

GENEVA

WATER HUB

**HYDROPOLITICS TOWARDS
PEACE & SECURITY**

The Principle of Equitable and Reasonable
Utilization and the Obligation
Not to Cause Significant harm:

The Tigris & Euphrates Watercourses

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OUTLINE

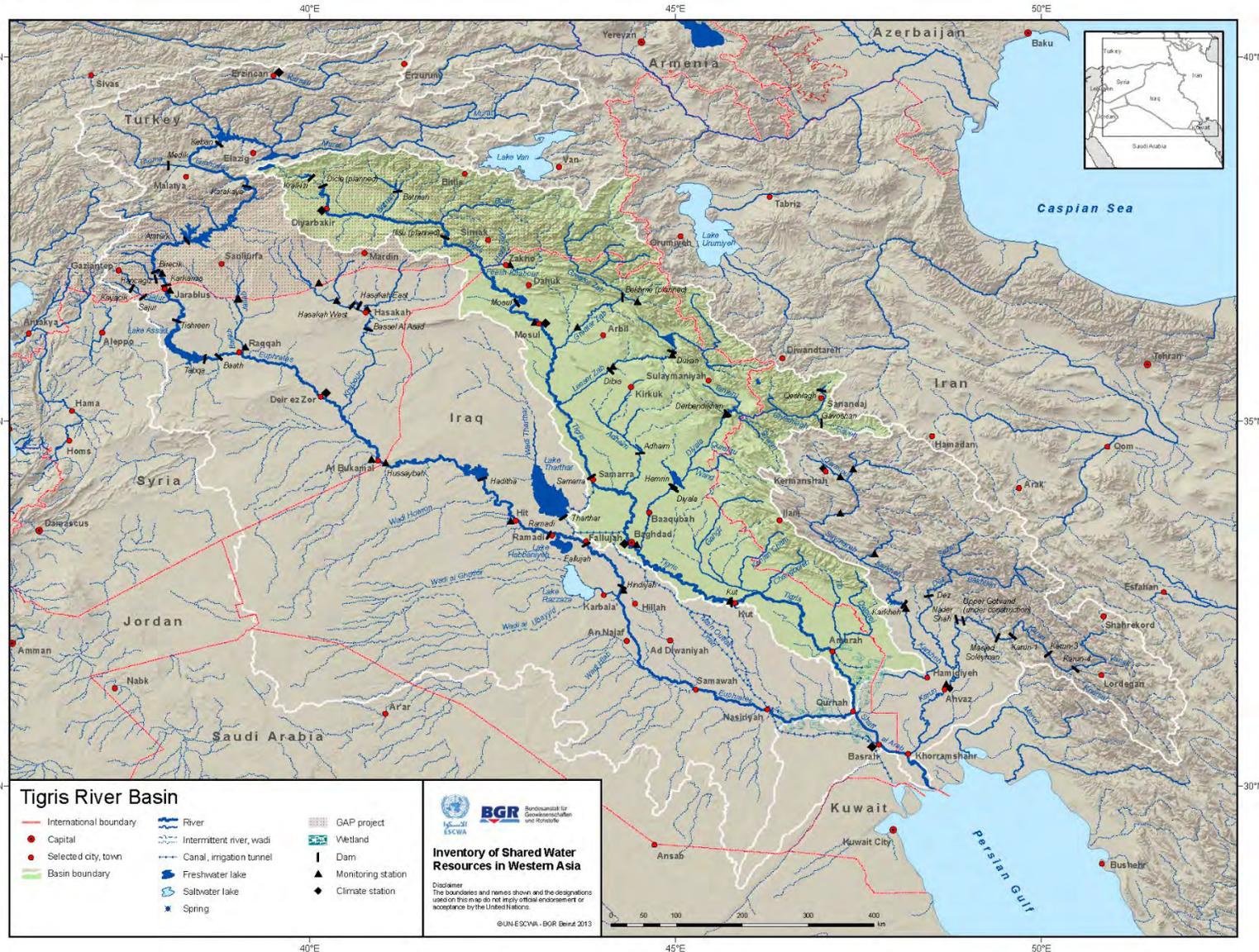
- I. Overview of the Tigris and Euphrates watercourses
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I. Overview of the Tigris and Euphrates watercourses



- **The Tigris and Euphrates watercourses** flow in Western Asia and discharge into the Persian Gulf.

