

BLUE GOLD TASKFORCE

**Water: A factor of instability or an opportunity
for cooperation?**

SESSION 2

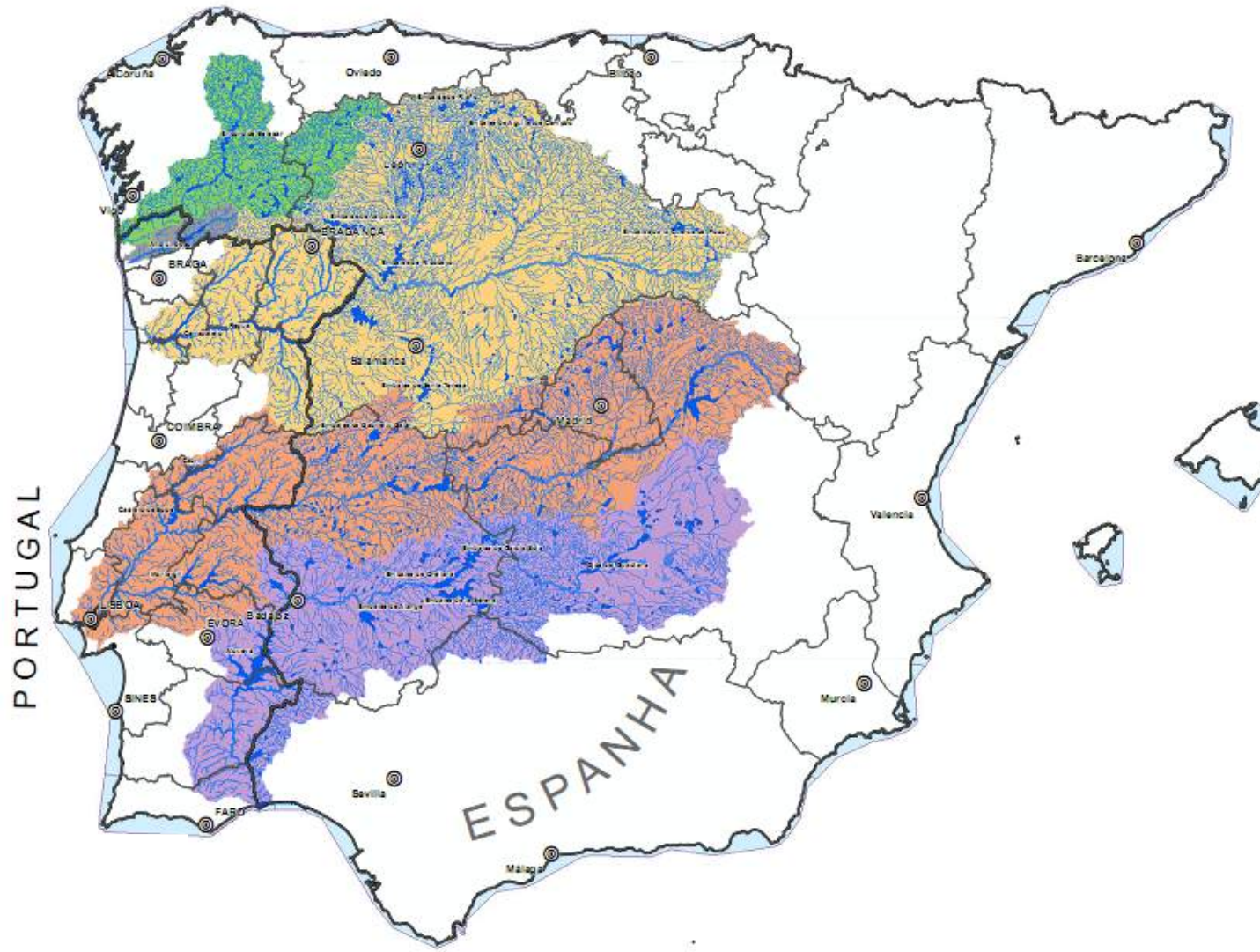
WATER AS AN OPPORTUNITY FOR COOPERATION THE IBERIAN TRANSBOUNDARY WATERS

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The Iberian Transboundary River Basins



The border between the kingdoms of Portugal and Castilla-Leon (latter Spain) dates from the end of the 13th century and the rivers were important for this purpose as natural barriers.



