consultations and negotiations is required. The protection and preservation of the ecosystems of international watercourses and the

[12] Final Act of the Congress.

[13] General Treaty for the Re-Establishment of Peace between Austria, France, Great Britain, Prussia, Sardinia and Turkey, and Russia, art. XVII.

[14] General Assembly resolution 2669 (XXV) of 8 December 1970, para. 1.

[15] *Yearbook ... 1991*, vol. II (Part Two), p. 66.

[16] *Yearbook ... 1994* (see footnote 1 above), p. 89.

[17] By means of its resolution 51/229.

prevention, reduction and management of the pollution of international watercourses are also stipulated. It is noteworthy that the settlement of disputes includes compulsory reference to an impartial fact-finding commission, although its findings are not binding upon the States concerned.

11. There were three major issues of contention during the negotiations in the Working Group of the Sixth Committee. The first involved the nature of the framework convention and its relationship to watercourse agreements for specific rivers. The downstream States insisted on the priority of the special agreements over the framework convention, while the developing upstream States wanted the principles in the framework convention to prevail. These are two practical considerations to be kept in mind. In any event, the consent of all watercourse States is required. And in reality, the principles enunciated in the framework convention would certainly affect the special watercourse agreement. The second issue was the balance between the principle of equitable and reasonable utilization and participation (art. 5) and that of the obligation not to cause significant transboundary harm (art. 7). This was indeed the core of the contention. The upstream States contended that unless this principle of utilization was given precedence over the no harm principle, they would not be able to execute development projects. On the other hand, the downstream States upheld the *sic utere tuo ut alienum non laedas* maxim (one should use his own property in such a manner as not to injure that of another). This point of contention was finally resolved by the package of linking the two principles by the words "having due regard for" in article 7, paragraph 2. This rather weak linkage might seem to favour the upstream States. Nevertheless, the upstream States must abide by the stringent regulations for new development projects as stipulated in part III of the Convention on the Law of the Non-navigational Uses of International Watercourses, and the total balance is achieved. The third issue related to dispute settlement, in particular whether it was necessary to have a compulsory fact-finding regime. This was solved through the tacit understanding that States might enter reservations if they could not accept compulsory referral to a fact-finding commission. All the above issues and solutions achieved thereto would be very relevant when the legal regime of any other shared natural resources is to be considered.

12. During the consideration of the law of the non-navigational uses of international watercourses in the Commission, the question of groundwater was raised in the context of the scope of the Convention on the Law of the Non-navigational Uses of International Watercourses. The Special Rapporteur, Mr. McCaffrey, presented a detailed study on the subject.[18] In his analysis of the components of a watercourse to be included in the definition of "international watercourse", he emphasized two aspects of groundwater. One was its quantity: the most astonishing feature of groundwater is its sheer quantity in relation to surface water. Groundwater constitutes approximately 97 per cent of the fresh water on earth, excluding polar ice caps and glaciers.[19] The other aspect was its use: groundwater is heavily relied upon to satisfy basic human needs, particularly in the developing world. To Mr. McCaffrey, the fundamental characteristic of groundwater seemed to be that while its flow is slow in comparison with that of surface water, it is constantly in motion, and while it may in exceptional cases exist in areas where there is virtually no surface water, it is normally closely associated with rivers and lakes. These two features of groundwater—its mobile nature and its interrelationship with surface water—indicate that the actions of one watercourse State involving its groundwater may affect the groundwater or surface water in another watercourse State. Thus, in the view of the Special Rapporteur, groundwater needed to be included in the scope of the Convention. The Commission debated his proposal and finally agreed to include in the draft Convention groundwater related to surface water. The draft article adopted by the Commission on first reading defined "watercourse" as "a system of surface and underground waters constituting by virtue of their physical relationship a unitary whole and flowing into a common terminus" (art. 2 (*b*)).[20] The rationale for including groundwater was that because the surface and underground waters formed a system of a unitary whole, human intervention at one point in such a system might have effects elsewhere within the same system. It follows from the unity of the system that the term "watercourse" so defined in the draft articles does not include "confined" groundwater, which is unrelated to any surface water. It was suggested that confined groundwater could be the subject of a separate study by the Commission with a view to the preparation of draft articles.

13. Mr. Rosenstock, who succeeded Mr. McCaffrey as Special Rapporteur in 1992, reopened the issue of groundwater. In introducing his first report[21] in 1993, he was inclined to include "unrelated confined groundwaters" in the topic. If the Commission was receptive to that idea, he would then prepare relevant changes in the draft articles. Mr. Rosenstock presented his study on "unrelated" confined groundwaters as an annex to his second report[22] in 1994. He contended that his study had demonstrated the wisdom of including unrelated confined groundwaters in the draft articles and noted that the recent trend in the management of water resources had been to adopt an integrated approach. Inclusion of "unrelated" confined groundwaters was the bare minimum in the overall scheme of the management of all water resources in an integrated manner. He was convinced that the principles and norms applicable to surface water and related groundwaters were equally applicable to unrelated confined groundwaters. In his view the changes required in the draft to achieve this wider scope were relatively few and uncomplicated and he prepared such changes as required to the draft articles. Extensive substantive discussions on his proposal took place in the Commission in 1993 and 1994.[23] While some members agreed with Mr. Rosenstock's proposal to include unrelated confined

[18] *Yearbook ... 1991*, vol. II (Part One), document A/CN.4/436, pp. 50–60, paras. 8–58.

[19] *Ibid.*, p. 52, para. 17.

[20] See footnote 15 above.

[21] *Yearbook ... 1993*, vol. II (Part One), p. 179, document A/CN.4/451.

[22] *Yearbook ... 1994*, vol. II (Part One), document A/CN.4/462, p. 123.

[23] *Yearbook ... 1993*, vol. I, summary records of the 2309th, 2311th–2316th and 2322nd meetings; and *Yearbook ... 1994*, vol. I, summary records of the 2334th–2339th, 2353rd–2356th meetings.

groundwaters in the scope, many members had reservations. They did not see how "unrelated" groundwaters could be envisaged as part of a system of water that constituted a unitary whole. In their view, the use of confined groundwaters was relatively new and little was known about such resources. However, they agreed that, in view of the fact that groundwater was of great importance in some parts of the world and that the law relating to confined groundwater was more akin to that governing the exploitation of natural resources, especially oil and gas, the separate treatment was warranted.

14. In the end, the Commission decided not to include unrelated confined groundwaters in the draft Convention on the Law of the Non-navigational Uses of International Watercourses[24] and adopted draft article 2 as formulated on first reading with minor reduction. In 1997, the General Assembly adopted article 2 without substantial change to the draft of the Commission. The final text is:

Article 2

Use of terms

For the purposes of the present Convention:

(*a*) "Watercourse" means a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus;

(*b*) "International watercourse" means a watercourse, parts of which are situated in different States;

…

15. At the same time, the Commission adopted and submitted the following resolution to the General Assembly commending States to be guided by the principles contained in the draft articles on the law of the non-navigational uses of international watercourses, where appropriate, in regulating transboundary groundwater:

The International Law Commission,

Having completed its consideration of the topic "The law of the non-navigational uses of international watercourses",

Having considered in that context groundwater which is related to an international watercourse,

Recognizing that confined groundwater, that is groundwater not related to an international watercourse, is also a natural resource of vital importance for sustaining life, health and the integrity of ecosystems,

Recognizing also the need for continuing efforts to elaborate rules pertaining to confined transboundary groundwater,

Considering its view that the principles contained in its draft articles on the law of the non-navigational uses of international watercourses may be applied to transboundary confined groundwater,

1. *Commends* States to be guided by the principles contained in the draft articles on the law of the non-navigational uses of international watercourses, where appropriate, in regulating transboundary groundwater;

2. *Recommends* States to consider entering into agreements with other State or States in which the confined transboundary groundwater is located;

3. *Recommends also* that, in the event of any dispute involving transboundary confined groundwater, the States concerned should consider resolving such dispute in accordance with the provisions contained in article 33 of the draft articles, or in such other manner as may be agreed upon.[25]

16. The General Assembly did not take any action on the recommendation of the Commission on confined transboundary groundwater.

17. When the Commission selected "shared natural resources" as one of the new topics in 2000 for the future quinquennium, it did so on the basis of the syllabus prepared by Mr. Rosenstock.[26] Mr. Rosenstock suggested that the Commission could usefully undertake the topic focused exclusively on water, particularly confined groundwaters, and such other single geological structures as oil and gas. The effort should be limited to natural resources within the jurisdiction of two or more States. The environment in general and the global commons raised many of the same issues but a host of others as well.

18. It is against this background that the Special Rapporteur proposes to take up confined groundwaters, oil and gas under the current topic and to begin first with confined groundwaters. It is furthermore noted that the current work of the Commission on the topic of international liability for injurious consequences arising out of acts not prohibited by international law is also of relevance to the work on shared natural resources. Although it does not address the use of resources as such, it deals with the activities within the jurisdiction of a State which could have transboundary effects in other States.

