

IWRA Webinar

*Why does the UN Watercourses Convention  
entry into force matter?*

15:00-16:30 CET, 14<sup>th</sup> July 2014

IHP-HELP Centre for Water  
UNESCO  
Law, Policy & Science

Where does the UN Watercourses  
Convention derive its authority from?

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# The UN's Work on the UNWC – A long history!

## **1401 (XIV). Preliminary studies on the legal problems relating to the utilization and use of international rivers**

*The General Assembly,*

*Considering* that it is desirable to initiate preliminary studies on the legal problems relating to the utilization and use of international rivers with a view to determining whether the subject is appropriate for codification,

*Requests* the Secretary-General to prepare and circulate to Member States a report containing:

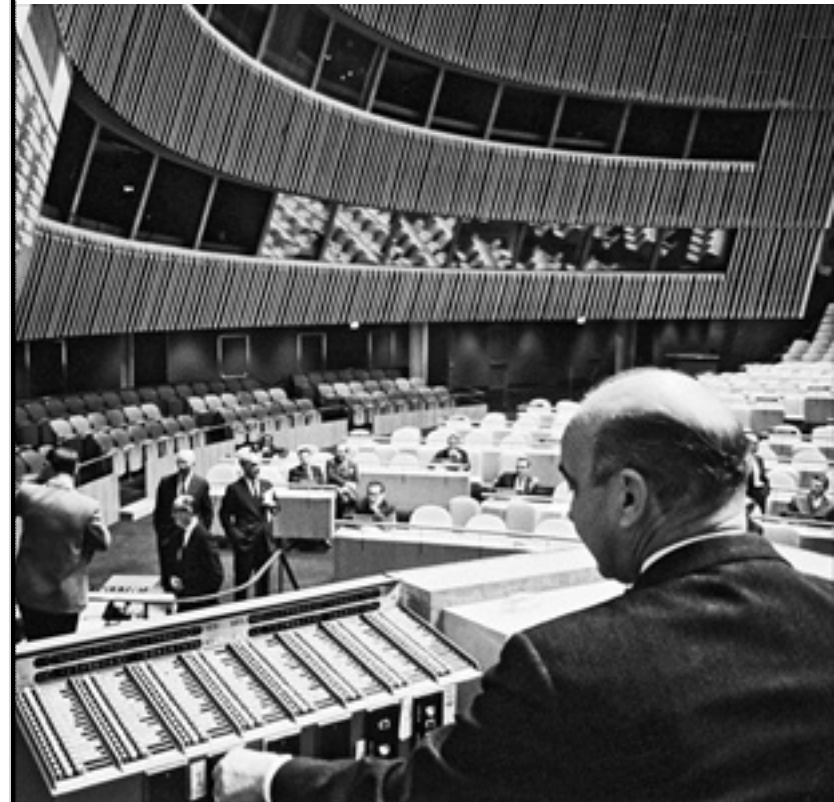
(a) Information provided by Member States regarding their laws and legislation in force in the matter and, when necessary, a summary of such information;

(b) A summary of existing bilateral and multilateral treaties;

(c) A summary of decisions of international tribunals, including arbitral awards;

(d) A survey of studies made or being made by non-governmental organizations concerned with international law.

*842nd plenary meeting,  
21 November 1959.*



# Why was it necessary to strengthen IWL?

**2669 (XXV). Progressive development and codification of the rules of international law relating to international watercourses**

*The General Assembly,*

*Recalling* its resolution 1401 (XIV) of 21 November 1959, by which it considered that it was desirable to initiate preliminary studies on the legal problems relating to the utilization and use of international rivers, and as a result of which useful legal material was collected in the report submitted by the Secretary-General on 15 April 1963,<sup>12</sup>

*Considering* that water, owing to the growth of population and the increasing and multiplying needs and demands of mankind, is of growing concern to humanity, that the available fresh water resources of the world are limited and that the preservation and protection of those resources are of great importance to all nations,

*Conscious* of the importance of legal problems relating to the use of international watercourses, *inter alia* with regard to international water resources development,

<sup>12</sup> United Nations, *Treaty Series*, vol. 704 (1969), No. 10106.  
<sup>13</sup> A/5409.

