

## ESSAY

### CRIMINAL COURTS, STATE SUCCESSION, AND WATERCOURSES: THREE POINTS OF INFLUENCE ON THE INTERNATIONAL LAW COMMISSION

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#### ABSTRACT

*Strong, functional systems of international law are critical to overcoming the challenges plaguing our increasingly globalized world; injustices that have spawned recently reaffirm the need for these systems. Successfully maintaining these systems requires deep multifaceted insights. The International Law Association, founded in 1873, has aided and influenced the work of the United Nation's International Law Commission for more than a century. Various documents produced in association with the International Law Association, including a draft statute for the establishment of a permanent international criminal court, a set of draft resolutions on the effect of state succession on treaties, a handbook identifying issues in the existing legal framework of the effects of state succession on treaties and existing State practice, and a set of draft articles addressing the use of non-navigational watercourses in international law all demonstrate different ways in which this influence has been exercised. The integration of the International Law Association's work into that of the International Law Commission illustrates one way in which the International Law Association has impacted the overall development of international law. Examining the creation of these documents also illuminates the cooperative process of between entities in the complex field of international law.*

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### I. INTRODUCTION

The International Law Association (“ILA”) was founded in 1873 with the goal of focusing on “the study, clarification and development of international law, both public and private, and the furtherance of international understanding and respect for international law.”<sup>1</sup> Over the years, the ILA has grown into an organization with more than sixty branches worldwide and more than 4200 members.<sup>2</sup> The ILA and many of its branches have established committees and study groups focusing on various topics of international law such as Alternative Dispute Resolution in International Law, Global Health Law, and Space Law.<sup>3</sup> These committees bring “together members with relevant expertise to carry out research, surveys and investigations on selected areas of international law and to prepare reports for consideration by membership and other interested parties.”<sup>4</sup> The International Law Commission (“ILC”), on the other hand, was established in 1947 by the United Nations General Assembly (the “General Assembly”). The Charter of the United Nations (“UN Charter”) tasks the General Assembly with the task of “initiat[ing] studies and mak[ing] recommendations for the purpose of . . . encouraging the progressive development of international law and its codification” under article

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1. *About Us*, INT’L L. ASS’N, <https://www.ila-hq.org/en/about-us> [https://perma.cc/UMT2-FE3W] (last visited Apr. 17, 2023).

2. *See Our Branches*, INT’L L. ASS’N, <https://www.ila-hq.org/en/about-us> [https://perma.cc/UMT2-FE3W] (last visited Apr. 17, 2023); *Branches*, INT’L L. ASS’N, <https://www.ila-hq.org/en/branches> [https://perma.cc/L36H-JRN4] (last visited Apr. 17, 2023).

3. *See ILA Committees*, INT’L L. ASS’N, <https://www.ila-hq.org/en/committees> [https://perma.cc/4D29-LRZY] (last visited Apr. 17, 2023).

4. *ILA Committees*, INT’L L. ASS’N, <https://www.ila-hq.org/en/committees> [https://perma.cc/4D29-LRZY] (last visited Apr. 17, 2023).

13(a)(1), and the General Assembly adopted a resolution establishing the ILC to do just that.<sup>5</sup>

The ILC has a long history of citing the work of the ILA and has increased its reliance on the ILA's interpretation of international law over the past two decades. The ILC's reliance on the work of the ILA dates back to the ILC's creation in 1947, when the ILC explicitly cited the 1920s work of the ILA on the creation of a permanent international criminal court in the development of the draft Code of Crimes Against the Peace and Security of Mankind (the "Code of Crimes").<sup>6</sup> This draft Code of Crimes was the basis for the Rome Statute, and was adopted in 1998 and established the International Criminal Court.<sup>7</sup> In 1967, the ILC appointed multiple special rapporteurs to evaluate the various effects of state succession in international law, including the appointment of Sir Henry Waldock as the Special Rapporteur on the topic of the effects of state succession on treaties to which the former state was a party.<sup>8</sup> This ILC working group referenced the work of the ILA in its 1969 Annual Report, explicitly referencing the ILA's *The Effects of Independence on Treaties* publication.<sup>9</sup> As Sir Humphrey Waldock's reliance on the Fifty-Third Conference Report grew, so did the ILC's citations to this work; in the ILC's 1972 Annual Report, the work of the 53rd Conference Report was cited more than twenty-five times.

In its 1974 Report, the ILC continued its heavy reliance on the work of the Fifty-Third Conference Report and introduced a new citation to a separate piece of the ILA's work. The Annex of the 1974 Report included the Report of the Sub-Committee on the Law of the Non-Navigational Uses of International Watercourses, which discussed the open legal question of the "meaning and scope" of the

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5. *About the Commission*, INT'L L. COMM'N, <https://legal.un.org/ilc/drafting.shtml> [<https://perma.cc/2SZV-JGCJ>] (last updated July 31, 2017).

6. See Doudou Thiam (Special Rapporteur), *First Rep. on the Draft Code of Offenses Against the Peace and Security of Mankind*, [1983] 2 Y.B. OF INT'L LAW COMM'N 137, 139, U.N. Doc. A/CN.4/364 (Mar. 18, 1983).

7. See Int'l Law Comm'n, Analytical Guide to the Work of the International Law Commission: Draft Code of Crimes Against the Peace and Security of Mankind (Part II) (Dec. 4, 2020), [https://legal.un.org/ilc/guide/7\\_4.shtml#fout](https://legal.un.org/ilc/guide/7_4.shtml#fout) [<https://perma.cc/NLM5-DLP9>].

8. See Int'l Law Comm'n, Rep. on the Work of Its Twenty-Fourth Session, U.N. Doc. A/8710/Rev.1, at 223 (1972) [hereinafter ILC 1972 Annual Report].

9. See Int'l Law Comm'n, Rep. on the Work of Its Twenty-First Session, U.N. Doc. A/CB.4/220, at 48 (1969) [hereinafter ILC 1969 Annual Report].

phrase “international watercourses” in international law.<sup>10</sup> After discussing various existing examples of state practice, the Sub-Committee noted that the ILA had “prepared a set of articles on the Uses of the Waters of International Rivers;” these draft articles ultimately became known as the “Helsinki Rules,” which offered additional guidance on the definition of the term “international watercourses”.<sup>11</sup>

The ILC 1975, 1976, 1977, and 1979 Annual Reports make references to works produced by the ILA, including the Fifty-Third Conference Report, the Helsinki Rules, and the ILA’s work on other topics, including state responsibility and decolonization.<sup>12</sup> The most in-depth citation during these years was the ILC’s reference to the Classification of Public Debts; in both the 1977 and 1979 Annual Reports, the ILC’s Draft Articles on Succession of States in Respect of Matters Other Than Treaties heavily relies on the ILA’s debt classification system to define three different types of public debts.<sup>13</sup>

The ILC continued to rely on the works of the ILA throughout the 1980s, citing to the ILA at least once in seven of the ten annual reports.<sup>14</sup> These citations solidified the use of the Helsinki Rules to define the concept of “international waters,” but also referenced a

10. Int’l Law Comm’n Rep. on the Work of Its Twenty-Sixth Session, U.N. Doc. A/9610/Rev.1, at 301 (1974) [hereinafter ILC 1974 Annual Report].

