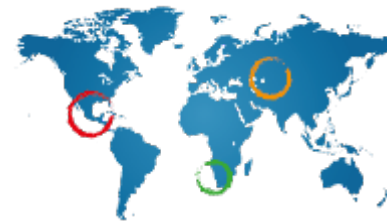

**GOVERNANCE
of GROUNDWATER RESOURCES
in TRANSBOUNDARY AQUIFERS
(GGRETA Project)**

GGRETA



Governance of
Groundwater
RESources in
Transboundary
AQUIfers

**INTERNATIONAL WATER LAW
- A FOCUS ON TRANSBOUNDARY AQUIFERS -**

*27 March 2017
Windhoek, Namibia*



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The law of international watercourses and aquifers

The law of international watercourses (and most aquifers) is crystallized in the:

UN Convention on the law of the non-navigational uses of international watercourses, adopted by the UNGA (New York) on 21 May 1997, in force since August 2014

It lays down a number of norms of inter-State behaviour reflecting the practice of States in the matter (“international customary law”)



The law of international watercourses and aquifers

The UN Convention covers - in addition to surface watercourses - all international aquifers which are physically linked to a surface water system



As a result, non-recharging (also known as “fossil”) aquifers escape the scope of coverage of the Convention, and fall in a legal limbo

The law of international watercourses and aquifers



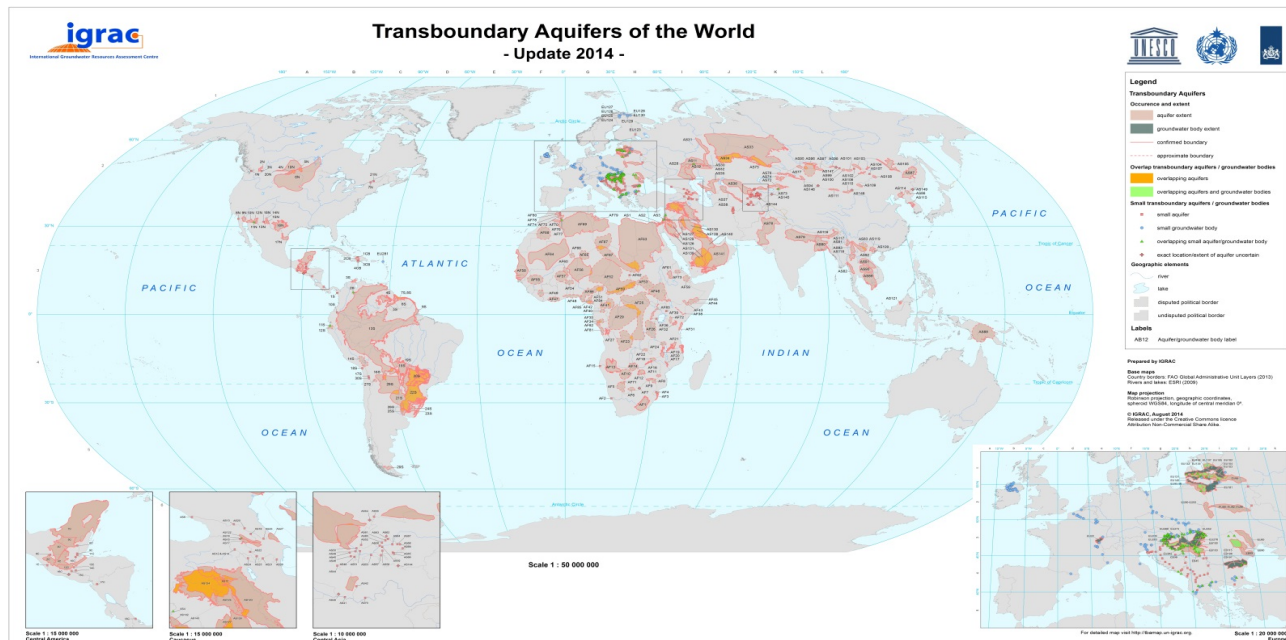
- This is why the UN adopted in 2008 Resolution 63/124, carrying “Draft Articles on the law of transboundary aquifers”
- The Draft Articles carry a body of norms of inter-State behaviour reflecting the practice of States in the matter (“international customary law”)
- The Draft Articles are not binding - except for a few “core” norms

