

UNECE

Practical Guide for the Development of
Agreements or Other Arrangements
for Transboundary Water Cooperation



Introduction to the Practical Guide for the Development of Agreements and other Arrangements for Transboundary Water Cooperation



Introduction to the Practical Guide

Objective: support countries in the **design and drafting** of agreements or other arrangements for transboundary waters that are effective, adaptable and sustainable.

Focus: on **content and drafting options** rather than on process.

Target audience: State representatives, legal and technical experts, decision-makers involved in negotiation of agreements or other arrangements for transboundary waters, the staff of river basin organizations, regional organizations, and other stakeholders working on transboundary cooperation and water diplomacy are the target audience of the Practical Guide.

Publication available at: <https://unece.org/info/publications/pub/361821>

Elaboration of the Practical Guide



Nur-sultan, 10-12 October 2018,
Meeting of the Parties to the Water Convention adopts programme of work for 2019-2021

Programme of work includes checklist
Preparation of the first draft annotated outline (secretariat in cooperation with several partners)

28-29 July 2020, Virtual Workshop
Tailored to support the preparation of the checklist and to gather input from participants

30 September-2 October, 15th meeting of the WGIWRM
Draft annotated outline submitted for consideration and review by the Working Group

27 Nov. 2020 - Present Drafting group
Formation of a drafting group and development of the text of the checklist

Finalization phase

29 Sept – 1 Oct 2021
MOP of the Water Convention and submission of the Checklist

Review phase

Drafting phase II

26-28 April 2021,
Review by WGIWRM and focal points

Drafting phase I

25 March 2021, 3rd meeting of the DG.
Agreement on allocation of responsibilities

28 January 2021, 2nd meeting of the DG.
Main issues related to first draft are discussed

27 November 2020, 1st meeting of the DG.
Agreement on allocation of responsibilities

- ❖ **Group of experts (Hungary (Lead Party) as Chair)** with proven experience in working on the development and practical implementation of legal arrangements for transboundary water resources.
- ❖ **Responsibilities :** written inputs, selection of cases studies, peer review and editing

