

# *International Water Law – evolution and current status of the Water Conventions*

Professor Alistair Rieu-Clarke

[alistair.rieu-clarke@northumbria.ac.uk](mailto:alistair.rieu-clarke@northumbria.ac.uk)

# Origins of international water law

- Earliest recorded treaty believed to be in 2,500 BC
- 1648 Peace of Westphalia
  - Birth of modern State
- Rights of navigation predominant in treaties during 19<sup>th</sup> and early 20<sup>th</sup> centuries
- 20<sup>th</sup> century increasing trend to encompass non-navigational issues
- Growing recognition of an integrated/ ecosystem approach

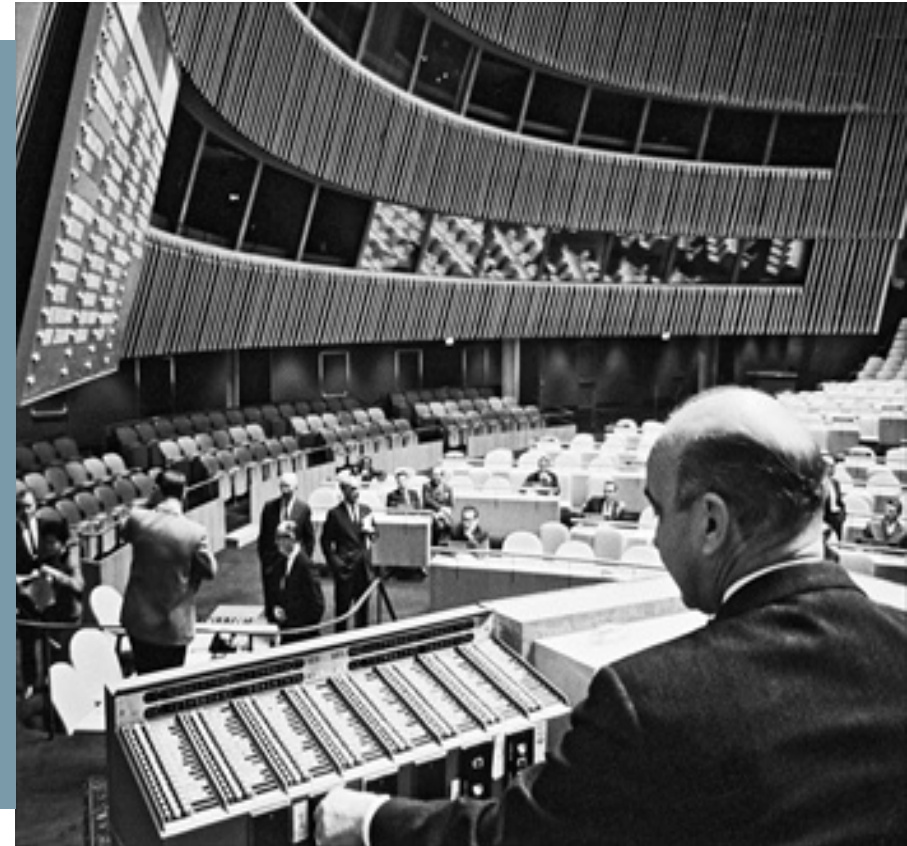


# “Private” codification efforts in IWL

- International Law Association
  - Non-state entity
- 1966 Helsinki Rules on the Users of the Waters of International Rivers
  - 1<sup>st</sup> comprehensive codification of law in the field
  - 6 Chapters
    - General
    - Equitable utilisation
    - Pollution
    - Navigation
    - Timber Floating
    - Dispute settlement
  - Adopted the ‘drainage basin’ concept
  - Equitable and reasonable principle, plus relevant factors
  - Influenced treaty practice 1960s to 1990s