The law of international watercourses and aquifers

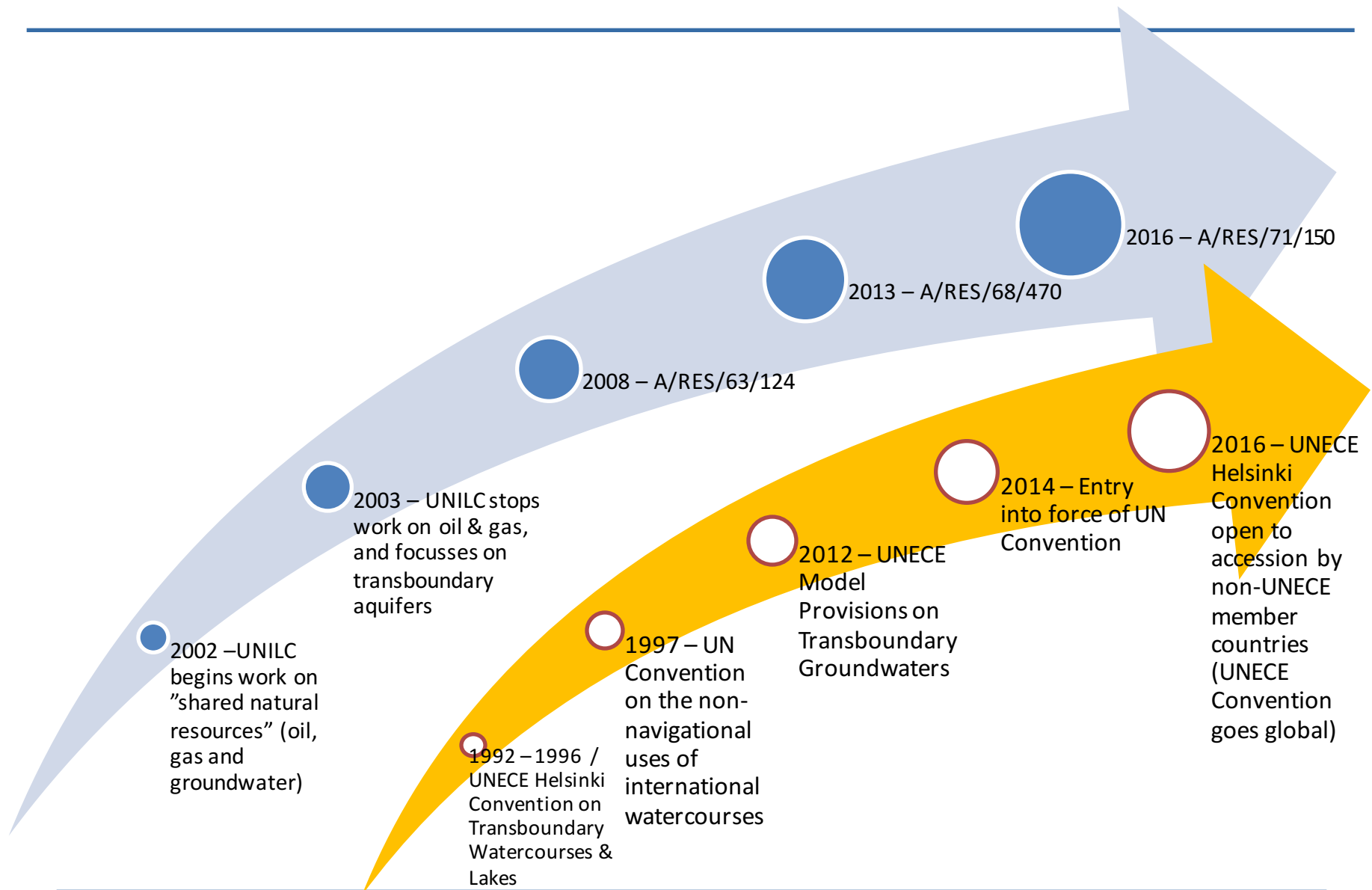
Transboundary aquifers & agreements - how many?