[24] *Yearbook ... 1994* (see footnote 1 above), p. 90, para. (4) of the commentary to article 2.

[25] See footnote 1 above.

[26] *Yearbook ... 2000* (see footnote 3 above), annex, sect. 3, p. 141.

Chapter II

Confined transboundary groundwaters

19. It follows from the discussion above that the scope of "groundwater" which is supposed to be addressed covers water bodies that are shared by more than two States but are not covered by article 2 (*a*) of the Convention on the Law of the Non-navigational Uses of International Watercourses. Various terms are in use to refer to such water body: "unrelated confined groundwaters", "confined groundwaters", "confined transboundary groundwaters", "internationally shared aquifer", and others. The term applies to a body of water which is an independent body that does not contribute water to a common terminus via a river system or receive a significant amount of water from any extant surface water body. It is necessary to formulate a precise definition of such a water body on the basis of a correct understanding of its hydrogeological characteristics. Until a decision can be

reached on the definition, the Special Rapporteur intends to use the term “confined transboundary groundwaters” for purposes of convenience.

20. It was perhaps a wise decision by the Commission to conduct a separate study on confined transboundary groundwaters. It is obvious that almost all the principles embodied in the Convention on the Law of the Non-navigational Uses of International Watercourses are also applicable to confined transboundary groundwaters. However, there exist distinct differences between these two water bodies. To cite an example, while surface water resources are renewable, groundwater resources are not. This means that when groundwater is extracted, it will be quickly depleted, as recharge will take years. When groundwater is contaminated, it will remain so for many years. In the case of surface water, the activities to be regulated are those involving the uses of such resources. In the case of groundwater, one may also have to regulate activities other than the uses of the resources that might adversely affect the condition and quality of groundwater. Additional principles need to be considered to address these unique problems.

21. Although water is the most widely occurring substance on earth and 70 per cent of the earth’s surface is covered by water, merely 2.53 per cent of it is fresh water. Still further, two thirds of this fresh water is locked up in ice in the polar districts and in glaciers.[27] The portion of fresh water available for human consumption is therefore only 1 per cent. Per capita usage is increasing, with enhanced lifestyles and the rapid growth of the world population. As a consequence, fresh water is becoming scarce. Moreover, freshwater resources are being increasingly polluted due to human activities. Fifty per cent of the population in developing countries is currently exposed to unsafe water resources; 6,000 infants in the developing world die every day as a result of dirty, contaminated water—the equivalent of 20 jumbo passenger jet crashes daily; or of the entire population of central Paris being wiped out annually.[28] We are headed for a world water crisis. This is the challenge that the World Water Forum is designed to cope with through international cooperation.[29]

22. In contrast to surface water, human knowledge of underground water resources is still limited despite their massive volume and their high and pure quality. One estimate puts the total amount of groundwater resources at 23,400,000 km^3, compared with 42,800 km^3 in rivers.[30] The science of the hydrogeology of groundwater is rapidly developing, but it seems to be treating groundwater as a whole rather than distinguishing between groundwater related to surface water and that unrelated to it. Management of confined transboundary groundwaters is still in its infancy and there is a clear need for initiating international cooperation for that purpose. Under the auspices of UNESCO and the International Association of Hydrogeologists (IAH) in cooperation with FAO and UNECE, a programme proposal for an international initiative on Internationally Shared (Transboundary) Aquifer Resources Management (ISARM) was prepared. The objective of the programme is to support cooperation among States to develop their scientific knowledge and to eliminate potential for conflict. It will provide training, education and information and provide inputs for policies and decision-making, based on good technical and scientific understanding.[31]

23. Ms. Alice Aureli of the UNESCO International Hydrological Programme, who is in charge of ISARM, has kindly offered assistance to the Special Rapporteur. On the occasion of the Third World Water Forum, a “groundwater theme” was held in Osaka, Japan, from 18 to 19 March 2003, at which Ms. Aureli organized a meeting between the support group,[32] consisting of representatives from UNESCO, FAO and IAH, and the Special Rapporteur. The support group suggested the formation of a group of experts to advise the Special Rapporteur and is ready to provide services for those experts. Approximately 20 experts[33] will be selected in the areas of legal affairs and hydrogeology on the basis of experience and representation of different regions. The Special Rapporteur is indeed grateful to the valuable assistance being offered.

24. In order to formulate rules regulating confined transboundary groundwaters, an inventory of these resources worldwide and a breakdown of the different regional characteristics of the resources are needed. National, regional and international organizations are currently studying and assessing such major aquifer systems as the Guarani aquifer (South America), the Nubian Sandstone aquifers (Northern Africa), the Karoo aquifers (Southern Africa), the Vechte aquifer (Western Europe), the Slovak Karst-Aggtelek aquifer (Central Europe) and the Praded aquifer (Central Europe). The Guarani aquifer, shared by Argentina, Brazil, Paraguay and Uruguay, has a storage volume of 40,000 km^3, enough water to supply a population of 5.5 billion people for 200 years at a rate of 100 litres per day per person.[34] Mr. Didier Opertti Badan has provided the Special Rapporteur with the text of the Memorandum of Understanding between the Government of Uruguay and the OAS General Secretariat for the execution of the “Environmental Protection and Sustainable Development of the Guarani Aquifer System Project”. The Special

[27] *Water for People, Water for Life: The United Nations World Water Development Report* (UNESCO and Berghahn Books, 2003), p. 8.

[28] Newsletter of the United Nations University, issued for World Water Day (22 March 2003).

[29] The Third World Water Forum was held in Kyoto, Osaka and Shiga, Japan, from 16 to 23 March 2003.

[30] *Water for People, Water for Life* (see footnote 27 above), p. 25.

[31] UNESCO, *Internationally Shared (Transboundary) Aquifer Resources Management–Their Significance and Sustainable Management: A Framework Document* (Paris, UNESCO, 2001), para. 1.1.

[32] The support group consists of Alice Aureli and Annukka Lipponen (both hydrogeologists) of UNESCO, Kerstin Mechlem (Legal Officer) and Jacob Burke (Senior Water Policy Officer) of FAO and Shammy Puri of IAH.

[33] Tentative list of experts: Alice Aureli, Annukka Lipponen and Bo Appelgren of UNESCO; Shammy Puri, H. Wong and Mario A. Lenzi of IAH; Stefano Burchi, Kerstin Mechlem and Jacob Burke of FAO. Hydrogeologists: M. Bakhbakhi, Yongxin Xu, Marie A. Habermehl, F. T. K. Sefe. Legal experts: Stephen C. McCaffrey, Lilian del Castillo Laborde, Marcella Nanni, S. U. Upadhyay and J. Ntambirweki.

[34] *Groundwater Briefing*, “Managing transboundary groundwater resources for human security”, presented by UNESCO and IAH at the Third World Water Forum, Kyoto, Japan, 16–23 March 2003. See also www.iah.org.

Rapporteur is indeed grateful for this contribution, which will certainly advance his understanding of the problem.

25. In addition to the necessary studies as described in paragraph 24 above, the following aspects must also be studied:

(*a*) Socio-economic importance: groundwater is becoming increasingly important for all populations, but particularly for the populations of the developing world. The development aspects of groundwater are being extensively studied by the World Bank Groundwater Management Advisory Team;

(*b*) The practice of States with respect to use and management;

(*c*) Contamination: causes and activities which adversely affect the resources as well as its prevention and remedial measures;

(*d*) Cases of conflicts;

(*e*) Legal aspects: existing domestic legislation and international agreements for management of the resources;

(*f*) Bibliography of materials of direct relevance to the work of the Commission.

PART TWO: OVERVIEW OF GROUNDWATER RESOURCES

Introduction

26. This part of the present report is intended to provide an overview of groundwater resources in the eyes of hydrogeologists. In part one of the report, the Special Rapporteur stated that the scope of groundwaters that the Commission is supposed to address covers water bodies that are shared by more than two States but are not covered by article 2 (*a*) of the Convention on the Law of the Non-navigational Uses of International Watercourses and that such water bodies should be termed for the time being "confined transboundary groundwaters".[35] It is essential, however, for the Commission to know exactly what the scope of such groundwater resources should be in order to regulate and manage them properly for the benefit of humankind. The legal norms that the Commission is to formulate must be easily understood and able to be readily implemented by hydrogeologists and administrators. With a view to having a dialogue with hydrogeologists and administrators who have profound knowledge of groundwater resources, the Special Rapporteur has requested the assistance of Alice Aureli, hydrogeologist of the UNESCO International Hydrological Programme, who co-opted expertise from ISARM, the programme coordinated by UNESCO jointly with FAO, UNECE and IAH.