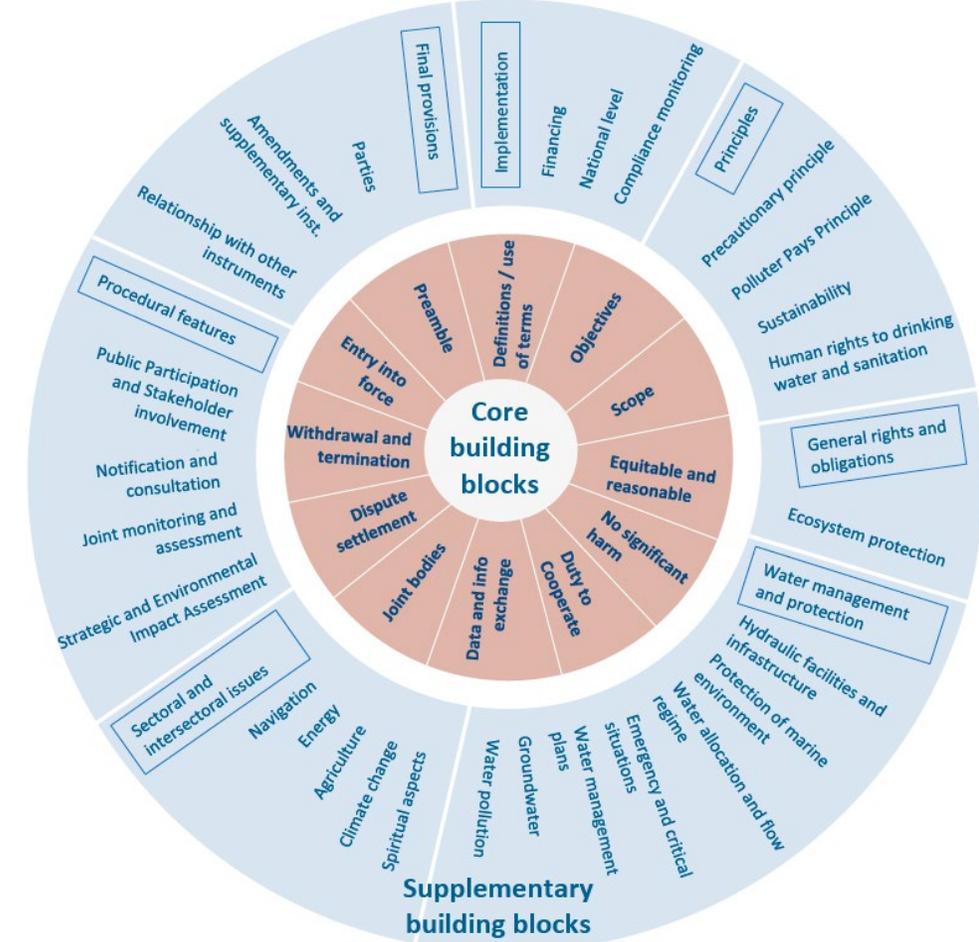


WATER CONVENTION

Structure of the Practical Guide

- **6 thematic modules:** Preamble; General provisions; Substantive content; Procedural features; Implementation, institutional framework and dispute settlement; Final provisions.
- **Building blocks** provisions/issues that countries may consider including within each module
- **Key aspects:** help define content of building blocks
- **Introductory text** to each building block, setting out its context and rationale;
- **Key considerations**, which explain different approaches that might be taken within the arrangements, and the implications thereof;
- **Examples from treaty practice** that illustrate how to frame a particular provision; and
- **Supporting resources**, assist in further developing the content

How to use the Practical Guide?



Identify thematic modules to structure the arrangement or the agreement

Consider which building blocks to include from each module

Decide upon the type of provision to develop within a particular building block

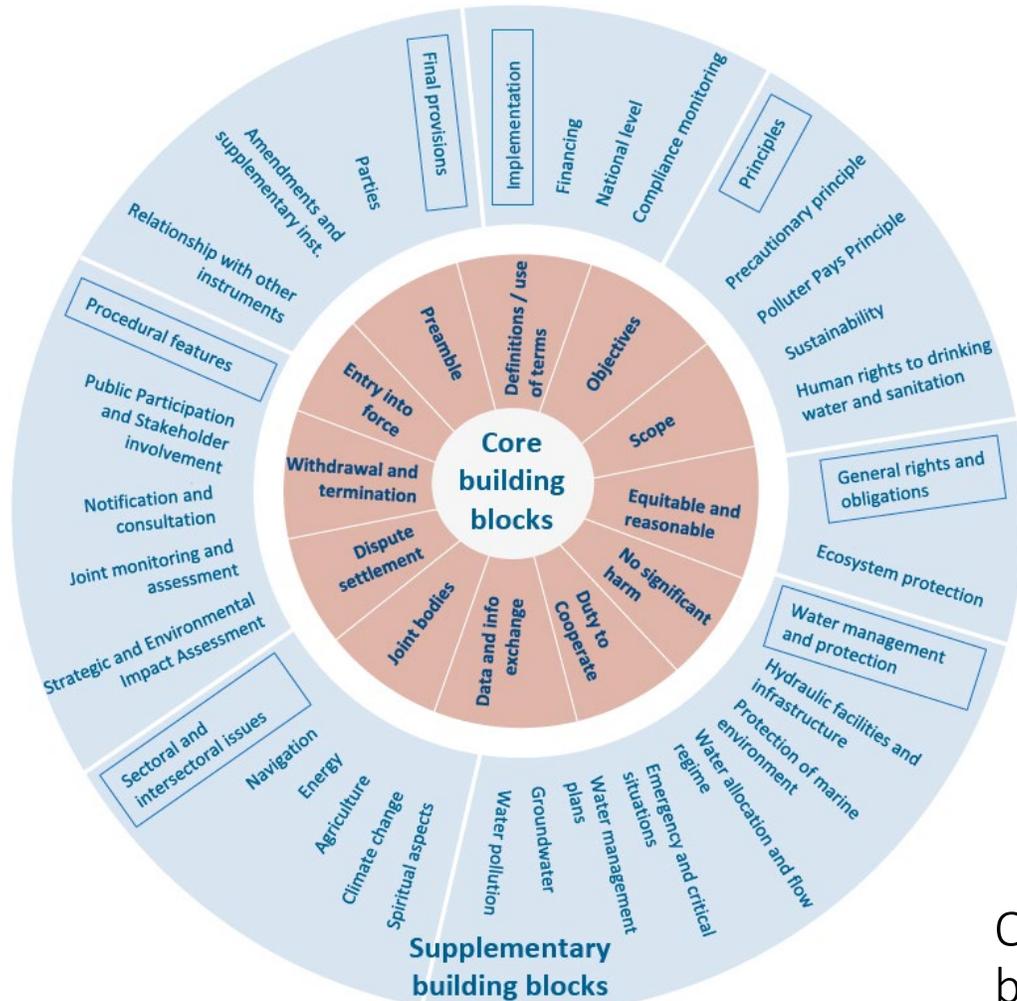
Rely on support resources for further details, justification and explanations

Question 1

What form might the arrangement take?

