

# Monitoring and data exchange under the UN Watercourses Convention (1997) and the Draft Articles on the law of transboundary aquifers

Key provisions, similarities, differences and complementarities

Strengthening Legal and Institutional Arrangements for Transboundary Water Cooperation and Data and Information Exchange

ESCWA, Beirut 30-31 May 2023

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# Background

1994: ILC adopts DA on the law of non-navigational uses of international watercourses

→ 1997 Convention (vote of the UN GA)

→ 37 Parties today (Iraq, Jordan, Lebanon, Libya, Morocco, Qatar, Palestine, Syria, Tunisia + Yemen (signed))

## Scope:

- uses of international watercourses and of their waters for purposes other than navigation
- measures of protection, preservation and management related to the uses of those watercourses and their waters.

(article 1)

### **Definition of a watercourse (article 2a):**

« a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole **and** normally flowing into a common terminus »



# Background

ILC acknowledged limited coverage of groundwater:

→ Introduction in 2002 in its agenda the topic of « Shared Natural resources »

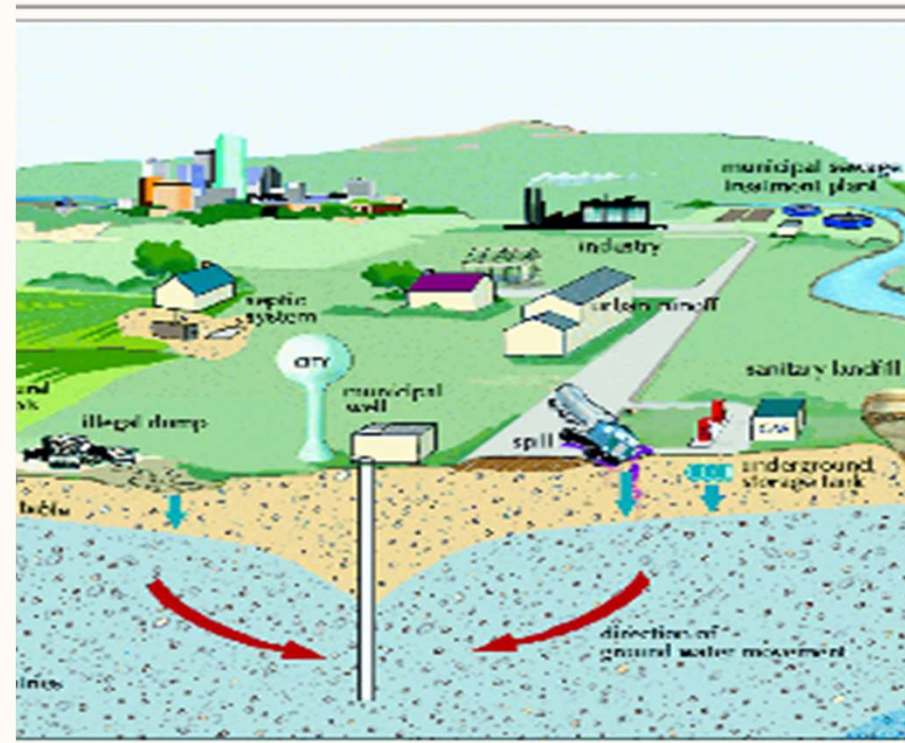
➤ DA adopted in 2008

➤ Scope (article 1):

- the utilization of the aquifers & the measures for their protection, preservation and management
- Other activities that have or are likely to have an impact upon such aquifers or aquifer systems

**Definition of an aquifer (article 2a):**

a permeable water-bearing geological formation underlain by a less permeable layer and the water contained in the saturated zone of the formation;



# Background

- DA: non-binding
  - Topic of 6 UN GA resolutions
  - Annexed to 2 resolutions 63/124 (2008) & 68/118 (2013)