27. This part is based on the contribution of the following experts: Jacob Burke (FAO), Bo Appelgren (ISARM/UNESCO), Kerstin Mechlem (FAO), Stefano Burchi (FAO), Raya M. Stephan (UNESCO), Jaroslav Vrba (Chairman of the IAH Commission on Groundwater Protection), Yongxin Xu (UNESCO Chair in Hydrogeology, University of the Western Cape, South Africa), Alice Aureli (UNESCO), Giuseppe Arduino (UNESCO), Jean Margat (UNESCO) and Zusa Buzás (ISARM/UNECE Task Force on Monitoring and Assessment on Transboundary Waters).[36] The Special Rapporteur expresses his deepest appreciation to all those experts, who provided contributions and data. He, however, takes full responsibility for the wording and content of this part of the report.

28. Groundwater is contained within sets of aquifer systems throughout the earth's crust. Groundwater provides the globe with its largest store of fresh water, exceeding the volumes stored in lakes and watercourses. From the human perspective, groundwater is a vital resource. It is often the only source of water in arid and semi-arid regions and on small islands. Groundwater plays an important role in maintaining soil moisture, stream flow, springs discharge, river base flow, lakes, vegetation and wetlands. In general groundwater is ubiquitous, relatively cheap to lift and of high quality, usually requiring little or no pre-treatment for potable use. Owing to these characteristics, during the past few decades there has been a rapid expansion in groundwater use, particularly in developing countries. Over half of the world's population depends on groundwater for its potable water, and approximately 35 per cent of the world's irrigation relies on continued access to groundwater.

29. This part will deal with the following issues: basic terminology; characteristics of groundwater, including transboundary aquifers; groundwater resources of the world and their use; causes and activities that adversely affect the resource; practices of States with regard to national management of groundwater; preliminary survey of shared groundwater aquifers under pressure from cross-border pumping or from cross-border pollution; and social, economic and environmental aspects of management of non-connected groundwaters, with a special focus on non-renewable groundwater.

[35] See paragraph 19 above.

[36] The following data have been extracted: *Internationally Shared (Transboundary) Aquifer Resources Management* (see footnote 31 above); Zaporozec and Miller, *Ground-Water Pollution*; Zektser and Everett, *Groundwater and the Environment: Applications for the Global Community*; Foster and others, *Utilization of Non-Renewable Groundwater: a Socially-Sustainable Approach to Resource Management*; Regional Groundwater Reports, Natural Resources/Water Series Nos. 12–27 (1983–1990) (United Nations publications); and Burke and Moench, *Groundwater and Society: Resources, Tensions And Opportunities*.

Chapter III

Confined versus decoupled aquifers

30. It is the intention of the Special Rapporteur to deal with confined transboundary groundwaters. The term "confined" is already contained in the Commission's resolution on confined transboundary groundwater. In the preamble of the resolution the Commission defined "confined groundwater" as "groundwater not related to an international watercourse".[37] Hence, it seems to employ the term "confined" as meaning "unrelated". This differs from the definition hydrogeologists use for "confined". In hydrogeological terms, a confined aquifer is an aquifer overlain and underlain by an impervious or almost impervious formation, in which water is stored under pressure. Confinement is thus a matter of hydraulic state and not a question of being connected or related to a body of surface waters. The Commission did not, in fact, mean to refer to "confined" aquifers in the hydrogeological sense, but simply to those groundwaters not connected to bodies of surface waters. In this sense, it used the term "confined" simply to distinguish groundwaters that were not connected or were decoupled from a body of surface water that may or may not be confined in the strict hydraulic sense.

31. Groundwater connected with a body of surface water can fall within the scope of the Convention on the Law of Non-navigational Uses of International Watercourses. The Convention applies to "international watercourses". A "watercourse" is a "system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus" (art. 2 (*a*)). An "international watercourse" is "a watercourse, parts of which are situated in different States" (art. 2 (*b*)). For groundwater to be covered by the Convention, four criteria must hence be fulfilled: (*a*) it must be part of a *system* of surface and groundwaters; (*b*) this system must be part of a *unitary whole*; (*c*) the system must normally flow into a *common terminus*; and (*d*) parts of the system must be located in *different States*. Looking at groundwater, this definition poses a number of problems that cannot be discussed in detail here. Groundwater does not normally flow into a common terminus and also the "unitary whole" criteria is more suitable for surface water than for groundwater. What are excluded from the scope of the Convention are groundwaters emplaced in aquifer systems that are decoupled from active surface water systems. Such aquifer systems may or may not be confined—i.e. contain water under pressure. A subset of these aquifers, which have received no contemporary recharge, are often called fossil aquifers. As indicated, these aquifers can be confined or unconfined. It is the fact that they are not renewable under present climate regimes that renders them distinctive, not the degree of pressure under which these waters are stored.

32. Fossil aquifers can be considered depletable resources like oil and gas. The Commission is therefore considering dealing with aquifer systems decoupled from surface water systems, providing particular focus to a subset of these aquifers called fossil aquifers. Fossil aquifers should also fall under a specific legal regime, as they are particularly vulnerable to pollution and depletion. While the waters of these aquifers are of vital importance for many arid regions of the world they are almost impossible to clean once polluted, as there is almost no flow within the aquifer. This sheds doubt on the suitability of the "significant harm" principle and raises the question whether a stricter standard should apply. Furthermore, these waters can only be depleted over shorter or longer periods of time and the law should deal with the question of what this means for the principle of equitable and sustainable utilization. The remainder of the text covers groundwater resources in general in order to give a more comprehensive picture of this important resource. Where the specific characteristics of fossil aquifers merit special attention this will be pointed out.

[37] See footnote 1 above.

Chapter IV

Characteristics of groundwater and aquifers

A. General characteristics

33. Groundwater occurs in aquifers, or, broadly, geological formations capable of producing usable amounts of water. Aquifers are rarely homogeneous and their geological variability conditions the nature of the groundwater flowing through their respective lithologies and structures. The greatest variations in groundwater flow patterns occur where changes in rock types—for example, limestone overlying sediments and a hard crystalline rock—induce discontinuities in flow and may bring groundwater flow to the surface on the junction between the two rock types. Practically all groundwater originates as precipitation. Rain falling or collecting on the earth's surface soaks through the ground and moves downward through the unsaturated zone (see fig. 1, p. 133). Once it reaches the top of the saturated zone, the water table, it recharges the aquifer system, building up hydrostatic pressure at the point of recharge and inducing pressure changes where the aquifer happens to be capped by a confining layer of impermeable material.

34. Aquifer systems constitute the predominant reservoir and strategic reserve of freshwater storage on planet Earth.[38] But it should be noted that only a fraction of the quantity of groundwater is economically recoverable and it is the groundwater levels, not the volumes of stored water, that are significant in determining access to

[38] Shiklomanov, "Global renewable water resources".

groundwater resources. Groundwater can move sideways as well as up or down. This movement is in response to gravity, differences in elevation, and differences in pressure. As a general rule, groundwater moves along hydraulic gradients driven by differences in hydrostatic pressure and ultimately discharges in streams, lakes, and springs and into the sea. Groundwater moves through the aquifers very slowly, with flow velocities measured in fractions of metres per day or metres per year, compared to metres per second for stream flow. Time and space scales are the key phenomena for understanding groundwater regime and flow dynamics. Aquifer systems are composed of interrelated subsystems, mainly controlled by the hydrogeological properties of the soil/rock environment, climatic conditions, landscape topography and surface cover. Flow in aquifer systems should be studied with respect to the infiltration rate in recharge areas, transition zone and upward rising groundwater flow in discharge areas. Under natural conditions a steady state or dynamic equilibrium prevails when recharge and discharge rates are in long-term balance. Some aquifer systems form a unitary whole with surface waters while others do not. In this case what is being considered is groundwater that is stored under confining pressures but which, owing to the geological structure, is not coupled to one specific watercourse in a unitary whole to be unrelated confined groundwater.

B. Characteristics of aquifers

35. Generally, three types of aquifers (both national and transboundary) should be recognized:

Shallow aquifers—usually occur in fluvial, glacial and aeolian deposits and in rock weathered zones, and are mostly unconfined or semi-confined, highly vulnerable because the unsaturated zone is of low thickness and frequently polluted (diffuse pollution of shallow aquifers below arable land is often recorded). They are characterized by active groundwater flushing and a single flow system. Porous permeability and high hydraulic conductivity prevail, particularly in aquifers in fluvial deposits. Short residence time in the order of years and tens of years and low mineralization are their feature. Interface with surface water (discharge of groundwater into streams or ponds, and/or surface water bank filtration from the surface water bodies to adjacent shallow aquifers) is often recorded. However, many shallow aquifers have no direct contact with surface water and discharge through springs. These systems can also be shared by two countries. Low development cost and easy accessibility of groundwater through simple shallow wells has led to the wide exploitation of shallow aquifers by public or domestic water supply wells.