But rivers also created links between the populations who shared them as means for navigation and the transportation of goods. Borders were not that important at that time for the populations living as neighbors, irrespective of nationality.

The first water conventions (1927, 1964, 1968)

The rationale of the first Iberian Convention



Portugal and Spain adopted a convention for **industrial usage of transboundary watercourses** in 1912.

But none of the parties to the convention exercised his rights until **1927**, when a first treaty for **hydropower development of the Douro boundary** section was signed.

The 1923 Geneva Convention Relating to the Development of Hydraulic Power Affecting more than one State, approved under the umbrella of the League of Nations, was the basis of this treaty.

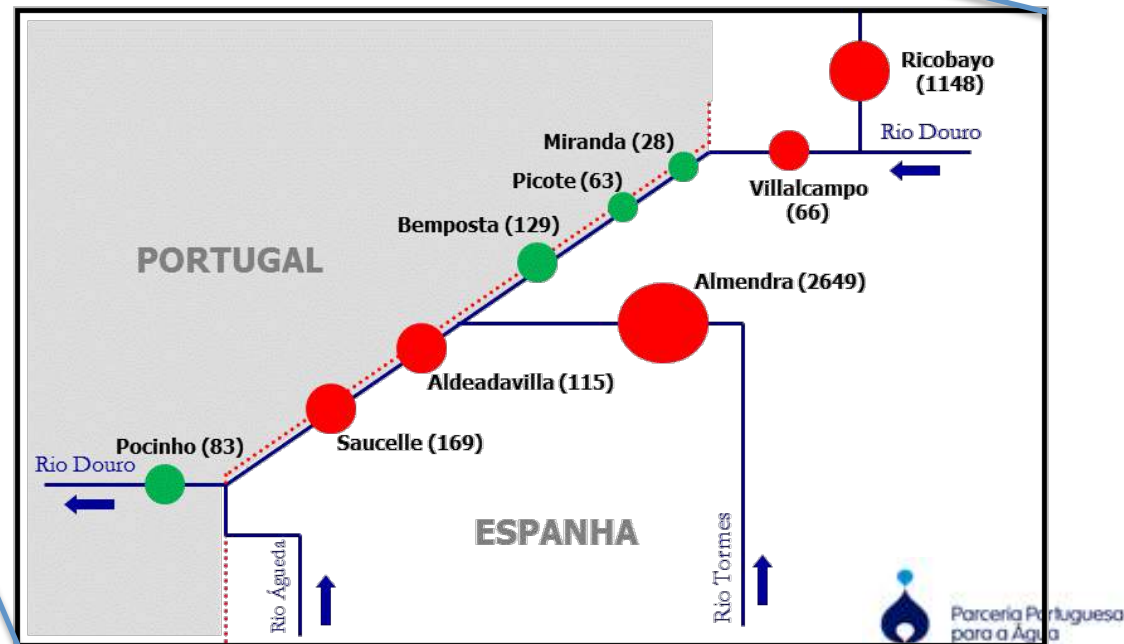


The 1927 Convention for the Douro river

The two countries decided to partake of the **hydropower potential of the mainstream border portion of the Douro river in equal shares**,

- ✓ The upstream part being allocated to Portugal
- ✓ The downstream part to Spain,

Industrialization was starting in both States and **electric power generation** was part of the package.





Environmental impacts were neglected and natural values were diminished.

Beautiful landscapes and natural habitats of avifauna were sacrificed.



Sharing the hydropower of the other transboundary rivers proved to be more complicated for several reasons:

1. It was the interest of the two Parties **to give other uses to the waters**, namely irrigation and transfers to other basins;
2. **The best technical solution** was no longer the sharing of the hydropower potential of each border stretch of each river in two equal parts, but the **sharing of the joint potential of the border stretches of all rivers**;

Finally it was possible to arrive to an agreement and a new treaty was signed in 1968.

- The mainstream border stretches of the **Tejo and Chança rivers were given to Spain**,
- Those of the **Lima and the Guadiana rivers to Portugal** and
- The **Minho river was used to balance the share of hydropower potential** between the two States.