11. *Id.* at 302.

12. See Int’l Law Comm’n, Rep. on the Work of Its Twenty-Seventh Session, U.N. Doc. A/10010/Rev.1, at 66, 81 n.167 (1975) [hereinafter ILC 1975 Annual Report]; Int’l Law Comm’n, Rep. on the Work of Its Twenty-Eighth Session, U.N. Doc. A/31/10, at 84 n.404, 155 (1976) [hereinafter ILC 1976 Annual Report]; Int’l Law Comm’n, Rep. on the Work of Its Twenty-Ninth Session, U.N. Doc. A/32/10, at 62, 65, 79, 91 n.415 (1977) [hereinafter ILC 1977 Annual Report]; Int’l Law Comm’n, Rep. on the Work of Its Thirty-First Session, U.N. Doc. A/34/10, at 44-45 (1979) [hereinafter ILC 1979 Annual Report].

13. See ILC 1977 Annual Report, *supra* note 12, at 63, 65; ILC 1979 Annual Report, *supra* note 12, at 44, 45.

14. See *generally* Int’l Law Comm’n, Rep. on the Work of Its Thirty-Second Session, U.N. Doc. A/35/10, at 58 n.210 (1980) [hereinafter ILC 1980 Annual Report]; Int’l Law Comm’n, Rep. on the Work of Its Thirty-Third Session, U.N. Doc. A/36/10, at 96 n.94 (1981) [hereinafter ILC 1981 Annual Report]; Int’l Law Comm’n, Rep. on the Work of Its Thirty-Fifth Session, U.N. Doc. A/38/10, at 34 (1983) [hereinafter ILC 1983 Annual Report]; Int’l Law Comm’n, Rep. on the Work of Its Thirty-Sixth Session, U.N. Doc. A/39/10, at 96, 20, 25, 27 (1984) [hereinafter ILC 1984 Annual Report]; Int’l Law Comm’n, Rep. on the Work of Its Thirty-Ninth Session, U.N. Doc. A/42/10, at 32 n.106, 22, 35, 22, 37 (1987) [hereinafter ILC 1987 Annual Report]; Int’l Law Comm’n, Rep. on the Work of Its Fortieth Session, U.N. Doc. A/43/10, at 40 n.168 (1988) [hereinafter ILC 1984 Annual Report]; Int’l Law Comm’n, Rep. on the Work of Its Forty-First Session, U.N. Doc. A/44/10, at 124 n.283 (1990) [hereinafter ILC 1990 Annual Report].

variety of ILA work relating to state responsibility, including the topics of restitution, jurisdictional immunity, and armed attacks.<sup>15</sup> Although the ILC relied on the ILA less during the 1990s, the ILC Annual Reports for 1990, 1991, 1993, 1996, and 1999 referenced the ILA on topics including restitution, jurisdictional immunity, and the uses of international waters.<sup>16</sup>

The ILC's reliance on the ILA has dramatically increased over the past two decades. In 2001, the ILC referenced the ILA's work on state responsibility and restitution as well as the Helsinki Rules.<sup>17</sup> Between 2003 and 2005, the ILC referenced the Helsinki Rules and ILA work on state responsibility and diplomatic protection.<sup>18</sup> In its 2006 report, the ILC looked to the ILA on topics including state responsibility and diplomatic protection, the uses of waters of international rivers, environmental transboundary harm enforcement, and natural disaster response in international humanitarian law.<sup>19</sup> And again between 2008 and 2010, on state responsibility, shared natural resources, and the succession of states to treaties.<sup>20</sup>

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15. See generally *supra* note 14.

16. See ILC 1990 Annual Report, *supra* note 14, at 47-48, 61 n.213, 63 n.223, 67 nn.243-44; Int'l Law Comm'n, Rep. on the Work of Its Forty-Third Session, U.N. Doc. A/46/10, at 131 (1991) [hereinafter ILC 1991 Annual Report]; Int'l Law Comm'n, Rep. on the Work of Its Forty-Fifth Session, U.N. Doc. A/48/10, at 60 n.162 (1993) [hereinafter ILC 1993 Annual Report]; Int'l Law Comm'n, Rep. on the Work of Its Forty-Eighth Session, U.N. Doc. A/51/10, at 87, 88, 91 (1996) [hereinafter ILC 1996 Annual Report]; Int'l Law Comm'n, Rep. on the Work of Its Fifty-First Session, U.N. Doc. A/54/10, at 156 n.7, 172 n.141 (1999) [hereinafter ILC 1999 Annual Report].

17. See Int'l Law Comm'n, Rep. on the Work of Its Fifty-Third Session, U.N. Doc. A/56/10, at 98 n.509, 152 n.875 (2001) [hereinafter ILC 2001 Annual Report].

18. See Int'l Law Comm'n, Rep. on the Work of Its Fifty-Fifth Session, U.N. Doc. A/CN.4/SER.A/2003/Add.1, at 102 (2003) [hereinafter ILC 2003 Annual Report]; Int'l Law Comm'n, Rep. on the Work of Its Fifty-Sixth Session, U.N. Doc. A/CN.4/SER.A/2004/Add.1, at 27 n.81, 67, 71 n.382, 121 n.477 (2004) [hereinafter ILC 2004 Annual Report]; Int'l Law Comm'n, Rep. on the Work of Its Fifty-Seventh Session, U.N. Doc. A/CN.4/SER.A/2005/Add.1, at 43 n.123, 43 n.126, 24 (2005) [hereinafter ILC 2005 Annual Report].

19. See Int'l Law Comm'n, Rep. on the Work of Its Fifty-Eighth Session, U.N. Doc. A/CN.4/SER.A/2006/Add.1, at 23, 35, 64 n.330, 87 n.472, 209 n.34 (2006) [hereinafter ILC 2006 Annual Report].