36. *Deeper aquifers*—are of major regional extent, often confined and usually of lower vulnerability. However, many deeper aquifers can be unconfined and can, owing to the permeability of the unsaturated zone, be vulnerable. Owing to geological heterogeneity, the deeper aquifers may consist of a number of laterally and/or vertically interconnected groundwater flow systems of various orders of magnitude. Groundwater in deeper aquifers is renewable, flows at greater distance compared to shallow groundwater systems and discharges into big rivers, lakes, or coastal areas of oceans or seas. Deeper groundwater basins do not often coincide with the surface water catchment areas. In deeper aquifers, temperature, pressure and time and space contact between rock and groundwater gradually increase and groundwater flow velocity decreases. Groundwater in deeper aquifers is decades to hundreds of years old. Many deeper aquifers are shared between two or more countries. Potential conflicts are foreseen for aquifers with their recharge area in one country and discharge area in another country. Interrelationship between shallow and deeper aquifers is observed particularly in regions with highly fractured rocks with fissured permeability.

37. *Fossil aquifers*—can be considered as non-renewable groundwater resources of a very low vulnerability. Fossil waters are not part of the present hydrologic cycle. Major recharge of these aquifers occurred in the last pluvial periods. Under wetter conditions, these aquifers would be renewable. Contamination of fossil confined aquifers is recorded exceptionally only (e.g. in the drilling of deep wells). Chloride-rich, highly mineralized fossil water is usually old; its age may vary from a few thousand to millions of years. Many fossil aquifers are internationally shared between two or more countries. Uncontrolled mining of fossil transboundary aquifers could lead to serious political and diplomatic problems, particularly in water-scarce arid and semi-arid zones.

C. International versus transboundary aquifers

38. In order to develop a uniform terminology it is suggested that a distinction be made between international aquifers and transboundary aquifers. An aquifer can be regarded as international if it is part of a system where groundwater interacts with surface water that is at some point intersected by a boundary. In the case of an aquifer and a river that are hydrologically linked, both resources can be intersected by a boundary or only one of the two, making the whole system international in character. Even an aquifer that is located entirely within the territory of one State can be regarded as an international aquifer (that would fall within the scope of the Convention on the Law of the Non-navigational Uses of International Watercourses when the other criteria of the Convention are fulfilled) when it is linked with a body of surface water that is intersected by an international boundary. A transboundary aquifer is in contrast a groundwater body that is intersected by a boundary itself. Hence, transboundary aquifers could be considered a subcategory of international aquifers. Fossil aquifers need to be transboundary ones in order to be regarded as internationally shared resources, as they are decoupled from all other waters.

D. Transboundary aquifer systems

39. Certain aquifers associated with continuous sedimentary basins can extend uniformly over very large land areas, extending across international boundaries. The key features of transboundary aquifers in general include a natural subsurface path of groundwater flow, intersected by an international boundary. Such water transfers, however slowly, from one side of the boundary to the other (see fig. 2, p. 134). In many cases, the aquifer might receive the majority of its recharge on one side of the border, while the majority of its discharge would be on the other.

It is this feature that requires wise governance and agreement in order to avoid or minimize harmful transboundary impact and, in general, to ensure accommodation of the competing interests of the countries concerned. Activities such as withdrawals of the natural recharge on one side of the boundary could have subtle impact on base flows and wetlands on the other side of the boundary. In most transboundary aquifers, these impacts can be widespread and delayed by decades. The same holds true for pollution, both from direct discharges and from land-based activities. Many years may pass before the impacts are detected by monitoring. A worldwide survey of significant transboundary aquifers has recently been initiated under the ISARM initiative (UNESCO, FAO, UNECE and IAH).

Chapter V

Groundwater resources of the world and their use

40. The total amount of groundwater use depends on different factors such as population, climatic and hydrogeological conditions, availability of surface water resources and their degree of contamination. Rapid expansion in groundwater exploitation occurred during 1950–1975 in many industrialized nations and during 1970–1990 in most parts of the developing world. Systematic statistics on abstraction and use are not available, but globally groundwater is estimated to account for about 50 per cent of current potable water supplies, 40 per cent of the demand of self-supplied industry, and 20 per cent of water use in irrigated agriculture. These proportions vary widely, however, from one country to another. Compared to surface water, groundwater use often brings large economic benefits per unit volume, because of ready local availability, drought reliability and good quality requiring minimal treatment.[39] Water for general household use includes water for drinking, cooking, dishes, laundry and bathing. Today, with a global withdrawal rate of 600–700 km^3/year, groundwater is the world's most extracted raw material, and, for example, forms the cornerstone of the Asian green agricultural revolution, providing 70 per cent of piped water supply in the European Union and supporting rural livelihoods across extensive areas of sub-Saharan Africa.[40] In arid and semi-arid regions, where water scarcity is endemic, groundwater plays an immense role in meeting domestic and irrigation demands.

A. Europe

41. Analysis of the data available shows that groundwater is the main source for public water supply in European countries accounting for more than 70 per cent of the total water resources used for this purpose. Rural populations and small and medium towns rely mainly on groundwater for drinking. In general, more than 90 per cent of big cities and towns are supplied exclusively by groundwater. Groundwater use for industrial water supply represents about 22 per cent of the total withdrawal, including mine-water drainage in some countries (e.g. France, Germany). Extensive groundwater use in industries is characteristic of such countries as France, Germany, the Russian Federation, and the United Kingdom of Great Britain and Northern Ireland.

B. India

42. Groundwater has been used in India since the Vedic times, for over 6,000 years. The irrigation potential created from groundwater has increased from 6 million ha in 1951 to 36 million ha in 1997. Stress on groundwater resources, also due to increasing water demands, has caused problems related to overexploitation, such as declining groundwater levels, sea-water intrusion, quality deterioration.

C. China

43. Distribution of groundwater use by sectors in China is as follows: urban residential use, 7.4 per cent; urban industrial use, 17.5 per cent; rural residential use, 12.8 per cent; farmland irrigation, 54.3 per cent; rural enterprises and others, 8 per cent.

D. North America

44. Groundwater represents perhaps less than 5 per cent of Canada's total water use;[41] however, more than 6 million people, or about one fifth of the population, rely on groundwater for municipal and domestic use. About two thirds of these users live in rural areas, and the rest primarily in smaller municipalities. About 50 per cent of the population of the United States of America depends on groundwater for domestic uses. More than 95 per cent of the households that supply their own drinking water rely on groundwater. The use of groundwater in the United States increased steadily from 1950 to 1980, and has declined slightly since 1980, in part in response to more efficient use of water for agricultural and industrial purposes, greater recycling of water and other conservation measures.

E. Central America

45. Groundwater is an important source of potable water throughout much of Mexico and Central America. In Mexico, where desert and semi-arid conditions prevail over two thirds of the country, groundwater is widely used. Groundwater provides most of the domestic, drinking, and industrial water needs of Nicaragua. Costa Rica, El Salvador, and Guatemala also use substantial groundwater, whereas Belize, Honduras, and Panama are less dependent on groundwater. In most rural areas of Central America, more than 80 per cent of the population is supplied by either private or municipal well systems. Urban areas in Mexico and Central America that

[39] *Water for People, Water for Life* (see footnote 27 above), p. 78.

[40] *Ibid.*

[41] Leeden, Troise and Todd, *The Water Encyclopedia*.

use groundwater as their sole or principal source of water supply include Mexico City, Guatemala City, Managua, and San José.

F. South America

46. Based on the latest United Nations estimates, in South America groundwater use is mainly to supply domestic and industrial demands. However, the present use of groundwater is very low, in comparison with the renewable resources available. The region has sufficient water but the availability of safe water is becoming a major socio-economic issue.

G. Africa and the Middle East

47. In general, groundwater is overdeveloped in Northern Africa, i.e. in the Arab countries, which occupy the semi-arid, arid and hyper-arid belt north of the Sahara. The economy of the region largely depends on groundwater resources. Large aquifers underlie North Africa and the Middle Eastern countries. In these regions several countries share the groundwater resources existing in transboundary aquifer systems. In the humid equatorial and tropical African regions, groundwater is underdeveloped, because rainfall and surface water is abundant in major rivers and their tributaries. However, countries in these regions have recently realized that provision of safe drinking water to small towns and rural areas can only be guaranteed by utilizing groundwater sources. In the arid and semi-arid region of Southern Africa, there is an urgent need to use groundwater for rural water supply. With the exception of the countries of North Africa, and a few countries in Western and Southern Africa, adequate and reliable information on water use is lacking or scarce in Africa. Lack of rules and national regulations is also an evident problem.

H. Australia

48. The total amount of groundwater used in Australia annually was about 2,460 x 10^6 m^3 in 1983, equivalent to about 14 per cent of the total amount of water used. In Australia, the surficial aquifers are generally the groundwater sources most intensively used for irrigation and for urban and industrial water supplies. The intensive use of groundwater in some areas, especially for irrigation, has led to the overdevelopment of some regional confined aquifers. Groundwater is vital to the pastoral industry (cattle and sheep) throughout large parts of Australia, and the mining industry is also heavily dependent on groundwater.