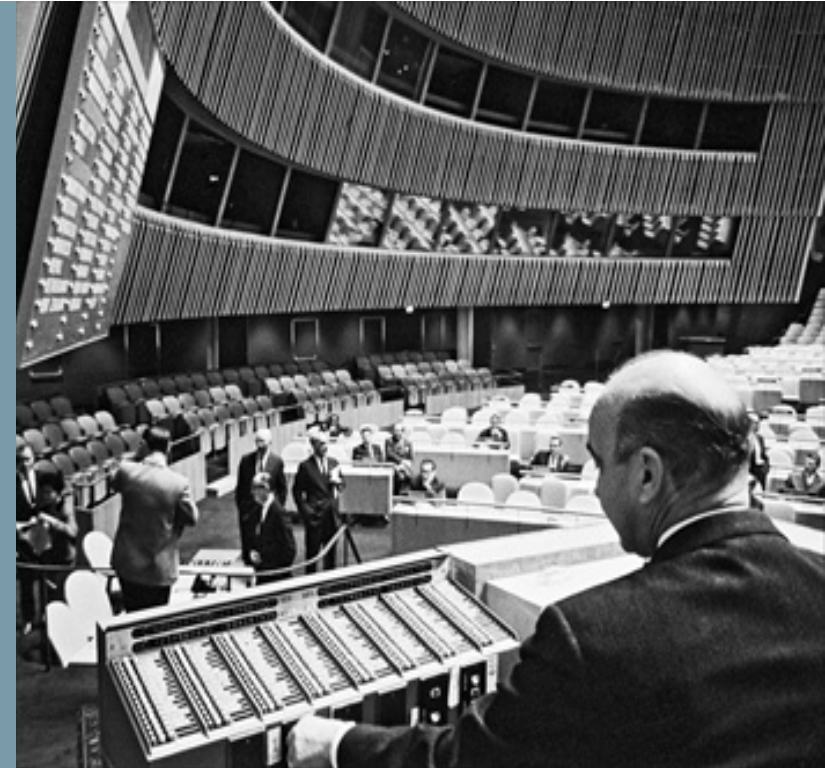
# UN Watercourses Convention

- UN GA Res 1401 (XIV), 1959
  - survey practice
- UN GA Res 2669 (XXV), 1970
  - International Law Commission (ILC) to codify and progressively develop the law
  - Why?
    - Address fragmentation
      - Lots of basins with no agreements
      - Lots of basins where not all basin States party to an agreement
      - Lots of agreements in need of updating
    - Tackle global challenges
      - Population increase
      - Limited water availability
      - Preservation and protection of resources great importance for all nations



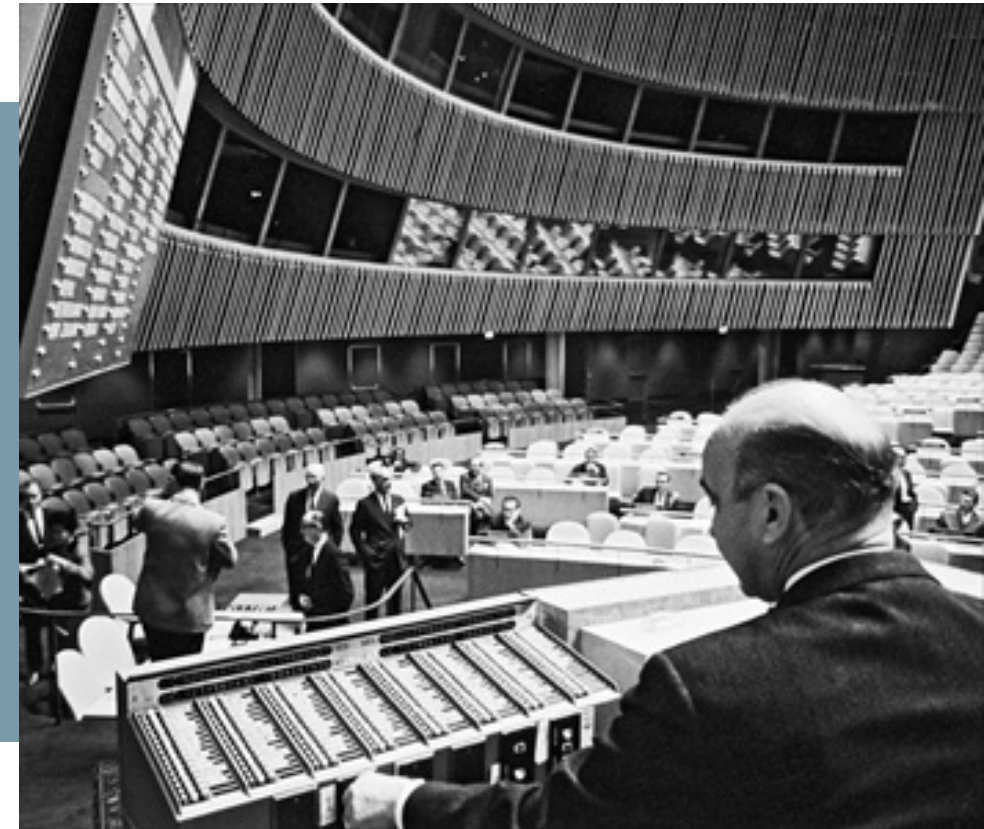
# Evolution of the UN Watercourses Convention