The rivers only were concerned and in these mainly the mainstream border portions, and the uses of the waters were only considered, not the protection of the water bodies.

No reference was made to other uses or for hydropower production in the national mainstream stretches and the tributaries, and the **words sustainability, sustainable uses, environment protection, or environmental impacts** were never used in these conventions.



The 1998 Convention on the Cooperation for the Protection and the Sustainable Use of the Waters of the Spanish-Portuguese River Basins

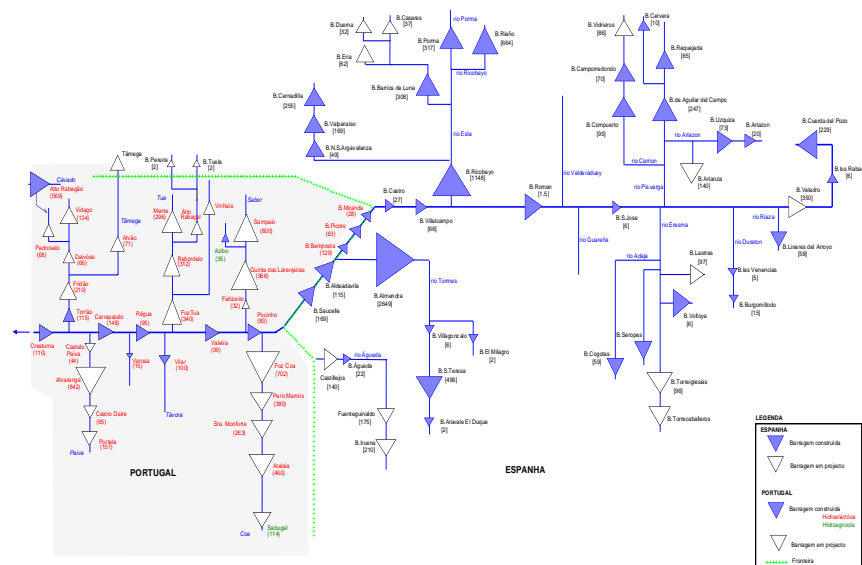
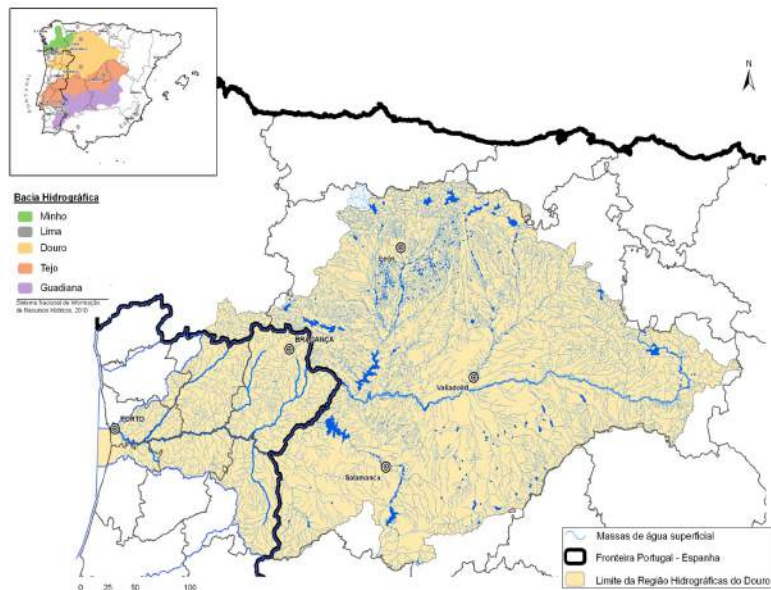
Between 1960 and 1993 the construction of new dams and the accompanying regulation of river flows and water consumption, mainly in irrigation and water transfers in Spain, **hugely increased** and contributed to diminish the amount of water flowing into Portugal.

The same policy at a smaller scale was being adopted in **Portugal** and as consequence the cumulative environmental impacts were very significant downstream.