Only 6 of the nearly 600 surveyed transboundary aquifers are governed by a legally binding agreement

<https://www.un-igrac.org/resource/transboundary-aquifers-world-map-2015>

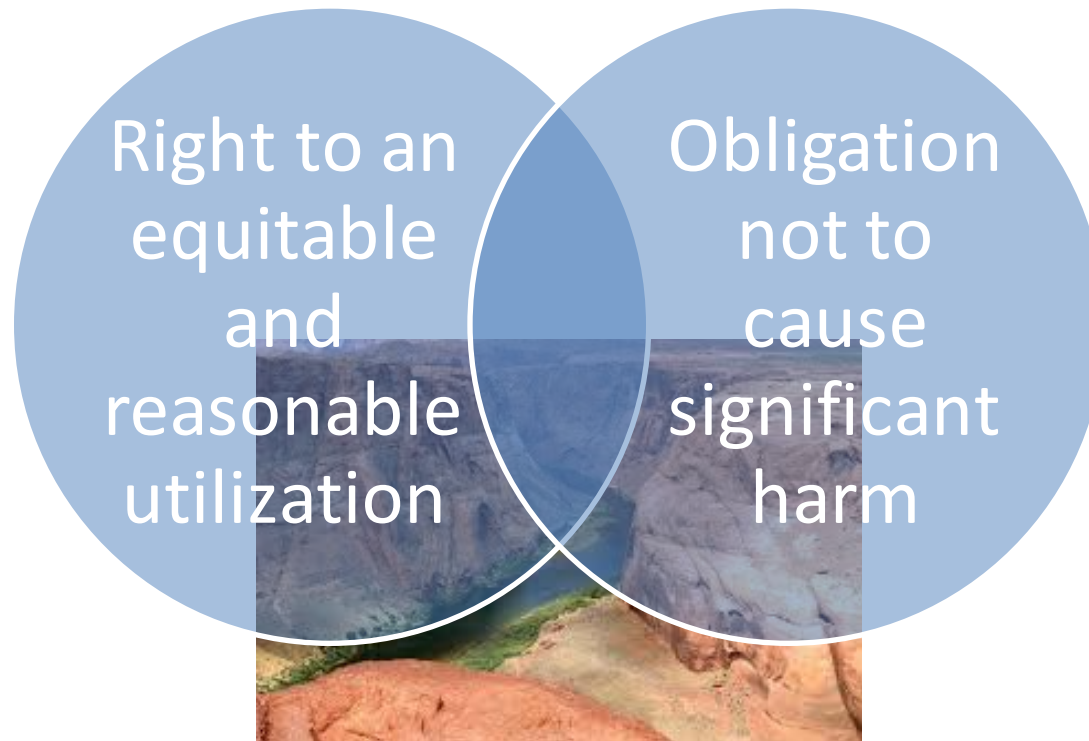


The law of international watercourses and aquifers



The law of international watercourses and aquifers

The “core” norms of international water law crystallize the substantive rights and obligations of States



