

**Tools to Improve Governance Frameworks for
Conjunctive Water Management: Draft Articles on
the Law of Transboundary Aquifers and Model
Provisions on Transboundary Groundwaters**

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The ILC's Draft Articles on the Law of Transboundary Aquifers

- Overview.
- The UNGA commended the DA to the attention of Governments as guidance for bilateral or regional agreements and arrangements and encouraged IHP of UNESCO to continue providing relevant scientific and technical assistance (UNGA res., 68/118, 71/150, 74/193 and 77/112 (see also previous UNGA res. 63/124 and 66/104)).
- Coverage of transboundary aquifers and aquifer systems, both connected and unconnected.
- States whose rights and obligations fall within the scope of the Draft Articles.

Model Provisions on Transboundary Groundwaters under the 1992 Water Convention

- Scope of application of the Water Convention with respect to groundwaters.
- Elaboration and adoption of the Model Provisions.
- Aim of the Model Provisions : offer assistance to States in drawing up specific agreements or provisions on groundwaters.

Draft Articles (6 UN languages):

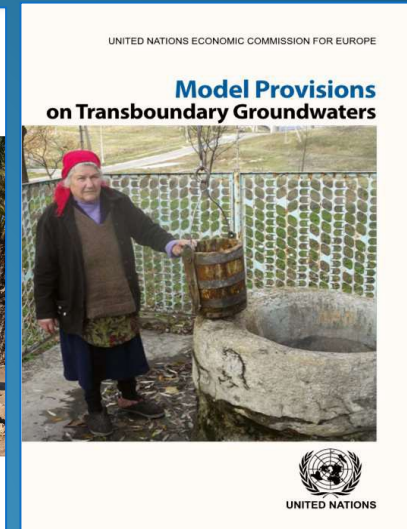
<https://digitallibrary.un.org/record/643188>

ILC Commentaries:

https://legal.un.org/ilc/texts/instruments/english/commentaries/8_5_2008.pdf

Model Provisions (A, E, F, R, S)

<https://unece.org/environment-policy/publications/model-provisions-transboundary-groundwaters>



The no-harm rule and the equitable and reasonable utilization principle

- 1. Obligation to take all appropriate measures to prevent, control and reduce any transboundary impact with respect to groundwater. (Paragraph 1 of Model Provision 1 and Draft Article 6).
- 2. Obligation to use transboundary groundwaters in an equitable and reasonable manner (Paragraph 2 of Model Provision 1 and Draft Article 4).

The sustainability principle

- Obligation to use transboundary groundwaters in a sustainable manner, with a view to :
 - a) maximize the long-term benefits accruing therefrom and
 - b) allow for the continuance of their functioning (Model Provision 2 and Draft Article 4, points (b) and (d)).

Monitoring and assessment

- Aquifer States shall use agreed standards and methodology for monitoring their transboundary aquifers or aquifer systems and agree upon key parameters and, whenever possible, carry out these activities jointly (Draft Article 13).
- The Parties shall cooperate in the common identification, delineation and characterization of their transboundary groundwaters. They shall also strive to develop common conceptual models whose level of detail depends on the complexity of the system and the pressures weighting on it (Paragraph 1 of Model Provision 3).

Prevention, control and reduction of pollution

- Obligation to prevent, control and reduce pollution (Draft Article 12, Model Provision 5)
- Need for a precautionary approach, in view of the vulnerability of groundwater to pollution, particularly in cases of possible uncertainty about the nature and extent of transboundary groundwaters (Draft Article 12).
- Appropriate measures may include, inter alia, the following :
- (a) The establishment of protection zones;
- (b) The adoption of measures to prevent or limit the release of pollutants into groundwaters;
- (c) The regulation of land uses;
- (d) The definition of groundwater quality objectives and the adoption of groundwater quality criteria (Paragraph 2 of Model Provision 5).

Integrated management

- Obligation of the aquifer States to establish and implement plans for the proper management of their transboundary aquifers (Draft Article 14).
- Where appropriate, joint or coordinated plans shall be established (Paragraph 1 of Model Provision 7).
- Management plans shall provide, inter alia, for:
The allocation of water uses, the recording of the volume of water abstractions, the prescription of pumping limitations and the development of programmes of measures for preserving and rehabilitating groundwater quantity and quality (Paragraph 2 of Model Provision 7).
- The Parties shall cooperate on the integrated management of their transboundary groundwaters and surface waters (Model Provision 4).

Obligation to cooperate

- Obligation of the aquifer States to cooperate in order to attain equitable and reasonable utilization and appropriate protection of their transboundary aquifers and aquifer systems (Draft Article 7, paragraph 1).
- Envisage the establishment of a joint body (Draft Article 7, paragraph 2 and Model Provision 9).

The ILC's Draft Articles and the Model Provisions : a shared vision

- The Draft Articles and the Model Provisions pursue the same overall objective: provide guidance for States to increase cooperation on groundwater through improved legal frameworks.
- The Draft Articles and the Model Provisions are similar in many aspects and usefully complement each other.
- Both the Draft Articles and the Model Provisions can support Conjunctive Water Management in transboundary settings as they strengthen the legal frameworks for management of groundwaters, while recognizing the interaction and specificity of the relationship between surface waters and groundwaters.
- The Model Provisions remain relevant and up to date. Their commentaries could benefit from an update in light of experience gained with cooperation on groundwater worldwide and to reflect the global nature of the Water Convention.



Thank you!