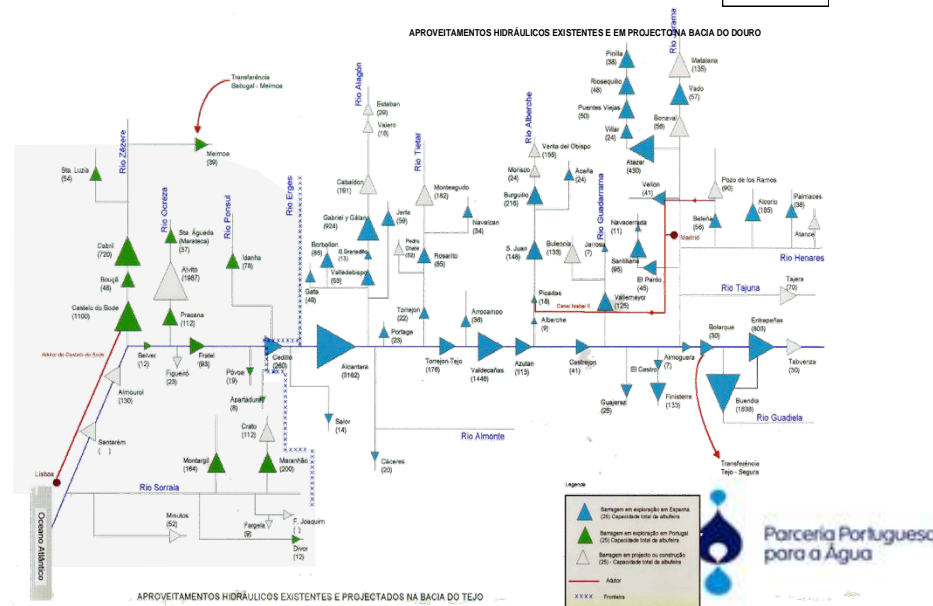
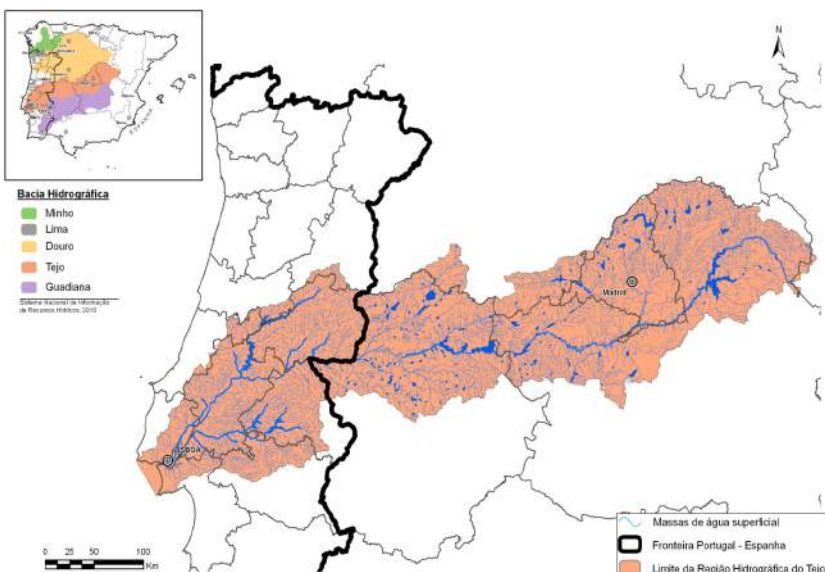
As Member-States of the EU both States had new obligations and things could not go on as they were. **Business-as-usual was no longer a legitimate option.**