Question 2

What core building blocks should be included in the arrangement?



Overview of building blocks that might be included in an arrangement

Preamble/Scope

Core building blocks

Preamble

Most arrangements include a preamble, which outlines, in broad and general terms, the intention of the Parties and may include the context and vision or purpose that triggered the decision to develop an arrangement, as well as the political, economic, social, or environmental context and concerns.

See pp. 11-12 for further details.

Definitions/ use of terms

Most arrangements include a section on definitions. Definitions can establish shared meaning of particular terms and/or abbreviate commonly used terms within the arrangement. They help to address ambiguity and ensure a consistent interpretation of key terms amongst the Parties.

See pp. 13-14 for further details.

Objectives

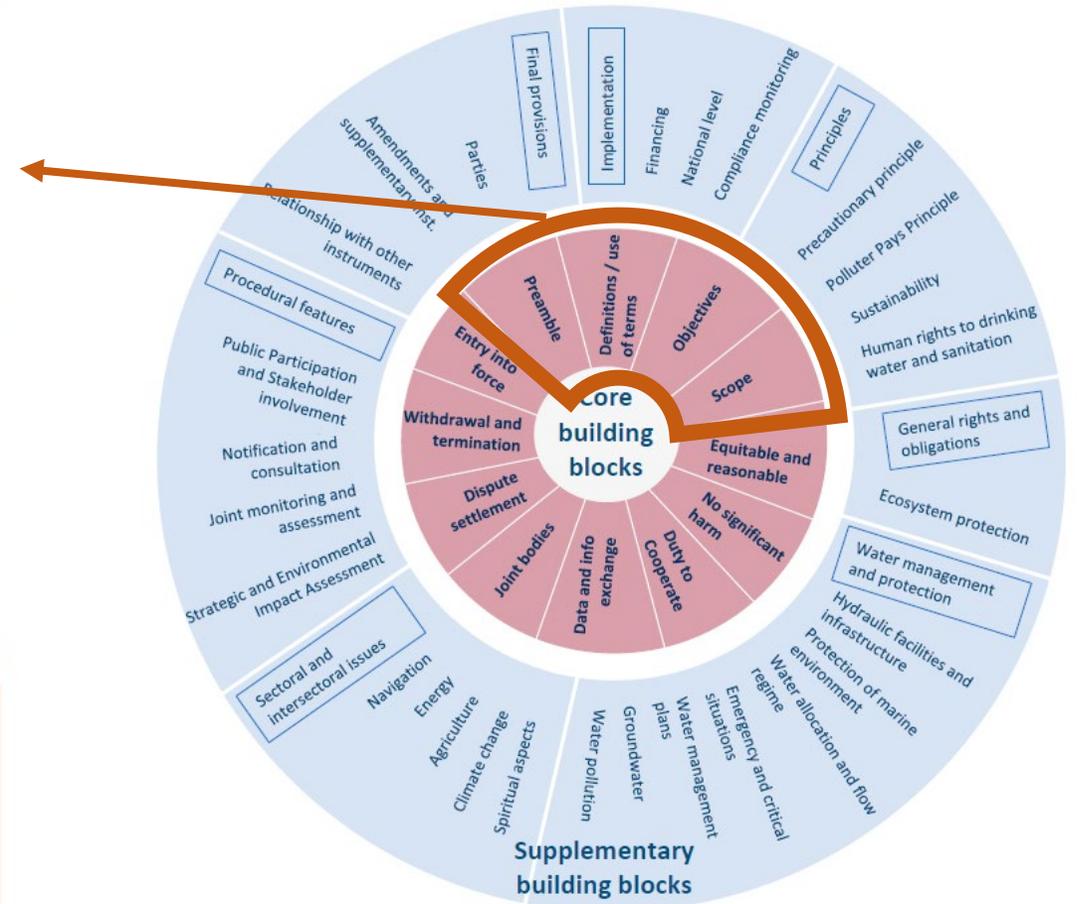
Objectives, along similar lines to the preamble, can set out the goals of the arrangement and therefore guide its implementation and interpretation.