- 1976-1994
  - work of the ILC (in consultation with States)
- 1996-1997
  - negotiations in sixth committee of the GA
- 1997 Convention on the Law of the Non-navigational uses of international watercourses adopted
  - 103 in favour; 27 abstained; 3 against
- 2014 Entry into force
  - 35 Parties (36 Parties to date)
- Informal gathering of 1997 UN Watercourses Convention
  - UNESCO, Paris, 15 September 2015



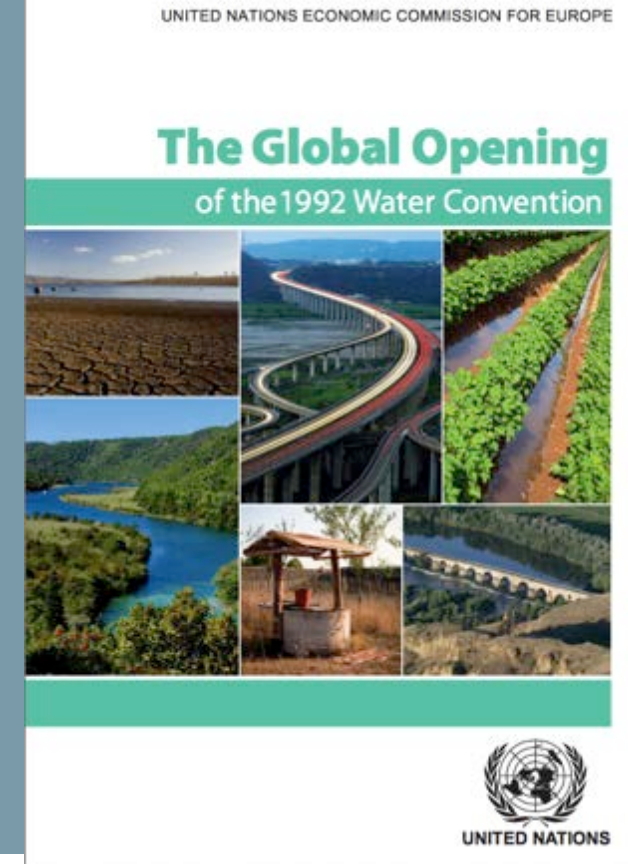
# Work of ILC on Transboundary Aquifers

- 2002 ILC included topic 'Shared Natural Resources of States'
- ILC Adopted Draft Articles in 2008
- 2011 & 2013 UN General Assembly Resolution
  - Encourage States to use Draft Articles as a guide
  - Form of Draft Articles deferred to 2016