- ILC should codify and progressive develop international law of the non-navigational uses of international watercourses.
- Why?
  - Population growth
  - Increasing and multiplying needs and demands growing concern of humanity
  - Freshwater availability is limited
  - Need to protect and preserve water is important to all nations
  - Conscious of legal problems related to use and development of international water resources
  - Despite great number of treaties, law still based in part of general principles and rules of customary law

# The work of the ILC – an extensive ‘bottom up’ approach

## Replies of Governments

- Replies of Governments to the Commission's questionnaire (A/CN.4/294 and Add.1, 1 April 1976, reproduced in *Yearbook of the International Law Commission, 1976*, vol. II, Part One, pp.147-183)
- Replies of Governments to the Commission's questionnaire (A/CN.4/314, 23 June 1978, reproduced in *Yearbook of the International Law Commission, 1978*, vol. II, Part One, pp. 253-261)
- Replies of Governments to the Commission's questionnaire (A/CN.4/324, 13 July 1979, reproduced in *Yearbook of the International Law Commission, 1979*, vol. II, Part One, pp. 178-181)
- Replies of Governments to the Commission's questionnaire (A/CN.4/329 and Add.1, 10 March and 3 July 1980, reproduced in *Yearbook of the International Law Commission, 1980*, vol. II, Part One, pp. 153-158)
- Replies of Governments to the Commission's questionnaire (A/CN.4/352 and Add.1, 18 February and 28 June 1982, reproduced in *Yearbook of the International Law Commission, 1982*, vol. II, Part One, pp. 191-197)
- Replies of Governments to the Commission's questionnaire (A/CN.4/447 and Add.1-3, 3 March, 15 April, 18 May and 14 June 1993, reproduced in *Yearbook of the International Law Commission, 1993*, vol. II, Part One, pp. 146-178)

## ILC Special Rapporteur Reports

- First report on the law of the non-navigational uses of international watercourses by Mr. Richard D. Kearney, Special Rapporteur (A/CN.4/295, 7 May 1976, reproduced in *Yearbook of the International Law Commission, 1976*, vol. II, Part One, pp. 184-191))
- First Report on the law of the non-navigational uses of international watercourses, by Mr. Stephen Schwebel, Special Rapporteur (A/CN.4/320 and Corr.1, 21 May 1979, reproduced in *Yearbook of the International Law Commission, 1979*, vol. II, Part One, pp. 143-177))
- Second report on the law of the non-navigational uses of international watercourses, by Mr. Stephen M. Schwebel, Special Rapporteur (A/CN.4/332 and Add.1, 24 April and 22 May 1980, reproduced in *Yearbook of the International Law Commission, 1980*, vol. II, Part One, pp. 159-198))
- Third report on the law of the non-navigational uses of international watercourses, by Mr. Stephen M. Schwebel, Special Rapporteur (A/CN.4/348 and Corr.1, 11 December 1981, reproduced in *Yearbook of the International Law Commission, 1982*, vol. II, Part One, pp. 65-191))
- First report on the law of the non-navigational uses of international watercourses, by Mr. J. Evensen, Special Rapporteur (A/CN.4/367 and Corr.1, 19 April 1983, reproduced in *Yearbook of the International Law Commission, 1983*, vol. II, Part One, 157-194))
- Second report on the law of the non-navigational uses of international watercourses, by Mr. Jens Evensen, Special Rapporteur (A/CN.4/381 and Corr.1 and Corr.2 (French only), 24 April 1984, reproduced in *Yearbook of the International Law Commission, 1984*, vol. II, Part One, pp. 103-127))
- Preliminary report on the law of the non-navigational uses of international watercourses, by Mr. Stephen McCaffrey, Special Rapporteur (A/CN.4/393, 5 July 1985, reproduced in *Yearbook of the International Law Commission, 1985*, vol. II, Part One, pp. 87-96))
- Second report on the law of the non-navigational uses of international

