

Chapter VIII

SHARED NATURAL RESOURCES

A. Introduction

184. The Commission, at its fifty-fourth session (2002), decided to include the topic “Shared natural resources” in its programme of work and appointed Mr. Chusei Yamada as Special Rapporteur.⁸⁶² A Working Group was also established to assist the Special Rapporteur in sketching out the general orientation of the topic in the light of the syllabus prepared in 2000.⁸⁶³ The Special Rapporteur indicated his intention to deal with confined transboundary groundwaters, oil and gas in the context of the topic and proposed a step-by-step approach beginning with groundwaters.⁸⁶⁴

185. From its fifty-fifth (2003) to its sixtieth (2008) sessions, the Commission received and considered five reports from the Special Rapporteur.⁸⁶⁵ During this period, the Commission also established four Working Groups, the first of which was chaired by the Special Rapporteur and the other three by Mr. Enrique Candioti. The first Working Group, established in 2004, assisted in furthering the Commission’s consideration of the topic. The second Working Group, established in 2005, reviewed and revised the 25 draft articles on the law of transboundary aquifers proposed by the Special Rapporteur in his third report, taking into account the debate in the Commission. The third Working Group, established in 2006, completed the review and revision of the draft articles submitted by the Special Rapporteur in his third report, culminating in the completion, on first reading, of the draft articles on the law of transboundary aquifers (2006). The fourth Working Group, established in 2007, assisted the Special Rapporteur in considering a future work programme, in particular the relationship between aquifers and any future consideration of oil and gas, consequently agreeing with the proposal of the Special Rapporteur that the Commission should proceed to a second reading of the draft articles on the law of transboundary aquifers in 2008 and treat that subject independently of any future work by the Commission on oil and gas.

186. Moreover, the Commission, at its fifty-eighth session (2006), adopted, on first reading, draft articles on

⁸⁶² *Yearbook ... 2002*, vol. II (Part Two), p. 100, paras. 518–519. The General Assembly, in para. 2 of resolution 57/21 of 19 November 2002, took note of the Commission’s decision to include the topic “Shared natural resources” in its programme of work. See also General Assembly resolution 55/152 of 12 December 2000.

⁸⁶³ *Yearbook ... 2000*, vol. II (Part Two), annex, p. 141.

⁸⁶⁴ *Yearbook ... 2002*, vol. II (Part Two), pp. 100–102, para. 520.

⁸⁶⁵ First report: *Yearbook ... 2003*, vol. II (Part One), document A/CN.4/533 and Add.1; second report: *Yearbook ... 2004*, vol. II (Part One), document A/CN.4/539 and Add.1; third report: *Yearbook ... 2005*, vol. II (Part One), document A/CN.4/551 and Add.1; fourth report: *Yearbook ... 2007*, vol. II (Part One), document A/CN.4/580; and fifth report: *Yearbook ... 2008*, vol. II (Part One), document A/CN.4/591.

the law of transboundary aquifers consisting of 19 draft articles,⁸⁶⁶ together with commentaries thereto.⁸⁶⁷ The Commission, at its sixtieth session (2008), adopted, on second reading, a preamble and a set of 19 draft articles on the law of transboundary aquifers,⁸⁶⁸ with a recommendation that the General Assembly: (a) take note of the draft articles and annex them to its resolution; (b) 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 the draft articles; and (c) 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.⁸⁶⁹

B. Consideration of the topic at the present session

187. At the present session, at its 3013th meeting, on 2 June 2009, the Commission decided to again establish a Working Group on shared natural resources, chaired by Mr. Enrique Candioti. The Working Group had before it a working paper on oil and gas (A/CN.4/608),⁸⁷⁰ prepared by Mr. Chusei Yamada, Special Rapporteur on the topic, before he resigned from the Commission.⁸⁷¹

⁸⁶⁶ At the 2885th meeting on 9 June 2006.