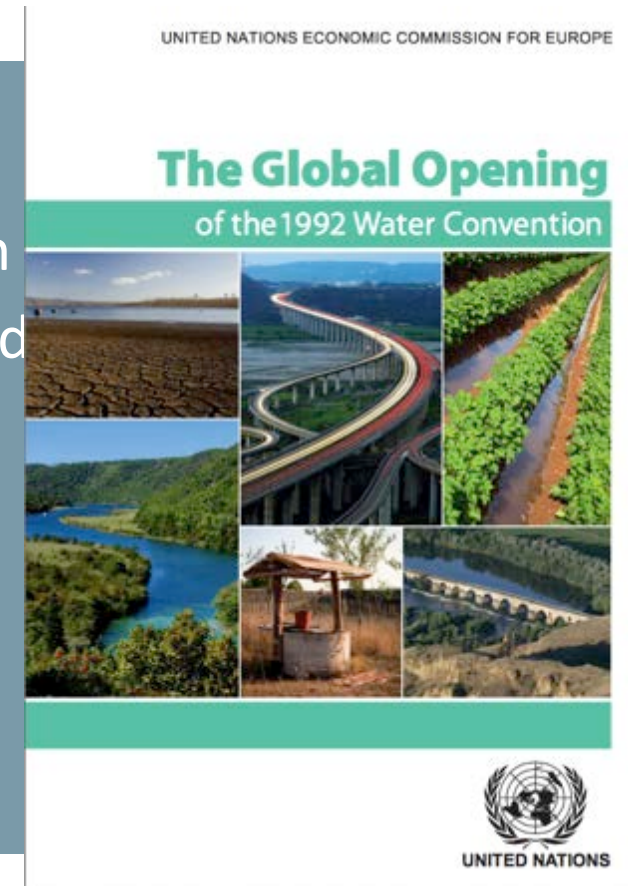
# The UNECE Water Convention

- UNECE 1 of 5 regional commissions established in 1947
- 'Europe' a misnomer!
  - 56 member states spanning Europe, North America and Asia
- Work on water started in last 1940s
- Initially Committee on Electric Power recognised potential for international cooperation pertaining to hydropower
- Expanded to cover other water related issues
- 1960s Committee on Water Problems established
  - Produced a series of recommendations, declarations and decisions from 1960s to early 1990s
  - Non-binding instruments covering, for example, water management, desalinisation, groundwater recharge, rational utilisation of water, use of economic instruments in water management, drinking water and sanitation, industrial processes, non-point source pollution, waste-water treatment and dam safety