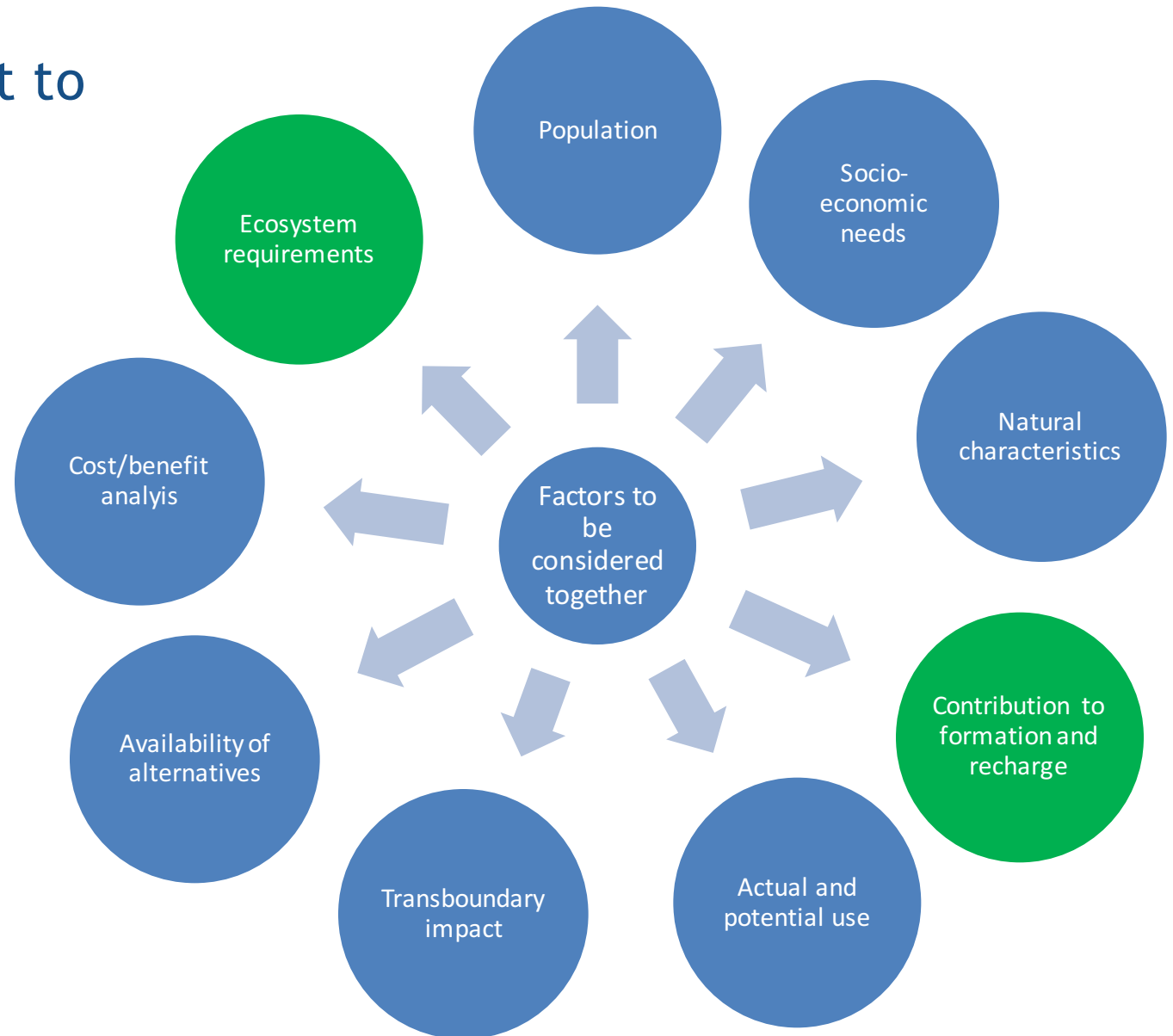
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Criteria entering equitable & reasonable utilization determinations



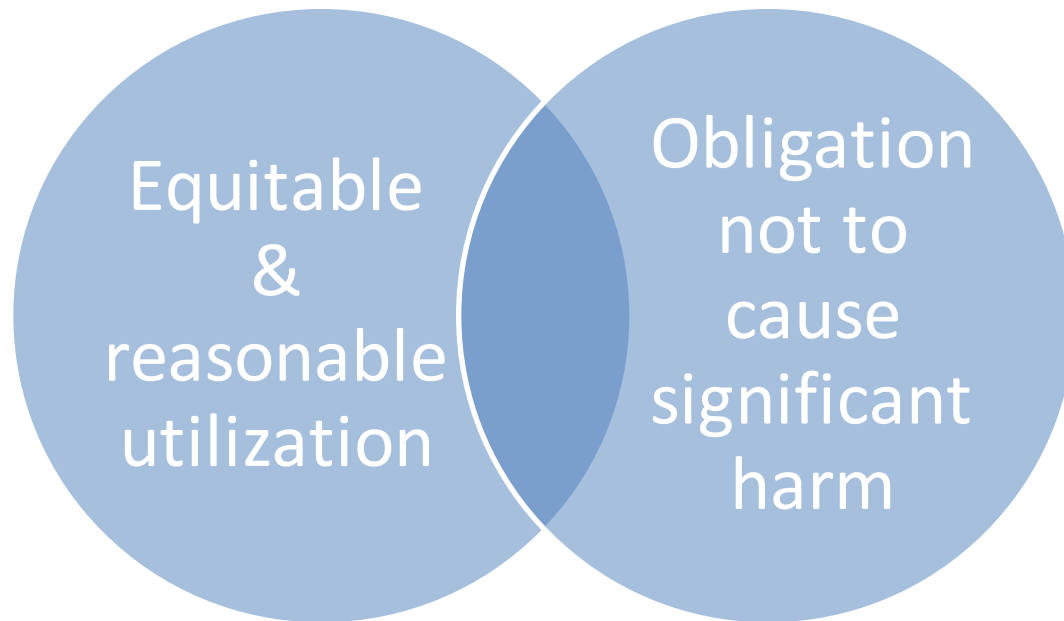
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Factors relevant to equitable & reasonable utilization determinations regarding transboundary aquifers