20. See Int'l Law Comm'n, Rep. on the Work of Its Sixtieth Session, U.N. Doc. A/CN.4/SER.A/2008/Add.1, at 23, 25 n.32, 120 n.569 (2008) [hereinafter ILC 2008 Annual Report]; Int'l Law Comm'n, Rep. on the Work of its Sixty-First Session, U.N. Doc. A/CN.4/SER.A/2009/Add.1, at 35 n.100, 37 n.125, 40 n.144, 41 n.147, 42 n.159, 61-62 n.272 (2009) [hereinafter ILC 2009 Annual Report]; Int'l Law Comm'n, Rep. on the Work of Its Sixty-Second Session, U.N. Doc. A/65/10, at 237, 259 (2010) [hereinafter ILC 2010 Annual Report].

The ILC 2011 Annual Report cites to ILA work about state responsibility and attribution, the formation and evidence of the existence of customary international law, the protection of the atmosphere, and the protection of the environment in relation to armed conflict.<sup>21</sup> In 2012 and 2013, the ILC again cited to ILA works relating to customary international law, as well as works regarding the principles of mass expulsion in 2012 and natural disaster response in 2013.<sup>22</sup> The 2014 Annual Report again referenced the principles on mass expulsion, and both the 2014 and 2015 Annual Reports referenced the ILA's work on the protection of the atmosphere in relation to climate change.<sup>23</sup> The 2016 Annual Report cited to the ILA's work on the formation of customary international law alongside citations to work on the settlement of international disputes as well as subsequent practice in the interpretation of treaties.<sup>24</sup> The 2017 Annual Report referenced multiple works relating to climate change, including reports from the ILA's Johannesburg Conference and 75th and 76th Conference Reports.<sup>25</sup>

In its most recent reports, the ILC has cited the work of the ILA quite frequently. In its 2018 Annual Report, the ILC cited to the ILA on fifteen different occasions covering five different legal topics, including climate change and sea-level change, the protection of the environment in relation to armed conflicts, the protection of the atmosphere in relation to climate change, the formation and evidence of existing customary law, and subsequent practice in the interpretation

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21. See Int'l Law Comm'n, Rep. on the Work of Its Sixty-Third Session, U.N. Doc. A/66/10, at 89 n.107, 95 n.138, 305 n.1, 323, 355 n.20 (2011) [hereinafter ILC 2011 Annual Report].

22. See Int'l Law Comm'n, Rep. on the Work of Its Sixty-Fourth Session, U.N. Doc. A/67/10, at 38, 39 n.98, 112 n.301 (2012) [hereinafter ILC 2012 Annual Report]; Int'l Law Comm'n, Rep. on the Work of Its Sixty-Fifth Session, U.N. Doc. A/68/10, at 45 n. 204, 94 (2013) [hereinafter *ILC 2013 Annual Report*].

23. See Int'l Law Comm'n, Report on the Work of Its Sixty-Second Session, U.N. Doc. A/69/10, at 37 n.77, 221-22 (2014) [hereinafter ILC 2014 Annual Report]; Int'l Law Comm'n, Report on the Work of Its Sixty-Seventh Session, U.N. Doc. A/70/10, at 30 n. 43 (2015) [hereinafter ILC 2015 Annual Report].

24. See Int'l Law Comm'n, Rep. on the Work of Its Sixty-Eighth Session, U.N. Doc. A/71/10, at 152 n.540, 231 n.1002, 233-34, 237-38 n.1032, 237-38 n.1034, 239 n.1039, 392-93,112 [hereinafter ILC 2016 Annual Report].

25. See Int'l Law Comm'n, Rep. on the Work of Its Sixty-Ninth Session, U.N. Doc. A/72/10, at 153 n.694, 115 n.706, 157 n.713, 207, 207 n.825 (2017) [hereinafter ILC 2017 Annual Report].

of treaties.<sup>26</sup> In 2019, the ILC referenced the ILA's work on the protection of the environment in relation to armed conflict, as well as its work on the development of custom and general principles of law, and its work on the subsidiary means for the determination of international law.<sup>27</sup> The ILC did not issue a report in 2020 due to the COVID-19 pandemic, but again heavily referenced ILA work in its 2021 Annual Report.<sup>28</sup>

As demonstrated, the ILC has relied on the work of the ILA more and more frequently over the past fifty years. This reliance has spanned multiple areas of international law, including ILA work on both the theoretical basis of international law as well as the application of this law to timely issues. The ILA's work has influenced the ILC in multiple different ways, as demonstrated by the ILC's reliance on a few specific ILA documents: (i) the draft Statute for the Permanent International Criminal Court, (ii) the ILA's Fifty-Third Conference Report regarding State Succession, (iii) the ILA's *Effect of Independence on Treaties* handbook, and (iv) the Helsinki Rules.

## II. INFLUENTIAL DOCUMENTS

### A. *The Proposal of an International Criminal Court*

One of the earliest significant ILA influences on the ILC was during the creation and development of the International Criminal Court.<sup>29</sup> The UN General Assembly (the "General Assembly") recognized the need for an international venue "to prosecute and punish persons responsible for crimes such as genocide."<sup>30</sup> The ILA began considering the establishment of an international criminal court as early

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26. See Int'l Law Comm'n, Rep. on the Work of Its Seventieth Session, U.N. Doc. A/73/10, at 40 n.158, 108 n.611, 109 n.614, 109, 114 n.647, 115 n.653, 151, 167 n.834, 171 n.858, 176 n.877, 187 n.926, 189 n.933, 242, 297, 327 (2018) [hereinafter ILC 2018 Annual Report].

27. See Int'l Law Comm'n, Rep. on the Work of Its Seventy-First Session, U.N. Doc. A/74/10, at 173, 240 n.1118, 278 n.1342, 280 n.1356, 330 (2019) [hereinafter ILC 2019 Annual Report].

28. See Int'l Law Comm'n, Rep. on the Work of Its Seventy-Second Session, U.N. Doc. A/76/10, at 18 n.37, 23 n.62, 27 n.79, 39 n.131, 40 n.138, 172, 196 (2021) [hereinafter ILC 2021 Annual Report].

