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



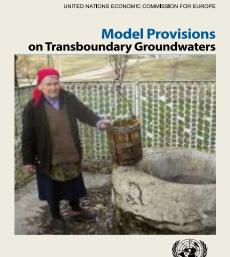
- 4 UN GA resolutions on the topic
- DA annexed to 2 UN GA resolutions
- Resolutions 63/124 (2008) & 66/104 (2011) :
 « Encourages the States concerned to ..."
- Resolutions 68/118 (2013) & 71/150 (2016):
 "Commends to the attention of Governments the draft articles ... as guidance ..."

I. Background

Reference in the Guarani Aquifer agreement

(2010)

Basis for the Model
 Provisions on transboundary
 groundwater (UNECE (2012)





- Structure of the DA (based on the UNWC)
- **I** Introduction
- II General principles
- III Protection, preservation and management
- IV Miscellaneous provisions

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

2. Reasonable utilisation:

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



§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 »



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.

Various elements:

1. *Objective of maximising & long term*: Important in the case of non-recharging aquifers

→ Making the best within the longest period possible

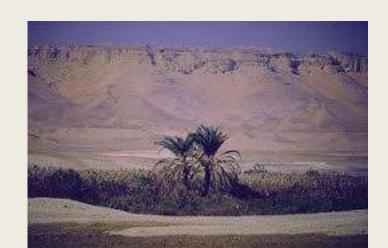


- 2. **Comprenhensive utilisation plan** → tool for realising the maximisation of the long term benefits:
 - ➤ Management (article 14): 2 obligations:
 - →each aquifer State to establish its own plan with regard to the aquifer and to implement it
 - → to enter into consultations with other aquifer States concerned at the request of any of them.
 - → Joint management mechanism

Management includes:

➤ the measures to be taken for the maximization of the long-term benefits

> the protection and preservation of transboundary aquifers.





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