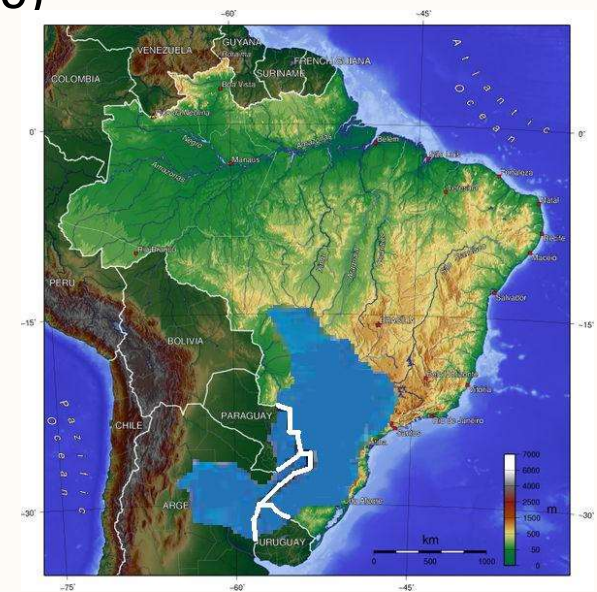
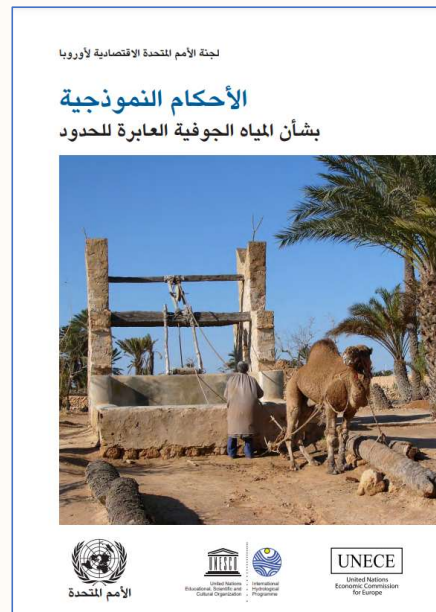
*“Commends to the attention of Governments the draft articles ... as guidance for bilateral or regional agreements and arrangements for the proper management of transboundary aquifers”*



# Background

- Reference in the Guarani Aquifer agreement (2010)

- Basis for the Model Provisions on transboundary groundwater (UNECE (2012))





# Background

## Structure of the DA (based on the UNWC)

I Introduction

II General principles

III Protection, preservation and management

IV Miscellaneous provisions



# Regular exchange of data (art 9 UNWC, art 8 DA)

→ first application of the general obligation to cooperate

**1st step:**

- regular basis
- readily available data and information

UNWC : in particular that of a hydrological, meteorological, hydrogeological and ecological nature and related to the water quality as well as related forecasts.

DA: in addition geological and related to the hydrochemistry



# Regular exchange of data (art 9 UNWC, art 8 DA)

## 2<sup>nd</sup> step (DA)

- Best efforts to collect data to improve the knowledge about the TBA
- individually, jointly or through IO

## 3<sup>rd</sup> step

- Request to provide data not readily available
- Best efforts to comply with the request
- compliance could be subject to payment

## Transversal obligation

- process data and information in a manner that facilitates their utilization by the other aquifer States





# Monitoring (article 13 DA)

## Obligation on the States

### Detailed process:

- wherever possible jointly or in collaboration with competent IO
  - If not jointly, exchange the monitored data
  - Use agreed or harmonized standards and methodology
  - Identify key parameters to monitor based on an agreed conceptual model
- parameters on the condition of the TBA: geological, hydrogeological, hydrological, meteorological and ecological nature and related to the hydrochemistry + on its utilization



Thank you for your attention


Workshop on Strengthening Legal and Institutional Arrangements for Transboundary  
Water Cooperation and Data and Information Exchange  
*Beirut, Lebanon, 30-31 May 2023*

**Monitoring and data exchange  
under the two United Nations global water  
conventions and the law of transboundary aquifers.  
*Key provisions, similarities, differences and  
complementarities***  
**Focus on the 1992 Water Convention**