29. See Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute].

30. Overview: *Rome Statute of the International Criminal Court*, U.N., <https://legal.un.org/icc/general/overview.htm> [https://perma.cc/7U4N-HFYC] (last visited Apr. 17, 2023).

as the ILA Buenos Aires Conference in 1922, which resolved that “the creation of an International Criminal Court is essential to the interests of justice and that . . . the matter is one of urgency.”<sup>31</sup>

Tasked with developing a draft Statute, Professor Hugh H. L. Bellot recognized that “[t]he crying need for the creation of a Permanent International Criminal Court or a Permanent International high Court of Justice will best be realized by an examination of the history of the various attempts to secure the trial and punishment of war criminals after the conclusion of the war.”<sup>32</sup> In 1918, Great Britain appointed Professor Bellot as the Secretary of the newly-formed Attorney-General’s Committee of Enquiry into Breaches of the Laws of War.<sup>33</sup> The Committee examined the possibility of retribution for “breaches of the laws and customs of war committed by the armed forces of the German Empire and its Allies” after World War I.<sup>34</sup> Bellot concluded that “national courts, whether of the victor or vanquished, [were] unsatisfactory” in bringing justice for war crimes.<sup>35</sup> Two years later, Professor Bellot proposed his draft Statute for the Permanent International Criminal Court (“Draft Statute”) to the ILA.<sup>36</sup>

Professor Bellot’s Draft Statute contains three Chapters, forty-seven articles in total. Chapter One focuses on the “Organization of the Court,” including the election of judges and jurists, dismissal of member States, the location of the Court, judge recusal, and salaries and funding.<sup>37</sup> The second chapter, titled “Competence of the Court,” covers the Court’s jurisdiction.<sup>38</sup> Unlike today’s Rome Statute, the draft lacks exacting detail about specific crimes over which the Court would have jurisdiction; the draft merely states that “[t]he jurisdiction of the Court embraces all complaints or charges of violation of the laws and customs of war generally accepted as binding or contained in International Conventions or in Treaties . . . [and] over all offences committed contrary to the laws of humanity and the dictates of public

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31. Hugh H. L. Bellot, *Draft Statute for the Permanent International Criminal Court*, 33 INT’L L. ASS’N REP. CONF. 75, 75 (1924) [hereinafter Bellot, *Draft Statute*].

32. Hugh H. L. Bellot, *A Permanent International Criminal Court*, 31 INT’L L. ASS’N REP. CONF. 63, 63 (1922) [hereinafter Bellot, *Permanent International Criminal Court*].

33. *See id.*

34. *See id.*

35. *Id.* at 63, 74; *see also* William A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute* 3-4 (Oxford University Press, 2d ed. 2016).

36. *See* Bellot, *Draft Statute*, *supra* note 31, at 75-112 (1924).

37. Bellot, *Permanent International Criminal Court*, *supra* note 32, at 75-81.

38. *Id.* at 81-83.



conscience.”<sup>39</sup> Finally, Chapter Three of the Draft Statute contains the “Procedure” of the Court,<sup>40</sup> including the public nature of the Court’s hearings, the production of documents, explanations, or other evidence, witness procedure, default judgments in the event that defendants fail to appear before the Court, and appellate and revisionary processes.<sup>41</sup>

The ILC began significant work on the development of a permanent international criminal tribunal in the aftermath of World War II, in 1947, when the General Assembly directed the ILC to “prepare a draft code of offences against the peace and security of mankind.”<sup>42</sup> In his 1950 Report, Special Rapporteur Jean Spiropoulos noted that the Working Group “tried to base [their] suggestions . . . on international practice,” including ILA works.<sup>43</sup> Mr. Spiropoulos presented the first version of the draft Code of Crimes in 1954, at which point the General Assembly elected to “postpone further consideration” of the draft Code of Crimes due to the question of defining “aggression.”<sup>44</sup> This further consideration was ultimately postponed until 1978, when the General Assembly requested that “the Secretary-General . . . invite Member States and relevant international intergovernmental organizations to submit their comments and observations on the draft Code.”<sup>45</sup>

In 1981, the General Assembly officially requested that the ILC recommence drafting the Code of Crimes. The ILC “appointed Mr. Doudou Thiam Special Rapporteur for the topic ‘Draft Code of Offences against the Peace and Security of Mankind’” and “established a Working Group on the topic.”<sup>46</sup> In his first report of the *Special Rapporteur* on the Draft Code of Offenses against the Peace and Security of Mankind, Mr. Thiam noted that “a great deal was being done at the theoretical level during the years between the wars” on the concept of “international level punishment for crimes against peace and

39. *Id.* at 81; *see also* Rome Statute, *supra* note 29, at arts. 5-8.

40. Bellot, *Permanent International Criminal Court*, *supra* note 32, at 82-87.

41. *See* Bellot, *Draft Statute*, *supra* note 31, at 75-112.

42. Doudou Thiam (Special Rapporteur), *First Rep. on the Draft Code of Offenses Against the Peace and Security of Mankind*, [1983] 2 Y.B. OF INT’L LAW COMM’N 137, 141, U.N. Doc. A/CN.4/364 (Mar. 18, 1983).

43. *Id.* at 141.

44. Analytical Guide to the Work of the International Law Commission: Draft Code of Crimes Against the Peace and Security of Mankind (Part I), INT’L L. COMM’N (Aug. 13, 2015), [https://legal.un.org/ilc/guide/7\\_3.shtml](https://legal.un.org/ilc/guide/7_3.shtml) [<https://perma.cc/VP7R-WAVR>].

45. *Id.*

46. Int’l Law Comm’n, Rep. on the Work of Its Thirty-Fourth Session, U.N. Doc. A/37/10, at 122 (1982) [hereinafter ILC 1982 Annual Report].

for violations of the law of war,” and noted that “[t]he advances in thinking [that] took place under the impetus of the legal associations, especially the International Law Association . . . open[ed] the way for the decisions taken in 1945.”<sup>47</sup> Further, Mr. Thiam directly references Professor Bellot’s draft Statute, noting that “[t]he text of the draft statute of the International Penal Court adopted by the Association is reproduced in United Nations, *Historical survey of the question of international criminal jurisdiction*.”<sup>48</sup>

By the 1990s, the ILC’s work on the draft Code of Crimes had expanded to include a draft statute for an international criminal court.<sup>49</sup> In 1994, the ILC adopted this draft and “recommend[ed] . . . an international conference . . . to study the draft statute and to conclude a convention on the establishment of an international criminal court.”<sup>50</sup> After accepting commentaries on the draft statute from states and other “relevant international organs,” the General Assembly ultimately voted to hold the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court in Rome in 1998.<sup>51</sup> The Conference, resulted in the adoption of the Rome Statute of the International Criminal Court.<sup>52</sup>

With Professor Bellot’s draft Statute, the ILA provided the ILC with a strong conceptual foundation for creating an international criminal court. Although Professor Bellot’s draft Statute differs significantly from the current text of the Rome Statute, the two texts address many of the same concepts: not only the concept of international criminal jurisdiction, but also concepts such as evidence and witness procedures, the funding of the court, and judicial appointments. The citations of the reports from both the first and

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47. Doudou Thiam (Special Rapporteur), *First Rep. on the Draft Code of Offenses Against the Peace and Security of Mankind*, [1983] 2 Y.B. OF INT’L LAW COMM’N 137, 138-39, U.N. Doc. A/CN.4/364 (Mar. 18, 1983).

48. *Id.* at 139 n.6.