Chapter VI

Causes and activities that adversely affect the resource

A. Groundwater quality

49. The value of groundwater lies not only in its widespread occurrence and availability but also in its consistently good quality, which makes it an ideal supply of drinking water. The term "quality of water" refers to the physical, chemical, and biological characteristics of the water as they relate to its intended use. Groundwater also is cleaner than most surface water because the earth materials can often act as natural filters to screen out some bacteria and impurities from the water passing through. Most groundwater contains no suspended particles and practically no bacteria or organic matter. It is usually clear and odourless. Most of the dissolved minerals are rarely harmful to health, are in low concentrations and may give the water a pleasant taste. Recognition of the fact that some of these dissolved substances may be objectionable or even detrimental to health has resulted in the development of drinking water standards. These standards serve as a basis for appraisal of the results of chemical analyses and are based on the presence of objectionable properties or substances (taste, odour, colour, dissolved solids, iron, etc.) and on the presence of substances with adverse physiological effects. A cause of negative impacts is the intensive exploitation of the aquifer. Equilibrium conditions can be disturbed by intensive aquifer exploitation. Intensive use of groundwater can lead to groundwater depletion and groundwater quality degradation.

B. Groundwater pollution

50. In view of the diverse uses of groundwater, it is essential to keep it free from any kind of pollution. While groundwater is less vulnerable to pollution than surface water, the consequences of groundwater pollution last far longer than those from surface water pollution. Pollution of groundwater is not easily noticed and in many instances it is not detected until pollutants actually appear in drinking water supplies, by which time the pollution may have affected a large area. The vulnerability of the aquifer systems to pollutants is dependent on a number of factors, including soil type, characteristics and thickness of materials in the unsaturated zone, depth to groundwater and recharge to the aquifer. Groundwater pollution is a modification of the physical, chemical, and biological properties of groundwater, restricting or preventing its use in a manner for which it had previously been suited. Substances that can pollute groundwater can be divided into substances that occur naturally and substances produced or introduced by human activities (see fig. 3, p. 135).[42]

51. *Naturally occurring* substances causing pollution of groundwater include iron, manganese, toxic elements, and radium. Some of them are quite innocuous, causing only inconveniences, such as iron and manganese. But others may be harmful to human health, e.g. toxic elements (such as arsenic or selenium), fluoride, or radionuclides (radium, radon, and uranium). Arsenic is widely distributed in the environment and is usually found in compounds with sulphates. Arsenic is highly toxic at concentrations above 0.01 mg/l, and high doses cause rapid death.

52. *Polluting substances resulting from human activities* primarily include organic chemicals, pesticides,

[42] Zaporozec and Miller, *op. cit.*

heavy metals, nitrates, bacteria, and viruses. The type of groundwater pollution of the greatest concern today—at least in the industrialized countries—is pollution from hazardous chemicals, specifically organic chemicals. Pesticides used in agriculture and forestry are mainly synthetic organic compounds. The term pesticide includes any material (insecticide, herbicide, and fungicide) used to control, destroy, or mitigate insects and weeds. Many of the pesticide constituents are highly toxic, even in minute amounts. Nitrate is the most commonly identifiable pollutant in groundwater in rural areas. Although nitrate is relatively non-toxic, it can cause, under certain conditions, a serious blood disorder in infants. The greatest danger associated with drinking water is that it may be polluted by human excreta and lead to the ingestion of dangerous pathogens. Pollution by infiltration is probably the most common groundwater pollution mechanism. A pollutant released at the surface infiltrates the soil through pore spaces in the soil matrix and moves downwards through the unsaturated zone under the force of gravity until the top of the saturated zone (the water table) is reached. After the pollutant enters the saturated zone (an aquifer), it travels in the direction of groundwater flow. Groundwater pollution can also result from the uncontrolled development and abstraction of groundwater. When uncontrolled use of groundwater has significantly exceeded natural rates of aquifer replenishment, negative impacts can affect the aquifer systems. Sometimes it can also lead to land subsidence and to the inflow of saline water from deeper geological formations or the sea. Sea-water intrusion is an ever-present threat to groundwater supplies in overdeveloped coastal aquifers, where under natural conditions fresh groundwater is delicately balanced on top of denser sea water. Often water of poor quality can enter deeper parts of the aquifer from rivers and polluted shallow aquifer systems.

C. Groundwater protection and management

53. Monitoring wells can be installed to discover groundwater pollution from a given activity, detect its extent, and provide advance warning of polluted water approaching important sources of water supply. However, clean-up is difficult and expensive and generally requires long periods of time. Therefore, a major effort should be directed towards preventing pollution from occurring. The cost of groundwater protection through prevention is generally much smaller than the cost of correcting the pollution after it is found. Groundwater resources are vulnerable to human impact particularly in recharge areas, where the hydraulic heads are high and water flow is downward. Important sources of drinking water can be protected by delineating protection zones, in which potentially polluting uses and activities are controlled. Human activities (agriculture, industry, urbanization, deforestation) in the recharge areas should be under control and should be partly or fully restricted by relevant regulations. However, groundwater protection policy should be adequate for different aquifer systems.

D. Transboundary groundwater contamination problems

54. Groundwater contamination can occur through infiltration (the downward influx of contaminants), recharge from surface water, direct migration and aquifer interface. Infiltration is the most common source of the contamination of shallow aquifers and unconfined deeper aquifers. Water penetrating downwards through the soil and unsaturated zones forms leachate that may contain inorganic or organic contaminants. When it reaches the saturated zone contaminants spread horizontally in the direction of groundwater flow and vertically owing to gravity. Recharge of polluted surface water into shallow aquifers can occur in losing streams, during flooding and when the groundwater level of the aquifer adjacent to a surface stream is lowered by pumping. Leakages from contamination sources located below the groundwater level (e.g. storage tanks, pipelines, basement of waste disposal sites) migrate directly into groundwater and particularly affect shallow aquifers. Contaminant transport in groundwater systems is a complex process, whose description is not the objective of this report and depends on rock permeability (porous, fissured, karstic), contaminant properties, groundwater chemical composition and processes controlling contaminant migration (advection, mechanical dispersion, molecular diffusion and chemical reactions). Various sources of contamination particularly affect shallow aquifers and unconfined deeper aquifers. Vulnerability of deeper confined aquifers to contamination impact is significantly lower and mostly occurs in recharge areas. However, such aquifers may be contaminated by natural constituents, like fluoride, arsenic, copper, zinc, cadmium and others. Fossil aquifers are not vulnerable to human impacts; however they are often more mineralized and of a higher temperature. The movement of contaminants is generally slow, but in fissured rocks and particularly in karst rocks, contaminants can move even several metres per day. Contaminants which migrate in the aquifers over long distances and are sources of contamination of transboundary groundwater are nitrates, oil hydrocarbons and light non-aqueous phase liquids, heavy metals and radionuclides.

E. Transboundary shallow aquifer contamination problems

55. Several scenarios of contamination of shallow transboundary aquifers exist. Many shallow unconfined aquifers are developed in the fluvial deposits in river valleys and pollution can be transported through groundwater flow from one country to another. Hydraulic gradients between surface water and groundwater control the possibility of bank infiltration of surface water to the adjacent aquifers and vice versa. Stream flow response to precipitation reflects short- and long-term changes in the hydraulic head of surface and groundwater bodies. During long dry periods, surface flow depends almost exclusively on groundwater (base flow conditions) and the water quality of the streams reflects the quality of the underlying aquifers. Contamination occurs mostly on the ground surface of fluvial deposits and penetrates to the aquifer. Contaminated groundwater may flow in a shallow aquifer parallel to a river flow, or discharge into a river or other surface water body. In both cases contamination originating in the upstream country affects water quality in the downstream country. Such transboundary contamination should be identified by water quality monitoring systems. Seasonal changes in the hydraulic head always have to

be considered when a groundwater quality monitoring system is established.

56. However, penetration of contaminated surface water into underlying shallow aquifers may also occur far from the contamination source, where the river is a losing stream and conditions of surface water infiltration set in. Owing to the low attenuation capacity of fluvial deposits (mostly gravel and sands), which are unable to retain or remove the contaminants, shallow aquifers become contaminated in the long term. Therefore, to identify water quality in the country borders, monitoring systems of both surface water and groundwater have to be designed. There are many shallow unconfined aquifers developed in rock weathered zones, in higher fluvial terraces or in aeolian deposits that are not directly connected with surface water bodies and discharge frequently in springs. However, such aquifers are often only of a smaller extent. Contamination occurs in recharge and vulnerable areas of such aquifers and may be transported along a flow path over a long distance. Contamination is detectable by sampling springs or using shallow monitoring wells. Transboundary contamination should be identified by shallow monitoring wells.

