Progressive development of International GW Law : awareness and cooperation

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Outline

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Introduction

Until recently, limited consideration of transboundary aquifers in international law

- Subsidiary to surface water:

D.UN Watercourse Convention (1997)

E.State practice: river basins agreements

A. UN Watercourse Convention

- Limited in its scope
  - Aquifers not ‘related’ to surface water bodies are excluded from the scope of the Convention
  - Groundwater and surface water do not necessarily share a ‘common terminus’
- The need for specific rules
  - *The rules were tailored for surface waters, GW came in later.*
  - GW more vulnerable to pollution and depletion than surface water : need for more protective obligations and principles

B. State practice

The majority of the agreements are on surface water,

GW is included when related to the surface waters:

Convention on the Sustainable Development of Lake Tanganyka, 12 June 2003, (*Burundi, Congo, Tanzania, Zambia)*

The Protocol for Sustainable Development of Lake Victoria basin, 29 November 2003, *(Kenya, Tanzania, Uganda)*

B. State practice

- Convention and Statutes relating to the development of the Chad basin, 22 May 1964 *(Cameroon, Chad, Niger, Nigeria)*
- Agreement concerning the equitable sharing in the development, conservation and use of the common water resources, 18 July 1990 *(Nigeria, Niger)*
- Convention on Cooperation for the Protection and Sustainable Use of the River Danube, 29 June 1994,
- Convention on the Protection of the Rhine,12 April 1999, *(Germany, European Community, France, Luxemburg, Netherlands, Switzerland)*

- **Result:**

- **Rules exist for GW related to surface water**
- **Exclusion of a great number of TA**
- **Agreements are tailored for surface water**

Few exceptions :

- **Arrangement on the protectionm utilisation and recharge of the Franco Swiss Genevese aquifer (9 June 1977, revised in January 2008)**

- **SASS : Establishment of a consultation mechanism approved by the three States (december 2002)** *(Algeria, Libya and Tunisia)*

- **Joint Authority on the NSAS** (1992) *(Chad, Egypt, Libya and Sudan)*

I. Development, Evolution and Cooperation at the global level

A. The process at the UN ILC

2002 : the ILC includes in its programme of work the topic of “Shared Natural Resources”

- **Transboundary groundwaters**
- Oil
- Natural gas

A. The process at the UN ILC

- In 2006, after the 3rd report, the ILC adoptes the draft articles at first reading

- The draft articles are transmitted to Governments for comments and observations, by 1 January 2008

- **2006 & 2007**

Comments by governments : 45 oral and 19 written

→ ***generally favorable***

- Between 2003 and 2007: What reactions at the UN GA 6th Committee:

- Global support of the project : acknowledgement of the importance of GW and TB aquifers, and awareness of the need for specific rules for TB aquifers
- Global support to the approach adopted in the reports and to the scientific consultation with GW experts

A. The process at the UN ILC

- In 2008, the ILC adopts at **second reading** the draft articles on the law of transboundary aquifers (19)

➢ End of a process of 5 years

➢ Draft articles transmitted to the UN GA

➢ Recommendation : 2 steps approach :

e. *Adoption of Resolution, with draft articles in annex*

f. *At a later stage elaboration of a convention*

B. Cooperation of two UN bodies:UN ILC and UNESCO IHP

Background

UN International Law Commission

- Established by the General Assembly in 1947
- Promotes the progressive development of international law and its codification
- Composed of 34 members elected by the GA

B. Cooperation of two UN bodies:UN ILC and UNESCO IHP

International Hydrological Programme

The only global intergovernmental scientific programme on water resources of the UN system

**** Created in 1975 after the International Hydrological decade***

**** Member States define needs and plans of phases***

**** Growing emphasis on management and social aspects***

International Hydrological Programme

The role of UNESCO-IHP

- Scientific and technical advice on the issues related to hydrogeology to the Special Rapporteur and to the ILC

- Invitation, coordination and support of contributions from international experts, international and national institutions, and centres on groundwater resources, such as IAH, FAO, UN ECE, IGRAC ...

II.Cooperation and awareness

A. Existing legal frameworks

UN ECE Convention on the protection and Use of Transboundary Watercourses and International Lakes (1992)