See pp. 15-16 for further details.

Scope

Setting out the scope of an arrangement provides certainty as to the elements covered by an arrangement, e.g., river basins, sub-basins, aquifers, surface water and groundwater, as well as the activities or uses covered by the arrangement. The scope of an arrangement may be provided for in a specific provision or in provisions concerning objectives and/or definitions.

See pp. 17-18 for further details.



Substantive commitments

Core building blocks

Equitable and reasonable utilization

Arrangements on transboundary waters often include a provision on equitable and reasonable utilization. Parties might decide whether to include a general provision that makes reference to the principle, or go further and include relevant factors to take into account when determining what is equitable and reasonable. When including the principle of equitable and reasonable utilization, Parties should be mindful that its implementation will be contingent on procedural rules, such as the duty to cooperate, to exchange data and information, and to notify and consult on planned measures.

See pp. 19-20 for further details.

Duty to take all appropriate measures to prevent significant harm

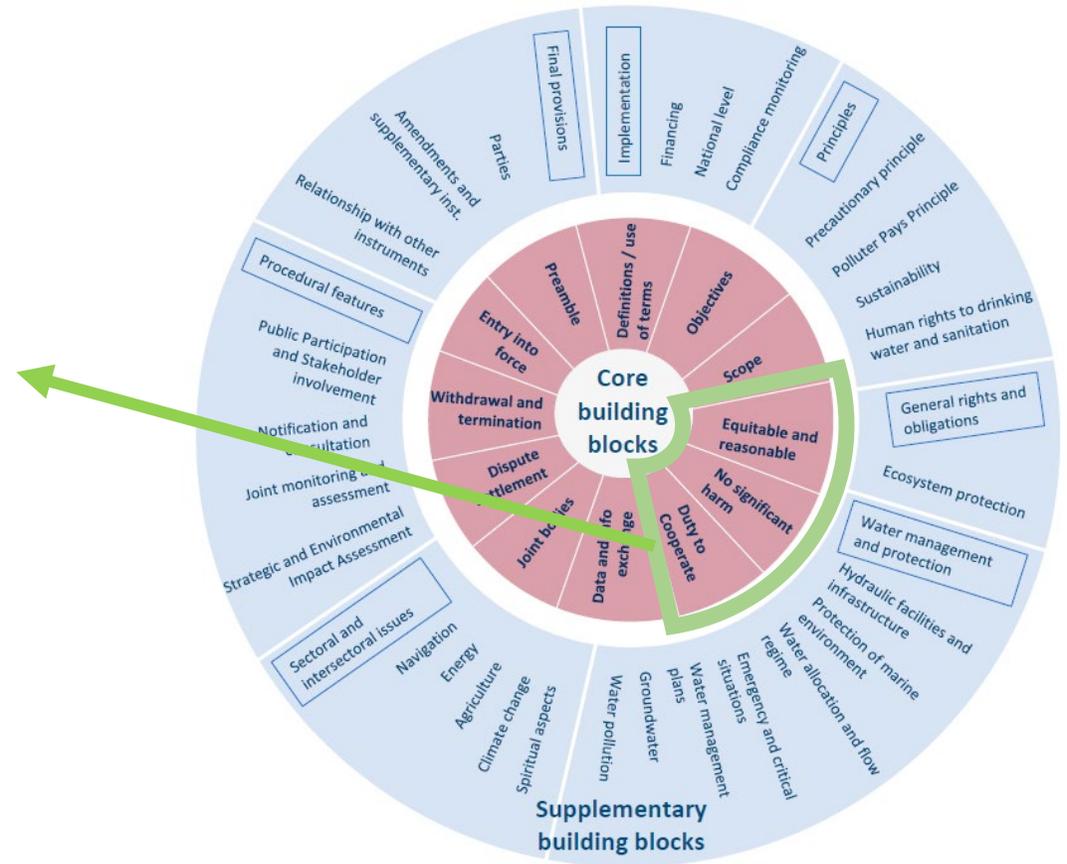
Agreements on transboundary waters often include the so-called "no-harm principle", ie., the duty to take all appropriate measures to prevent significant harm. Parties may wish to clearly set out the type of measures that should be adopted in order to prevent, control and reduce significant transboundary harm, such as those provided in Article 3 of the 1992 Water Convention.