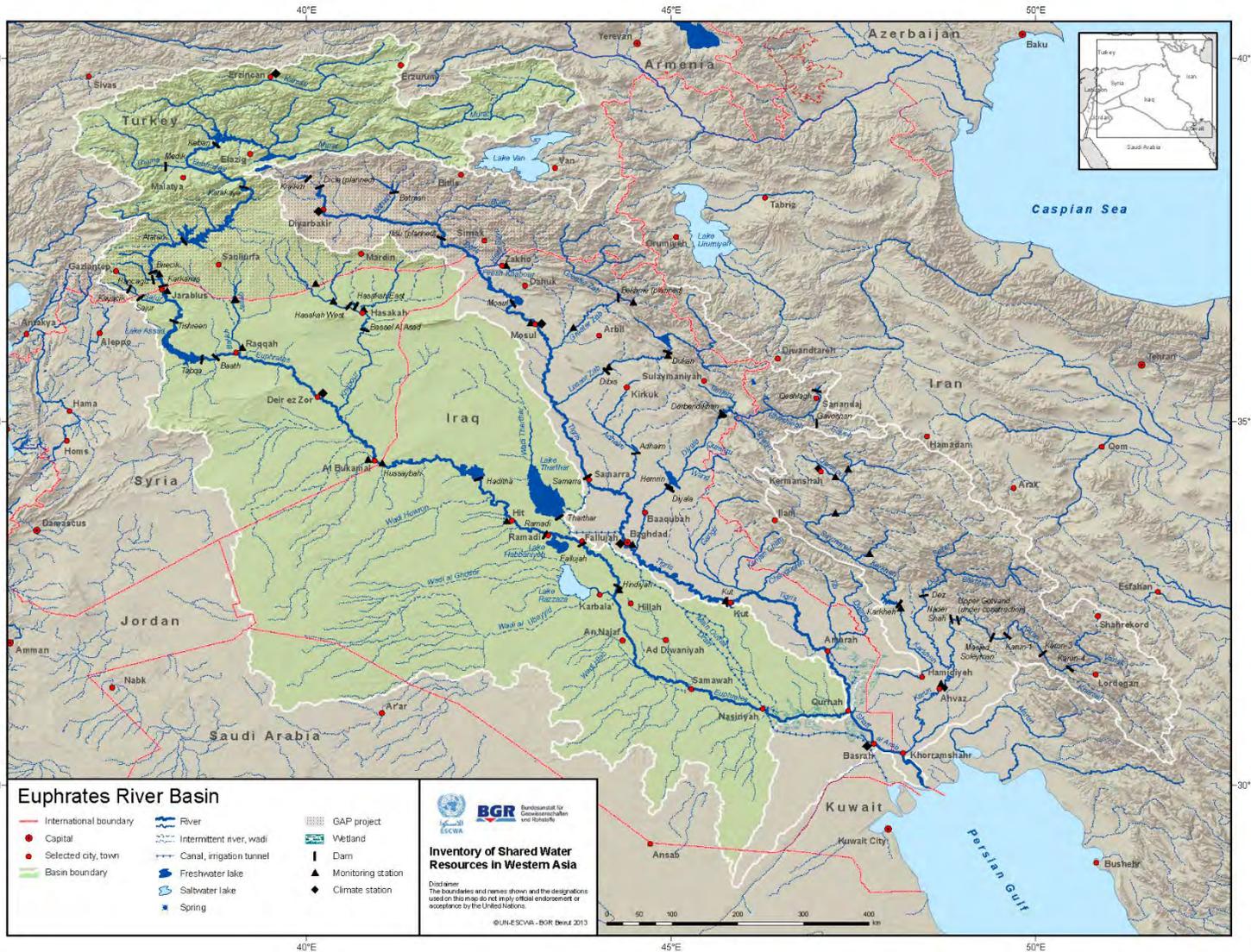
1. Tigris Watercourse - Overview Map



Riparian countries : Iraq, Turkey, Iran and Syria

UN-ESCWA and BGR. Inventory of Shared Water Resources in Western Asia, 2013.

