

## **UNESCO Seminar on Groundwaters**

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Mr. Chairman,

I am very grateful to the organizers of this Workshop on Transboundary aquifers at UNESCO Headquarters; UNESCO IHP, French Academie de l'eau and the French Geological Survey. I am happy to be able to attend this workshop in my capacity as the Special Rapporteur on Shared Natural Resources of the UN International Law Commission and to meet with the European experts on groundwaters.

Ms. Stephan has just briefed you on the current work of the International Law Commission on groundwaters. I will supplement her introduction from the perspective of the Commission.

As you might be aware, one of the important functions of the United Nations is to promote progressive development of international law and its codification as stipulated in Article 13 of the Charter of the United Nations. The International Law Commission was established in 1947 as a subsidiary organ of the United Nations General Assembly. Its mandate is to prepare for the UN General Assembly more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and doctrine. In other word, its work is to restate in the form of draft articles what is existing customary international law. During the last 60 years, the Commission has produced more than 20 draft conventions on important subjects.

The first time the Commission dealt with a shared natural resource was when it took up international surface waters and formulated draft articles on the law of non-navigational uses of international watercourses. The final draft articles adopted by the Commission in 1994 resulted in the 1997 UN Convention on the law of non-navigational uses of international watercourses. Article 2 of the convention defines "watercourses" as "a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus". Thus, the 1997 convention covers international surface waters, which are rivers and lakes, and only such groundwaters that are hydraulically linked to international surface waters. The last Special

Rapporteur of the topic, late Robert Rosenstock of the United States wanted to have the convention also cover transboundary groundwaters that are not linked to surface waters. He called such groundwaters as “confined groundwaters”. This terminology is used in a different context in scientific community. However, most of the members of the Commission felt that such groundwaters are more akin to oil and natural gas and that separate studies are required for them. At the end, the Commission adopted the resolution recommending the UN General Assembly to apply the articles of international watercourses *mutatis mutandis* to such groundwaters and also to initiate studies on them.

The adoption of the new topic of “shared natural resources” in our programme of work in 2002 was, therefore, the follow-up of this recommendation of the Commission. It is generally perceived that the topic covers three kinds of natural resources; groundwater, oil and natural gas. The Commission accepted my suggestion to take a step by step approach and decided to focus first on groundwaters. It completed its first-reading of a set of 19 draft articles on the law of transboundary aquifers last year. It transmitted these draft articles and the commentaries thereto to the UN General Assembly. You will find the draft articles and the commentaries thereto in Chapter VI of the Report of the Commission of 2006 in UN document A/61/10 which I think was already emailed to you in English and French versions.

UNESCO has rendered valuable assistance to me and to the Commission for the last five years as the coordinating agency of the UN system on the global water issue. UNESCO was also kind enough to organize a briefing session on these draft articles in New York last year for the delegations.

In the discussions held in the Sixth Committee, which is in charge of legal matters, of the UN General Assembly during its 61<sup>st</sup> session in 2006, the delegations welcomed the timely completion of the first reading of the draft articles and expressed, in general, favourable responses to these draft articles. You will find the summary records of these statements in Informal Paper 1 and brief summary prepared by the Secretariat in Informal Paper 2 which, I understand, are contained in your dossier.

We are expecting written submission of comments and observations on the draft articles from Governments by January 1, 2008. It is vitally

important for the Commission to receive comments and observations from as many governments as possible so that the Commission would be able to reflect the views of governments and improve its second reading texts of draft articles. I sincerely hope that you would provide your expertise advice to your governments and encourage them to submit the comments to the United Nations in time for the deadline of January 1, 2008. Europe is the region that is most advanced in the study of aquifers, in management of aquifers and in international cooperation on aquifers. Your valuable comments would benefit many States in other regions, in particular in the developing world.

I would also like to hear the government views on the final form of our product, whether it should be a convention or guidelines, as it would affect the drafting. In any event, what the Commission produces is a framework convention which would serve as guidelines to bilateral or regional agreements on some specific aquifer system to be negotiated by the States concerned.

As we are awaiting the submission of government comments, the Commission has not commenced the second reading of the draft articles. I will study the comments as soon as I receive them next January and prepare my 5<sup>th</sup> report which will contain the whole set of revised draft articles that takes into account of the positions of various governments. I am hoping that the Commission will be able to complete the second reading, which is the final reading, next year and recommend them to the UN General Assembly for its adoption. For this, I need the continued assistance from UNESCO.

There is however one aspect that the Commission is addressing this year. It is the aspect of the relationship between the work on transboundary aquifers and the possible future work on oil and natural gas. I said that the topic of "Shared Natural Resources" is generally perceived to cover three kinds of natural resources; groundwaters, oil and natural gas. Formal decision on the scope of the topic has not yet been taken.

During the first-reading exercise on transboundary aquifers, the question was often raised in the Commission on this aspect because the proposed measures relating to aquifers might have certain implications for the future work on oil and natural gas and, conversely, existing State practices and norms relating to oil and natural gas might have certain

implication on the current work on transboundary aquifers. I was instructed last year to present a report on this aspect. During the debate held in the Sixth Committee of the UN General Assembly last year, delegations commented on this aspect also. You will find the summary of such debate in Paragraph 24 of the Topical summary in document A/CN.4/577. I would say that the majority of delegations that commented preferred us to proceed with the second-reading of the draft articles on the law of transboundary aquifers independently from the work we might be taking up on oil and natural gas.

The 4<sup>th</sup> report which I submitted this year was on this aspect and is rather brief. Chapter II of the report describes origin, formation and exploitation of oil and natural gas. It also deals with similarity and dissimilarity between aquifer on one hand and oil and natural gas on the other not only from the point of scientific and technical features but also from those of political, economic and environmental aspects. To summarize, there exists close similarity between the physical feature of non-recharging aquifer and that of reservoir rock of oil and natural gas. The similarity between groundwaters on one hand and oil and natural gas on the other ends there. In all other aspects, they are different. I am also worried if we initiate our studies on oil and natural gas in parallel with groundwaters, it will complicate the work on groundwaters and unduly delay the work on groundwaters. My recommendation is, therefore, that the Commission could and should proceed with the second-reading of the draft articles on the law of transboundary aquifers next year and should endeavour to complete the second-reading as expeditiously as possible independently from the possible future work on oil and natural gas. I presented this report already and I hope that the Commission will approve my recommendation during the 2<sup>nd</sup> part of the session in July in Geneva.