49. See Doudou Thiam (Special Rapporteur), *Twelfth Rep. on the Draft Code of Crimes Against the Peace and Security of Mankind*, [1983] 2 Y.B. OF INT’L LAW COMM’N 99, 108, U.N. Doc. A/CN.4/460/Corr.1 (Apr. 15, 1994).

50. *Analytical Guide to the Work of the International Law Commission: Draft Code of Crimes Against the Peace and Security of Mankind (Part II)*, INT’L L. COMM’N, [https://legal.un.org/ilc/guide/7\\_4.shtml#fout](https://legal.un.org/ilc/guide/7_4.shtml#fout) [<https://perma.cc/A4SZ-QXUN>] (last updated Dec. 4, 2020).

51. *Id.*

52. See *United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court*, U.N., [https://legal.un.org/diplomaticconferences/1998\\_icc/](https://legal.un.org/diplomaticconferences/1998_icc/) [<https://perma.cc/JT7C-R9SX>] (last visited Mar. 19, 2023).

second working groups on the ILC's Draft Code of Crimes Against the Peace and Security of Mankind shows the ILA's work on the development of an international criminal court provided fundamental inspiration for the texts that ultimately became the existing International Criminal Court.

*B. 53rd Conference Report and the Effect of Independence Handbook*

Two other ILA publications that significantly influenced the ILC were the Draft Resolutions of the Committee on the Succession of New States to the Treaties and Certain Other Obligations of Their Predecessors (the "Draft Resolutions") and the *Effect of Independence on Treaties* handbook (the "Effect of Independence").<sup>53</sup> These two texts influenced the ILC's work by identifying issues within the currently-existing legal framework and providing evidence of existing State practice regarding how new States must treat the treaty and international legal obligations of their predecessors.

The ILA Committee on the Succession of New States to the Treaties and Certain Other Obligations of Their Predecessors ("The Committee")'s report notes that the rule that relieved newly sovereign States from treaty obligations of the former State, would create massive problems in the modern world.<sup>54</sup> Although the various members of the Committee did not agree entirely about how to remedy this problem, they developed a report and Draft Resolutions that were presented at the ILA's fifty-third conference in 1968.<sup>55</sup>

The Draft Resolutions contained nine rules that established how newly sovereign States should handle the treaty obligations of their predecessor, and also contained nine notes providing further explanations of these rules.<sup>56</sup> The first rule provides circumstances in which a successor State may invoke or be liable under a treaty ratified by its predecessor.<sup>57</sup> Under the rule, the new State must be aware that the treaty is internationally in force and have either expressly agreed to be bound by the treaty.<sup>58</sup> An exception to those requirements arises if the new State fails to revoke the treaty within a reasonable time from

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53. *Committee on State Succession*, 53 INT'L L. ASS'N REP. CONF. 589, 596-97 (1968) [hereinafter *State Succession*].

54. *See id.* at 589.

55. *See id.* at 596.

56. *See id.* at 596-603.

57. *See id.*

58. *See id.*

the new State's independence.<sup>59</sup> The second rule establishes specific rules for unions or federations, and the third rule establishes that a notice of termination between the two original treaty parties does not terminate the application of a treaty to a successor State.<sup>60</sup>

The draft resolutions enumerate a fourth rule which provides that a new State should provide explicit notice to the other parties in a multilateral treaty when the new State does not intend to remain a party to the treaty.<sup>61</sup> The fifth rule states that a new State will generally become a beneficiary of and liable under a multilateral treaty, unless that treaty contains a different procedure for dealing with successor States.<sup>62</sup> The sixth rule discusses the effects of successor States on the number of parties to a specific convention, and the seventh rule notes that a successor State is not to be considered bound to a treaty which was ratified by the preceding State but was not in force at the time in which the new State arose.<sup>63</sup> The eighth rule establishes various procedures for delimitation and successor States, and the ninth rule states that new States are still liable for any debts contracted when the previous State was "in a colonial condition."<sup>64</sup>

Likewise, the *Effect of Independence* was published by the ILA in 1965 and contains "a series of studies on the particulate aspects of success in respect of treaties accompanied by extracts from State practice."<sup>65</sup> The first and second chapters discuss the process of independence, and chapters four, five, six, and seven cover both treaty-making processes and case studies of treaty continuity in various States.<sup>66</sup> Chapters eight and nine cover succession to multilateral treaties and devolution agreements, and the remainder of the chapters cover various issues that may arise with state succession and treaties, including disengagement from treaties, memberships in international organizations, and specific types of treaties.<sup>67</sup>

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59. *See id.* at 596-97.

60. *See id.* at 597.

61. *See id.* at 598.

62. *See id.*

63. *See id.*

64. *Id.*

65. Sir Humphrey Waldock, *Succession of States and Governments*, [1968] 2 Y.B. OF INT'L LAW COMM'N 45, 48, U.N. Doc. A/CN.4/SER. A/1969/Add. 1.

66. *See* EFFECT OF INDEPENDENCE ON TREATIES: A HANDBOOK, INTERNATIONAL LAW ASSOCIATION ix-x (1965) [hereinafter EFFECT OF INDEPENDENCE].

67. *See id.*

*Effect of Independence* was developed by the ILA's Committee on State Succession and took four years to produce.<sup>68</sup> During its development, the ILA "examined the contemporary practice with respect to the effect on treaties of independence of colonial territories, protectorates, and mandates" and ultimately concluded that "the problem is too novel and the practice insufficiently coherent to permit [the ILA] to take an attitude with respect to the law."<sup>69</sup> Since the law of state succession with respect to treaties was too underdeveloped to draw any significant conclusions, the ILA determined that "the most effective contribution it could make towards stabilizing the law would be to produce a handbook of practice in which the relevant documentation is analysed and the problems are clearly stated."<sup>70</sup> *Effect of Independence* also established a collection of state practices the ILC could use to determine the emerging custom.<sup>71</sup>

The ILC began significantly referencing the Draft Resolutions and *Effect of Independence* in the 1970s.<sup>72</sup> Sir Waldock specifically noted that the Draft Resolutions 1(b)(iv) disagreed with the ILC's conclusions on the "presumption of continuity" in state succession to treaties.<sup>73</sup> While Sir Waldock concluded that there should not be a presumption of continuity—successor States would not be presumed to be the subject of multilateral treaties in force at the time of the new State's independence—the Committee's Draft Resolutions concluded that a new State should be considered a party to a multilateral treaty if that State fails to declare an intent to reject the treaty within a reasonable time of declaring its independence.<sup>74</sup> The Commission ultimately failed to adopt the Committee's presumption of continuity, citing Sir Waldock's reasoning of existing state practice and self-determination considerations.<sup>75</sup>

The ILC's 1972 Annual Report, which contained significant developments on the international rules on the succession of States to treaties, puts forth the ILC's Draft Articles on Succession of States in

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68. Arman Sarvarian, *Codifying the Law of State Success: A Futile Endeavor?*, 27 EUR. J. INT'L LAW 789, 795 (2016).

