Negotiate

Reaching agreements over water

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Water & Nature Initiative

Edited by

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Contents

Key messages

1. Why Negotiate?

Fair, effective and sustainable water management requires a multi-stakeholder, negotiated approach. The inherent complexity and diversity of interests in water is a social and political challenge for which top-down 'command-and-control' water management does not provide durable solutions. Lack of shared commitment or recognition of the legitimacy of decisions over water can mean people choose not to comply and water resources become overused, polluted and degraded. Coming to decisions which are instead fair, effective and sustainable is possible. Stakeholders with interests in water decisions need to work together to understand their differences and search for workable solutions that each can accept.

Negotiation processes and the skills to design, facilitate and participate in multi-stakeholder negotiations are critical to improving water management.
Water users, water managers and policy makers involved in negotiating water decisions need to develop effective negotiation practice. Better negotiation can help stakeholders to arrive at workable solutions they would not otherwise achieve. Applications of better negotiation practice are numerous. Water allocation agreements, watershed management plans, national water law reforms, corporate water policies and transboundary water treaties all involve multiple stakeholders and can be strengthened through more deliberative and inclusive negotiation.

An explicit focus on the 4Rs of rewards, risks, rights and responsibilities supports effective water negotiations.
The 4Rs provide a framework for structuring, analyzing and understanding the interests of diverse stakeholders, based on defining who seeks a reward, claims a right, bears a risk or holds a responsibility. Keeping a focus on the 4Rs in negotiations helps create the space needed by negotiators to identify the elements that must come together to accommodate diverse interests in agreements.

Water governance is strengthened by using constructive engagement.
Water governance encompasses 'the range of political, social, economic and administrative systems that are in place to develop and manage water resources, and deliver water services, at different levels of society.' Governance can be a constructive and creative process through engagement of different people in negotiation. The larger goal of water negotiation is to turn potential conflict into constructive engagement and ideally into voluntary, fair, lasting agreements that can be effectively implemented.

2. Constructive Engagement

With constructive engagement, stakeholders gain the ability to influence and shape decisions.
Stakeholders choosing constructive engagement recognize that it can be preferable to work with others to find options that are mutually acceptable. Public participation in planning and decision

making encourages engagement by multiple stakeholders. However, simply 'informing' or 'consulting' the public is not adequate. In some circumstances the public may be empowered to make decisions, but most frequently stakeholders influence and shape decisions by creating and deliberating options.

Negotiation plays a central role where multiple stakeholders participate in constructive engagement. To offer a legitimate way forward for dealing with differences collectively, negotiations over complex water decisions need to be transparent and inclusive. If negotiation can be approached in a considerate and constructive manner, it can encourage understanding and joint problem solving, greater mutual regard for diverse interests and values, and the possibility of integrating these into sustainable, rewarding and workable outcomes. Approaches to negotiation that are suited to constructive engagement are key.

Hard bargaining in competitive negotiation leads to loss of opportunities for mutual gains. Competitive negotiation, parties often establish a particular 'position' at the outset that is then sought and defended on one side and argued against on the other. With its focus on bargaining over predetermined positions and dividing benefits to maximize gains or minimize losses, competitive negotiation tends to result, at best, in a compromise. Opportunities for creating new solutions with mutual gains can be easily missed.

Cooperative negotiation strengthens constructive engagement. Rather than focusing on positions, cooperative negotiation focuses on 'interests'. Interests relate to the reasons why a position is sought, the underlying values, needs, concerns or relationships. In cooperative negotiation, parties build trust and mutual understanding of interests. They create new options for agreement by examining the inter-dependent interests of the parties and exploring how they can find mutual gains in order to come to a workable, equitable agreement.

3. Multi-Stakeholder Platforms (MSPs)

Multi-Stakeholder Platforms (MSPs) are an approach to constructive engagement and learning about complex water problems. Choices about water often involve contesting facts and values. In an MSP, deliberation is fostered among multiple, diverse stakeholders to help them undertake joint analysis prior to decisions. Differences are respected – or at least better understood – while pursuing fair and effective, workable agreements about complex issues.

Setting up an MSP requires good design and process led by credible and competent convenors. The purpose and scope of an MSP must be clear, with appropriate scales and levels for deliberation and analysis (for example watershed versus river basin, or local district versus national). There should be sufficient human, financial and information resources, political support and enough time available for deliberations to be completed. Explicit recognition of politics and power should be incorporated into the MSP design and process.

High quality process, enabling effective deliberation, is key to MSPs earning legitimacy. MSPs need high standards of deliberation, facilitation, inclusiveness, information exchange and communication with the participants and wider constituency. Deliberation is fundamental, aimed at producing reasonable, well-informed opinions in which participants are willing to revise preferences in light

of discussion, new information and claims made by fellow participants. MSPs should use and share the best available information and build the knowledge base. Good facilitation is essential.

Practical steps for organizing an MSP must keep in mind the final goal of producing workable recommendations for forward action.
To get going, a steering group is established and the rationale for an MSP is explained to help build a constituency of support for the process. Convenors identify relevant stakeholders using stakeholder analysis and, as they come together, convenors and participating stakeholder representatives agree rules of engagement and roles and responsibilities. A sufficiently thorough assessment of contested issues is needed that is informed by, and of use to, all stakeholders. Deliberation tools such as scenario building help participants create options for workable recommendations based on learning about each others' different interests, values, priorities, assumptions and constraints. MSPs might also take and implement decisions, depending on the extent of their mandate.

MSPs help deliberation to become routine, enabling complex water issues to be more rigorously examined in better informed negotiations.
MSPs can lead to a variety of desirable outcomes. They can expand representation and participation of stakeholders in governance. They encourage learning and greater understanding of interdependencies among stakeholders and ways of resolving contested issues. By providing a pathway for deliberation, MSPs can lead to better decisions and water agreements that can be more successfully implemented.

4. Consensus Building

Consensus building aims to meet the interests of all the parties at the negotiating table.
In consensus building, parties agree to seek unanimity but settle for overwhelming agreement. The politically less powerful are assured that their interests will be addressed and that they will not be forced to accept something they oppose. Politically powerful parties keep the equivalent of a veto as long as they make every effort to meet the interests of all the other parties at the table. The facilitator holds the parties accountable to their consensus building commitments.

Consensus-building negotiation creates new value for stakeholders through mutual gains.
It is a mistake in water negotiation to consider one issue at a time, as trading across issues is key to creating value. The agenda should guarantee all participants that issues of greatest concern to them will be addressed as part of a package. Negotiations on one issue should not be concluded until the full package of issues has been explored. Otherwise, negotiators may be unable to link issues together to create value through mutual gain.

Consensus building requires a commitment to take science and empirical knowledge seriously as well as focus on achieving political accord.
In a consensus-building process that has incorporated joint fact finding and an agenda developed by the group as a whole, it is much more likely that scientific and empirical knowledge will be given its due. A powerful majority cannot force its political preferences on a minority and overlook what the technical or local empirical evidence suggests.

Consensus building is guided by a 6 step process, from convening to deciding, implementing and learning.
Successful water negotiations hinge on getting the right parties to the table in Step 1, convening. Step 2 is clarifying responsibilities. Once the right parties are at the table, they review roles and responsibilities, select the facilitator or chair and agree the agenda, work plan, budget, ground rules and joint fact-finding procedures. Step 3 is deliberating, that is informed by joint fact finding and enables invention of options and packages that respond to the concerns of all parties. Step 4 is deciding, in which parties formulate agreements and check that their constituencies can live with what is being proposed. Step 5 is implementation, including creation of monitoring strategies and schedules for reporting. Step 6 is organizational learning, by applying monitoring results in adaptive management

5. Agreements

An agreement is the direct tangible product of negotiation that captures joint decisions and outlines the steps for its implementation.
There are many types of water agreements: policies, laws, charters, codes of conduct, contracts or other agreements to manage and allocate water. Agreements can be guiding in nature, or set laws or specific rules. Agreements can be formal or informal, legally binding or voluntary, verbal or written. They can apply at various scales and levels – from local to international, from wells to micro-watershed to river basins – and between a diversity of actors.