F. Transboundary deeper aquifer contamination problems

57. Deeper confined aquifers may cover hundreds or even thousands of square kilometres. Groundwaters in recharge areas of deeper aquifers are unconfined and vulnerable to contamination. If contamination occurs, it can be transported laterally over a long distance along a flow path under confined aquifer conditions. The lateral movement of contaminants in the aquifer from recharge to discharge area may be accelerated by intensive aquifer exploitation. Contamination of deep confined transboundary aquifers should be identified by deep monitoring wells located in the country borders, which with respect to the contaminant properties have to reach the upper part or the bottom of the aquifer. Because the recharge area of deep confined aquifers in one country may be many times larger than the discharge area in the other country, aquifer depletion may occur, particularly if control measures regarding aquifer exploitation are missing. Deeper aquifers may also be unconfined ones, which renders the transit and recharge zone vulnerable. The downward migration of the contaminants to the aquifer depends on soil properties and the thickness and lithology of the unsaturated zone. In conditions of porous permeability it can take many years before the contamination plume reaches the saturated aquifer. However, in aquifers with fissured permeability and in karst aquifers contaminants can reach the aquifer very fast (days, months). The mechanism of lateral contaminant movement in these aquifers is similar to that of confined aquifers. Early-warning quality monitoring of the unsaturated zone and the upper part of the aquifer supports identification of groundwater pollution problems while they are still at the controllable and manageable stage.

G. Transboundary fossil aquifer contamination problems

58. Fossil aquifers are well protected by the geological environment and are typically of very low vulnerability and their contamination is uncommon. Contaminants can enter fossil aquifers through vertical leakage through the seals around well casings when deep wells are drilled for various purposes (e.g. exploitation wells, deep disposal wells) and the drilling process is not controlled. However, many transboundary aquifers can be affected by depletion, particularly if there is mining and non-renewable groundwater storage is continuously depleted. Comprehensive control over the abstraction of transboundary fossil aquifers is a very desirable and urgent task.

Chapter VII

Practices of States with regard to national management of groundwater

59. Groundwater resource management has to balance the exploitation of a complex resource (in terms of quantity, quality and surface water interactions) with increasing demands for water and the attitudes of land users who can pose a threat to resource availability and quality. Both in common law and in civil law countries, landownership used to attract all resources above and below the land. However, in response to growing pressure on high-quality reserves from increasing demand, groundwater has been increasingly brought within the scope of legislation regulating the extraction and use of the resource. Also, the threat posed to the quality of groundwater has attracted legislation regulating direct and indirect discharges and preventing and abating groundwater pollution. In many countries, groundwater is protected through the enactment of a basic water law that covers all water resources. Specific provisions for groundwater may be included within this or may be added at a later time. This approach has been followed in Finland, Israel, Italy, Poland, Spain, the United Kingdom and the United States. In other countries, including France, the Netherlands, Romania and Turkey, groundwater protection has evolved through the adoption of a wide range of regulations dealing with specific aspects of groundwater, such as extraction rates, well depth and environmental protection. Primary jurisdiction for groundwater protection may be centralized at the national level, as in Egypt and Mexico, or may be largely delegated to states or provinces, as in China, India and the United States. In cases where this jurisdiction is delegated, the central government typically retains authority over certain aspects, such as minimum water quality standards, to ensure consistency. One of the key components of effective groundwater management is the establishment of a central agency with responsibility for the implementation of groundwater legislation. A wide variety of regulatory and non-regulatory mechanisms have been developed to protect groundwater resources from overextraction and from pollution.

Chapter VIII

Preliminary survey of shared aquifers under pressure from cross-border pumping or from cross-border pollution

60. *Sonora-Arizona border area* of Mexico and the United States (partly covered by agreement (Minute 242 of 1973, of the Mexico-United States International Boundary and Water Commission). This area concerns the Yuma Mesa aquifer and belongs hydrologically to the lower Colorado River basin, but the tension is about the pumping of groundwater.

Hueco Bolson aquifer (United States (Texas)–Mexico (Chihuahua)) (no agreement).

Mimbres aquifer (United States (New Mexico)–Mexico (Chihuahua)) (no agreement).

Generally at least 15 transboundary aquifers at the United States–Mexican border (no agreement except for Minute 242 on the Yuma Mesa).

Araba-Arava groundwater area (Israel and Jordan) covered by the Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan (26 October 1994). It could be a case of cooperation. The real tension between Israel and Jordan is about surface water (Jordan and Yarmuk rivers).

Mountain aquifer (Israel and Palestine) (a case of actual conflict) (Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (28 September 1995). The Agreement establishes a joint commission; however, it does not solve the conflict over water, which was supposed to be discussed in the final negotiations).

Disi aquifer (Jordan and Saudi Arabia) (no agreement).

Regional basalt aquifer system (Jordan-Syrian Arab Republic). Technical cooperation between the two countries was developed by ESCWA and the Federal Institute for Geosciences and Natural Resources of Germany to establish information regarding the sustainable development of groundwater resources; the outputs were the establishment of a geological map of the aquifer, and the study of the prevailing hydrogeological conditions. At the urging of ESCWA, a memorandum of understanding was signed by the Syrian Arab Republic, and will be signed by Jordan for further cooperation regarding the aquifer.

Nubian Sandstone Aquifer System (NSAS) (Chad, Egypt, Libyan Arab Jamahiriya, Sudan). Agreement establishing an NSAS Joint Authority (date uncertain) and two agreements made during 2000 governing access to, and use of, the aquifer database and model (on file with FAO).

North-Western Sahara Aquifer System (Algeria, Libyan Arab Jamahiriya, Tunisia) (no agreement, but joint decision setting up an arrangement for tripartite consultation on the updating and management of the aquifer database and model) (on file with FAO).

Continental Terminal aquifer (Gambia and Senegal) (no agreement).

Guaraní Aquifer (Argentina, Brazil, Paraguay, Uruguay) (no agreement, but a Global Environment Facility project in progress. The main objective of the project is to prepare and implement a common institutional framework for managing and preserving the aquifer. The project agreement provides for a Steering Committee of representatives of the four countries (and one from the South American Common Market (MERCOSUR)).

Eighty-nine transboundary aquifers in Europe have been surveyed and recorded by the UNECE task force on monitoring and assessment set up under the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (in Almássy and Buzás, *Inventory of Transboundary Groundwaters*, annex III, pp. 181–283 (copy on file with FAO)). Of these, however, it is not known at this time how many are under actual or foreseeable pressure from extraction or pollution.

Chapter IX

Social, economic and environmental aspects of the management of non-connected groundwaters: special focus on non-renewable groundwater

A. General

61. Water resources are of two types: flows and stocks. The use of flows does not affect future availability, while the use of stocks does. Fossil groundwater represents, by definition, a stock resource. Management of flow resources generally represents a straightforward application of marginal analysis. Stock resources, on the other hand, like any physical capital, have the characteristic that its optimal use requires considering future impacts (as risks or utilitarian values) of current decisions. Considering non-connected or unrelated groundwaters as a combination resource with conjunctive characteristics, the connection with flow resources is closer to the hydrogeological realities. However, the conjunctive aspects of water make its management more complex and this is probably one reason why this has developed into a principal question of discussion. In a neo-classical paradigm the goal of water resource management is to maximize the (short- and long-run) value of the water resources to society. However, the neo-classical paradigm has increasingly given way to alternatives, such as the political,

evolutionary, institutional and economic paradigm, with greater recognition of evolutionary processes and the prevailing political economy, which in reality governs decisions on the allocation of resources in society. Fossil groundwater resources contained in confined aquifers can be large regional systems shared by two or more countries. Fossil water appears as directly measurable and contained in a receptacle and should therefore be subject to appropriation and regulated by law like any other owned object. However, this is a simplified picture, and the measurable and contained-in-a-receptacle aspects do not accommodate the complex and uncertain hydrogeological, social, economic and political long-term impacts characterized by high risk and uncertainty related to change of climatic and environmental conditions. So far, hydrologists and lawyers have, in fact, few tools to incorporate future uncertainties. This shortcoming requires mechanisms for enhanced participation and communication and enhanced attention to social and environmental water demands. The political will to accommodate uncertainty and incorporate escape clauses and to provide for shared risks at the moment of negotiating international water agreements has already, however, proved to be limited and there is therefore a call for alternative mechanisms for conflict prevention and resolution.

B. Non-connected groundwater resources: risk combined with scientific and policy uncertainty

62. While not, at least not directly, connected to modern annual recharge, fossil groundwaters are generally confined, overpressured and often artesian. The risk of human-induced abuse coincides with that for annually recharged, connected groundwaters and includes not only inappropriate water and other drilling, casing and capping practices, over-abstraction and inter-aquifer contamination, but also impacts of changing land use, its consequences for recharge, pressure salinization and water quality. While non-connected groundwaters are less vulnerable to point- and non-point-source pollution, sudden expansion and waste discharges from abstraction of partly fossil water could have wide negative (water pollution, salinization and water-logging) and positive (increase in the available water resource, reduced evaporation losses) environmental impacts. Similar to the exploitation of other stock natural resources the practices of transboundary agreement therefore seem to represent one important tool for the joint management and use of transboundary non-connected groundwater.

