

Sharing of Benefits in the Draft Articles on the Law of Transboundary Aquifers of the International Law Commission

XVI WWC

IWRA

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Outline

- I. Background
- II. Sharing of benefits
- III. Elements: science into policy

I. Background

- In 2008, ILC adopts the DA on the law of TBA
- Recommendation to the UNGA:
 - (a) To take note of the draft articles on the law of transboundary aquifers in a resolution, and to annex these articles to the resolution;
 - (b) To recommend to States concerned to make appropriate bilateral or regional arrangements for the proper management of their transboundary aquifers on the basis of the principles enunciated in these articles;
 - (c) To also consider, at a later stage, and in view of the importance of the topic, the elaboration of a convention on the basis of the draft articles.

I. Background



- 4 UN GA resolutions on the topic
- DA annexed to 2 UN GA resolutions
- Resolutions 63/124 (2008) & 66/104 (2011) :
« *Encourages* the States concerned to ...”
- Resolutions 68/118 (2013) & 71/150 (2016):
“*Commends* to the attention of Governments the draft articles ... as guidance ...”

I. Background

- Reference in the Guarani Aquifer agreement (2010)
- Basis for the Model Provisions on transboundary groundwater (UNECE (2012))



II. Sharing of benefits

- Structure of the DA (based on the UNWC)

I Introduction

II General principles

III Protection, preservation and management

IV Miscellaneous provisions

II. Sharing of benefits

Equitable and reasonable utilisation (article 4):

Principle divided in 3 parts:

1. Equitable utilisation:



➤ §a, Aquifer States « shall utilize transboundary aquifers or aquifer systems in a manner that is consistent with the equitable and reasonable accrual of benefits therefrom...”

➔ equality of rights, equitable (≠ equal) allocation of benefits among the States sharing the aquifer

II. Sharing of benefits

2. Reasonable utilisation:

- §b Aquifer States « shall aim at maximizing the long-term benefits derived from the use of water contained therein »



II. Sharing of benefits

§c « They shall establish individually or jointly a comprehensive utilization plan, taking into account present and future needs of, and alternative water sources for, the aquifer States »



II. Sharing of benefits

3. Duty to protect

§d. They shall not utilize a recharging transboundary aquifer or aquifer system at a level that would prevent continuance of its effective functioning.



III. Elements

Various elements:

1. ***Objective of maximising & long term:***

Important in the case of non-recharging aquifers

➔ Making the best within
the longest period possible



III. Elements

2. ***Comprehensive utilisation plan*** → tool for realising the maximisation of the long term benefits:

- Management (article 14): 2 obligations:
 - ➔ each aquifer State to establish its own plan with regard to the aquifer and to implement it
 - ➔ to enter into consultations with other aquifer States concerned at the request of any of them.
 - ➔ Joint management mechanism

III. Elements

Management includes:

- the measures to be taken for the maximization of the long-term benefits
- the protection and preservation of transboundary aquifers.



III. Elements

3. Consideration of the present and future needs:

Reflects the concerns of sustainability and intergenerational equity (cf §7 Preamble)

4. Alternative water resources

5. Recharging aquifers: obligation of maintaining their functioning (protection) → not necessary to limit the level of utilization to the level of recharge. Control of the utilization level

Thank you for your attention