The law of international watercourses and aquifers

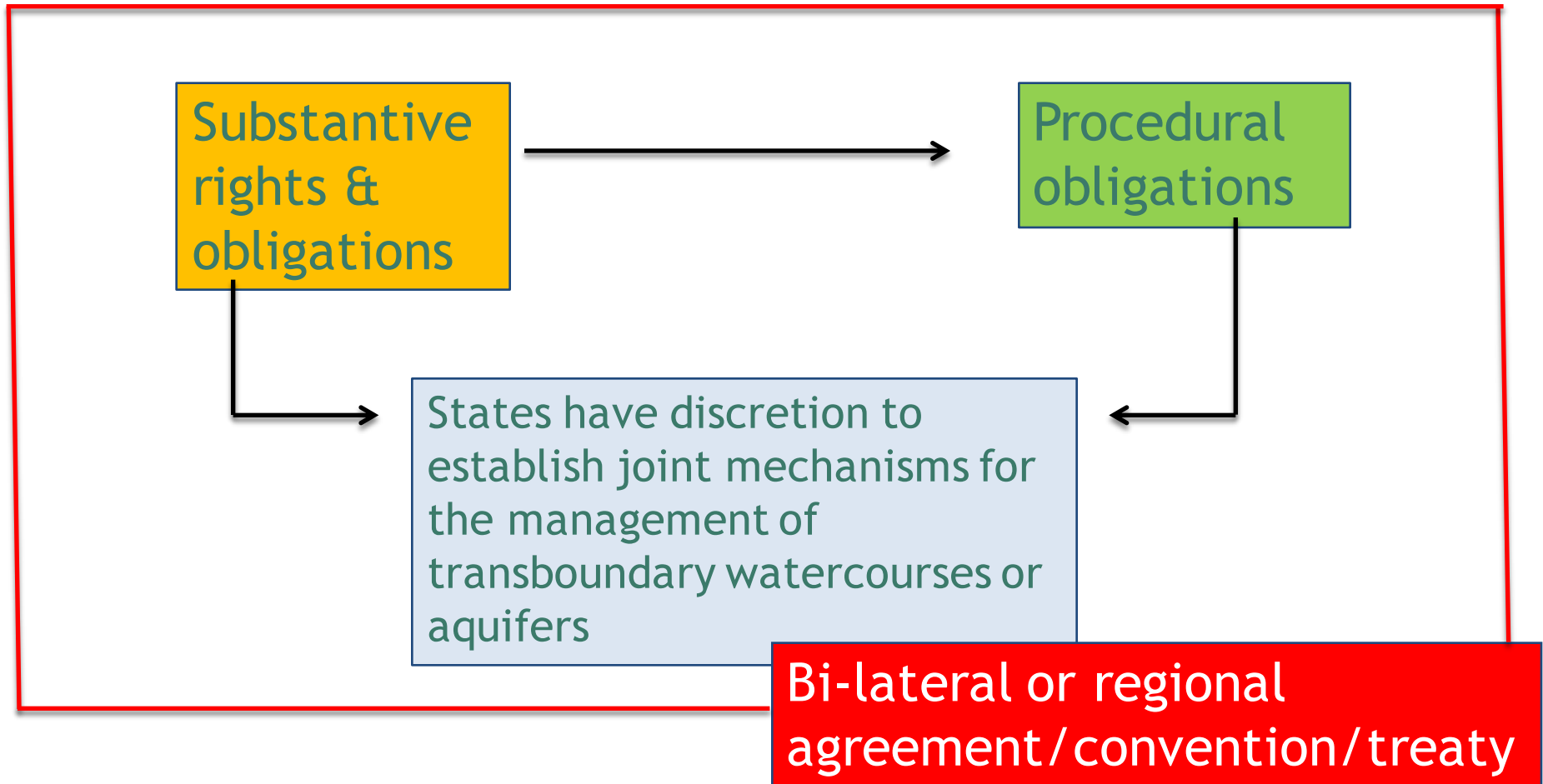
Procedural norms, and relationship to substantive norms