Agreements bring more certainty and more transparency to expected rewards, risks, rights and responsibilities.
Agreements must be formulated to be consistent with the existing legal and policy framework. Good agreements include clear steps to address future differences, inadequate implementation, or breaches of them. The clearer the agreement, the less its provisions will be contested. Regardless of type, core features of good agreements define and describe: scope, governance mechanisms including roles and responsibilities, financing, provisions for data and information sharing, compliance needs, mechanisms for enforcement and dispute resolutions, and the dates of effect, duration and amendment procedures.

Fairer and more sustainable water allocation, use and management results from agreements only if they are effectively implemented.
Finalizing an agreement begins with drafting a written text, and requires verification by stakeholders and endorsement through signature. For agreements where authority rests outside the negotiating table, a further enactment step may be required such as ministerial approval or parliamentary ratification. Implementation steps for formal agreements include putting in place the necessary institutional arrangements, building capacity, taking agreed actions and undertaking monitoring. For agreements that aim to influence decisions taken by others, influencing strategies need to be developed.

Translating the agreement into action is at the heart of effecting change, and requires ongoing commitment.
Stakeholders must continue to work together to reflect on the fairness and effectiveness of implementation, resolve new differences and enhance cooperation.

There are additional, less tangible results of negotiation that are essential to enhancing water governance in the long run.
Improved relationships, enhanced understanding and better processes for deliberation and decision making emerge from constructive engagement and effective multi-stakeholder negotiation. Where no formal agreement results, these other outcomes can nevertheless be highly influential in the way water resources are allocated and managed.

Multi-stakeholder water governance is a long-term process encompassing cycles of engagement and negotiation.
Each negotiated agreement is significant, but new issues arise and need to be addressed and resolved. It is important to build on the momentum and relationships created during constructive engagement to positively influence decision-making processes and institutions in the long run.

Preface

Around the world people are involved in negotiations about water. This is a book for practitioners committed to negotiations which lead to fair agreements about how societies sensibly use water. The book provides ideas, tools and inspiration.

The book recognizes that water negotiation is often complex – socially, economically and environmentally. Too often in East Asia, the part of world with which I am most familiar, this complexity is ignored or reduced to simplifications. To deal with complexity the writers suggest focused examination of Rewards and opportunities, Rights of different actors, Risks of action and inaction, and Responsibilities of all involved parties.

Too often, negotiation over-emphasizes bargaining and competition embedded in zero-sum thinking. In welcome contrast, this book has an emphasis on constructive engagement and encouraging space in negotiations for deliberation, hearing multiple perspectives and consensus-building. Institutionalizing, or normalizing, this approach would lead to more informed and respectful negotiations and, hopefully, wiser and fairer choices.

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Acknowledgements

Why Negotiate?

1.1 Negotiation as a tool for fair, effective and sustainable water management

Managing water has been a source of challenge, innovation and advancement for societies since ancient times. This is evident in the elegantly engineered water infrastructure from millennia and centuries past that is still visible, and sometimes still in use at locations across the world. Most tangibly, water management has been an engineering problem, demanding technical solutions. Implementation has been achieved by institutions able to control the investments, knowledge and decisions needed to harness benefits from water. Allowing such a 'technocratic' approach to water management to predominate has a downside, however. It masks the true complexity of water.

Water is needed by everyone, every day, for myriad uses that are critical to survival, health and prosperity. Human needs are mirrored by nature's needs, and all must be accommodated within hydrological regimes of drought and flood in which there may be too little water, or otherwise too much. Interests in water and opinions on how it is best used, and for which benefits, are inherently diverse. Handling this complexity and diversity is a social and political challenge for which top-down, 'command-and-control' water management does not provide durable solutions. Fair, effective and sustainable water management requires a different approach.

With so many different demands on how water should be used and managed, choices over water can affect the interests and concerns of many stakeholders. Those who feel impacted by such choices vary according to the issues and water uses involved and whether these are, for example, local, national, basin-wide, regional or global in scope. In small watersheds where farmers and households must find ways to share the available water, local decisions over water may especially affect groups such as women, herders, fishers and farmers. Where plans and investment strategies for river basin development are at stake, different groups may take an interest. These might include urban water utilities, hydropower operators, small-scale farmers, commercial irrigators, industrial processors, or managers of wetlands that sustain biodiversity, fisheries and clean water supplies. Poor decisions in either case, which might arouse anger, ignore rights or deprive users of water, can lead to disputes and conflict. Lack of shared commitment or recognition of the legitimacy of decisions can mean people choose not to comply and water resources become overused, polluted and degraded. Coming to decisions which are instead fair, effective and sustainable is possible, if the multiple stakeholders with interests in water decisions work together to understand their differences and search for workable solutions that each can accept. Negotiation processes and the skills to design, facilitate and participate in multi-stakeholder negotiations are critical to ensuring this happens (see Box 1.1).

NEGOTIATE is intended to help water users, water managers and policy makers involved in negotiating water decisions to identify and develop effective negotiation practice. Agreements over water take many different forms, and may be between governments or involve civil society, be written or customary, but better negotiation can help stakeholders to arrive at workable solutions they would not otherwise achieve. Applications of better negotiation practice in water management are numerous. Water allocation agreements, watershed management plans, national water law reforms, corporate water policies and transboundary water treaties all involve multiple stakeholders and are subject to negotiation. NEGOTIATE aims to encourage and guide negotiation of fairer and more

effective and sustainable water agreements, based on putting into practice constructive engagement and multi-stakeholder techniques that build on analysis and understanding of rewards, rights, risks and responsibilities – the 4Rs of negotiation.

"NEGOTIATE AIMS TO ENCOURAGE AND GUIDE NEGOTIATION OF FAIRER AND MORE EFFECTIVE AND SUSTAINABLE WATER AGREEMENTS"

Box 1.1 What is special about water?
by Dipak Gyawali

Why negotiate? And what has negotiation to do with water? The answer lies in the very nature of water in both its physical reality and social impacts. Just as life is richly varied, so are the services that water is put to in the myriad niches that sustain the planet's biodiversity. Water is known as a 'fugitive' resource: that means that – unlike land, food, trees, minerals or even people – when left alone water is constantly on the run, trying to escape.

Water's movement is obvious in rivers; but even in the apparent stillness of a glacier or reservoir, it melts silently, evaporates invisibly. It flows inexorably downhill, seeping underground only to emerge back onto the surface as springs and oases in the unlikeliest of places, till it cycles back to the seas, evaporates and falls again as rain or snow. In its ubiquity, it seems to permeate everything – prompting the ancient Greek philosopher Thales of Miletus to declare water to be the ultimate substance behind all substances.

Yet when humans enter this cycle, with their ever-increasing demands and powers, the result is water stress. Stress is experienced most acutely by non-human life and between human societies with different values and requirements. Human economies have varied but ever-expanding needs to be satisfied by different properties of water, but there is not enough water to meet demand. Indeed, ever since the dawn of civilization, much human ingenuity has been expended in arresting the natural flow of water and diverting it elsewhere to quench our thirst. It has been the source of ill-will, if not outright fighting, between different efforts originating from varied perspectives: the Latin root of 'rival' traces back to 'those who share the same stream'. Disputes over conflicting demands are thus inevitably part and parcel of the rights to, risks of, responsibilities towards and rewards from, a flowing yet fugitive resource such as water.

Water intersects subjects ranging from engineering, hydrology, chemistry and microbiology to economics, law, sociology, history, culture and philosophy. Privileging one field (e.g., civil engineering) while ignoring others (e.g., economics or ethics) in modern water management has been at the root of many contemporary conflicts over water.

What has changed is that more people are demanding more say in how water is used, managed and shared. They demand, in a word: negotiation. Open negotiation can be a civilized approach to the voluntary settlement of conflict; the alternative is domination of one party by another, capitulation, inaction, withdrawal and third-party intervention.

Negotiation is messy. It is time-consuming and often frustrating. Yet it remains the only process that can resolve the multitude of problems arising out of water disputes in a way that sustains both the rich tapestry of human societies and the even richer biosphere in which civilization is embedded.