2. Euphrates Watercourse - Overview Map



Riparian countries : Iraq, Syria and Turkey

UN-ESCWA and BGR. Inventory of Shared Water Resources in Western Asia, 2013.

II. Main Agreements, Memoranda and other Instruments Governing the Euphrates and the Tigris

1. Main Agreements

(1) Franco-British Convention (1920)

Mandatory powers agreed to establish a committee to examine and coordinate the use of the waters of the Euphrates and Tigris rivers (Art. 3).

(2) Lausanne Peace Treaty (Turkey-the Allies) (1923)

Issues related to transboundary water should be dealt with, with mutual respect. Turkey must consult Iraq before undertaking any water works (Art.109).

(3) Treaty of friendship (Iraq-Turkey) (1946)

Protocol n°1 related to the regulation of the Tigris and Euphrates rivers: Turkey shall install and operate permanent flow measurement facilities and inform Iraq periodically about the recorded data and water projects (Arts. 3 and 5).

(4) Treaty concerning the State frontier and neighbourly relations (Iraq-Iran, 1975)

Protocol concerning the delimitation of the river frontier between Iran and Iraq

Delimitation of the frontier line in the Shatt al 'Arab: The frontier line in the Shatt al 'Arab shall follow the median line of the main navigable channel at the lowest navigable level, starting from the point at which the land frontier between Iran and Iraq enters the Shatt al 'Arab and continuing to the sea (Art. 2).

(5) Protocol on matters pertaining to economic cooperation (Syria- Turkey, 1987)

Syria and Turkey shall work together with Iraq to allocate Euphrates and Tigris water within the shortest possible timeframe (Art. 7). Construction and joint operation of irrigation and hydropower projects on the two rivers (Art. 9).

(6) Agreement on the creation of a pumping station in Syria on the Tigris (Iraq-Syria, 2002)

- Establishment of a Syrian pumping station on the Tigris River (Art. 2)
- The quantity of water to be drawn by Syria from the River Tigris shall be of 1,250 billion m³ annually (Art. 3)
- Inclusion of the commitments of the UN Watercourses Convention by providing that “all issues that are not provided for in this Agreement shall be dealt with under the Convention” (art. 7)

2. Main Memoranda and other Instruments

(1) Joint Minutes concerning the provisional division of the waters of the Euphrates River (Syria-Iraq, 1989)

Sharing of the Euphrates waters: “The Iraq water share on the border region between Iraq and Syria is 58% of the water of Euphrates River allowed to pass in Syria through the border with Turkey, and the Syrian share of water is the remainder quantity 42% of the water of Euphrates River allowed to pass through the border between Turkey and Syria” (para.1).

(2) Joint Communiqué on Cooperation between the Syria and Turkey (1993)

Parties agreed to reach before the end of 1993 a final solution determining the allocation to the parties from the waters of the Euphrates River (para. 5).

(3) Joint Communiqué between Turkey and Syria (2001)

Technical cooperation between the parties including training programs, joint development projects as well as exchange programs and partnerships between the parties.

(4) Memorandum of Understanding between Turkey and Syria on establishment of a pumping station in Syria for water withdrawal from the Tigris River (2009)

A maximum of 1 billion 250 million cubic meters of waters from the Tigris River per annum (Art. 4). Syria agreed to “construct a pumping station in its territory at the part of the Tigris River forming a border between Turkey and Syria” (Art. 1).

(5) Memorandum of Understanding in the field of remediation of water quality between Turkey and Syria (2009)

Cooperation in a number of areas including: Joint work on prevention of pollution coming from residential areas, agriculture and industry(Art.2).

(6) Memorandum of Understanding between Turkey and Syria in the field of efficient utilization of water resources and combating drought (2009)

Cooperation in number of areas including: sharing of information and data; water treatment technologies; and flood early warning systems (Art. 2).

(7) Memorandum of Understanding between Turkey and Iraq on Water (2009)

Cooperation in a number of areas including: water resources management in the Euphrates and Tigris rivers; Modernization of existing irrigation systems, building up water supply and water treatment infrastructure in Iraq with the involvement of Turkish companies (Art.2).