- watercourses, by Mr. Stephen C. McCaffrey, Special Rapporteur (A/CN.4/399 and Add.1 and 2, 19 March, 12 and 21 May 1986, reproduced in *Yearbook of the International Law Commission, 1986*, vol. II, Part One, pp. 88-144))
- Third report on the law of the non-navigational uses of international watercourses, by Mr. Stephen C. McCaffrey, Special Rapporteur (A/CN.4/406 and Corr.1 and Add.1 and 2, 30 March; 6 and 8 April 1987 reproduced in *Yearbook of the International Law Commission, 1987*, vol. II, Part One, pp. 16-46)
- Fourth report on the law of the non-navigational uses of international watercourses, by Mr. Stephen C. McCaffrey, Special Rapporteur (A/CN.4/412 and Add.1 and 2, 3 March, 3 and 9 May 1988, reproduced in *Yearbook of the International Law Commission, 1988*, vol. II, Part One, pp. 206-250)
- Fifth report on the law of the non-navigational uses of international watercourses, by Mr. Stephen C. McCaffrey, Special Rapporteur (A/CN.4/421 and Add.1 and 2, 5 April, 4 and 19 May 1989, reproduced in *Yearbook of the International Law Commission, 1989*, vol. II, Part One, pp. 92-130))
- Sixth report on the law of the non-navigational uses of international watercourses, by Mr. Stephen C. McCaffrey, Special Rapporteur (A/CN.4/427 and Corr.1 and Add.1, 23 February and 7 June 1990, reproduced in *Yearbook of the International Law Commission, 1990*, vol. II, Part One, pp. 42-82))
- Seventh report on the law of the non-navigational uses of international watercourses, by Mr. Stephen C. McCaffrey, Special Rapporteur (A/CN.4/436 and Corr.1-3, 15 March 1991, reproduced in *Yearbook of the International Law Commission, 1991*, vol. II, Part One, pp. 46-69))
- First report on the law of the non-navigational uses of international watercourses, by Mr. Robert Rosenstock, Special Rapporteur (A/CN.4/451, 20 April 1993 reproduced in *Yearbook of the International Law Commission, 1993*, vol. II, Part One, pp. 179-185))
- Second report on the law of the non-navigational uses of international watercourses, by Mr. Robert Rosenstock, Special Rapporteur (A/CN.4/462 and Corr.1, 21 April 1994, reproduced in *Yearbook of the International Law Commission, 1994*, vol. II, Part One, pp. 114-128)

## Outcomes

- Draft articles on the law of the non-navigational uses of international watercourses. Titles and texts adopted by the Drafting Committee: Parts I, II and VI of the draft articles; articles 2, 10 and 26-33 (A/CN.4/L.458 and Corr.1 and Add.1, 6 June 1991)
- International Law Commission, Draft articles and commentaries thereto adopted by the Drafting Committee on second reading: articles 1-33, reproduced in *Yearbook of the International Law Commission 1994*, vol. II, Part Two, para. 222 (A/CN.4/L.493 and Add.1 and Add.1/Corr.1 and Add. 2, 12 July 1994)
- General Assembly resolution 51/229 of 21 May 1997 (Convention on the Law of the Non-Navigational Uses of International Watercourses)