1.1.1 What is negotiation?

We live in a world where there are choices to be made about water allocation and use, and differences to be resolved. These choices often make people come together to negotiate – to talk, bargain, trade, haggle, share perspectives and search for solutions which include workable collective decisions.

The dictionary defines negotiate as to: 1) try to reach an agreement or compromise by discussion; 2) obtain or bring about by negotiating; or 3) find a way over or through (an obstacle or difficult path). The word originates from the Latin negotiare which means 'to do in the course of business'.

A useful working definition holds that:

Negotiation is a process of interaction by which two or more parties, with differences to be reconciled or choices to be made, seek to do better through jointly decided action than they might do by acting individually. The main aim of negotiation is to reach a workable, acceptable agreement to all parties.

Negotiation is an active and dynamic process; it goes beyond participation in the evaluation of the ideas of another. Constructive negotiation implies being expected – and respected – to bring and share at least some of your ideas at a 'negotiation table'.[1]

"NEGOTIATION IS AN ACTIVE AND DYNAMIC PROCESS"

1.1.2 Governance and negotiation

From discussions under ancient shade trees to modern UN General Assembly rooms, the 'negotiation table' has formed the participatory basis for effective governance. Governance transcends the narrow definition of legislative, executive or judicial State officials to convey all the ways in which the activities of those officials, non-governmental organizations (NGOs) international organizations and business increasingly overlap. It describes 'a complex tapestry of competing authority claims'.[2] More specifically, water governance expresses 'the range of political, social, economic and administrative systems that are in place to develop and manage water resources, and the delivery of water services, at different levels of society'.[3]

"THE 'NEGOTIATION TABLE' HAS FORMED THE PARTICIPATORY BASIS FOR EFFECTIVE GOVERNANCE"

In this light, governance can be a constructive and creative process that is often structured and implemented through negotiation. There is no single actor or outcome. Rather, governance includes engagement by different people in different modes of negotiation, and can result in a wide diversity of types of agreement.

From village to international levels, engagement and negotiation might involve: protesting and preaching, advocacy and diplomacy, deliberation and disagreement, competition and cooperation. Water conflict negotiation can prove a messy process. But then perhaps this is necessary in any attempt to deal adequately with complexity and nuance. After all, the larger goal is to turn potential conflict into constructive engagement, and then intensify this inclusive engagement into robust negotiations and ideally into voluntary, fair, lasting agreements.

This book aims to help water managers at all levels define and get to grips with the political and ecological complexity of water management, and respond to it as a new opportunity to engage in informed multi-perspective negotiation.

"THE LARGER GOAL IS TO TURN POTENTIAL CONFLICT INTO CONSTRUCTIVE ENGAGEMENT"

1.2 The Four Rs

"NEGOTIATIONS SHOULD MAINTAIN AN EXPLICIT FOCUS ON THE 4Rs"

The path to fair, durable and effective water governance demands that all parties acting in 'good-faith' negotiations must maintain an explicit focus on the *4Rs – Rewards, Risks, Rights and Responsibilities.*

This approach supports the 'rights and risks' approach taken by the World Commission on Dams,[4] subsequently elaborated to 'rights, risks and responsibilities'. NEGOTIATE adds the fourth element of 'rewards' to clarify incentives in its 4Rs analysis.

The need to collectively document different facts and perspectives is itself a primary catalyst for bringing stakeholders together to negotiate. It helps identify all actors who have an 'interest' in a negotiation; it also transparently highlights what exactly each party's specific interests may be. It asks the right questions of the right people to define: who seeks a reward, claims a right, bears a risk, or holds a responsibility.

Answering these questions is a dynamic ongoing process. NEGOTIATE's 4Rs analysis may involve searching, interviewing, listening, mapping, photographing, recording, collating, interpreting, and discussing. It can be applied at early stages of engagement, help parties progress to more intensive negotiations, and act as a checklist for the acceptability of a draft agreement as it is being shaped. The 4Rs provide a framework for structuring, analyzing and understanding the interests of diverse stakeholders. Keeping a focus on the 4Rs in negotiations helps to create the space needed by negotiators to identify the elements that must come together to accommodate diverse interests in agreements.

Photo 1.1 Water allocation and management needs to be negotiated among water users. (Tanzania).

Figure 1.1: 4Rs
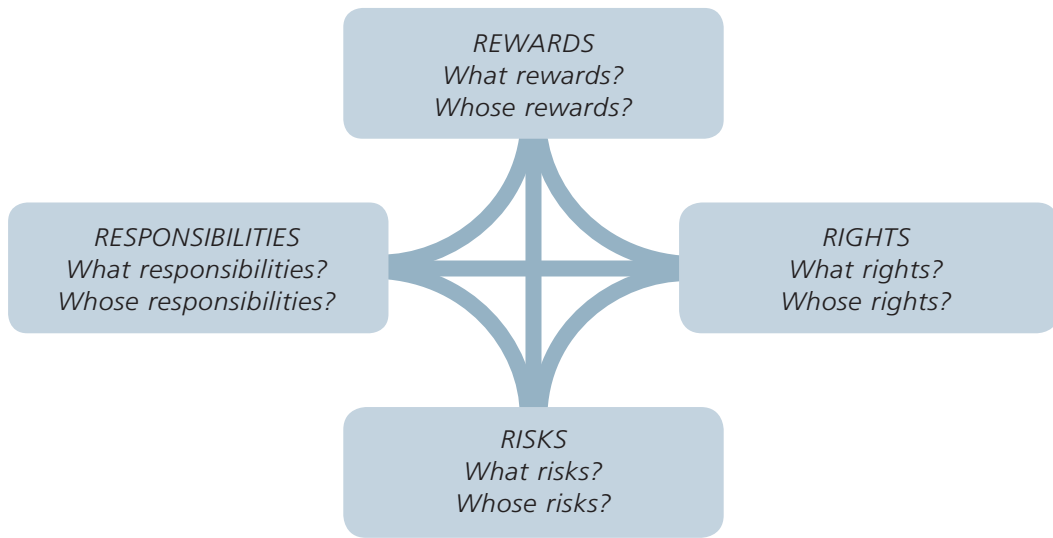
"THE 4Rs PROVIDE A FRAMEWORK FOR STRUCTURING,
ANALYZING AND UNDERSTANDING THE INTERESTS
OF DIVERSE STAKEHOLDERS"

1.2.1 Rewards

In situations where tensions over water may escalate, good negotiators always keep one thing at the front of their minds: rewards. These rewards range from the creation and sharing of benefits to the sharing and reduction of costs.

Material and measurable rewards include healthier ecosystems, new regimes, and progressive incentives. It is hard to dispute incentives such as a more affordable share of cleaner water, reliably delivered when and where people want it.

Not all rewards are so clearly visible, material or tangible. Some rewards have a dimension that cannot easily be measured. For many the goal of negotiation is to respect and support rights, equitably share risks, and empower actors to effectively discharge their responsibilities.

4Rs rewards analysis should focus on both the material and the normative, with key questions:
- For different options, what are the possible rewards?
- Who stands to gain these rewards or benefits? Who stands to lose?
- How might rewards be shared?
- What is fair, effective and sustainable?

1.2.2 Risks

Negotiating changes in water use, management and development invariably brings risk. But over time the nature and perception of that risk has evolved. In the past, most attention was given to financial risk posed to public or private investors. Today's decisions now often include a much stronger emphasis on the risks all actors assume, either voluntarily or involuntarily.

Some risks are optionally taken on in the normal course of business. A company may choose to invest financial capital in a hydropower dam. A government agency may choose to allocate a portion of its annual operating budget toward a water-supply system. A public-private business partnership may choose to devote years of human resources to planning, designing and implementing an irrigation scheme. These stakeholders assume risks, but they are all taken voluntarily.

Involuntary risk is quite different, and may be contrasted to the cases above. Fishermen above that hydropower dam may be forced to lose some of their normal catch. Homes submerged by a new water-supply reservoir may force families to move. Habitat drained or flooded by a new irrigation scheme may result in declining wildlife populations. Stakeholders who lose access and water entitlement as the result of a change also assume risks, but they must bear them involuntarily.