*Iulia Trombitcaia, Water Convention secretariat*



# HOW ARE THE TWO GLOBAL WATER CONVENTIONS COMPLEMENTARY?



**1992  
WATER  
CONVENTION**



- Content of specific agreements and tasks of joint bodies (Art.9)
- Information subject to assessment and exchange (Arts. 11 and 13)
- Guidance on water quality objectives and BAT (annexes)
- Appropriate measures to prevent transboundary impact (Art. 3)



**1997  
WATERCOURSES  
CONVENTION**

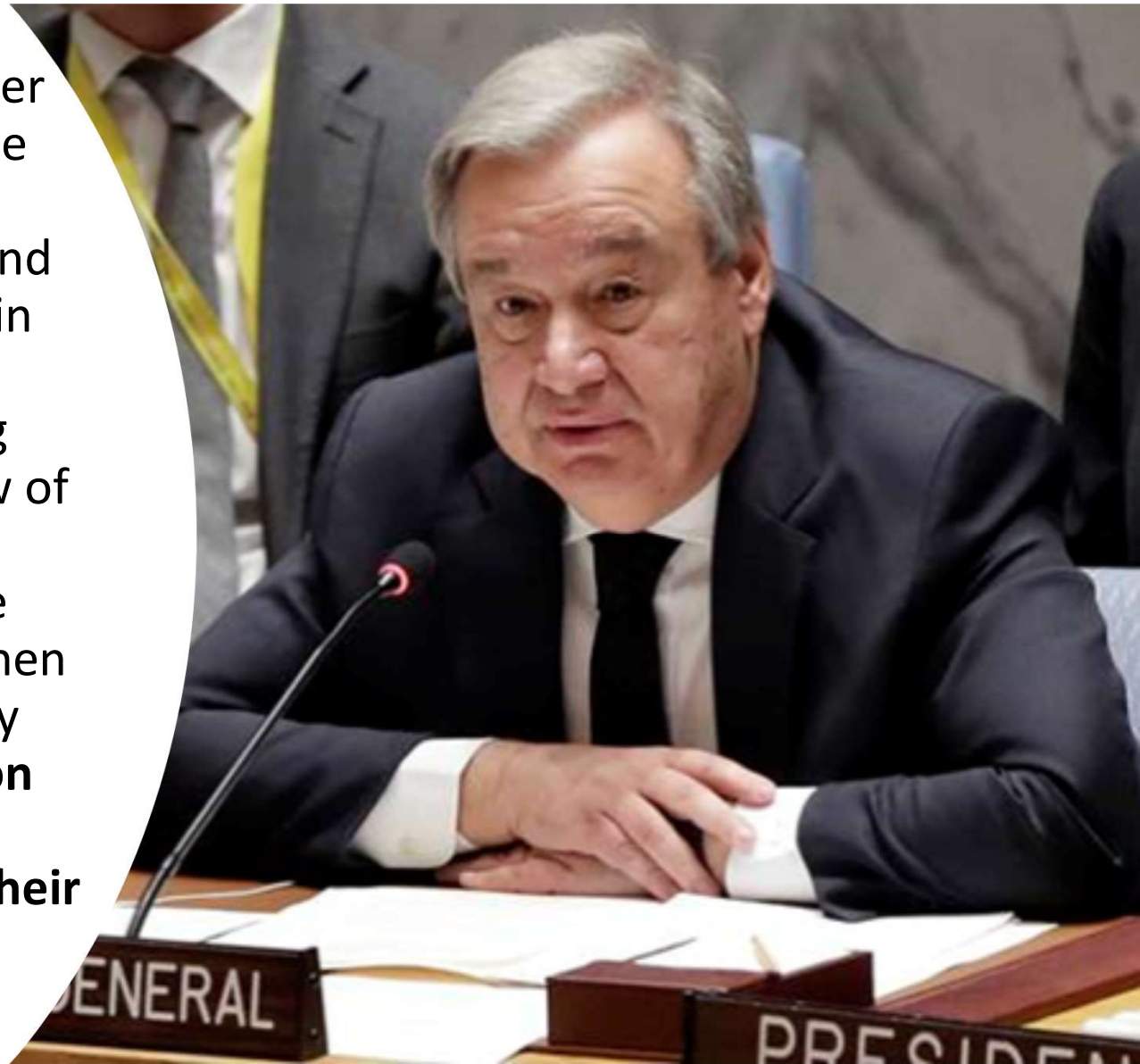
- Detailed factors relevant to equitable and reasonable utilization (Art.6)
- Procedures for consultation on planned measures (Part III)
- Consequences of the occurrence of transboundary impact (Art. 7(2))
- Provisions on armed conflict (Part VI)