C. Ethical versus scientific standards

63. While utilization of fossil groundwater had long been labelled as non-sustainable, the rigid attitude based on the rigid hydrogeological safe-yield concept has recently become relaxed and the permissible level of exploitation is no longer a fixed but a relative term related to social, economic and environmental values. It is becoming increasingly recognized that most standards in water and natural resources management are ethical, as the earlier dominance of scientific and utilitarian standards could deviate from and confuse politically agreed and ethically based intentions as expressed by legislators and the public.

Chapter X

Conclusions

64. The presentation of groundwater resources in general has shown that:

(*a*) Transboundary aquifers (be they shallow unconfined, semiconfined, confined) can be connected with international surface water systems;

(*b*) However, there may be cases where transboundary aquifers are not connected with international surface water systems;

(*c*) Shallow aquifers are generally more vulnerable (easily exploited and contaminated) than deeper aquifers but all aquifers (confined, unconfined) are vulnerable in their recharge areas;

(*d*) Fossil aquifers, decoupled from contemporary recharge, need to be treated as a non-renewable resource and planned for accordingly;

(*e*) Aquifers need to be periodically assessed and monitored, if they are to be managed and allocated in an equitable fashion;

(*f*) Groundwater development policies need to consider conjunctive use of groundwater and surface water, impacts to dependent ecosystems, coordination with land-use planning and links to social policy and cultural practice.

65. The vulnerability of groundwater, especially fossil groundwater, to depletion and pollution calls for the development of norms of international law that contain stricter standards of use and pollution prevention than those applied to surface waters.

FIGURE 1

Hydrogeological cycle

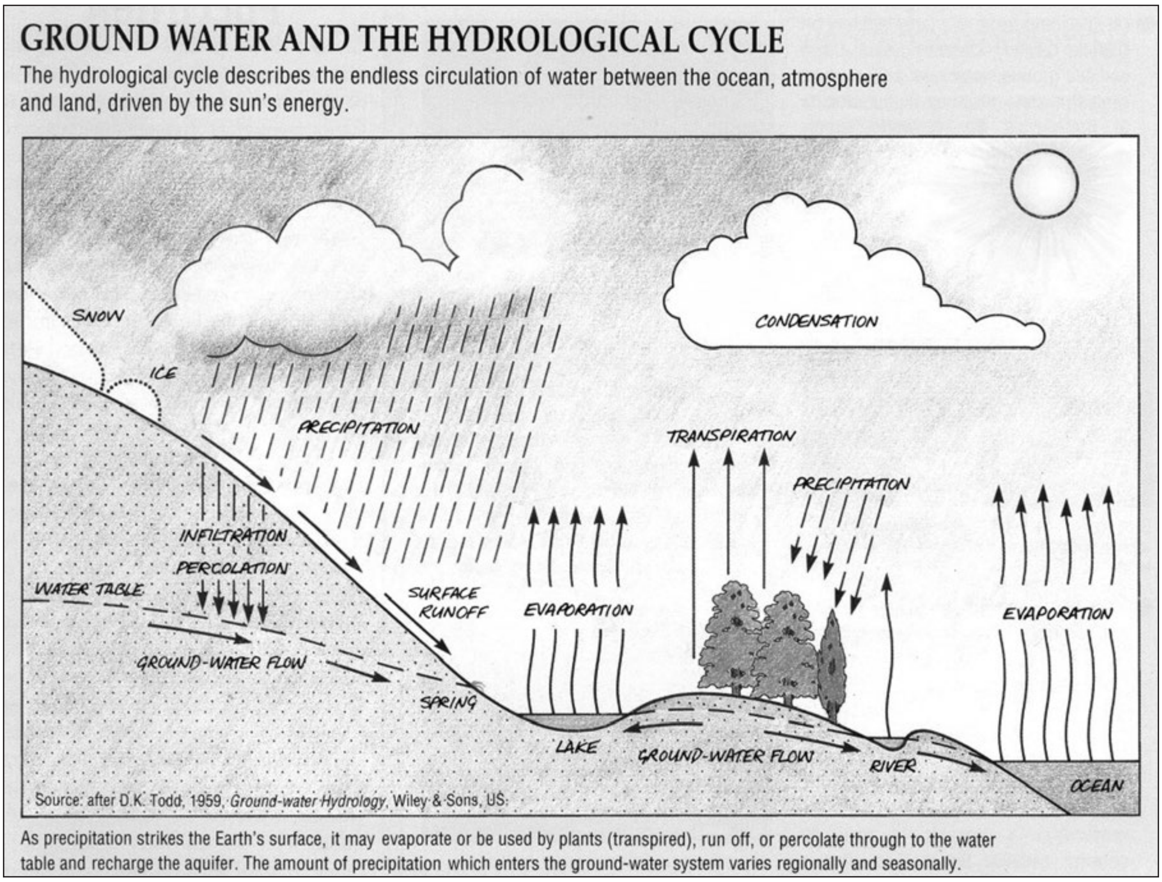
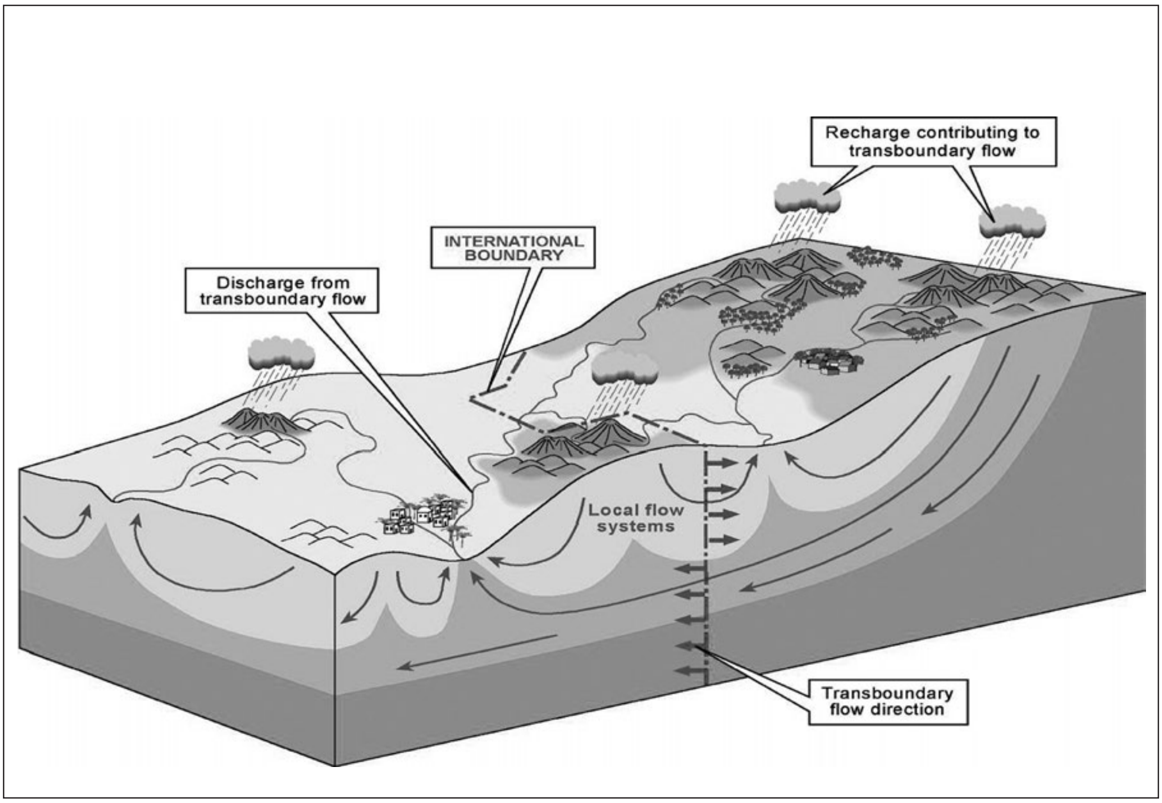