NEGOTIATE's 4Rs analysis should not ignore voluntary risk taking, but should focus primarily on involuntary risk bearing, whether it is fair, and if not, how can it be made so, guided by key questions such as:

- For different options, what are the possible risks?
- Who are the voluntary risk takers?
- Who are the involuntary risk bearers?
- How might risks be shared, and especially, how might involuntary risks be reduced?

1.2.3 Rights

The 4Rs analysis leads directly to the question of whether those involuntary risk bearers come to the table with legal standing and negotiate from the position of having a human right to water or a water-related service.

Many argue they do, implicit in a suite of other related 'rights' articulated in various texts of global norms and values, of relevance to water negotiations.[5] The UN Committee on Economic, Social and Cultural Rights maintains that because water is a limited natural resource and a public good fundamental for life and health: 'The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights. The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use'.[6]

Other powers like the United States and transnational institutions, including the World Bank, dispute the explicit existence of this right. Some even call it potentially ruinous. The precise wording of 'human right' vs 'human need' has engaged diplomats and protesters at global World Water Forums from Mexico City to Istanbul. It remains a contentious issue, debated at the highest levels of governance.

Perhaps less critical than the precise letter of the law is the spirit in which the human rights of involuntary risk bearers are embraced. To that end, many regional texts help improve the context for more informed and inclusive water-related negotiations that involve potentially displaced and impacted people and the ecosystems upon which they depend. In Europe, the Aarhus Convention on environmental governance links sustainability principles, environmental rights and human rights.[7] An initiative of the Organization of American States commits members to enabling genuine participation by wider society in government decision making. Similar provisions are embedded in many national constitutions, transnational codes of conduct, and other informal or customary operating frameworks.

To be sure, complex situations require nuanced understanding to make wise decisions. The norms in these examples lay the foundation for defining water governance rights. Putting these norms into practice may seem daunting, and can indeed prove difficult, but this book outlines the transition processes to more equitable and egalitarian negotiations.

NEGOTIATE will aid parties to be aware of the wide range of potentially overlapping rights that will be claimed, and different views on their priorities, which will influence engagement, negotiation and agreements. Key questions on rights include:
- What are the rights of all parties in the negotiation?
- Are there overlapping rights?
- What are the different views on prioritization of rights?

1.2.4 Responsibilities

In addition to rewards, risks and rights, negotiations over water must also consider responsibilities. All stakeholders – whether citizens, transnational corporations or governments at different levels – have responsibilities. For example, a right to access a certain quantity and quality of water from a river or aquifer entails responsibility to use it efficiently for the agreed-upon purpose. If responsibilities are ignored, the expansion of one party's desired benefits becomes another's unwanted burden and cost. The links between rights and responsibilities may be formal or informal, but to have enduring value it must be understood and agreed to during the course of negotiations.

To explicitly define responsibility, and clarify the extent of accountability, 4Rs analysis should clearly identify the roles, duties, liabilities and obligations of different water actors, using key questions including:
- What are the responsibilities of all parties in the engagement or negotiation?
- Who is accountable to whom? For what?
- Are these responsibilities contested?

1.3 Organization of NEGOTIATE

NEGOTIATE's chapters outline the main steps towards reaching fairer and more effective and sustainable water agreements.

Chapter 1 'Why Negotiate?' introduces water negotiations within the bigger governance picture. It emphasizes constructive engagement, and offers a four-part analytical tool that explicitly clarifies and defines Rewards, Risks, Rights and Responsibilities.

Chapter 2 'Constructive Engagement' looks at the array of approaches to negotiation, ranging from the competitive to the cooperative, noting that the two can and do usefully coexist. It further discusses the social complexity of water and an analysis of some of the cultural, political and power issues surrounding water.

Chapter 3 'Multi-Stakeholder Platforms (MSPs)' introduces and unpacks an example of a constructive-engagement approach that depends on deliberation. The chapter is structured around desirable characteristics of MSP context, process, content and outcomes. MSPs are not presented as a panacea, but experience from around the world suggests they can prove very helpful in informing and shaping negotiations.

Chapter 4 'Consensus Building' explains another negotiation method, and argues that it is a useful way to reach fairer and more effective water agreements. This pragmatic chapter offers insights that can help would-be negotiators.

Chapter 5 'Agreements' focuses on the intended products of water negotiations – the actual agreements which seek to guide fairer allocation and more sustainable use. The chapter discusses agreements within States (local, sub-national or national), between States (regional, international), and those which transcend States (transnational).

Constructive Engagement

2.1 Constructive engagement for complex decision making

The complexity of water is partly due to there often being numerous stakeholders with many interests they wish taken into account in decisions over water. Choices made over how water is allocated or managed have impacts on other people and other uses of water. These effects often cross scales and levels and, as a result, may be unseen or given low priority by those making decisions. Upstream irrigators may be unaware of the aggregate effects of their decisions over water allocation on downstream hydropower generation. Decisions over flood releases from dams may not account for risks, such as the vulnerability of those living beside and using rivers, that may be small at the basin scale, but overwhelming for those affected locally. Arriving at fair decisions over water is made complex by the need to weigh up and address a wide array of competing interests and perspectives on prioritizing how the 4Rs – rewards, risks, rights and responsibilities – are distributed.

Stakeholders can contribute to, endorse or contest decisions through a variety of routes. If perceiving decisions or plans over water as unfair, stakeholders can choose resistance. They can protest or refuse to take action demanded of them. Those with more power can choose suppression, to enforce or overturn decisions. Both responses can sometimes escalate to include aggression and violence, with the result that water disputes can fuel or be a source of conflict, especially where there are wider tensions in society. Constructive engagement is an alternative path aiming to improve the fairness and effectiveness of complex decisions over water via peaceful, informed and inclusive processes.

"CONSTRUCTIVE ENGAGEMENT OFFERS A WAY OF ACCOMMODATING DIVERSE INTERESTS AND PERSPECTIVES"

Constructive engagement does not remove the passions people bring to water disputes and decisions, but it offers a way of accommodating the diverse interests and perspectives that inspire those passions in processes for finding agreed ways forward. Box 2.1 explores the importance of working with such diversity in building workable solutions to water management problems. Stakeholders choosing constructive engagement recognize that because of the complexity of water, outcomes are likely to be less desirable and problems inflated by acting in isolation. They recognize that a preferable track is to work with others to find options that are mutually acceptable.

"CONSTRUCTIVE ENGAGEMENT CAN TAKE MANY FORMS"

Constructive engagement can take many forms. In relations between States, diplomacy is a form of constructive engagement. Using legal proceedings to resolve disputes is another, as parties use the judicial process to argue and debate the legality or legitimacy of, for example, protection of rights in water resource development schemes. Groups may engage constructively with governments

or corporations through advocacy or lobbying. All of these examples are means of trying to shape decisions that better accommodate varied interests and perspectives.

A limitation on constructive engagement can be restriction on access. Some groups may be better positioned or more able to use some forms of constructive engagement. For example, legal recourse is often closed to stakeholders without the legal standing, financial resources or specialist skills needed to take part effectively in court proceedings. Even if resources and capacities are found, more powerful parties may retain an advantage by having more of them. Similarly, advocacy may be more successful for those with better access to more influential actors, marginalizing less powerful or less well represented groups. Such inequity in access can bias outcomes from engagement, leading to real or perceived unfairness.

Box 2.1: Social solidarities – wax, wick, flame – science and art
by Dipak Gyawali

Social solidarities – four diverse perspectives
Modern chemistry teaches us that water is simple H_2O. The social sciences, however, tell us that water, as is the way with the social construction of reality, comes in many incarnations. While human societies are complex and plural, they still exhibit some common patterns of behaviour which determine how water is valued. Four social solidarities, with distinct views on water negotiation, can be found from village to global level:
- A hierarchic regulatory solidarity favouring authorities and those able to influence controls in institutions where rights reside, and to avoid risks.
- An individualistic market solidarity favouring the affluent and those able to buy rights, take risks and win in the market.
- A civic egalitarian solidarity aiming for more equitable and equal distribution of 4Rs.
- A fatalist solidarity, convinced of its lack of agency, seeing imbalances and inequities as insurmountable, and comparatively disadvantaged in all of the 4Rs.