69. EFFECT OF INDEPENDENCE, *supra* note 66, at xiii.

70. *Id.*

71. See EFFECT OF INDEPENDENCE, *supra* note 66; see *infra* Section II. C.

72. See Int'l Law Comm'n, Rep. on the Work of Its Twenty-Second Session, U.N. Doc. A/CN.4/237, at 301-03 (1970) [hereinafter ILC 1970 Annual Report].

73. *Id.* at 303.

74. See *id.* at 303; *State Succession*, *supra* note 53, at 596.

75. See ILC 1970 Annual Report, *supra* note 72, at 304.

Respect of Treaties while referencing the Draft Resolutions on ten separate occasions.<sup>76</sup> These citations include references to State commentary and other evidence of existing practice collected by the Committee as well as to legal concepts developed within the Draft Resolutions.<sup>77</sup> The Draft Resolutions and *Effect of Independence* are heavily referenced in the ILC's 1974 Annual Report. It is first referenced with respect to its proposition that "modern law does, or ought to, make the presumption that a 'newly-independent State' consents to be bound by any treaties previously in force internationally with respect to its territory, unless within a reasonable time it declares a contrary intention."<sup>78</sup> The ILC instead thought that a new State should begin "its treaty relations with a clean slate" to be consistent with "the principle of self-determination as it is applicable in the case of newly independent States."<sup>79</sup>

The 1974 Report refers to *Effect of Independence* multiple times to establish that many international organizations, such as UNESCO and WHO, do not "recognize[] any process of succession converting an associate into a full member on the attainment of independence."<sup>80</sup> When stating that "devolution agreements may play a role in promoting continuity of treaty relations upon independence," the ILC refers the reader to *Effect of Independence* "[f]or an assessment of the value of devolution agreements."<sup>81</sup> The ILC cites to both *Effect of Independence* and the Draft Resolutions to establish various instances of state practice.<sup>82</sup> The Draft Resolutions are cited as a justification for the ILC's formulation of a "rule recognizing that a newly independent State may establish itself as a separate party to a general multilateral treaty by notifying its continuance of, or succession to, the treaty."<sup>83</sup> The ILC notes its disagreement with the Draft Resolutions in its conclusion that it is acceptable to count the "notification of a newly independent State as equivalent to a ratification, accession, acceptance, or approval" of a treaty because "the general intention of these clauses is essentially to ensure that a certain number of States shall have

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76. See ILC 1972 Annual Report, *supra* note 8, at 230.

77. See *id.* at 258 n.172.

78. ILC 1974 Annual Report, *supra* note 10, at 168-69.

79. *Id.*

80. *Id.* 179; see also *id.* at 178 n.71.

81. *Id.* at 184.

82. See *id.* at 186 n.116, 186 n.124, 190 n.137, 191 n.146, 192 n.149, 202, 214.

83. *Id.* at 215; see *id.* at 218 n.275.

definitively accepted the obligations of the treaty before they become binding on any one State.”<sup>84</sup>

The ILC also cites to the Draft Resolutions to discuss whether various points of law regarding the rights of a new State to participate in treaties signed by the predecessor State,<sup>85</sup> and to support the proposition that “a general presumption has sometimes been derived that bilateral treaties in force with respect to a territory and known to the newly independent State continue in force unless the contrary is declared within a reasonable time after the newly independent State’s attainment of independence,” and that “[a]greements for technical or economic assistance are another category of treaties where the practice shows a large measure of continuity.”<sup>86</sup> The ILC cites to the Draft Resolutions to support the proposition that “a termination of the treaty as between the *predecessor* State and the other State party resulting from the initiative of one of them . . . does not, *ipso jure*, affect the separate treaty or relations between the newly independent State and the other State party.”<sup>87</sup> Finally, the ILC cites to the Draft Resolutions’ definition of a “composite State,” clarifying that “the underlying legal situations at the moment of the succession are not the same in the uniting of two or more States as in the creation of a State formed from two or more territories.”<sup>88</sup>

Ultimately, the ILC’s draft Articles on Succession of States in Respect of Treaties were accepted by the General Assembly, which voted to hold the UN Conference on Succession of States in Respect of Treaties in 1977, in Vienna.<sup>89</sup> A second conference on the subject was held in 1978, where ninety-four States adopted the Vienna Convention on Succession of States in Respect of Treaties.<sup>90</sup>

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84. *Id.* at 119.

85. *See id.* at 220 n.285.

86. *Id.* at 237 n.285, 237 n.289. In both this instance and the one above, the ILC is citing to the ILC’s work on state succession to establish a general practice of international law.

87. *Id.* at 242.

88. *Id.* at 248 n.440.

89. *Analytical Guide to the Work of the International Law Commission: Succession of States in respect of treaties*, INT’L L. COMM’N, [https://legal.un.org/ilc/guide/3\\_2.shtml](https://legal.un.org/ilc/guide/3_2.shtml) [<https://perma.cc/N7QU-3EC4>] (last updated Feb. 9, 2022).

90. *United Nations Conference on Succession of States in Respect of Treaties*, U.N., [https://legal.un.org/diplomaticconferences/1977\\_succession/](https://legal.un.org/diplomaticconferences/1977_succession/) [<https://perma.cc/Q4KR-GWRZ>] (last visited Mar. 19, 2023). The Vienna Convention on Succession of States in Respect of Treaties currently has nineteen signatory states and twenty-three party states. *Law of Treaties: Vienna Convention on Succession of States in Respect of Treaties*, U.N.,

In the case of the Vienna Convention on Succession of States in Respect to Treaties, the ILA significantly influenced the ILC by identifying important issues within the then-existing law regarding the effect of state succession on treaties. It is evident that both Sir Waddock and ultimately, the ILC, disagreed with many of the solutions to these problems presented by the ILA; however, the ILA's proposed solutions were highly impactful on the development of Sir Waddock's proposed ideas. Sir Waddock explained his reasoning when he disagreed with the ILA's propositions, and he relied on the ILA's work in multiple instances to establish existing State practice.<sup>91</sup> Although the ILC did not end up using a considerable portion of the substantive law suggested by the ILA in their Draft Resolutions and *Effect of Independence* works, these works still had a considerable influence on the draft Articles and the existing Vienna Convention.