FIGURE 2

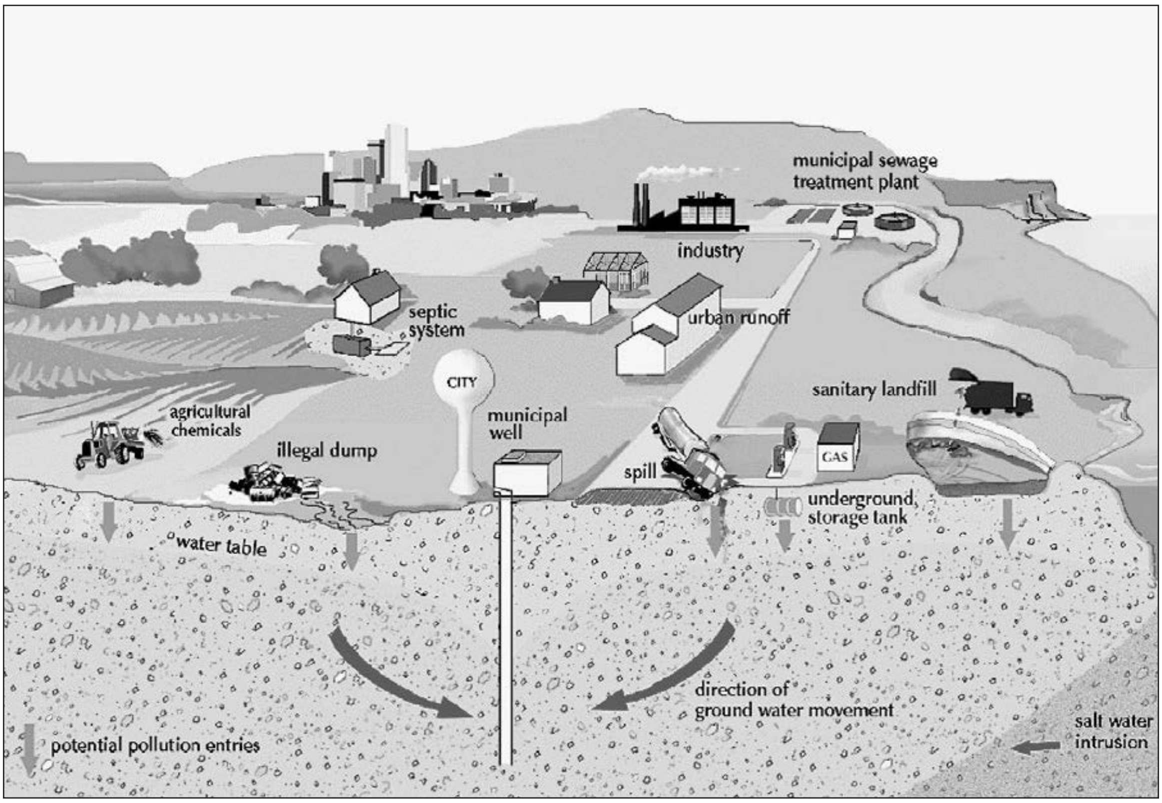
Transboundary flow



Source: UNESCO, *Internationally Shared (Transboundary) Aquifer Resources Management–Their Significance and Sustainable Management: A Framework Document* (Paris, UNESCO, 2001), p. 13.

FIGURE 3

Groundwater pollution



Source: Zaporozec and Miller, *Ground-Water Pollution*, p. 1.

Annex I

TERMINOLOGY USED IN THIS REPORT

Aquifer	Permeable water-bearing geological formation capable of producing exploitable quantities of water
Confined aquifer	Aquifer overlain and underlain by an impervious or almost impervious formation and in which the groundwater is stored under a confining pressure
Unconfined aquifer	An aquifer that has a water table at atmospheric pressure and is open to recharge
Fossil groundwater	Groundwater that is not replenished at all or has a negligible rate of recharge and may be considered non-renewable
Groundwater	Any water existing below the ground surface
Groundwater resources	Volume of groundwater that can be used during a given time from a given volume of terrain or water body
Groundwater table	The upper limit of the saturated zone where pore water pressure equals atmospheric pressure
Groundwater vulnerability	An intrinsic property of a groundwater system that depends on the sensitivity of that system to human and/or natural impacts
International groundwater	Groundwater that is either intersected by an international boundary or that is part of a system of surface and groundwaters, parts of which are located in different States
Recharge	Replenishment of groundwater from downward percolation of rainfall and surface water to the water table
Surface water	Water that flows over or is stored on the ground surface
Transboundary groundwater	Groundwater that is intersected by an international boundary. It is a subcategory of international groundwater
Unsaturated zone	Part of ground below land surface in which the pore and fissures contain air and water

Annex II

CASE STUDIES

A. Practice of States in groundwater management and cases of adverse effects on groundwater and their causes. Examples from the Middle East: Jordan, Lebanon and the Syrian Arab Republic

Groundwater resources

Located in an arid and semi-arid zone, the countries of the Middle East have limited surface water and rely on their groundwater resources.

Of the three countries presented, Jordan has very limited water resources (among the lowest in the world on a per capita basis), and most of it consists of groundwater, in renewable and non-renewable aquifers. Thirteen groundwater basins have been identified, among them two are non-renewable (Al Jafer and the Disi aquifer which is shared with Saudi Arabia) and two (other than the Disi) are shared (one with the Syrian Arab Republic and one with Israel (Wadi Araba)).

As for the Syrian Arab Republic, the country counts seven major surface water basins (of which six are main international rivers like the Tigris and the Euphrates) where seven General Directorates are assigned responsibilities. No reliable data are available on groundwater availability and quality. In some of the hydrological basins, groundwater is more important than in others, and some of it is renewable and some of it is not.

In Lebanon, 65 per cent of the country is composed of a karstic soil, which favours fast water infiltration. However, only part of this water is stored, some of it reappears as surface water (springs), the rest flows underground to the sea or to neighbouring countries.

Groundwater regulations

In all three countries, water is part of the public domain (Lebanon and the Syrian Arab Republic) or State owned (Jordan). Therefore, the pumping and use of groundwater is regulated through a law or a by-law. Well drilling is subject to a permit, which also specifies the volume of water that can be extracted and its use. In Jordan, the Ministry of Water and Irrigation has also developed a groundwater management policy, which sets out the Government's policy and intentions concerning groundwater management aiming at the development of the resource, its protection, management and measures needed to bring the annual abstractions from the various renewable aquifers to a sustainable rate for each.

Groundwater use

As in most other countries in the Middle East, agriculture is the largest consumer of water. Between 75 and 80 per cent of the water resources in Jordan, Lebanon and the Syrian Arab Republic are used for irrigation and rely heavily on groundwater.

In the Syrian Arab Republic, 60 per cent of all irrigated areas are currently irrigated by groundwater, through wells privately owned and developed. In spite of the by-law regulating the use of groundwater in agriculture and subjecting well-drilling to a permit, almost 50 per cent of the total number of wells in the country are illegal, leading to severe overdraft and pollution problems. Extraction often exceeds recharge, therefore water level declines are occurring in several basins, having major impacts on surface sources, such as spring flows. In the coastal area, groundwater is suffering from sea-water intrusion owing to the overdraft. Mining of non-renewable resources is particularly evident in some of the basins.

In Jordan, the situation is very similar. Privately managed farms in the highlands are irrigated by groundwater from private wells. Highlands irrigation expanded from 3,000 ha in 1976 to an estimated 33,000 ha today and accounts for about 60 per cent of groundwater use. Another 5,000 ha is irrigated by non-renewable groundwater in the Disi area. Groundwater extraction exceeds the safe yield, leading to significant water level decline and salinity increase, drying up of springs and reduced water level and water quality. Enforcement of the by-law regulating groundwater control is also poor. Even if they have been drilled with a permit, most of the wells do not respect the allowed quantity of water to be pumped (broken meters) or the pumping depth.

In Lebanon, most of the wells are drilled illegally. Overpumping has led to the same problems mentioned above for Jordan and the Syrian Arab Republic. In the Bekaa valley, the water table has declined from two metres in 1952 to 160 metres today.

B. Case study: the Nubian Sandstone Aquifer System

The Nubian Sandstone Aquifer System (NSAS) occupies a great portion of the arid Eastern Sahara in northeast Africa. It is shared among four countries: Chad, Egypt, the Libyan Arab Jamahiriya and the Sudan. The NSAS study covers an approximate area of 2.2 million km^2. The groundwater in storage in the Nubian sandstone aquifers is huge; it is estimated at 457,000 km^3. The aquifer system is a transboundary, deep, confined aquifer system containing non-renewable groundwater resources.

Over the past three decades, Egypt, the Libyan Arab Jamahiriya and the Sudan have made separate attempts to develop the Nubian sandstone aquifers and the overlying arid lands. Since the early 1970s, the three countries have expressed their interest in regional cooperation in studying and developing these shared resources. They agreed to form a joint authority to study and develop the Nubian sandstone aquifer systems and also agreed to seek international technical assistance to establish a regional project in order to develop a regional strategy for the utilization of NSAS.

In order to assure the sustainable development and continued regional cooperation for the proper management of the Nubian sandstone aquifer, it was deemed imperative to share the information, monitor the aquifer regionally, and exchange updated information on the behaviour of that shared resource. Therefore, the national coordinators of the four countries signed two agreements in October 2000 that were endorsed later on by the Joint Authority in January 2001.