- General obligation to cooperate
- Regular exchange of information & data
- Prior notification of planned measures, consultation and good-faith negotiation with a view to reaching agreement

These norms give effect to the rights and obligations posited by substantive norms

The law of international watercourses and aquifers



Agreements on transboundary aquifers

There exist a handful bi-lateral and regional agreements on specific transboundary aquifers



- The Genevese Aquifer Agreement (2008, France, Switzerland)
- The Guaraní Aquifer Agreement (2010, Argentina, Brazil, Paraguay, Uruguay)
- The Joint Authority for the Study & Development of the Nubian Sandstone Aquifer (Chad, Egypt, Libya, Sudan)(1992)
- The Al-Disi Aquifer Agreement (Saudi Arabia, Jordan (2015)
- MOU on a Consultation Mechanism for the Iullemeden Taoudeni/Tanezrouft Aquifer (7 countries in the Sahara-Sahel region) (2014)
- MOU on a Consultation Mechanism for the Northern Sahara Aquifer System (2008, Algeria, Libya, Tunisia)

Local-level arrangements for transboundary aquifers

There exist a few known arrangements between or among units of local-level government or local authorities, concerning a transboundary aquifer



- MoU between the water supply companies of El Paso (Texas) and Cd Juarez (Mexico) re: the Hueco Bolson aquifer (1999)
- In Europe local governments have made arrangements for the management of small transboundary aquifers, based on a Framework Convention on transfrontier local-level cooperation (1980)
- The French contracting Parties of the Genevese Aquifer Agreement are local government units
- MoU between the cities of Concordia (Argentina) and Salto (Uruguay) on the use of Guaraní aquifer (thermal) waters (2015, not signed yet)

The law of international watercourses and aquifers

Conclusions / 1



- *The UN Convention on the law of the non-navigational uses of international watercourses (1997) lays down:*
 - Substantive rights & obligations
 - Procedural obligations
 - Rules for the settlement of disputes

- The Convention only recently (2014) has come into effect, however it binds only the 36 States which have ratified it - **not the others!**

- Still, all States are bound by the few “core” norms of the Convention reflecting customary international law

The law of international watercourses and aquifers

Conclusions/2



- Likewise, the Draft Articles on the law of transboundary aquifers (UNGA Resolution 128 of 2008, re-iterated in 2013 and 2016) lay down:
 - Substantive rights & obligations
 - Procedural obligations
 - Rules for the settlement of disputes

- The Draft Articles are not binding, however they serve as authoritative reference in the negotiation and formulation of aquifer-specific treaties and agreements

- Still, all States are bound by the few “core” norms in the Draft Articles which reflect customary international law

The law of international watercourses and aquifers

Conclusions/3



- In addition, there exist a few arrangements negotiated by local government units/authorities regarding transboundary aquifers
- Such arrangements are based on the constitutional system of the relevant countries, and are valid to the extent permitted by it
- In the EU context, local-level arrangements on transboundary aquifers are based on a specific Framework Convention (1980) enabling local governments and local authorities to make such arrangements

THANK YOU!

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