

Jointly agreed revision of a transboundary agreement: Example of the Okavango River Basin Water

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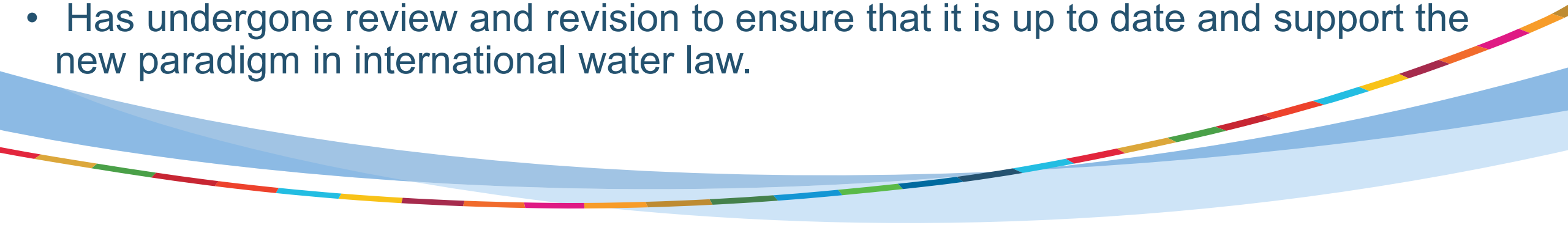


Introduction

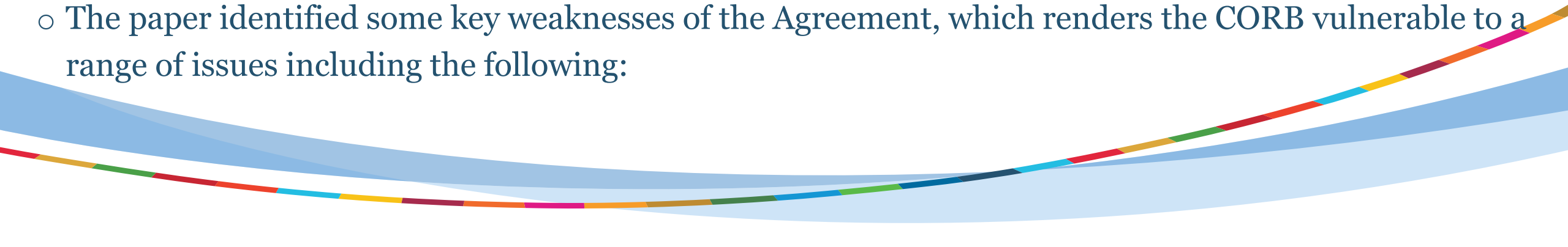
Background overview



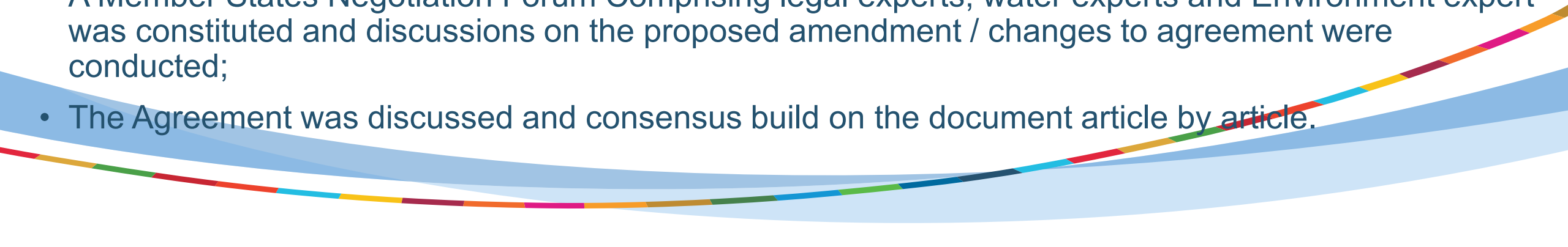
The OKACOM Agreement 1994

- One of the First Basin Wide Agreements to be signed in the SADC Region;
 - Predates the Adoption of the SADC Protocol of Shared Watercourse Systems (1995) and the establishment of the SADC Water Sector (1996)
 - Provides for the Establishment of the Okavango River Basin Water Commission (OKACOM) and its requisite Organs (The Forum of Ministers, The Council of Commissioners, The Okavango Basin Steering Committee (OBSC), the Permanent OKACOM Secretariat and 5 Specialized Technical Committees)
 - Give guidance on how the three Member States ought to collaborate and cooperate on the joint Management, Utilisation, Protection and Conservation of the basin water resources of common interest.
 - Has undergone review and revision to ensure that it is up to date and support the new paradigm in international water law.
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The Process of The Agreement Review and Revision