# HOW ARE THE TWO GLOBAL WATER CONVENTIONS DIFFERENT?

 <p><b>1992 WATER CONVENTION</b></p>	<p><b>≠</b></p>	 <p><b>1997 WATERCOURSES CONVENTION</b></p>
<p>Obligation to enter into agreements and establish joint bodies (Art. 9)</p>	<p>FUTURE AGREEMENTS AND JOINT BODIES</p>	<p>Recommendation to enter into agreements and establish joint bodies (Arts. 3, 4, 8(2), 24)</p>
<p>Obligation to adapt in line with the basic principles of the Convention (Art. 9(1))</p>	<p>EXISTING AGREEMENTS</p>	<p>Recommendation to adapt (Art. 3(2))</p>
<p>Included (Arts. 17-19)</p>	<p>INSTITUTIONAL MECHANISM BASED ON THE MEETING OF THE PARTIES</p>	<p>Not included</p>
<p>All transboundary waters (Art. 1(1)), including confined groundwater</p>	<p>SCOPE</p>	<p>Surface water and connected groundwater (not confined groundwater) (Art. 2(a))</p>



“The global opening of the Water Convention, the accession of the first countries from outside the UNECE region -- namely Chad and Senegal -- and the momentum in support of the Convention are promising developments. Along with the Convention on the Law of the Non-Navigational Uses of International Watercourses, the world has the ability to strengthen the rule of law in transboundary cooperation worldwide. **I call on Member States to join both Conventions and to strive for their full implementation.**”



# The 1992 Water Convention obligations

## Obligations for all Parties (Part I)

- Licensing of waste-water discharges and monitoring of authorized discharges
- Setting emission limits based on BAT
- Application of best environmental practices
- Establishing monitoring programmes
- Exchange information on issues covered by the Convention
- Minimization of the risk of accidental pollution
- EIA and other assessments

## Obligations for Riparian Parties (Part II)

- Conclusion of bilateral and multilateral agreements and creation of joint bodies
- Joint monitoring and assessment
- Common research and development
- Exchange of information
- Consultations
- Warning and alarm systems
- Mutual assistance
- Public information



# 1992 Water Convention: Joint monitoring and assessment (Art.11)

- Two key obligations:
  - Establish and implement *joint* programmes for monitoring the conditions of transboundary waters;
  - At regular intervals, carry out *joint or coordinated* assessments of the conditions of transboundary waters
- “Joint or coordinated”

## Elements to agree about:

- Objectives/needs to be achieved
- Identification of monitoring sites
- Selection of parameters, sampling and analytical methods, frequency, etc.
- **Guidance documents** on monitoring and assessment of transboundary rivers (2000), groundwaters (2000), lakes (2003), Strategies (2006) and Updated Strategies (2023)

= “monitor ... aquifers...jointly”, “exchange monitored data”, “use agreed or harmonized standards” (Draft Articles 13)



# 1992 Water Convention: Exchange of information (Art.13)

- Exchange “reasonably available” data (approximate, non-exhaustive list)
- Respond to requests for data or information that is not “reasonably available”
  - “Endeavour to comply with the request” (due diligence obligation)
  - Against payment of “reasonable charges” for collecting and processing information
- Exists for both downstream and upstream countries
- Protection of information (art.8)
  - Industrial and commercial secrecy, including intellectual property
  - National security

= “readily available” in the Watercourses Convention (Art.9.1)

= “readily available” (Draft Articles 8.1)

= “employ its best efforts to comply with the request” but payment of the “reasonable costs” in the Watercourses Convention (Art.9.2)