### *C. Helsinki Rules*

Finally, the ILC's Helsinki Rules significantly influenced the ILC by providing substantive law that was ultimately incorporated and adopted into an existing treaty. At the Fifty-Second International Law Association Conference held in Helsinki, Finland, in 1966, the ILA adopted a resolution approving the Helsinki Rules.<sup>92</sup> The Helsinki Rules, comprising of thirty-seven articles in total, are divided into six chapters that cover multiple topics, including the "equitable utilization of the waters of an international drainage basin," "pollution," "navigation," and "procedures for the prevention and settlement of disputes."<sup>93</sup>

Article V of the Helsinki Rules ("Article V") was particularly influential on the work of the ILC. The ILC somewhat frequently cited it while developing its draft Articles on the Law of the Non-Navigational Uses of Watercourses.<sup>94</sup> Article V states that "[w]hat is a reasonable and equitable share within the meaning of [a State's entitlement to a fair and equitable share in the beneficial uses of the waters of an international drainage basin within its territory] is to be

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[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXIII-2&chapter=23&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXIII-2&chapter=23&clang=_en) [<https://perma.cc/BL3Y-8SAK>] (last visited Mar. 19, 2023).

91. *See supra* Section II.B.

92. INT'L L. ASS'N, *Helsinki Rules on the Uses of the Waters of International Rivers*, in REP. FIFTY-SECOND CONF. 483 (1967) [hereinafter *Helsinki Rules*].

93. *See id.* at 483.

94. *See infra* Section II.C.



determined in the light of all the relevant factors in each particular case,” and establishes eleven different relevant factors that should be considered in this determination.<sup>95</sup> These factors include “(a) the geography of the basin, including in particular the extent of the drainage area in the territory of each basin; (b) the hydrology of the basin, including in particular the contribution of water by each basin State; (c) the climate affecting the basin; (d) the past utilization of the waters of the basin, including in particular existing utilization; (e) the economic and social needs of each basin State; (f) the population dependent on the waters of the basin in each basin State; (g) the comparative costs of alternative means of satisfying the economic and social needs of each basin State; (h) the availability of other resources; (i) the avoidance of unnecessary waste in the utilization of waters of the basin; (j) the practicability of compensation to one of more of the co-basin States as a means of adjusting conflicts among uses; and (k) the degree to which the needs of a basin State may be satisfied, without causing substantial injury to a co-basin State.”<sup>96</sup> The text of Article V is followed by a generous Commentary section, which provides explanations for the selection of each factor and various examples of application.<sup>97</sup>

In December of 1970, the General Assembly recommended that the ILC “take up the study of the law of the non-navigational uses of international watercourses with a view to its progressive development and codification.”<sup>98</sup> The Helsinki Rules were mentioned in the ILC’s 1974 Annual Report, in a subsection of the report compiled by the Sub-Committee on the Law of the Non-Navigational Uses of International Watercourses.<sup>99</sup> In discussing the “nature of international watercourses,” the ILC cites to the definition of the term “international drainage basin” in Article II of the Helsinki Rules, which were developed by the International Law Association in 1996.<sup>100</sup> The ILC notes that while the ILA’s work does “not have the weight of State practice,” it does “provide [an] additional example[] of the various

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95. *Helsinki Rules*, *supra* note 92, at art. V, §§ 1-2.

96. *Id.* at art. V.

97. *See id.*

98. ILC 1984 Annual Report, *supra* note 14, at 82.

99. *See* ILC 1974 Annual Report, *supra* note 10, at 302.

100. *Id.*

terms that have been used to denote ‘international watercourses.’<sup>101</sup> This is referenced again in the ILC’s 1976 Annual Report.<sup>102</sup>

By the Annual Report of 1984, the ILC’s Sub-Committee on the Law of the Non-Navigational Uses of International Watercourses had developed a set of draft articles covering multiple areas of the law of the non-navigational uses of international watercourses.<sup>103</sup> Article 8 of these draft articles covered the “[d]etermination of reasonable and equitable use” of these waters, and listed multiple factors that should be considered when determining “whether the use by a watercourse State of the waters of an international watercourse [was] exercised in a reasonable and equitable manner.”<sup>104</sup> When reviewing Article 8, Special Rapporteur Jens Evensen noted his strong opinion that it “would not be appropriate to establish any order of priority” regarding the factors used in the determination of whether a use of a watercourse was exercised reasonably, and “drew attention to the fact that an enumeration similar to that contained in draft article 8 had also been established in article V of the Helsinki Rules prepared by the International Law Association.”<sup>105</sup> The Helsinki Rules are also referenced in the section containing “[c]omments on specific draft articles,” where “several members [of the sub-committee] asked why the Special Rapporteur had referred simply to a ‘use’” in the text of draft Article 24 when “article VI of the Helsinki Rules on the Uses of the Waters of International Rivers, adopted by the International Law Association in 1966, referred to a ‘use or category of uses.’”<sup>106</sup>

Continuing the ILC’s work on the draft articles on the law of the non-navigational use of international watercourses, the ILC Annual Report of 1987 references the Helsinki Rules in the commentary to draft Article 6.<sup>107</sup> Draft Article 6 cites to the Helsinki Rules to support the proposition of “the principle of the sovereign equality of States.”<sup>108</sup> The Helsinki Rules are further referenced in the commentary of draft Article 6, first stating that the Asian-African Legal Consultative Committee’s draft propositions “follow closely the Helsinki Rules,”

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101. *Id.*

102. *See* ILC 1976 Annual Report, *supra* note 12, at 155.

103. *See* ILC 1984 Annual Report, *supra* note 14, at 82-98.

104. *Id.* at 95 n.301.

105. *Id.* at 96.

106. *See* ILC 1990 Annual Report, *supra* note 14, at 47.

107. *See id.* at 32 n.106.

108. *See* ILC 1987 Annual Report, *supra* note 14, at 32.

and reference to the Helsinki Rules' Article IV.<sup>109</sup> Finally, in the commentary to draft Article 7 cites the Helsinki Rules Article V as one of the "efforts . . . made at the international level to compile lists of factors to be used in giving the principle of equitable utilization concrete meaning in individual cases."<sup>110</sup> As many of the factors listed in both ILC draft Article 6 and Helsinki Rules Article V are the same, the ILC's draft Article 6 was likely heavily influenced by the Helsinki Rules Article V.

Following the summary of the progress and commentary on the development of the draft articles, the Annual Report of 1990 contains a revised version of the draft articles on the law of the non-navigational uses of international watercourses. The commentary on draft Article 23 references the Helsinki Rules as one of the sources of the "other definitions of the term."<sup>111</sup> The ILA is again referenced in the final paragraph of commentary on Article 23, where the ILC notes that "[t]he work of international non-governmental organizations concerned with international law and groups of experts in this field has been particularly rich," and that "[t]hese authorities evidence a long-standing concern of States with the problem of pollution of international watercourses."<sup>112</sup>

The Helsinki Rules are briefly mentioned in ILC Annual Report of 2001, where the ILC cites to the Helsinki Rules' definition of the term "significant" in the commentary of the ILC's draft articles on the

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109. *See id.* at 35.