Dams in Douro and Tejo River Basins



APROVEITAMENTOS HIDRÁULICOS EXISTENTES E EM PROJEÇÃO BACIA DO DOURO

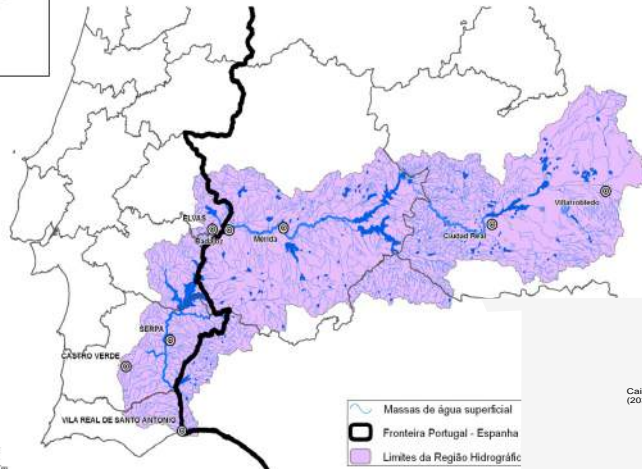


APROVEITAMENTOS HIDRÁULICOS EXISTENTES E PROJECTADOS NA BACIA DO TEJO

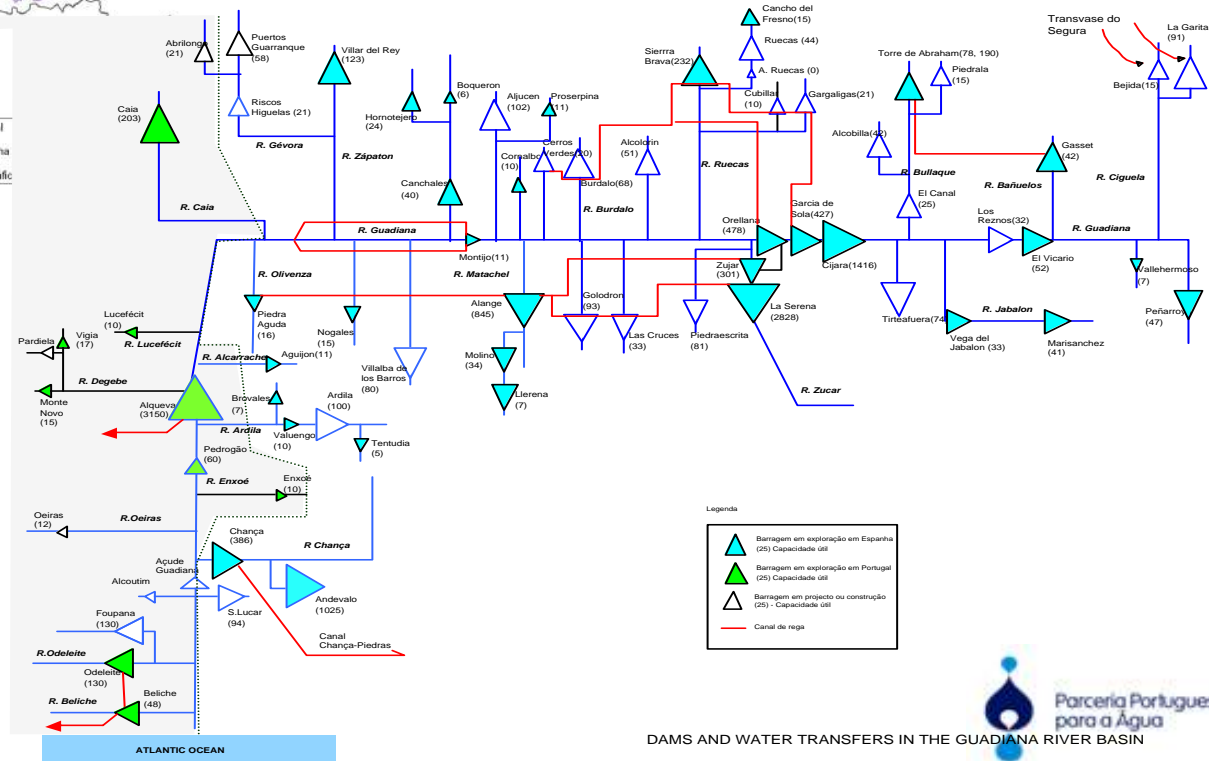
In the Guadiana river basin **water is used mainly for irrigation, a highly consumptive use** and one who requires very intensive seasonal regulation of flows.



Bacia Hidrográfica



Massas de água superficial
Fronteira Portugal - Espanha
Limites da Região Hidrográfica



The 1993 Spanish Hydrologic Plan

In 1993 the Spanish Government submitted to public consultation **without even previous communication to the Portuguese Government** the Spanish National Hydrologic Plan where huge transfers of water from the shared river basins in direction to the Mediterranean region were considered.