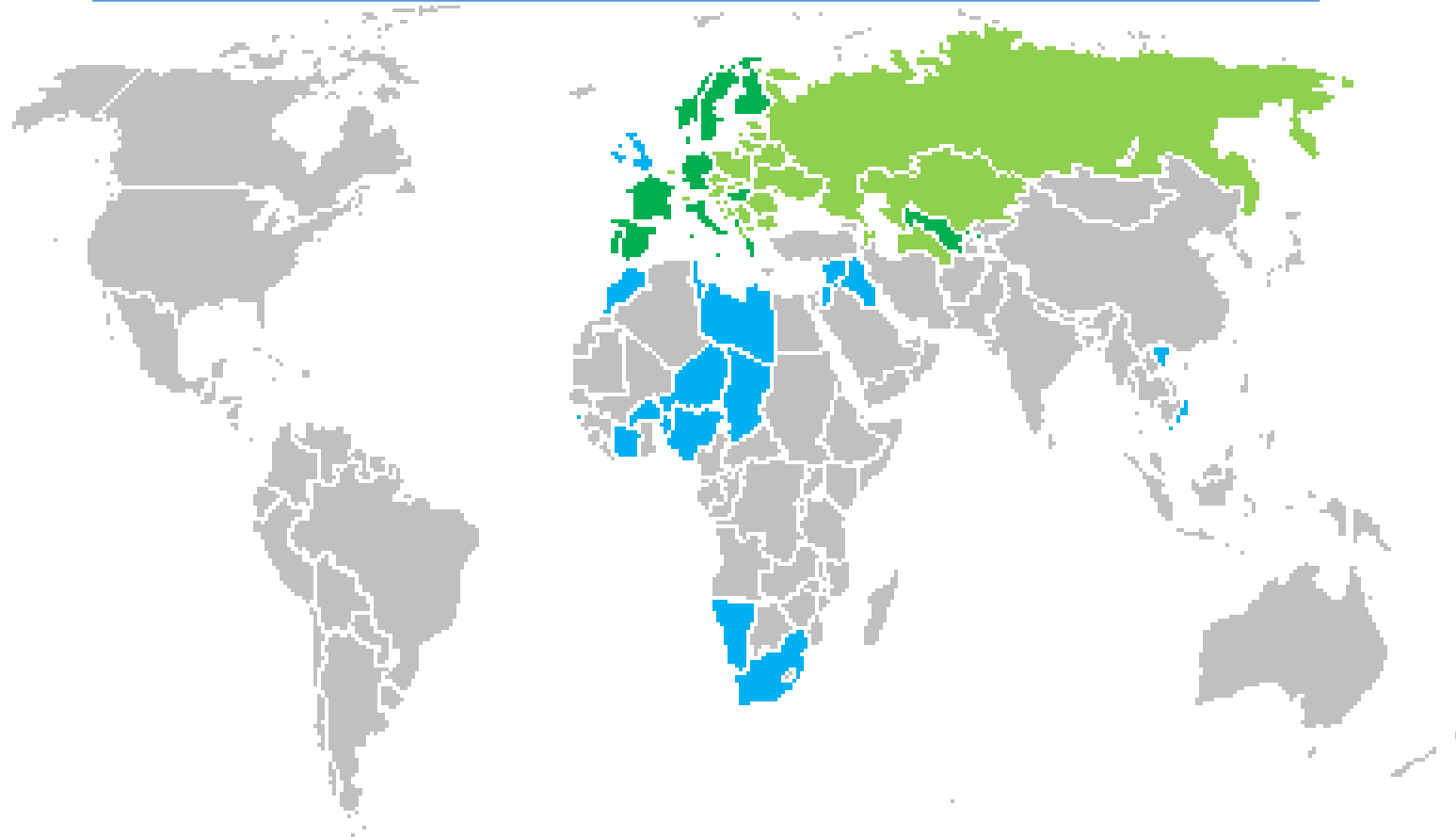
# The UNECE Water Convention

- 1989 Conference on Security and Cooperation
  - Call for UNECE Water Convention
- UNECE Working Party on Water Problems elaborated draft Convention
- Convention on Protection and Use of Transboundary Watercourses and International Lakes adopted 17 March 1992 and entered into force 6 October 1996
- 1996-present
  - Concerted and successful effort to implement and develop the treaty regime
- 2003 Amendment to allow States outside the UNECE region to join
- Amendment became operational in March 2016





By 2030, implement integrated water resources management at all levels,  
including through transboundary cooperation as appropriate  
Sustainable Development Goal 6.5