110. *Id.* at 37.

111. ILC 1990 Annual Report, *supra* note 14, at 61. This footnote also references another International Law Association work, the Rules of International Law Applicable to Transfrontier Pollution adopted by the International Law Association at Montreal in 1982. *See* INT'L L. ASS'N, REPORT OF THE SIXTIETH CONFERENCE, Montreal, 1982, at 1-3 [hereinafter MONTREAL REPORT].

112. ILC 1990 Annual Report, *supra* note 14, at 63. In footnote 227, the Annual Report of 1990 references the ILA as one of the "international non-governmental organizations" and "groups of experts," referencing the Helsinki Rules alongside the ILA's 1982 Montreal Rules on Water Pollution in an International Drainage Basin and the ILA's Rules on International Groundwaters. *See* INT'L L. ASS'N, REPORT OF THE SIXTY-SECOND CONFERENCE, Seoul, 1986, at 251 [hereinafter SEOUL REPORT]. Further, the draft Articles on the Law of Non-Navigational Uses of International Watercourses also mention multiple other ILA works, including citations to the Articles of Regulation adopted by the ILA at Belgrade in 1990, the Rules on Water Pollution in an International Drainage Basin adopted by the ILA at Montreal in 1982), and the ILA Report by the Committee on International Water Resources Law in 1972. *See* INT'L L. ASS'N, REPORT OF THE FIFTY-NINTH CONFERENCE, Belgrade, 1990, at 48 [hereinafter BELGRADE REPORT]; MONTREAL REPORT, *supra* note 112, at 63; INT'L L. ASS'N, REPORT OF THE FIFTY-FIFTH CONFERENCE, New York 1972, at 66 nn.243-44.

Prevention of Transboundary Harm from Hazardous Activities.<sup>113</sup> This same reference occurs in the 2004 draft articles on the Prevention of Transboundary Harm from Hazardous Activities.<sup>114</sup> In the ILC Annual Report of 2005, in response to member comments that “the precautionary principle had not yet developed as a rule of general international law,” the Special Rapporteur notes that “[t]he principle was contained in . . . the International Law Association Helsinki Rules on the Uses of the Waters of International Rivers” among other documents and concluded that “[t]he principle was well recognized as a general principle of international environmental law and needed to be stressed in the draft articles.”<sup>115</sup> Finally, the Helsinki Rules were most recently cited in the 2006 version of the draft articles on the Prevention of Transboundary Harm from Hazardous Activities, again referenced to support the proposition that “significant” has “been used in other legal instruments and domestic law” when referencing the required level of harm for a valid legal claim.<sup>116</sup>

The various draft articles for which the ILC used the Helsinki Rules became the United Nations Convention on the Law of Non-Navigational Uses of International Watercourses, which was signed in New York on May 21, 1997.<sup>117</sup> This treaty entered into force on August 17, 2014, and currently has sixteen signatories and thirty-seven parties.<sup>118</sup> Article 6 of the Convention on the Law of Non-Navigational Uses of International Watercourses looks strikingly similar to Article V of the Helsinki Rules, noting that “[u]tilization of an international watercourse in an equitable and reasonable manner . . . requires taking into account all relevant factors,” including many of the factors initially

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113. ILC 2001 Annual Report, *supra* note 17, at 152 n.875.

114. See ILC 2004 Annual Report, *supra* note 18, at 71 n.382.

115. ILC 2005 Annual Report, *supra* note 18, at 24.

116. ILC 2006 Annual Report, *supra* note 19, at 64 n.331.

117. See *Analytical Guide to the Work of the International Law Commission: Law of the Non-navigational Uses of International Watercourses*, INT’L L. COMM’N, t [https://legal.un.org/ilc/guide/8\\_3.shtml](https://legal.un.org/ilc/guide/8_3.shtml) [<https://perma.cc/HY5D-LKFC>] (last visited Mar. 19, 2023). See also *Convention on the Law of Non-Navigational Uses of International Watercourses*, U.N., [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XXVII-12&chapter=27&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-12&chapter=27&clang=_en) [<https://perma.cc/KU5Z-EGMP>] (last visited Mar. 19, 2023).

118. *Convention on the Law of Non-Navigational Uses of International Watercourses*, U.N., [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XXVII-12&chapter=27&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-12&chapter=27&clang=_en) [<https://perma.cc/KU5Z-EGMP>] (last visited Mar. 19, 2023).

proposed by the Helsinki Rules.<sup>119</sup> As States considered the Convention on the Law of Non-Navigational Uses of International Watercourses, both the ILA and the ILC turned their focus to the international law on freshwater aquifers. When the ILC began developing draft Articles on the Law of Transboundary Aquifers in the early 2000s, it once again looked to the ILA's rules on the subject.<sup>120</sup>

In the case of the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses, the ILA's work on the Helsinki Rules provided the ILC with substantive law that was ultimately incorporated into the treaty itself.<sup>121</sup> The references discussed above demonstrate that the ILC relied on the ILA's Helsinki Rules, particularly the contents of Article V of the Helsinki Rules, to draft the contents of the ILC's draft Articles on the Law of the Non-Navigational Uses of International Watercourses. This reliance supports the conclusion that the ILA's Helsinki Rules significantly influenced the substantive law applied to non-navigational uses of international watercourses in international law.

### *III. CONCLUSION*

International law has faced significant challenges over the past few years, and these challenges have illustrated the importance of the existence of a strong, functional system of international law. This system cannot be developed or maintained without the dedicated work of associations such as the ILA. This work is integral to the work of international entities such as the ILC. The work of the ILA has influenced the ILC in many ways; by providing foundational ideas, such as the development of an international criminal court, by identifying issues in international law that need be resolved, such as the effect of state succession on treaties, and by providing draft text to be used in treaties, such as with the Helsinki Rules. The ILA has also provided substantive legal frameworks upon which the ILC can build,

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119. *Convention on the Law of Non-Navigational Uses of International Watercourses*, U.N. 1, 5, [https://legal.un.org/ilc/texts/instruments/english/conventions/8\\_3\\_1997.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/8_3_1997.pdf), [<https://perma.cc/2W3Z-RHE2>].

120. *See* ILC 2004 Annual Report, *supra* note 18, at 23 (“The Commission also held an informal meeting in 2004 with the Water Resources Law Committee of the International Law Association and wished to acknowledge its comments on the Commission’s draft articles adopted on first reading, as well as its appreciation of the International Law Association Berlin Rules of 2004.”).

121. *See supra* Section II.C.

such as the law of international watercourses. Through this impact on the ILC, the ILA, has played a substantive role in developing international law over the last century.