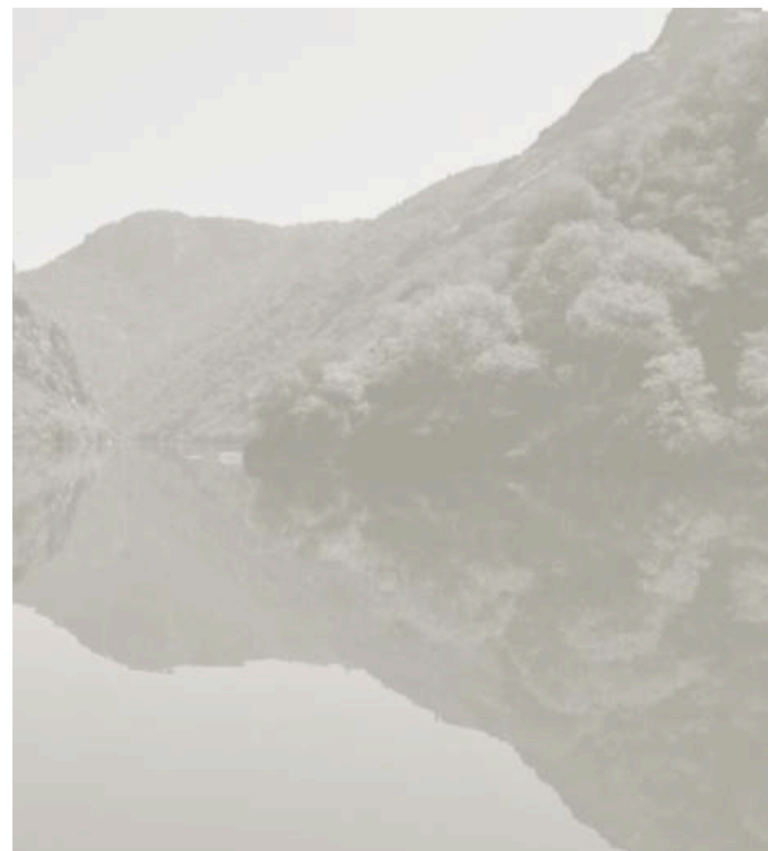
News on the eminent approval of this Plan reached Portuguese press and created a commotion in the public opinion. A clamor from civil society constrained the Portuguese government to become concerned and raised the question to the top of the agenda at the highest level.



In **1994** the Governments of the two States decided to launch the **negotiations for a new water convention**.

It was then decided, that this new convention should be based on the **concepts of environment protection and sustainable use**, should encompass all the transboundary watercourses, the whole river basins and all water uses. It was an ambitious project that took **4 years to conclude**.

The parties decided to analyse the situation in each river basin, to inventory all uses, present and foreseen in the horizons 2012 and 2020, to perform backwards **reconstitution of the situation of river flows in pristine conditions** and perform hydrologic and hydraulic studies to **simulate future conditions for different scenarios**.



- Cooperation
- Coordination
- Environmental protection
- Sustainable development
- Exchange of information
- Consultation
- Impact mitigation
- Flow guarantees



Key challenges

CHALLENGES	DESCRIPTION IN THE CASE
Water demand/water allocation	<p>Water demand is very important in some of the Mediterranean basins in Spain and in some cases is clearly unsustainable.</p> <p>Because of this, Spanish authorities envisaged to transfer water from the Douro and Tejo rivers towards those basins (Segura, Sur).</p> <p>On the other hand, Portugal was entitled by the 1968 treaty to build a large dam (Alqueva) in the Guadiana River and divert part of the water for irrigation in the Sado River basin.</p>
Water quality/biodiversity	<p>All issues related to water quality and biodiversity are regulated by EU directives, namely WFD.</p> <p>Nevertheless, cooperation between riparian States was needed for environmental protection at river basin level.</p>
Water scarcity	<p>Water scarcity is very important in the Guadiana River basin and in Mediterranean basins in Spain and Sado and Algarve basins in Portugal.</p> <p>Both States had important projects for further regulation of Guadiana and for transfers of water towards some of those other basins.</p> <p>Furthermore, Spain envisaged the transfer of water from the Douro and Tajo River to the Segura River basin</p>