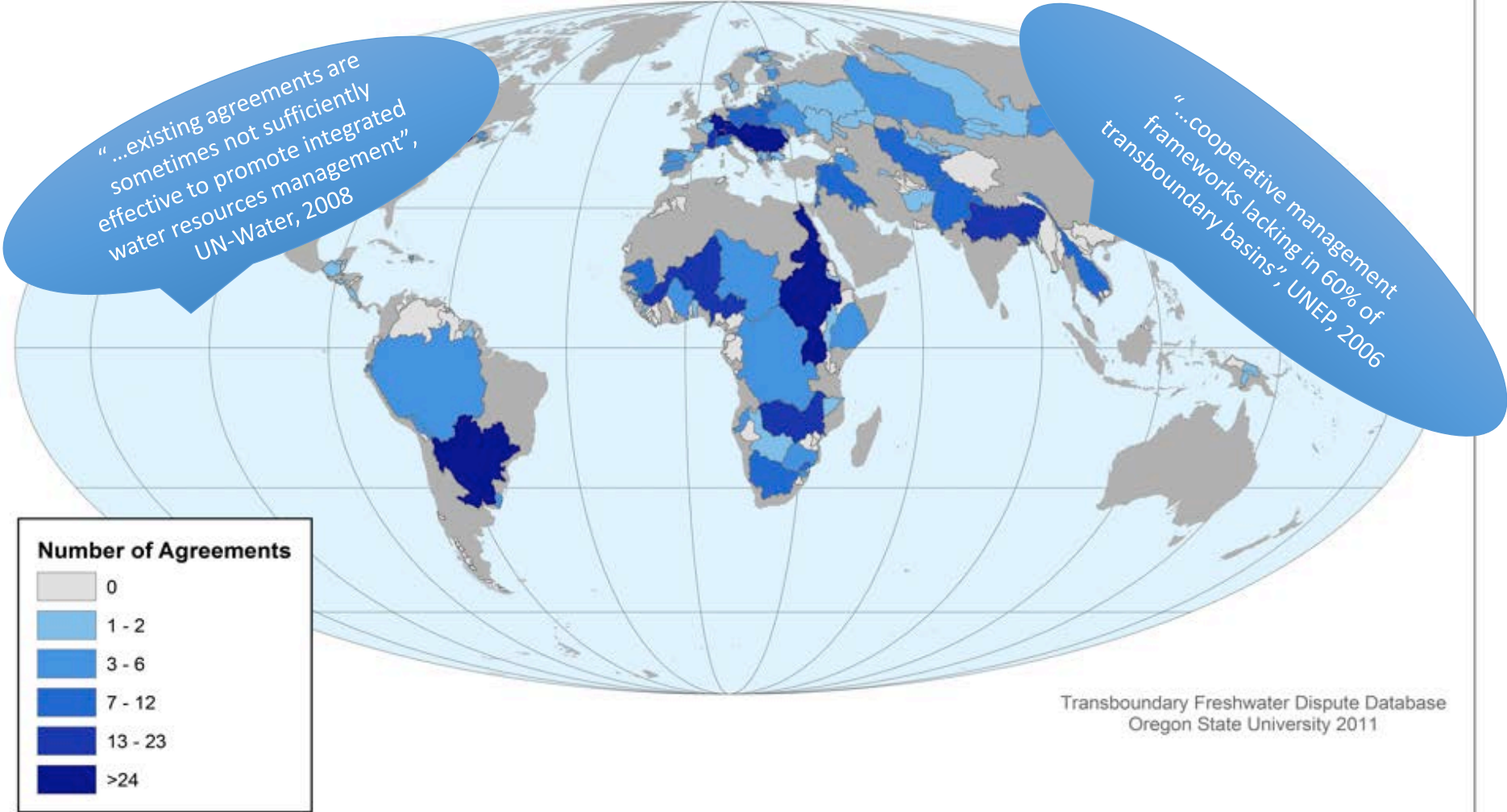


Party to UNECE Water  
Convention (1992)

Party to UN Watercourses  
Convention (1997)

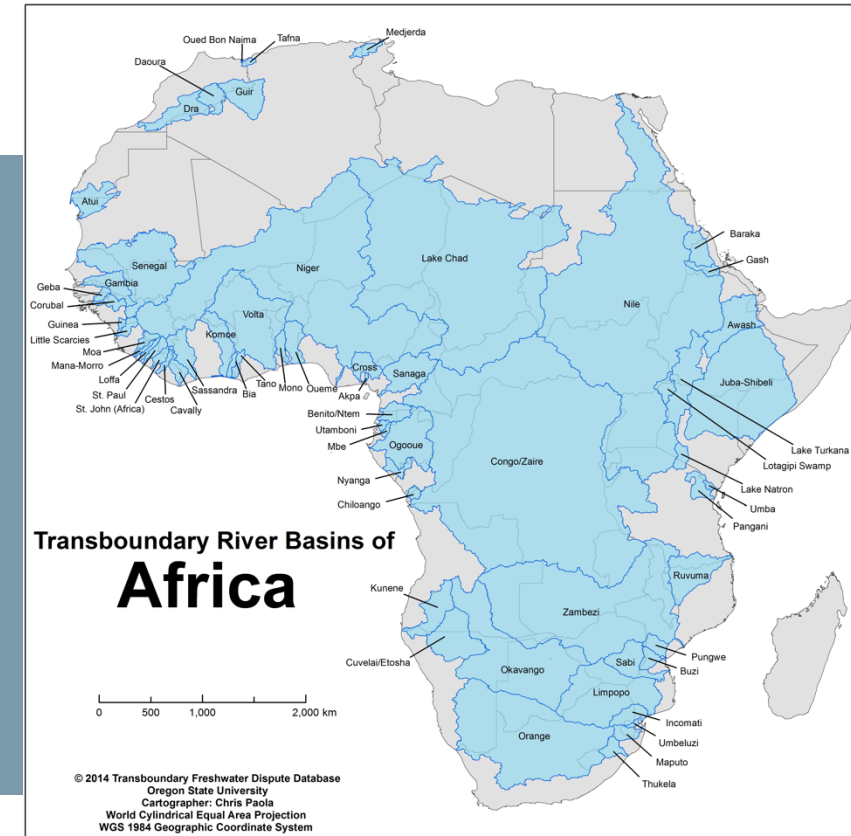
Party to both Conventions

# Number of Agreements per International River Basin



# Transboundary water cooperation and conflict – Africa

- 64 transboundary river basins
- 38 transboundary aquifers
- Regional integration
  - SADC Revised Protocol
  - West Africa, IGAD developing regional water policies
  - Fragmented system of basin-specific and bilateral agreements