Amendment of Article 2: Cooperation on joint projects on the water resources management in the Euphrates and Tigris shall further be developed. *Turkey will release equitable and reasonable river waters to Iraq according to the above assessment.*

III. Joint Technical Committee for Regional Waters

Joint Technical Committee for Regional Waters (1980)

Turkey and Iraq, through a protocol for technical and economic cooperation, agreed to establish a Joint Technical Committee (JTC) whose mission was to determine *the appropriate and reasonable quantity of water that each country needs from the Tigris and Euphrates rivers.*

The JTC held sixteen meetings, but it did not reach an agreement to accomplish its specific mission

IV. The Role of Customary International Law and the UN Global Water Conventions

1. The Role of Customary International Law

- Both the principle of equitable and reasonable utilisation and the obligation not to cause significant harm are **part of customary international law** (see case law)
- Both of them apply to the Tigris and Euphrates watercourses
- In the event of a conflict between uses of an international watercourse, it shall be resolved with reference to the principle of equitable and reasonable utilisation and the obligation not to cause significant harm, ***with special regard being given to the requirements of vital human needs*** (Art.10 of the UN Convention on the Law of Non-Navigational Uses of International Watercourses (UN Watercourses Convention))

2. The UN Global Water Conventions

- Iraq (2001) and Syria (1998) are parties to the UN Watercourses Convention
- Iraq has almost finalized the process of accession to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention)

3. The Relationship between Existing Agreements and the UN Watercourses Convention

Article 3

Watercourse agreements

1. In the absence of an agreement to the contrary, nothing in the present Convention shall affect the rights or obligations of a watercourse State arising from agreements in force for it on the date on which it became a party to the present Convention.
2. Notwithstanding the provisions of paragraph 1, parties to agreements referred to in paragraph 1 may, where necessary, consider harmonizing such agreements with the basic principles of the present Convention.

3. Watercourse States may enter into one or more agreements, hereinafter referred to as “watercourse agreements”, which ***apply and adjust*** the provisions of the present Convention to the characteristics and uses of a particular international watercourse or part thereof.

4. Where a watercourse agreement is concluded between two or more watercourse States, it shall define the waters to which it applies. Such an agreement may be entered into with respect ***to an entire international watercourse or any part thereof or a particular project, programme or use except insofar as the agreement adversely affects, to a significant extent, the use by one or more other watercourse States of the waters of the watercourse, without their express consent.***

5. Where a watercourse State considers that adjustment and application of the provisions of the present Convention is required because of the characteristics and uses of a particular international watercourse, ***watercourse States shall consult with a view to negotiating in good faith for the purpose of concluding a watercourse agreement or agreements.***

6. Where some but not all watercourse States to a particular international watercourse are parties to an agreement, ***nothing in such agreement shall affect the rights or obligations under the present Convention of watercourse States that are not parties to such an agreement.*** (Art.3)