= “employ its best efforts” but payment of “reasonable costs” (Draft Articles 8.3)

= “national defense or security” in the Watercourses Convention (Art. 31)

= “national defence or security” (Draft Articles 19)



# 1992 Water Convention: Warning and alarm systems (Art.14)

- Without delay **inform each other** about any critical situation

## Critical situation:

- “Any” situation that poses a threat of causing transboundary impact
- Occurs suddenly or develops over a period of time
- Irrespective of the origins, whether natural phenomena or human conduct
- Set up and operate **“coordinated or joint” warning and alarm systems**
- Inform each other about **competent authorities**
- Provide **mutual assistance** upon request (Art.15)
- Develop **contingency planning** (Art. 3.1)

= “without delay ... notify ... of any emergency” in the Watercourses Convention (Art.28.2)

= “without delay... notify... of the emergency” (Draft Articles 17.2)

= “from natural causes... or from human conduct” in the Watercourses Convention (Art.28.1)

= “from natural causes or from human conduct” (Draft Articles 17.1)

= “develop contingency plans” in the Watercourses Convention (Art.28.4)

= “emergency response... humanitarian assistance” (Draft Articles 17.4)





# 1992 Water Convention: Bilateral and multilateral agreements and joint bodies (Art.9)

Obligation to set up joint bodies

## Tasks of joint bodies:

- Elaborate **joint monitoring programmes** concerning water quality and quantity
- Draw up inventories and **exchange information** on the pollution sources
- Establish **warning and alarm procedures**
- Serve as a **forum for the exchange of information** on existing and planned uses of water and related installations that are likely to cause transboundary impact
- Promote **exchange of information on the best available technology**

“consider the establishment of joint mechanisms... to facilitate cooperation” (Art.8.2) ; “joint management mechanisms” (Art.24.1) in the Watercourses Convention

establish “joint management mechanism” wherever appropriate (Draft Articles 14)



# 1992 Water Convention: Consultations (Art.10)

- Hold consultations at the request of any Riparian Party on all issues covered by the Convention
- Through a joint body where one exists

Part III “Planned measures” in the Watercourses Convention

Timely notification, EIA, consultations, fact finding (“Planned activities”, Draft Articles 15)



# Soft-law instrument: Model Provisions on Transboundary Groundwaters



- Non-binding guidance, adopted by Water Convention's Meeting of the Parties in 2012
- Build on the International Law Commission (ILC) Draft Articles
- To be used by Parties and non-Parties when entering into or reviewing bilateral or multilateral agreements on transboundary groundwaters
- Additional protocol to an existing agreement or new and separate specific agreement/arrangement on groundwaters
- Accompanied by commentaries with references to international commitments and State practice

[bit.ly/3MWbe7C](http://bit.ly/3MWbe7C)



# Soft-law instrument: Model Provisions on Transboundary Groundwaters

Provision 1: Obligations to prevent, control and reduce any transboundary impact; equitable and reasonable use

Provision 2: Obligation of sustainable use

Provision 3: **Obligation of cooperation in the identification, delineation and characterization; joint monitoring & assessment**

Provision 4: Integrated management of surface & groundwater

Provision 5: Prevention, control and reduction of pollution

Provision 6: **Exchange of information and data**

Provision 7: Joint or coordinated management plans

Provision 8: **EIA, notification and consultations**, access to information and to justice, public participation

Provision 9: Joint body



= “collect and generate more complete data and information” (Draft Articles 8.2)

= “monitor ... aquifers...jointly”, “exchange monitored data”, “use agreed or harmonized standards” (Draft Articles 13)

# More information



WEB [unece.org/env/water](http://unece.org/env/water)



EMAIL [water.convention@un.org](mailto:water.convention@un.org), [iulia.trombitcaia@un.org](mailto:iulia.trombitcaia@un.org)



RESOURCES [www.unece.org/env/water](http://www.unece.org/env/water) (1992 Water Convention)



[www.unwatercoursesconvention.org/](http://www.unwatercoursesconvention.org/) (1997 Watercourses Convention)



WATER  
CONVENTION