The three primary and active social solidarities – leaving aside the passive fatalists – have different foundations that affect the way they view water – public, private, common-pool, etc. – and what fair negotiation outcomes should resemble. These philosophies are mutually contradictory and cannot be easily 'integrated'. This is important to appreciate if we are to understand what makes a negotiation successful or suspect in the eyes of the different protagonists. Of course, people and organizations may straddle more than one of these solidarities.

The wax, wick and flame – different types of power
Samkhya philosophy, one of the six main Hindu philosophical lineages, distinguishes between coercive (legal, regulatory, enforced) power exercised by the hierarchic solidarity (*tamasik shakti*), the persuasive (monetary or organizational) power exercised by the individualist solidarity (*rajasik shakti*) and the moral power claimed and wielded by the egalitarian ethics community (*satwik shakti*).

The hydrocracies of different countries may wield coercive power, and the business trading houses and the construction industry persuasive power; but many of the social and environmental movements enjoy support because of their moral or cognitive power. By being the voice of the excluded poor or the mute non-human nature, an array of social and environmental movements have touched a chord within many people, moving them to support courses of action that might even be at a cost to their immediate personal wellbeing.

Samkhya avoids reductionism by arguing that the harmonious exercise of power requires a balanced and infused deployment of all three. This early South Asian attempt at holistic thinking argued that *tamasik, rajasik* and *satwik* are akin to the wax, the wick and the flame: the absence of any one will result in no light. It is what we have chosen to call 'constructive engagement' between the hierarchic, market and egalitarian solidarities.

Science and art

If impasse and domination are unacceptable, and negotiation the way forward, how is it to be realized in practice? Those who have practiced it argue that it is both a science and an art. Raiffa argues that the 'science' means systematic analysis for problem solving, with the systematic part developed and supported by the rigors of mathematics, in particular, its branches such as game theory and operational analysis.[8] The 'art' part is slippery for the rigorous mathematicians and includes interpersonal skills, the ability to convince and be convinced, the ability to employ a basketful of bargaining ploys, and the wisdom to know when and how to use them.[9] In between the mathematical sciences of negotiation and its art of personal skills lie the social sciences of negotiation, which do claim rational logic and analytical thoroughness; but they also introduce some of the fuzziness that comes with issues such as culture and power. They accept plural rationalities of different social solidarities and their inherently contradictory certitudes, which provide us with crucial lenses with which to understand the social encounter that is negotiation.

The field of water negotiations has been dominated in the past by the international relations and political science schools that see nation states as the primary (and often only) actors, believe in economic efficiency as the primary criterion, as well as the hierarchic proclivities towards regime formation through regulations, laws, rules and treaties. A re-positioning of perspectives for successful water management in the years and decades ahead requires that concerns of social and environmental equity as well as climate change be included. To do so, negotiating processes must also include in their engagements the voices of non-State actors, as well as other social science disciplines such as sociology and anthropology to supplement conventional insights from law and economics. This will mean giving up on monistic water solutions provided only by the market or governments, moving beyond two-legged public-private partnerships, and enabling a three-cornered constructive engagement that includes the hitherto marginalized social and environmental civic movements who can play a creative role only if allowed to the negotiating table.

2.2 Effective public participation

Demands for public participation in planning and decision making are widely articulated, whether by governments, donors, civil society, or within law and policy itself. Participatory approaches imply that people outside the machinery of the State, or other formal institutions, are involved in some way in governance processes. However, the idea of public participation can mean different things to different people. Participation can have varying levels or degrees. These reflect the extent to which the influence or authority to make decisions is shared.

"THE IDEA OF PUBLIC PARTICIPATION CAN MEAN DIFFERENT THINGS TO DIFFERENT PEOPLE"

Modes of public participation can be organized along a spectrum (see Table 2.1). Moving from left to right, this spectrum begins with nominal – or token – participation and ends with public empowerment in which the authority to make decisions is placed in the hands of the public. Simply 'informing' or 'consulting' are not forms of participation that are adequate for constructive engagement, as decision makers are relatively free to ignore contributions by stakeholders. Public participation needs at the very least to be 'involving' and 'collaborating'. This ensures that participation helps influence and shape decisions, by contributing options that are deliberated prior to decision making. A blanket embrace of 'empowering' participation is not possible, however, because while authorities have a responsibility to listen and learn, they also ultimately have responsibility to decide and implement on

behalf of the society they are appointed to serve. Within constructive engagement, therefore, even if participation does not always result in ultimate decision making, stakeholders gain the ability to influence and shape decisions.

"WITHIN CONSTRUCTIVE ENGAGEMENT, STAKEHOLDERS GAIN THE ABILITY TO INFLUENCE AND SHAPE DECISIONS"

Table 2.1: Public participation spectrum[10]

Inform	Consult	Involve	Collaborate	Empower
Goal of participation				
To provide the public with balanced and objective informa-tion to assist them in understanding the problems, alternatives and solutions.	To obtain public feedback on analysis, alternatives and/or solutions.	To work directly with the public throughout the process to ensure that public issues and concerns are consis-tently understood and considered.	To partner with the public in each aspect of the decision includ-ing the development of alternatives and the identification of pre-ferred solutions.	To place final decision making in the hands of the public.
Promise to public participants				
We will keep you informed.	We will keep you informed, listen to and acknowledge your concerns and provide feedback on how pub-lic input influenced the decision.	We will work with you to ensure that your issues and concerns are directly reflected in the alternatives developed and provide feedback on how pub-lic input influenced the decision.	We will look to you for direct advice and inno-vation in formulating solutions and incor-porate your advice and recommendations into the decision to the maximum extent possible.	We will implement what you decide.
Examples of participation tools				
Fact sheets, websites, open houses.	Public comment, focus groups, surveys, public hearings.	Workshops, delibera-tive polling, MSPs and associated tools, such as scenario building and exploration.	Citizen advisory com-mittees, MSPs includ-ing consensus-building processes.	Citizen juries, ballots, delegated decisions, MSPs etc.

2.3 Approaches to negotiation

Negotiation plays a central role where multiple stakeholders participate in constructive engage-ment. Where choices have to be made to agree ways forward, negotiation is the process used to attempt to reconcile differences among stakeholders. The main aim of an ideal-type negotiation is to reach a workable agreement, acceptable to all parties. In the context of constructive engagement over complex issues relating to water, there may be many stakeholders – individuals, communities,

governments, business, financiers, scientists, NGOs and knowledge brokers – representing themselves or in various groups, organizations and coalitions. Approaches used for negotiation need to be appropriate for this context and for this diversity of actors. There are also many different types of arenas (see Box 2.2).

"THE MAIN AIM OF NEGOTIATION IS TO REACH A WORKABLE AGREEMENT, ACCEPTABLE TO ALL PARTIES"

Box 2.2: Global water negotiation arenas

Four distinct arenas in the global debate around water can be described:
The inter-governmental: Formal UN-type efforts at regime forming for water courses that water bureaucracies around the world uphold and engage in. It is mostly about framing rules that are to be upheld by formalized treaties and enforced by the collective 'international will'.

Market-led: Globalized efforts to let market players find their own equilibrium through privatization, championed by private multinational water companies and supported by development financing and development banks.

Civil society: There is a third influential arena dominated by egalitarian social movements often opposing large dams, big water diversions etc., that are seen as socially and environmentally harmful.

Expert-led: Water experts and professionals drawn from more or less all the above three who try to find a consensus among the three forces of the State, market and civic movements through measures such as Integrated Water Resources Management (IWRM).

To offer a legitimate way forward for dealing with differences collectively, negotiations over complex water decisions need to be transparent and encourage well-intentioned participation. This premise does not make negotiations easy. The examination of rights and responsibilities along with risks and rewards is rarely straightforward. And yet, if negotiation can be approached in a considerate and constructive manner, it can potentially encourage understanding and joint problem solving, greater mutual regard for diverse interests and values, and the possibility of integrating these into sustainable, rewarding and workable outcomes.