See pp. 21-22 for further details.

General obligation to cooperate

The obligation to cooperate, which finds its basis in the Charter of the United Nations, should underpin all arrangements for transboundary waters between countries. Such an obligation is often included in arrangements on transboundary waters.

See pp. 25-26 for further details.



Procedure and implementation

Core building blocks

Data and information exchange

Most arrangements on transboundary waters include a provision related to data and information exchange, which is a fundamental basis upon which the Parties can develop their cooperation. Arrangements may go into further detail about the type of data and information to be exchanged and the methods and frequency of exchange, or may include more specific detail in an annex or subsequent protocol to the arrangement.

See pp. 69-70 for further details.

Establishment of joint bodies

Joint bodies provide an important means by which to implement the arrangement, and are therefore commonly found within arrangements for transboundary waters. Arrangements set out the status, structure, tasks and functions of a joint body.

See pp. 87-89 for further details.

Dispute settlement

The majority of arrangements include a provision on dispute settlement, which is in line with the general requirement contained in Article 33 of the Charter of the United Nations for States to settle their disputes in a peaceful manner. States may agree on a range of different steps and means by which to settle their disputes.

See pp. 94-96 for further details.

Entry into force

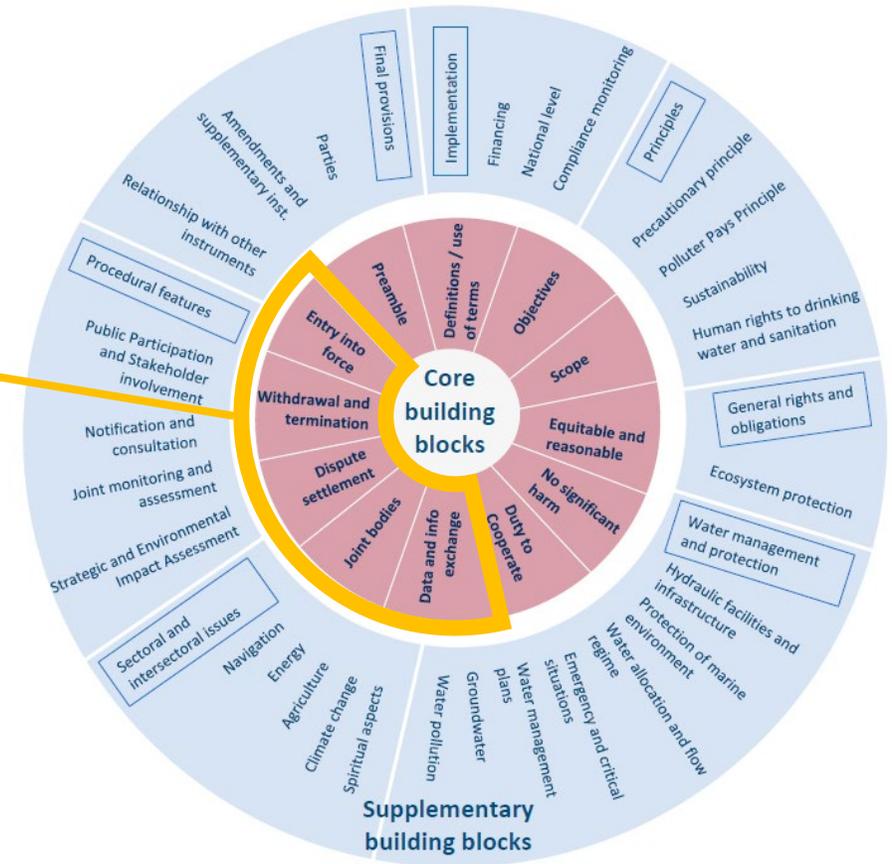
A provision for entry into force puts in place processes that trigger the coming into legal effect of an arrangement at domestic level, and is therefore an important element of an arrangement.

See pp. 105-106 for further details.

Withdrawal and termination

While different approaches exist, most arrangements provide a procedure by which a Party may withdraw from an arrangement, as well as procedures by which the arrangement may be terminated.

See pp. 107-108 for further details.



Procedures and implementation

Question 3

Should the arrangement include general principles and other guiding concepts?