4. The relationship between future agreements and the UN Watercourses Convention

Article 4

Parties to watercourse agreements

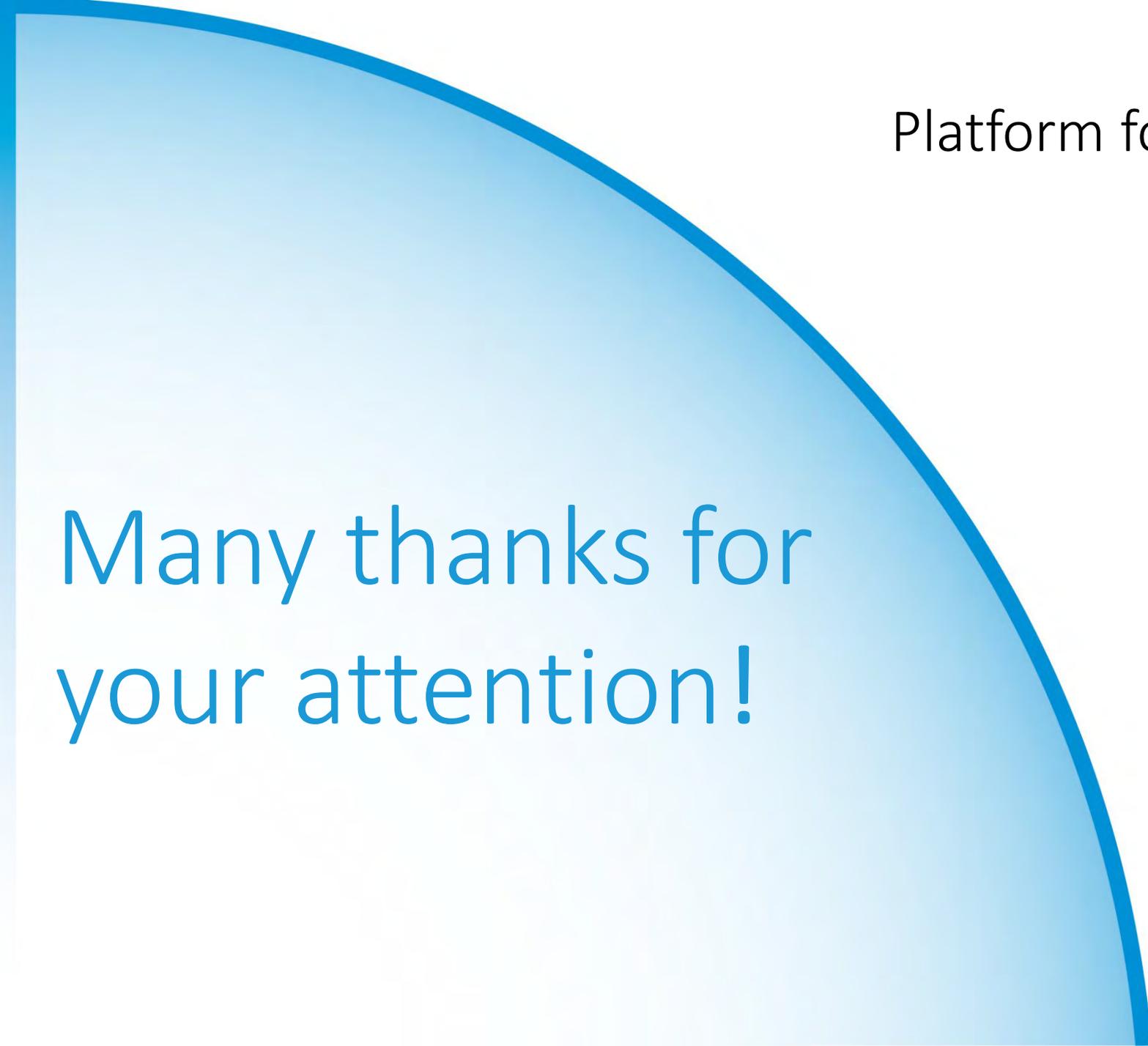
1. ***Every watercourse State is entitled to participate in the negotiation*** of and to become a party to any watercourse agreement that applies to the entire international watercourse, ***as well as to participate in any relevant consultations.***
2. ***A watercourse State whose use of an international watercourse may be affected to a significant extent by the implementation of a proposed watercourse agreement*** that applies only to a part of the watercourse or to a particular project, programme or use ***is entitled to participate in consultations on such an agreement and, where appropriate, in the negotiation thereof in good faith with a view to becoming a party thereto, to the extent that its use is thereby affected.***

5. The relationship between existing and future agreements and the UNECE Water Convention

The Riparian Parties shall on the basis of equality and reciprocity ***enter into bilateral or multilateral agreements or other arrangements, where these do not yet exist, or adapt existing ones***, where necessary to eliminate the contradictions with the basic principles of this Convention, in order to define their mutual relations and conduct regarding the prevention, control and reduction of transboundary impact. The Riparian Parties shall specify the catchment area, or part(s) thereof, subject to cooperation. These agreements or arrangements shall embrace relevant issues covered by this Convention, as well as any other issues on which the Riparian Parties may deem it necessary to cooperate. **(Art. 9.1)**

Final remarks

- Multiple freshwater agreements apply to the Tigris and Euphrates watercourses: there is a need to adjust them taking into account the legal developments and the current challenges (i.e. development of dams, diversion of waters, climate change)
- The principle of equitable and reasonable utilization and the obligation not to cause significant harm are part of customary international law and apply to the Euphrates and Tigris watercourses
- The UN global Water Conventions contain both principles and have a role to play in the process of adaptation of existing agreements and guide the negotiations of future agreements



Many thanks for
your attention!

Platform for International Water Law
www.unige.ch/droit/eau

Geneva Water Hub
www.genevawaterhub.org