

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

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Virtual Workshop on designing legal  
frameworks for transboundary water  
cooperation

28-29 July 2020



# Designing legal frameworks - Preliminary comments

- ‘Substantive rules’ are the rules in international agreements that establish substantive, or material, rights and obligations of riparian states utilizing the shared water body
  - ‘Procedural rules’ are the means of implementing the substantive rules and of managing the shared water body
- Vinogradov et al, 2001*
- Both sets of rules are complementary - procedures support achieving substantive objectives

# Designing legal frameworks – Substantive features

Module 3 – Substantive content of the agreement or other arrangement

- 1) General obligations and rights**
- 2) Principles and other rights and obligations**
- 3) Water management and protection issues**
- 4) Sectoral and intersectoral issues**

# Designing legal frameworks – Procedural features

## Module 4 – Procedural features

- 1) Regular exchange of data and information**
- 2) Notifications and consultations**
- 3) Public participation and stakeholder involvement**
- 4) Environmental impact assessment**
- 5) Joint monitoring and assessment**

# Challenges

1. Balance: finding the right balance between what should be included in the agreement/arrangement and what may be too detailed to be included
2. Flexibility: considering the ability of the agreement/arrangement to deal with changing situations or uncertainties
3. Language: wording the provisions of the agreement/arrangement clearly so that those charged with its implementation, not present in the negotiations, understand how to implement them
4. Implementation: ensuring that the agreed provisions are implementable – e.g. alignment with domestic legislation, other international obligations, financial sustainability, capacity, etc.

# Lessons learned/recommendations

1. Substantial and procedural features – key elements of a treaty
2. Centrality of substantial and procedural provisions requiring careful drafting
3. Multi-disciplinary approach to the drafting (water resources managers, lawyers, hydrologists, diplomats, hydro-geologists, etc.)
4. Solid understanding of domestic and transboundary water resources management challenges of the water bodies under consideration

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**Thank you for your attention!**