Precautionary principle	<p>The explicit inclusion of the precautionary principle within an arrangement on transboundary waters helps to ensure that environmental obligations contained in the arrangement are interpreted by the Parties within the context of scientific uncertainty, such as future scenarios concerning the impacts of climate change or the impacts of transboundary pollutants.</p> <p><i>See pp. 28-29 for further details.</i></p>
Sustainability	<p>The inclusion of the concept of sustainability as a guiding principle within an arrangement for transboundary waters allows States to internalize and address long-term social, economic, and environmental costs that might affect the distribution of costs and benefits today and across generations.</p> <p><i>See p. 30 for further details.</i></p>
Polluter/ user-pays principle (PPP)	<p>While the polluter-pays principle has a primarily national focus, its inclusion within an arrangement assists States to harmonize any relevant national laws.</p> <p><i>See pp. 31-32 for further details.</i></p>
Human rights to safe drinking water and sanitation	<p>A few arrangements make reference to the rights to safe drinking water and sanitation in recognition of broader efforts through the United Nations General Assembly and the Human Rights Council to promote these rights at a national level.</p> <p><i>See pp. 33-35 for further details.</i></p>

Question 4

Should the arrangement include provisions on general substantive rights and obligations?

**General
obligation
to protect
ecosystems**

While covered by the principles of equitable and reasonable utilization and no significant harm, including a provision on ecosystem protection allows States to place specific emphasis on the need to protect ecosystems and to provide more detailed measures, such as those related to environmental flows.

See pp. 23-24 for further details.

Question 5

Should the arrangement include provisions on water management and protection issues?

Water allocation and flow regulation	<p>Where States have developed water allocation and flow-regulation scenarios, these may be included in an arrangement, such as within an annex; or the arrangement might commit the States to develop rules on water allocation and flow regulation.</p> <p><i>See pp. 37-39 for further details.</i></p>
Hydraulic facilities and infrastructures	<p>States in an advanced stage of cooperation may include provisions within an arrangement or its annexes concerning the joint ownership and/or management of hydraulic facilities and infrastructure. States may also decide to include a provision related to the safety of hydraulic facilities and infrastructure.</p> <p><i>See pp. 40-41 for further details.</i></p>
Prevention, reduction and control of pollution	<p>Consistent with the two Global Water Conventions, States often adopt provisions relating to the prevention, reduction and control of pollution with a view to ensuring for co-ordinated or joint action.</p> <p><i>See pp. 42-43 for further details.</i></p>
Emergency or critical situations	<p>Including provisions related to emergency or critical situations reduces disaster-related risks by committing States to develop contingency plans, early-warning systems, and procedures on mutual assistance in the event of both natural disasters, or emergencies that are the result of human conduct.</p> <p><i>See pp. 44-47 for further details.</i></p>

**Water/basin/
aquifer
management
plans**

Plans are an important means by which to reassess the current and forecasted state of the basin, along with the need of the countries to inform the setting of priorities for the basin or aquifer, and to ensure that national priorities are coordinated at the transboundary level. A commitment to the development of a joint transboundary plan, or co-ordinated national plans, and to reviewing such plans periodically, will strengthen an arrangement's implementation.

See pp. 48-49 for further details.

Groundwater

While groundwater specific arrangements remain limited, most contemporary arrangements for transboundary water cooperation recognise the interaction between both surface water and groundwater. States may also wish to include more specific provisions related to groundwater that recognise its distinct characteristics, such as in some cases being non-renewable, or being more sensitive than surface water to pollution.

See p. 50-52 for further details.

**Protection
of marine
environment**

Including a provision related on the protection of the marine environment recognizes the interactions across the source-to-sea system, and the impact of land-based activities on the marine environment.

See p. 53-55 for further details.

Question 6

Should the arrangement include provisions on sectoral and intersectoral issues?

Agriculture

Where agriculture accounts for any existing or potential transboundary impacts, States may decide to include a dedicated provision related to agricultural development. However, it is more likely that the impact of agricultural practices is taken into account across a range of provisions, including in the tasks of a joint body, or in commitments to prevent, control and reduce pollution.

See pp. 57-58 for further details.

Energy

Including provisions relating to energy can ensure better predictability and an adequate legal basis for liability, water uses and compensation measures, as well as ensuring coordination at the level of, and between basin organizations and, where appropriate, regional power pools. However, if States decide not to include specific provisions related to energy, such practices would still be covered by more general requirements, including the principle of equitable and reasonable utilization, or the duty to take all appropriate measures to prevent significant harm.