"NEGOTIATION REQUIRES THAT THERE IS A DIVERGENCE OF INTERESTS AMONG ACTORS"

2.3.1 Pre-conditions for negotiation

There are some essential pre-conditions for negotiation. Negotiation requires that there is a divergence of interests among actors, but that actors recognize there is a degree of mutual interdependence in resolving problems, and that actors are able to communicate freely with each other:

- *Divergence of interests:* Different preferences among actors may be manifest, for example, in disagreements about how a body of water is owned, used, managed or priced. Differences among actors may be rooted in differing perceptions of water and its intangible values or in different attitudes to development. Differing ways of valuing and thinking about water result in different expectations of negotiations.
- *Mutual interdependency:* Without some recognition by stakeholders of interdependency, reasons to negotiate may not be compelling. The negotiation process itself is an attempt to do something with others that cannot be done alone, coupled with the potential for improving outcomes (including social relations) or at least doing no harm to each other. This builds on the understanding that the fates of individuals or groups are interwoven, which challenges a prevalent view that water and its use is invariably a competitive struggle.
- *Communication:* Capacity to communicate is an important basis for constructive negotiation. This involves listening, learning, being respectful, clarity and endeavouring to address misunderstandings. Communication with these qualities in negotiations leads to greater understanding among participants, helping them to evaluate and decide between choices, and to focus on finding resolutions to disagreements and pathways forward.

It is also important that negotiations operate where there is the possibility of some other action or recourse and/or appeal (for example, a legal process) if agreements are not reached or if they are challenged. This provides a motivation for participants to negotiate as well as alternate ways forward if agreement is not reached or if some parties are excluded or exclude themselves from agreements.

2.3.2 Types of negotiation

"NEGOTIATIONS ALSO INVOLVE THE EXERCISE OF POWER, WHICH ITSELF REFLECTS A COMPLEX SET OF RELATIONS AND PROCESSES"

There are different approaches to negotiation. These shape the way negotiations are set up, the design of processes used, the stance taken by negotiators, the tone and openness of interactions and the types of outcomes possible. Overlain on this are differences in style and ways of behaving that actors may adopt when negotiating.

A variety of factors influence how an individual, group, organization or government will negotiate; for example, their purpose, intention, social status and their sense of responsibility to the process or parties involved. It depends also on what is being negotiated, the history of relationships and the issues at hand, and the legal, political and procedural context. Negotiations also involve the exercise of power, which itself reflects a complex set of relations and processes at both an individual and social level. The way power is exercised always affects the strategies parties use in negotiation. For example, when a party chooses to exercise power over another, they may be aiming to 'defeat' the other by demonstrating that they have greater means (in status, resources, ability, influence or legitimacy) to achieve their aims than does their 'adversary'. Power can be exercised, however, for different reasons and results, including cooperative pursuits. Complex social and psychological interactions thus underlie negotiations. Facilitators and participants in negotiations need to find constructive ways of managing this complexity if workable, fair and effective agreements are to emerge.

Facilitators and negotiators need approaches to negotiation that are suited to constructive engagement. It is vital, therefore, that they develop an understanding of what approaches and behaviours are more likely to lead to desirable, mutually acceptable outcomes. The distinctions

between types of negotiation should guide this understanding. There is a variety of terminologies and concepts applied to negotiation. These can be grouped into two main types of negotiation:

- *Competitive negotiation,* which generally places greater emphasis on trading, hard bargaining and distributing.
- *Cooperative negotiation,* which generally places greater emphasis on collaborating, seeking consensus and integrating.

"IN PRACTICE, COMPETITIVE AND COOPERATIVE STANCES CO-EXIST DURING NEGOTIATION"

The contrasts between these types of negotiation are summarized in Table 2.2. In practice, competitive and cooperative stances co-exist during negotiation. Negotiation can be structured and guided by cooperative principles, while at times parties use competitive behaviours, either as a deliberate ploy or inadvertently. In complex situations, if competitive negotiation is dominant, however, outcomes may be less than optimal. Cooperative negotiation strengthens constructive engagement.

"COOPERATIVE NEGOTIATION STRENGTHENS CONSTRUCTIVE ENGAGEMENT"

Table 2.2: Contrasting emphases and assumptions in negotiation

Competitive negotiation	Cooperative negotiation
Greater emphasis on trading, hard bargaining, distributing	Greater emphasis on collaborating, seeking consensus integrating
Parties tend to take 'positions' i.e., a specific 'solution', from their perspective	Parties encouraged to focus on their 'interests' i.e., that which underlies their possible 'positions'
Process tends to assume fixed value, and distribution of that fixed 'quantity' or 'good'	Negotiators focus on value creation, prior to agreements on distribution
Negotiators seek to maximize own gain (or minimize loss) and assume 'my gain is your loss'	Negotiators identify options, including trades, techniques or various criteria, that may provide added benefit to all
Assume fixed preferences	Assume preferences are changeable, as a result of new under-standings
Often seen to privilege particular branches of knowledge	Greater emphasis on embracing wider diversity of relevant knowledge
May reinforce existing inequalities and inequities	Process tends to level out power imbalances – at least to some extent – partly as a result of emphases on deliberation and exploration of options, and how to access the merits of options or preferences

Competitive negotiation

Competitive negotiation is characterized by a set of assumptions about the relationships among parties and the transactions to be negotiated:

- Parties take the stance that whatever difference is involved, the other party is a potential threat or competitor to obtaining a particular end. The assumption is that there are incompatible or oppositional goals or objectives to the negotiation from the outset.
- What is at issue can (or must) be divided and distributed. The aim of negotiating is to maximize the greatest share of a fixed set of rewards. This is usually gained at the expense of the 'other side', or at least not to your detriment. The language spoken is usually adversarial, with other parties viewed as an opponent, threat or competitor to a contested or limited resource. From the outset the tendency is to assume that 'your gain is my loss'. The focus tends to remain on risk factors and claiming a share of whatever is at stake.

Competitive negotiation is seen as predominantly about bargaining, which involves settling on what each party shall concede and take, or perform and receive. The general focus is on identifying a particular solution that is then sought. Having a particular solution at the outset is known as establishing a 'position', which is then defended and used by parties as the target for what needs to be achieved by negotiating. The discussion is then limited to this reference point.

With parties taking different positions that are defended and sought, negotiation becomes a concession-making process. This can involve each party implicitly or explicitly having a bargaining 'range' between what they want most and what would be unacceptable to them, with an optimum point or a 'bottom-line' somewhere between the two extremes.

A bargaining range can be set in terms of, for example, prices: 'I'd prefer $60,000, but would take $50,000, however, I'm not going below $40,000!' Or it might be in terms of types of actions: "I want you to stop pumping water, or at least reduce it to this level, or else…". With this range in mind, the basic expectation of negotiation and strategy is the making of offers and counter-offers (or a series of demands) until a workable agreement can be reached. If this fails then the 'talks' may be postponed or ended.

