

# Designing substantive and procedural features of an agreement or other arrangement: general considerations

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# Substantive and Procedural Features - Definitions

“**Substantive law** refers to the body of rules that determine the rights and obligations of individuals and collective bodies. **Procedural law** is the body of **legal** rules that govern the process for determining the rights of parties.” (<https://law.irank.org/>)

“**Substantive law** is all laws including common law and statutory law which deal with legal principles, as opposed to **procedural law** which refers to the procedure for putting law into practice.” (PONS)

## Substantive Features

- Create, define, and regulate rights and obligations

## Procedural Features

- Describe conduct of a formal process

# Predominantly Substantive Rights and Obligations (examples)

“The Parties shall, in particular, take all appropriate measures: ... (c) To ensure that transboundary waters are used in a reasonable and equitable way, taking into particular account their transboundary character, in the case of activities which cause or are likely to cause transboundary impact;” Art 2 (2) UNECE1992

- Equitable and reasonable use
- Obligation to prevent significant harm
- General obligation to protect ecosystems
- Navigation rights
- Flood control

# Predominantly Procedural Rights and Obligations (examples)

“The Riparian Parties shall, within the framework of relevant agreements or other arrangements according to article 9 of this Convention, exchange reasonably available data,...” Art 13 (1) UNECE1992

- Regular exchange of data and information
- Notification of emergencies and of planned measures
- Consultation
- Negotiation
- Stakeholder participation

# Complementarity of Substantive and Procedural Features

“Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection of an international watercourse.” Art 8 (1) UNWC

“In the application of [equitable and reasonable use], watercourse States concerned shall, when the need arises, enter into consultations in a spirit of cooperation.” Art 6 (2)  
UNWC1997

# Achieving “the right” Balance

- Procedures to achieve substantive objectives
- Mechanisms to deepen substantive objectives and procedure over time
- How much detail is required?
- What to put in a treaty? What to put into more flexible instruments?



# Conclusions



Procedural features facilitate achievement of substantive features



Substantive and procedural features complement one another



In most cases, the same rule contains both procedural and substantive elements



Thank you for  
your attention!