⁸⁶⁷ At the 2903rd, 2905th and 2906th meetings on 2, 3 and 4 August 2006. At the 2903rd meeting on 2 August 2006, the Commission decided to transmit the draft articles, through the Secretary-General, to Governments for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 1 January 2008. See the comments and observations by Governments on the draft articles adopted on first reading (*Yearbook ... 2008*, vol. II (Part One), document A/CN.4/595 and Add.1). See also the topical summaries, prepared by the Secretariat, of the discussion held in the Sixth Committee of the General Assembly during its sixty-first session (A/CN.4/577 and Add.1–2, sect. A (mimeographed; available on the Commission’s website, documents of the fifty-ninth session)) and its sixty-second session (A/CN.4/588, sect. B (mimeographed; available on the Commission’s website, documents of the sixtieth session)). The draft articles with the commentary thereto adopted by the Commission on first reading are reproduced in *Yearbook ... 2006*, vol. II (Part Two), pp. 94–115.

⁸⁶⁸ At the 2971st meeting, on 4 June 2008. The preamble and the draft articles with the commentary thereto adopted by the Commission on second reading are reproduced in *Yearbook ... 2008*, vol. II (Part Two), chap. IV, sect. E, pp. 19 *et seq.*

⁸⁶⁹ See General Assembly resolution 63/124 of 11 December 2008.

⁸⁷⁰ The Working Group had before it: (a) the questionnaire on oil and gas (circulated to Governments in 2007); (b) document A/CN.4/608; (c) document A/CN.4/580 (fourth report of the Special Rapporteur (see footnote 865 above)); (d) document A/CN.4/591 (relevant portions of the fifth report of the Special Rapporteur (*ibid.*)); (e) document A/CN.4/607 and Add.1 (comments and observations received from Governments on the questionnaire); (f) A/CN.4/606 (relevant parts of the topical summary); and (g) a compilation of excerpts from the summary records of the debate in the Sixth Committee on oil and gas in 2007 and 2008.

⁸⁷¹ See footnote 1 above.

188. At its 3020th meeting, on 14 July 2009, the Commission took note of the oral report of the Chairperson of the Working Group on shared natural resources and endorsed the recommendations of the Working Group (see section B.2 below).

1. DISCUSSIONS OF THE WORKING GROUP

189. The Working Group held one meeting on 3 June 2009 and exchanged views on the feasibility of any future work by the Commission on the issue of transboundary oil and gas resources. It addressed several aspects, including whether there was a practical need for work on oil and gas; the sensitivity of the issues to be addressed; the relationship between the issue of transboundary oil and gas resources and the question of boundary delimitations, including maritime boundaries; and the difficulties in the collection of information relating to the practice in this field.

190. Some members, while recognizing the specificities of each situation involving the exploration or exploitation of transboundary oil and gas resources, were of the view that there might be a need to clarify certain general legal aspects, in particular in the field of cooperation.

191. Several members emphasized the need for the Commission to proceed cautiously with regard to oil and gas, and to be responsive to the views expressed by States. Some members pointed to the fact that the majority of Governments who expressed themselves on this issue did not favour future work by the Commission on oil and gas, or expressed reservations thereto. However, the point was also made that the number of written responses received so far, although substantial, was still insufficient

for the Commission to make an assessment on whether it should undertake any work on this subject. The view was expressed that the General Assembly had already considered that oil and gas were going to be part of the topic "Shared natural resources".

2. DECISIONS AND RECOMMENDATIONS OF THE WORKING GROUP

192. In order to assist the Commission in assessing the feasibility of any future work on oil and gas, the Working Group decided to entrust Mr. Shinya Murase with the responsibility of preparing a study to be submitted to the Working Group on shared natural resources that might be established at the sixty-second session of the Commission. The study, which would be prepared with the assistance of the Secretariat, would analyse the written replies received from Governments on the subject of oil and gas, their comments and observations in the Sixth Committee of the General Assembly, as well as other relevant elements.

193. Furthermore, on the basis of the discussions, the Working Group agreed to recommend that:

(a) a decision on any future work on oil and gas would be deferred until the sixty-second session of the Commission; and

(b) in the meantime, the questionnaire on oil and gas would be circulated once more to Governments, while also encouraging them to provide comments and information on any other matter concerning the issue of oil and gas, including, in particular, whether the Commission should address the subject.