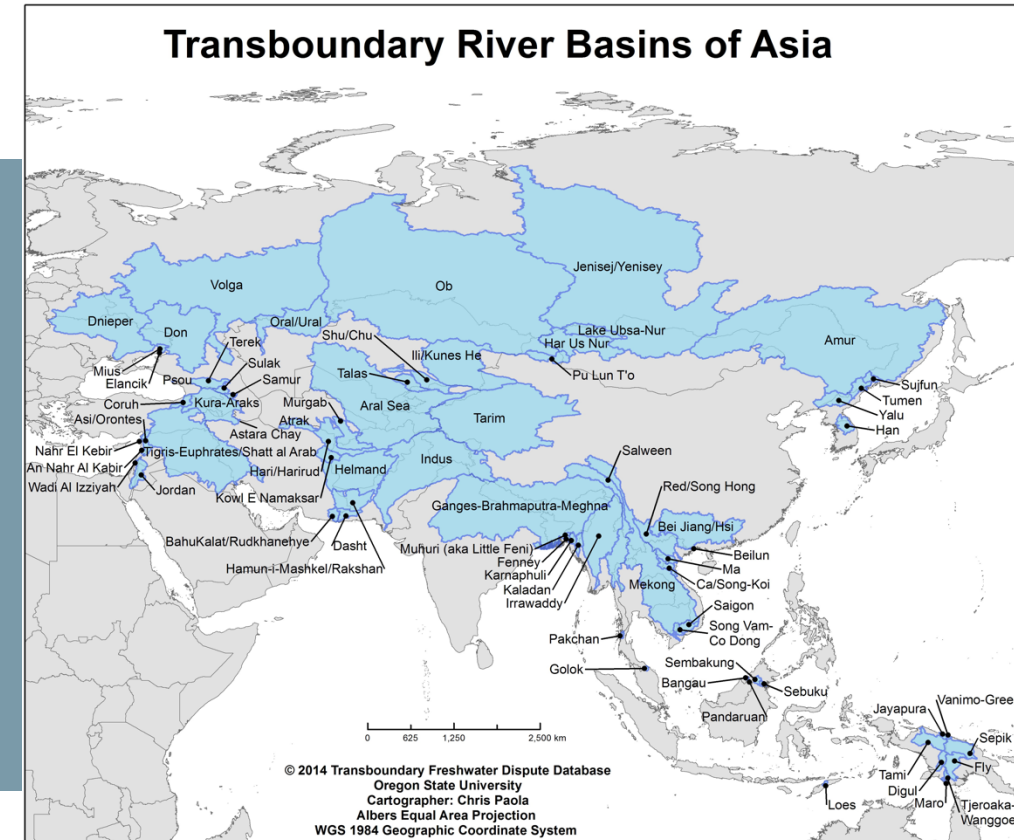
# Transboundary water cooperation and conflict – Europe

- 71 transboundary river basins
- 89 transboundary aquifers
- Strong regional integration
  - EU Water Framework Directive
  - UNECE Water Convention
- Most basins covered by basin-specific arrangements



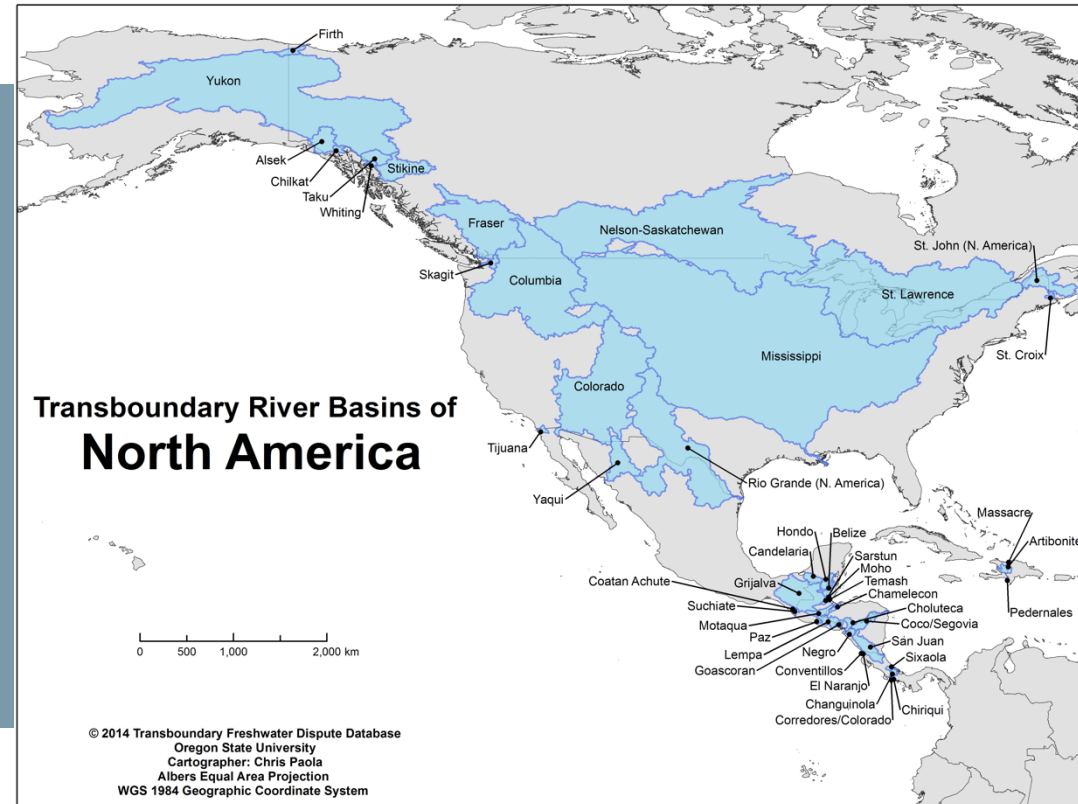
# Transboundary water cooperation and conflict – Asia

