

Statement
by the Representative of the Russian Federation J.Panevkin
in the Sixth Committee of the 59-th session of UN General Assembly
on the Report of the International Law Commission
(item 144 of the Agenda)

5 November 2004

Mr. Chairman,

We are grateful to Mr. C. Yamada, the Special Rapporteur, for the preparation of the second report and draft articles **on the topic “Shared Natural Resources”**. We agree with the conclusion made by the Special Rapporteur on the need to collect additional information and to study a set of related issues, including the relevant practices of the States. We believe that it is yet more appropriate in view of the provisions of the report dealing with the difficulties in identifying groundwaters not linked to the surface waters and, consequently, not covered by the 1997 Convention on the Law of the Non-navigational Uses of International Watercourses. In this regard we suppose that the results of such a study can influence the ILC’s work on this topic.

We are aware that the collection of data on this topic involves objective difficulties arising from the lack of relevant practices in the States. In our turn, we would like to note that, for instance, the agreements between Russia and certain neighboring States on the protection and use of transboundary waters contained no special mentioning of groundwaters not linked to the surface waters. We intend to provide the Commission with answers to the questionnaire circulated by the UN Secretariat in its memorandum dated 23 September this year.

We note that the Special Rapporteur is now trying to avoid the concept of “confined groundwaters”. Therefore, we consider as justified his approach that

rather encourages the use of 1997 Convention provisions while working on this topic. In our view, we also should not forget about the 1992 Convention on the protection and use of transboundary watercourses and international lakes despite its regional scope. This document sets a number of fundamental principles guiding the protection and use of transboundary waters, be those surface waters or groundwaters.

Assuming that groundwaters that are the subject of this study are specifically characterized as exhaustible and nonrenewable, the meaning of the concept of transboundary damage used in draft articles needs further analysis. For example, can the concept be applied to a decrease in the quantities of water in the aquifer when used within the territory of only one of the neighboring States or when aquifer system States use different quantities of its resources?

On the whole, we are inclined to believe that irrespective of the kind of results the ILC obtains while working on this topic, they should provide a framework. On the one hand, they could serve as a reference point for the states concluding related bilateral or regional agreements. On the other hand, they should be without prejudice to special regimes, where applicable. This was the approach that laid the base for the 1997 Convention and, as far as we understand, was used by the Special Rapporteur.

In conclusion we would like to say a couple of words on extending the scope of the Commission's further study on this topic to such types of transboundary natural resources as oil and gas. We believe that issues arising from the definition of an international legal regime for these natural resources have a very specific nature. Therefore, we are doubtful that it would be expedient to consider the international legal regulation of these kinds of natural resources within this topic. In our view, it should be assumed that such regulation should be provided in each particular case upon the agreement between the parties concerned.

Thank you, Mr. Chairman.