ELEMENTS	DESCRIPTION OF THE INSTRUMENTS IN THE CASE
Legal frameworks for cooperation	<p>Two bilateral treaties, several EU directives and the UNECE environmental conventions were relevant:</p> <p>1964 treaty on hydropower in the Douro River (limited to the border stretches);</p> <p>1968 treaty on hydropower and other water uses in the Minho, Lima, Tejo and Guadiana Rivers (border stretches);</p> <p>1991 UNECE Convention on EIA in a transboundary context (Espoo);</p> <p>1992 UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention, 1992);</p>
Institutions for cooperation	<p>Joint Commission responsible for the follow up of 1964 and 1968 treaties (active since 1927);</p> <p>High level meetings (ministerial);</p> <p>Working group in charge of the drafting of the new convention;</p>

Approach to cooperation

ELEMENTS	DESCRIPTION OF THE INSTRUMENTS IN THE CASE
Information Exchange and monitoring	<p>Each Party is responsible for monitoring a set of parameters (both quantitative and qualitative) in its own territory and reporting them to the other Party.</p> <p>Besides this, the Parties exchange information on warnings and emergency situations and on programs and projects that may have a transboundary impact.</p>
Incentives for cooperation	<p>Without cooperation the Parties would have to find other solutions for the disputes that would arise from the use of water in water scarce areas;</p> <p>Funding for projects would be problematic, with each Party raising obstacles to other Party's projects.</p>
Benefit Sharing	<p>Portugal benefits from regulation of river flows in upstream (Spanish) reservoirs in the Douro and Tejo Rivers, and water in Alqueva reservoir would be used for urban water supply and irrigation in both countries.</p>
Mediation and dispute resolution	<p>Has never happened but a mechanism for dispute resolution is foreseen in all treaties.</p>
Others – confidence building	<p>Confidence building and good relationship between the administrations and the people in charge has proved to be very important.</p>

	DESCRIPTION
Key elements and qualities of the process that help resolve conflicts/promoted cooperation	<p>The key elements for the success of the negotiations were:</p> <ul style="list-style-type: none"> Open exchange of points of view on all issues at stake and flexibility to accommodate legitimate points of view of the other party; Availability of information on water issues, water quality, water uses, historical, present and foreseen; all the information required was openly exchanged between the two parties; Common legal and institutional framework as both parties were already by that time EC Member-States; A tradition of cooperation on issues related to transboundary watercourses that dates from the 19th century (1867); The existence of a joint commission first created in 1927 that was meeting regularly for the implementation of 1964 and 1968 conventions; Good relationship between all engaged in the negotiations in spite of the differences of opinion; Engagement of skilled hydraulic engineers, jurists and diplomats in the preparation of technical documents, drafts of the terms of agreement and the negotiations; Political willingness of both Governments to arrive to a conclusion in due time; Frequent meetings at the highest level (Ministers of the Environment and even Prime Ministers) where the issue was in the top of the agenda;

LESSONS LEARNED	EXPLANATION/COMMENT
1 Engage diplomats as soon as possible in the process;	Diplomats are experts in negotiations and will bring a sense of realism to the negotiations;
2 Engage experts on International Public Law in the negotiations;	A river basin agreement, be it a treaty, a convention, an exchange of diplomatic notes between the two governments or whatever you call it, is always a legally binding document that will last for many years;
3 Engage skilled multidisciplinary team of experts for the preparation of technical documents	A good agreement, an agreement that will last many years and respond to your expectations must have a sound technical basis;
4 Try hard to accommodate all relevant issues raised by the other party	A good agreement is always a win-win agreement; if it is not good to one of the parties it will not work and will never be fully implemented, will never accomplish your expectations;

Lessons learned

LESSONS LEARNED	EXPLANATION/COMMENT
5 Do not try to evade difficult issues by postponing them to the future, unless this is unavoidable	Reopening negotiations is always difficult. Take advantage of the mood to negotiate of the other party as political changes that may occur at any moment may change it from day to night;
6 Take the chance, be opportunistic;	Jump into the opportunity as it may well not present itself again for many years; all negotiation requires the good will of two parties;
7 Be rigorous in drafting, avoid ambiguous formulations as much as possible	Ambiguities will create difficulties in the implementation and may jeopardise expected results

Thank you for your attention

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