See pp. 59-60 for further details.

River navigation

States may decide to include provisions that regulate navigation and/or commit the Parties to protect transboundary waters from any negative environmental impacts associated with navigation. If the Parties decide not to include specific provisions related to navigation, such practices would still be covered by more general requirements, including the principle of equitable and reasonable utilization and the duty to take all appropriate measures to prevent significant harm.

See pp. 61-62 for further details.

Climate change

States may include a specific commitment to develop a climate-change strategy for the basin, or ensure that one is embedded within a basin management plan, or commit themselves to specific water regime protocols in periods of water scarcity. If States decide not to include specific provisions related to climate change, such aspects may still be captured through other provisions related to, for example, extreme events, the tasks of a joint body, or the development of a basin management plan.

See pp. 63-64 for further details.

Spiritual aspect of water

While not commonplace, including explicit reference to the spiritual aspects of water may help to incorporate indigenous people's views and beliefs systems into decision-making process at the basin level. Where the spiritual aspects of water are not included in an arrangement, any established joint body may, where appropriate, develop supplementary instruments that explicitly incorporate these aspects. Also, the spiritual aspects of water would still be covered by more general requirements, including the principle of equitable and reasonable utilization, or the duty to take all appropriate measures to prevent significant harm.

See pp. 65-67 for further details.

Question 7

**Should the arrangement include provisions
on procedural norms?**

Notification and consultation

It is common for arrangements on transboundary waters to include a provision on notification and consultation which is a fundamental basis upon which the Parties can develop their cooperation. Some arrangements provide a general provision on notification and consultation, whereas other arrangements spell out specific steps to follow in the case of planned measures.

See pp. 71-72 for further details.

Public participation and stakeholder involvement

Most contemporary arrangements recognize the importance of engaging stakeholders and the public in water management issues, and therefore include a provision related to access to information, participation in decision-making and access to justice.

See pp. 73-74 for further details.

Strategic and environmental impact assessment

Most contemporary arrangements include a provision related to environmental impact assessment, and in some instances also strategic environmental impact assessment. These provisions clarify requirements both in terms of the content and process by which environmental impact assessments are developed and implemented consistently across State jurisdictions.

See pp. 75-78 for further details.

Joint monitoring and assessment

Basic requirements for joint monitoring and assessment might be set out in a provision of an arrangement, annex or subsequent protocol that covers, for example, harmonization of data gathering and processing.

See pp. 79-80 for further details.

Question 8

**Should the arrangement include provisions
on implementation?**

**Implementation
at the national
level**

National measures are critical for ensuring that the international commitments contained in an arrangement are implemented. States may therefore include a provision that commits the Parties to implement certain national measures, such as regulatory frameworks for waste water, or to establish institutional structures for coordinating implementation at the national level, such as national river basin committees.

See pp. 83-85 for further details.

**Compliance
monitoring**

A provision related to compliance monitoring provides a useful means by which States can monitor progress in the implementation of the arrangement in a transparent manner, and ensure the necessary technical or financial assistance to address any incidences of non-compliance.

See pp. 92-93 for further details.

Financing

For the sake of transparency and sustainability, it is advisable to include a provision that sets out how the costs of implementing the arrangement are shared, and in particular how to provide for and sustain the running of any joint institutional structure.

See pp. 90-91 for further details.

Question 9

Should the arrangement include final provisions?

Parties

A provision might help clarify who can be Party to an arrangement, especially where it is envisaged that non-State entities, such as international organizations, might become a Party.

See pp. 99-100 for further details.

Relationship with other agreements

Parties to the arrangement might want to explicitly state that any rights and obligations within the arrangement do not affect those emanating from existing arrangements.

See pp. 101-102 for further details.

Amendments and supplementary instruments

Some arrangements provide a joint body with the function of developing supplementary instruments, such as protocols to the arrangement, which can be a useful way to embed adaptability within the arrangement.

See pp. 103-104 for further details.

Key messages

1. There are several benefits to developing agreements or arrangements for transboundary water cooperation.
2. The process of developing an agreement or other arrangement is itself an important outcome.
3. Arrangements can take many shapes and forms.
4. Consider existing national and international law and practices.



THANK YOU

Water Convention:

<https://www.unece.org/env/water/>

Contact:

remy.kinna@un.org

water.convention@un.org