- 80 transboundary rivers basins
- 12 transboundary aquifers
- Fragmented system of basin-specific and bilateral agreements
  - 95 Mekong Agreement (4 lower riparians)
  - Major rivers lacking comprehensive agreement (Aral Sea, Indus, GBM, Salween, Jordan, Tigris-Euphrates)



# Transboundary water cooperation and conflict – North America

- 19 transboundary river basins
- 17 transboundary aquifers
- 1909 Boundary Waters Treaty
  - International Joint Commission (Canada-US)
  - Numerous US-Canada bilateral agreements
- 1944 US-Mexico Treaty
  - International Boundary and Water Commission (US-Mexico)



# Transboundary water cooperation and conflict – Latin America

- 67 transboundary river basins
- 51 Transboundary aquifers
- Fragmented system of basin-specific and bilateral agreements
  - 8 basins partially covered by specific treaties, e.g. 2010 Guarani Aquifer Agreement, 1978 Amazon Treaty, 1975 Uruguay Statute



# UN Secretary-General message to 7<sup>th</sup> World Water Forum, April 2015

‘The UN Watercourses Convention finally provides a universally-applicable legal framework to assist countries and basins to jointly manage their shared resources.

The UNECE Water Convention provides an important framework for cooperation. It has evolved to address climate change and other emerging challenges. And the Convention has led to ground-breaking work on the nexus between water, food, energy and ecosystems.

These two Conventions complement each other and should be implemented in synergy.

I call on Member States to join both Conventions and carry out their provisions – for greater water cooperation around the world.’



# Group Exercise – Similarities and Differences

- Break into groups
- Each group to address 1 of 5 key questions
  1. Do both the Conventions differ in terms of their geographic and functional scope?
  2. Do both Conventions differ in relation to their key substantive norms, e.g. equitable and reasonable utilisation and the duty to take all appropriate measures to prevent significant harm/ transboundary impact?
  3. Do the primary procedural rules differ between both Conventions?
  4. Do the legal and institutional arrangements, e.g. duty to establish/modify watercourse agreements and joint bodies, differ between the Conventions?
  5. Do the dispute settlement mechanism contained in each Convention differ?

# Legal Analytical Framework

Key Elements	Details
1. Scope	<ul style="list-style-type: none"><li>• Geographical scope (what waters? beyond freshwaters?)</li><li>• Definitions (watercourse; uses; impacts)</li><li>• Parties (States; RIEOs)</li></ul>
2. Substantive Norms	<ul style="list-style-type: none"><li>• Legal duties &amp; entitlements (no harm, equitable and reasonable utilisation; due diligence; )</li><li>• Rules of substance (general or precise)</li></ul>
3. Procedural Rules	<ul style="list-style-type: none"><li>• Duty to cooperate as bridge</li><li>• Notification / exchange of information</li></ul>
4. Institutional Mechanisms	<ul style="list-style-type: none"><li>• Joint bodies (RBOs)</li><li>• Conference of the Parties (MoP; CoP)</li><li>• Organisations / organs (Ministerial level; other)</li></ul>
5. Dispute Settlement	<ul style="list-style-type: none"><li>• Dispute avoidance (consultation)</li><li>• Dispute settlement (Art. 33 UN Watercourses Convention, Art. 22 UNECE Water Convention ; other)</li><li>• Implementation and compliance (reporting; facilitation, Implementation Committee)</li></ul>