Having a bargaining range is not unhelpful, but it can limit what is discussed and the results possible. The competitive approach – with its focus on predetermined positions, distribution, and maximizing gain/minimizing losses – tends to result, at best, in a compromise. Little or nothing is added to the scope of the discussion or outcomes. The purpose is to claim something (of value) within a predetermined range of options. The positions of parties are played off one against another, with a net result that may not be satisfying to either, or more to one party at the expense of the other. The parties tend to be working against each other, as compared to with each other. Communication spirals easily into monologues about why one position or outcome is better than another. Information used, in a variety of forms, tends to reinforce one party's position over the others and become a source of contention. For simple exchanges/transactions/decisions, this might be efficient and acceptable. However, for complex situations where ongoing relationships are important, this way of negotiating has a tendency neither to foster nor maintain the relationship, and may make it difficult to achieve the best overall results, as seen in international cooperation in the Aral Sea Basin (Case 2.1), conserving the Florida Everglades (see Chapter 4, Case 4.2) and wastewater management in Coffs Harbour, Australia.[11]

"COMPETITIVE NEGOTIATION IS CHARACTERIZED BY CERTAIN TYPES OF BEHAVIOUR OR ACTIONS"

Competitive negotiation is characterized by certain types of behaviour or actions. Parties tend to be: dominating or combative, where people try to convince, persuade, influence, manipulate, argue,

threaten or bargain hard to gain an advantage; or accommodating or compromising, where a little of something is claimed in order to gain at least a portion of what is required; or at least efforts are directed to not losing too much, and the bargaining style may be to concede, avoid confrontation or hostility, submit or withdraw. Each style of behaviour reflects different goals and values, as well as the different contexts (including the nature of the relationship) involved.[12]

There are a number of strategies that may be employed. For instance trade-offs, in which something is given up or provided in exchange for a gain of another type, or a take-it-or-leave-it offer, or a time-specific offer. It can also be an advantageous tactic to try to uncover information about the other's bargaining range, or to not be forthcoming with one's own. Information in general becomes part of the struggle or game and therefore valuable as a resource to use, gain, conceal or manipulate.[13] House buying and selling is a classic example where competitive, hard bargaining is the norm. Houses are different from complex water.

Case 2.1: Tensions in the Aral Sea Basin

The Aral Sea – once the fourth largest inland body of water in the world – has been reduced to 10% of its original size and is plagued by salinization and pollution. Competition for water is adding tension to what is already an uneasy region. However the shrinking Aral Sea is not so much the crux of the problem as an illustration of the impact of the real problem which is overuse of water caused by inefficient use of water. Many people think the Aral Sea itself is a lost cause. Improving the way water is used so that there is more to share is not.

The problems of increasing demand and declining supplies have been compounded by the failure of the region's nations to work together. Despite an agreement in 1992 amongst the five States to cooperate on its management, an annual cycle of disputes has developed between the three downstream countries – Kazakhstan, Turkmenistan and Uzbekistan – that are all heavy consumers of water for growing cotton and wheat, and the upstream nations, Kyrgyzstan and Tajikistan, who have considerable water resources and hydroelectric potential, but little potential for agriculture.

Water management in Central Asia has suffered greatly from the Soviet legacy of top-down control and general rivalries between the States. The inter-governmental organization charged with managing the basin – the Interstate Water Coordination Commission – has been criticized for operating with little transparency, with no representation from agricultural or industrial consumers, NGOs or other parties, and being generally ill-equipped to deal with the complexity of issues. Accusations of favouritism have further weakened cooperation.

As each country started to view the problem as a zero-sum game, it took steps to increase control over water and energy, often to the detriment of the others. There is increasing uncertainty over plans to build new reservoirs and dams or to expand irrigation, and the relatively little consultation over most of these projects has led to intensified suspicions between States.

Tensions over water and energy have contributed to a generally uneasy political climate in Central Asia. Not only do they tend to provoke hostile rhetoric, but they have also prompted suggestions that the countries are willing to defend their interests by force if necessary. Competition for water can only increase, and tensions will continue to rise unless better mechanisms are put in place to manage the problems.[14]

"COOPERATIVE NEGOTIATION IS AN OPPORTUNITY TO CONFER AND PROBLEM SOLVE"

Cooperative negotiation

Cooperative negotiation is an opportunity to confer and problem solve to enable outcomes that are mutually beneficial to all involved. This is achieved by striving to accommodate the differences and/or the interests of the parties involved in integrated packages. Both the means of negotiating

and the particular ends sought are viewed as interlinked and integral to arriving at a sustainable, satisfying or beneficial outcome.

The aim is for parties to negotiate on the merits of the options available. The parties explore how efficiently and amicably they can find mutual gains or establish mutually agreeable standards for assessing gains in order to come to a workable, equitable agreement.

"COOPERATIVE NEGOTIATION FOCUSES ON INTERESTS RATHER THAN DIFFERENCES"

Cooperative negotiation focuses on interests rather than differences in positions. Interests are defined in broader terms such as values, needs, wants or fears,[15] or underlying concerns (about the substance of the negotiation) and relationships with other parties. In either case, interests are understood to relate to what lies behind a stated position – that is, the reasons why something is sought. For example, in the context of regulation of river flows by a dam, an environmental group may take the position that the dam spillways must be open during flood seasons, but their underlying interest is in ensuring that peak flows occur during spawning of an endangered fish species in downstream wetlands. The dam operator may take the position that timing of flow releases should be determined only by power demand and reservoir levels. Their actual interests may relate more to avoiding loss of income and avoiding shortfalls in electricity. Negotiations between the two parties that only focus on their positions leave little room for finding solutions. Understanding respective interests through cooperative negotiation, on the other hand, opens room for discussion of ideas and innovation in the way a dam might be managed and financed and the way water is allocated that could be acceptable to both parties.

Cooperative negotiation is more explicit about the aim of negotiation being a collective, constructive and mutually rewarding process. It leads to integrated decision making that is based on mutual regard and the co-existence of interests and values. Sometimes it is described as 'win-win', or 'mutual gain', or 'creating value'.

There are assumptions underpinning cooperative negotiation that relate to the stance of the parties, their ways of relating, and outcomes sought:

- Differences are viewed as inevitable and are not assumed from the outset to reflect incompatibilities or opposing objectives. Other parties may not therefore be potential competitors and their goals or interests may not be a threat. Rather, the differences that arise may provide an opportunity for another way of doing or understanding something, or the impetus for change and decision making.
- As there is some level of interdependency, there is the possibility of collaborating rather than competing. There is an underlying assumption that people have the capacity to work through differences constructively, alongside recognition that mutual benefit can not always be achieved. Other parties are seen as integral to working through an issue or situation. There is, hence, an emphasis on improving ways of relating and giving attention to the relationship. This can be seen as being motivated by altruism or, pragmatically, by the need to create the conditions for achieving a workable agreement. Issues of trust, communicating openly or effectively, and fostering dialogue are central.
- Any issue may involve more than a fixed value or sum of rewards, ensuring there are various ways to address what parties are seeking. Negotiation is not simply about bargaining, but also involves managing and valuing relationships. Although substantive interests are considered important, other interests are seen as equally so, like being treated fairly and with respect, having a chance to speak and be heard, and having values and needs acknowledged and addressed.

By going beyond viewing situations or issues as having a constant or fixed value, more can be added to the situation than seems apparent at first. For instance, there may be different ways to measure worth, a whole sought by parties can be broken down into parts, and/or something new or different may be created through understanding the reasons for why something is wanted or desired. Integrating decisions opens the possibility of creating new options or possible arrangements for agreement. A negotiation and its outcomes may not, therefore, be restricted to dividing portions or result in a gain-loss scenario. It may not even result in compromising, as there may be the possibility of making anew something not considered before, as compared to just giving and taking.[16]

Cooperative negotiation thus goes beyond dealing with positions, and gives attention to the process of exploring issues. Time must be spent bringing differences into the open, asking parties to explain to each other:

- why they hold a particular position in the first place
- how they came to decide on it
- how it serves them better
- whether there are other aspects to a situation that need attention or addressing

This process is critical, as it provides a space in which parties can better understand what may have previously been unknown or misunderstood about other parties. This paves the way for creating new pathways and options for decision making and outcomes that are more workable, fair and effective. Case 2.2 presents a positive change towards constructive engagement in Nepal's hydropower sector. Case 2.3 describes the steps taken to comprehensively review the operation of the Ok Tedi Mine in Papua New Guinea, change the paradigm of engagement, and build trust required to negotiate fairer compensation to affected communities.

Case 2.2: From conflict to constructive engagement in Nepal's hydropower sector

Nepal's hydropower politics have traditionally been dominated by confrontation between environmental and social activists and large-scale dam proponents. The campaign to stop the Arun-3 hydroelectric project in the 1990s, however, marked a shift from confrontation to more constructive engagement.

