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SHARED NATURAL RESOURCES
REPORT OF THE WORKING GROUP

1. At the 2920th meeting, on 16 May 2007, the Commission decided to establish a Working Group on Shared natural resources under the Chairmanship of Mr. Enrique Candioti to assist the Special Rapporteur in formulating a future work programme, taking into account the views expressed in the Commission. The composition of the Working Group was announced at the 2921st meeting, on 18 May.¹
2. The Working Group decided to deal with three issues, namely (a) the substance of the draft articles on the law of transboundary aquifers adopted on first reading; (b) the final form that the draft articles should take; (c) issues involved in the consideration of oil and gas.
3. The Working Group had before it informal papers circulated by the Special Rapporteur containing excerpts from the summary records of the debate on the topic “Shared national resources” in the Sixth Committee during the sixty-first session of the General Assembly, and

¹ The Working Group was composed as follows: Mr. E. Candioti (Chairman); Mr. C. Yamada (Special Rapporteur); Mr. I. Brownlie; Mr. P. Comissário Afonso; Ms. P. Escarameia; Mr. G. Gaja; Mr. Z. Galicki; Mr. H.A. Hassouna; Mr. M.D. Hmoud; Ms. M.G. Jacobsson; Mr. R.A. Kolodkin; Mr. D.M. McRae; Mr. G. Nolte; Mr. R.A. Perera; Mr. G.V. Saboia; Mr. N. Singh; Mr. M. Vázquez-Bermudez; Mr. A. Wako; Mr. N. Wisnumurti; Ms. H. Xue; and Mr. E. Petrič (*ex officio*).

excerpts of the topical summary on the topic “Shared natural resources”, as well as a preliminary bibliography on oil and gas prepared with the assistance of the Chairman of the Working Group. The Working Group held four meetings on 18 May, on 4 and 5 June and on 17 July 2007.

4. The Working Group was mindful of the fact that the draft articles on the law of transboundary aquifers adopted on first reading had already been submitted to Governments for their comments and observations, including on the final form. Accordingly, the comments made in the Working Group were informal in character and only intended, as part of a brainstorming exercise, to facilitate the Special Rapporteur’s work in the preparation of his fifth report and did not prejudice or prejudice any further analysis and discussion to be made during the second reading of the draft articles taking into account the comments and observations of Governments. Some members indicated the importance of maintaining the balance achieved in the first reading text, in particular with respect to draft articles 1 (Scope), and 14 (Planned activities). Some other members made comments or sought specific clarifications regarding the draft articles, in particular with respect to draft articles 1 (Scope), 2 (Use of terms), 3 (Sovereignty of aquifer States), 4 (Equitable and reasonable utilization), 5 (Factors relevant to equitable and reasonable utilization), 7 (General obligation to cooperate), 8 (Regular exchange of data and information), 11 (Prevention, reduction and control of pollution), 14 (Planned activities) and 19 (Bilateral and regional agreements and arrangements). Yet some other members preferred to make their comments at the appropriate time during the consideration of the second reading of the draft articles. The Special Rapporteur responded to the questions posed and took note of the comments made.

5. It was recalled that the Commission makes a recommendation on the final form to the General Assembly at the conclusion of a second reading. Since the final form would have a bearing on the substance of the text, including on issues relating to the relationship between any future binding instrument and existing bilateral agreements or arrangements, as well as concerning dispute settlement, it was noted that an early exchange of views on the matter would assist the Special Rapporteur in the preparation of his fifth report. While members expressed views on the different possibilities, including preference for either a non-binding instrument in the form of a declaration of principles or a binding format by way of a framework convention,

the Working Group refrained from taking any definitive position on the final form. Some members also stressed the importance of the normative formulation of the draft articles adopted on first reading.

6. Regarding issues involved in the consideration of transboundary oil and gas resources, a suggestion was made that the Secretariat prepare a survey of State practice on oil and gas. Such a survey would assist the Commission in sketching out the future treatment of that part of the topic. Following a discussion on the various options, the Working Group agreed as a first step to prepare a questionnaire on State practice for circulation to Governments. Such a questionnaire would, *inter alia*, seek to determine whether there were any agreements, arrangements or practice regarding the exploration and exploitation of transboundary oil and gas resources or for any other cooperation for such oil or gas, including, as appropriate, maritime boundary delimitation agreements, as well as unitization and joint development agreements or other arrangements; the content of such agreements or arrangements or a description of the practice, as well as any further comments or information, including legislation, judicial decisions, which Governments may consider to be relevant or useful to the Commission in the consideration of issues regarding oil and gas.

7. Some members were of the view that the assistance of the Secretariat will subsequently be necessary for analysis of the State practice. It was also suggested that the Secretariat assist in the identification of expertise within the United Nations system to provide at the appropriate time the scientific and technical background information in the elaboration of the subject as was done with the draft articles on law of transboundary aquifers.