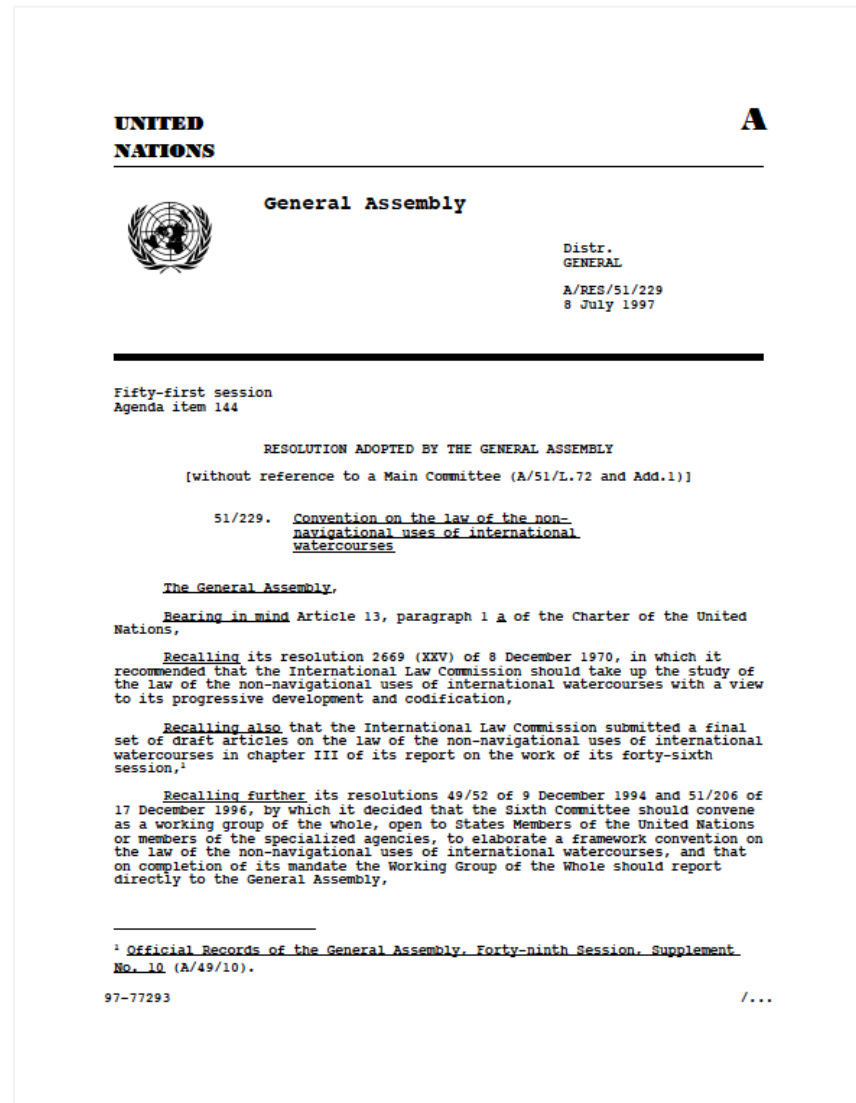
# How did States get involved in the drafting process?

- Two sessions
  - 7-25<sup>th</sup> October 1996
  - 24<sup>th</sup> March – 4<sup>th</sup> April 1997
- Draft articles to be discussed on ‘article-by-article basis’
- Recorded votes on
  - Art 3 (existing agreements)
  - Arts 5-7 (equitable and reasonable utilization vis-à-vis no significant harm)
  - Art. 33 and Annex (Dispute settlement)
- Statements from 54 nations recorded



# Outcome of Negotiations

- UN Resolution, 51/229, 21<sup>st</sup> May 1997, UN General Assembly adopted text of the Convention
- Recorded vote
  - 103 nations in favour (3 subsequently informed the UN GA they they intended to vote in favour)
  - 27 Abstentions
  - 3 nations against (Burundi, China, Turkey)
- Statements by Tanzania, Turkey, Bolivia, Pakistan, Czech Republic, China, Slovakia, France, India, Ethiopia, Egypt, Spain and Rwanda



# Final remarks – the persuasive power of the UNWC

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“Modern development of international law has strengthened this principle for non-navigational uses of international watercourses as well, as evidenced by the adoption of the Convention of 21 May 1997 on the Law of the Non-Navigational Uses of International Watercourses by the United Nations General Assembly”

International Court of Justice, Case Concerning the Gabčíkovo-Nagymaros Project (Hungary/ Slovakia), 25 September 1997, Para. 85