- The Agreement was signed over 25 years ago, (before the 1995 SADC Protocol the 1997 UN Watercourse Convention)
 - The decision was then taken by OKACOM in 2017 to develop a Discussion Paper, around the question of: *“is the 1994 Agreement still fit for purpose?”*
 - The Discussion Paper raised a number of specific questions including the following:
 1. *Does the Agreement adequately address the sharing of water and allocations, including groundwater?;*
 2. *Does the Agreement give OKACOM the authority it needs in order to carry out the forward-looking Strategic Action Programme (SAP)?*
 3. *Does the Agreement incorporate developments in international water law, that would enable OKACOM to deliver on its mandate to address water security and development in the Basin?*
 - The paper identified some key weaknesses of the Agreement, which renders the CORB vulnerable to a range of issues including the following:
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Process of Agreement Review cont...

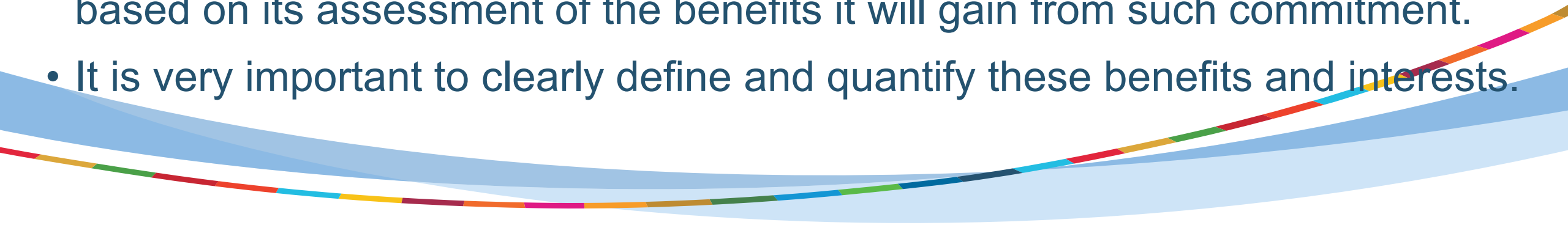
1. does not create substantive rights and obligations of the Parties with respect to the management of the basin however it determines the issues on which OKACOM is mandated to advise the Parties;
 2. The Need to adapt and accommodate the evolving Mandate of the Commission from a purely advisory to an executing mandate.
 3. The need to consolidate subsidiary instrument adopted to enhance the Agreement into one comprehensive document to facilitate ease of interpretation and implementation;
- A team of Consultants was engaged to review the Agreement, benchmark against other existing instruments at international, and regional level;
 - The consultant Prepared a report and presented to OKACOM outlining the findings with proposed changes and amendments to specific clauses;
 - The consultant then prepared a draft revised document based on the agreed proposed changes by the state parties;
 - A Member States Negotiation Forum Comprising legal experts, water experts and Environment expert was constituted and discussions on the proposed amendment / changes to agreement were conducted;
 - The Agreement was discussed and consensus build on the document article by article.
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Challenges and Lessons

- The negotiation Process happened during the time of Covid with limited travel;
- Due to the need for physical meeting across the table all efforts were taken to find time to meet.
- There were inherent delays in concluding the process due to this situation;
- The consensual agreement was adopted for final review and clearance by Member States internally.



Conclusions

- While the Agreement is still under its final stages of clearance by the State Parties there is a general consensus on its contents;
 - It will highly assist in helping the Member States to fully achieve their shared vision and embrace the evolving Mandate of the Commission and its Organs;
 - Consensus and ensuring that all stakeholders are on board is very important for the implementation and harmonised interpretation of the Agreement;
 - The new agreement has therefore tried to address all the gaps identified in the current agreement and help in improving its scope of application.
 - The decision for state parties to be bound by an international agreement is based on its assessment of the benefits it will gain from such commitment.
 - It is very important to clearly define and quantify these benefits and interests.
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Thank you!

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