Applies to the 56 member States of the ECE: countries of Europe,

Canada and United States

Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan

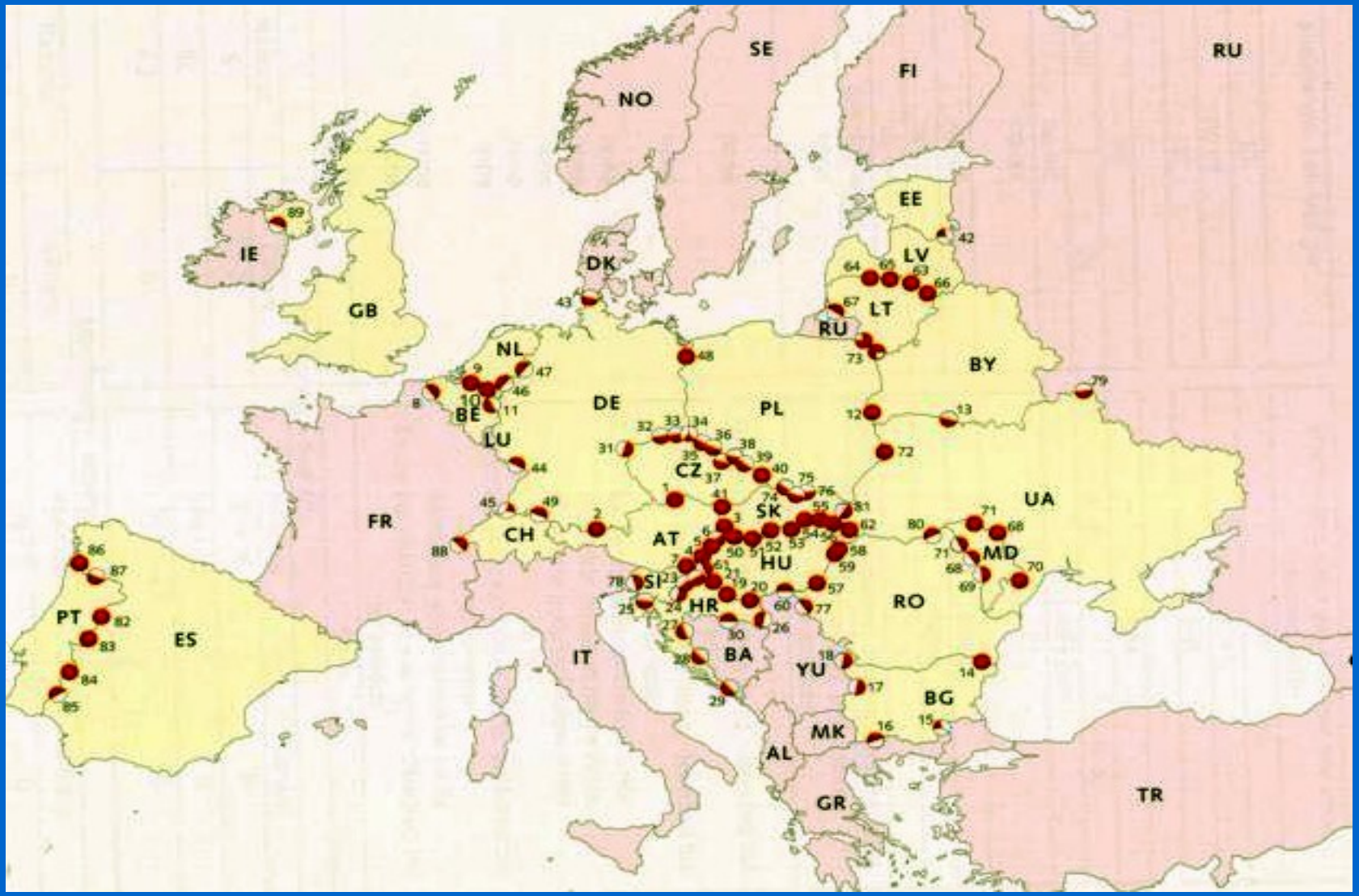
Israel

UN ECE Convention on the protection and Use of Transboundary Watercourses and International Lakes (1992)

- applies to all transboundary waters
- Provisions procedural rules, such as monitoring
- Guided by the equitable and reasonable use principle, the precautionary principle and the sustainable development

International Hydrological Programme

UNECE Survey of European transboundary aquifers



Under the Convention (1992) on the Protection and Use of Transboundary Watercourses and International lakes

Guidelines on monitoring and assessment of transboundary groundwaters

- Monitoring programmes
- Data management
- Quality management
- Joint action and institutional arrangements

http://www.unece.org/env/water/publications/documents/guidelinesgroundwater.pdf

Transboundary aquifers in the EU WFD

- Provisions on shared GW bodies among EU Member States, and between a Member State and a non Member State → cooperation requirements

- Member States sharing groundwater bodies have to coordinate their activities in respect of monitoring, setting of threshold values, and identifying relevant hazardous substances

- Coordination for establishing groundwater threshold values is made even more specific in Article 3 (criteria for assessing good chemical status), for both transboundary GW bodies within the Community and bodies shared with non-Member States

B. Legal component in projects

- Emergence of various projects on TA with a legal component aiming at the establishement of mechanisms for cooperation in TA management & the supporting legal instruments

- Iullemeden Aquifer System (IAS)
  - Guarani Aquifer System
  - Strengthening of cooperation in the NSAS
  - Med Map on the coastal aquifers

- **Capacity building for sustainable utilization, management and protection of internationally shared groundwater in the Mediterranean region**

(ESCWA, ECE, ECA, in partnership with UNESCO-IHP (ISARM))

Main objective: ***increased awareness and application by the MEDA countries of the international norms in the sustainable management of shared aquifers***

Conclusion

- The development of international law is a slow process
- In the case of TA, the process is on
- The process is supported by an emerging awareness
- However there is still a long way to go