A coalition of national and international activists together with small-scale hydropower entrepreneurs successfully campaigned to halt the billion dollar 201 MW project in eastern Nepal. The campaign used economics and science to demonstrate that the proposed project, to be financed by the World Bank and a consortium of donors, was financially unsound. A crucial component of the campaign was the proposal of cost-effective and timely alternatives – rather than simply opposing 'bad' dams, there was advocacy for socially and environmentally 'good' dams.

The success of the activists in halting Arun-3 changed water politics in Nepal; government could no longer ignore activists and their call for constructive dialogue. Water politics were also changing globally with the release in 2000 of the World Commission on Dams (WCD) report.

Seeing the need to move beyond the 'pro-dam' and 'anti-dam' positions, the government of Nepal initiated a multi-stakeholder negotiation process in 2003, in which State and non-State water actors agreed to come together to explore options and find workable ways forward. Drawing upon the work of the WCD, multidisciplinary and multisectoral teams worked to improve joint understanding of the complexity of the issues with the ultimate aim of modifying the WCD recommendations to guide Nepal's hydropower sector.

The participants in the dialogue process included representatives of the government's parastatal electricity authority and Ministry of Water Resources (dam managers), the private sector (dam builders), and NGOs representing the communities affected by the project and concerned about other social and environmental issues.[17]

Photo 2.1 Women's meeting to discuss Community Mine Continuation Agreements with the OK Tedi Mine (Serki Village, Papua New Guinea).

Case 2.3: Ok Tedi Mine, Papua New Guinea – Changing the negotiating paradigm

The Ok Tedi Mine in Papua New Guinea (PNG) is among the largest gold-copper mines in the world, a major source of revenue for the PNG government, and a source of employment and revenue for people in PNG's remote Western Province.

When building a mine tailings storage dam proved technically treacherous, the mine operator, Ok Tedi Mining Limited (OTML), received permission in 1984 from the government to discharge 90,000 tonnes of mine waste directly into the local river each day. The tailings have caused significant environmental damage to the Ok Tedi and Fly river systems, and seriously affected the livelihoods of more than 90,000 people living downstream.

A series of legal actions in Australia, where BHP, multi-national mining company and then majority shareholder of OTML, was registered, resulted in, first, a payment to landowners in an out-of-court settlement, and later unsuccessful class actions on behalf of landowners.

By 2000, new assessments of the damage from the mine led the World Bank to recommend closing the mine without delay, and BHP to withdraw from the project. The government, a shareholder of OTML, agreed to keep operating the mine, having already lost the national income from the Bougainville copper mine due to civil war.

With this legal history and a need to garner the support of affected communities to continue mining, OTML negotiated Community Mine Continuation Agreements (CMCAs) in 2001. These agreements sought the communities' consent for continued operation along with acceptable compensation arrangements.

The CMCAs were not supported by all villages, with some villagers who took part in legal action refusing to sign up. The CMCAs included provision for a mid-term review in 2005, and an obligation on the mining company to report major changes in the environmental predictions on which the agreements were based.

The review became a centrepoint for airing conflicts, concerns, hopes and demands, and a platform for improved delivery on the sustainable development projects component of the compensation. There was clear interdependency among the key stakeholders: the mining company desired community consent to continue operating; the villagers had limited alternatives other than to work with the company to alleviate their social, environmental and economic hardships. The dilemma for the communities was that the obvious social and economic benefits of the mine, and their dependence on them, had to be balanced against the continuing damage of the mine's tailings on their lifeblood – the Fly River system.

The review centred on renewing communities' support for continued mining, and a better sustainable development outcome. The environmental and social contexts were indivisible – and a process of negotiation was required that could result in an enduring and positive legacy for all affected.

The CMCA mid-term negotiations took 18 months, involved 500 meetings and many thousands of people from 150 villages. The review faced a number of challenges: i) communication and language differences; ii) distances and the inaccessibility of some villages; iii) cultural issues regarding participation of women; iv) representation, trust and capacity to participate; and v) how to ensure informed consent and deal with technical information.

A fully transparent, collaborative approach to the situation was identified as the best way forward, to overcome entrenched distrust and real and perceived power imbalances. The mining company, OTML, its advisors and others developed a negotiation and communication process based on interest-based negotiation principles. The Informed Consensus approach adopted also reflected Papua New Guinean traditions of discussion in longhouses to reach community consensus.

The review process culminated in the signing of a Memorandum of Agreement by all parties in 2007 that resulted in a four-fold increase in compensation to affected communities, and a new Ok Tedi and Fly River Sustainable Development Foundation to be controlled by affected communities and funded by mining royalties. An evaluation of the review reported that the working relationships between all parties had significantly improved.[18]

2.4 Designing negotiation processes

"NEGOTIATION PROCESSES SHOULD PAY ATTENTION TO THE NEEDS OF THOSE LESS ABLE TO ARTICULATE THEIR CLAIMS"

There can be a healthy tension between flexibility and structured design in a negotiation process. As social, political and economic contexts change, so too might the stances and behaviour of key actors. Some issues should be non-negotiable – for example, basic human rights – but other changes might require facilitators and participants to adjust.

There are also usually constraints to any ideal setting for constructive engagement. For example, special efforts might be necessary to ensure that stakeholders without essential means or resources can genuinely participate. Negotiation processes should pay attention to the needs of those less able to articulate their claims, understand their entitlements or obtain adequate representation.

Sub-optimal results can have many other causes. For example, it is important not to underplay power relations or be blind to the political and cultural contexts that favour certain groups. Valuation is another area where mistakes are often made. Often there are very different views of the 'right way' of valuing, and care must be taken not to use frameworks which unfairly privilege particular options. Appropriate design of a negotiation process, reshaping when needed, and fostering deliberation are key to unravelling and eventually understanding different perspectives.

Multi-Stakeholder Platforms (MSPs) (see Chapter 3) and consensus building (see Chapter 4) are forms of deliberative and constructive engagement that are being applied to complex water issues and decisions, by those aspiring to make decision making more reasoned. As demonstrated in the following chapters, their design explicitly incorporates methods for increasing the fairness and effectiveness of agreements, implementation and outcomes.

Multi-Stakeholder Platforms (MSPs)

3.1 MSPs: a basis for fairer water governance

Multi-Stakeholder Platforms (MSPs) are a part of governance in which different stakeholders are identified and, usually through representatives, invited and assisted to interact in a deliberative forum that focuses on:
- sharing knowledge and perspectives
- generating and examining options
- informing and shaping negotiations and decisions

MSPs are not the only places where deliberation takes place. MSPs and dialogues are words that are often used interchangeably. This may be misleading. Any 'dialogue process' implies deliberation is central. There may be much dialogue and deliberation embedded in advocacy organizations, diplomacy, operations within the party room, the parliament, contract drafting, the corporate board room or the village committee. However, as the name specifies, MSPs refer to where deliberation is fostered among multiple, diverse stakeholders.

MSPs are an approach for constructive engagement and learning about complex problems where facts and values may be in dispute. Choices about water often involve society contesting facts, such as the most efficient way to supply water, recover delivery costs, and provide efficiency incentives. Choices about water also often involve contesting values, for example, whose priorities and needs matter most, when there is insufficient water to satisfy all demands.

MSPs may lead to the creation or strengthening of bridges of understanding between actors representing wide-ranging interests, and the satisfactory resolution of at least some differences. An MSP can bring into sharper focus substantive differences of approach and priorities that may not be easily reconcilable. By articulating these differences in the public sphere, an MSP can contribute to a sounder basis for negotiation and decision making.

"MSPs ARE AN APPROACH FOR CONSTRUCTIVE ENGAGEMENT AND LEARNING ABOUT COMPLEX PROBLEMS"

MSPs can be influential by bringing together stakeholders in a new form of communication and decision finding. In this way, they can ensure that differences are respected – or at least better understood – while pursuing fair and effective workable agreements about complex issues.

Influence is different to authority. Many MSPs are not necessarily vested with, nor must they claim, authority to make decisions. To do so may invite resistance and be counter-productive. Although not all dominant political cultures support or permit MSPs, in many places MSPs are part of a broader trend towards new forms of governance based on collaboration that build and draw upon social capital.
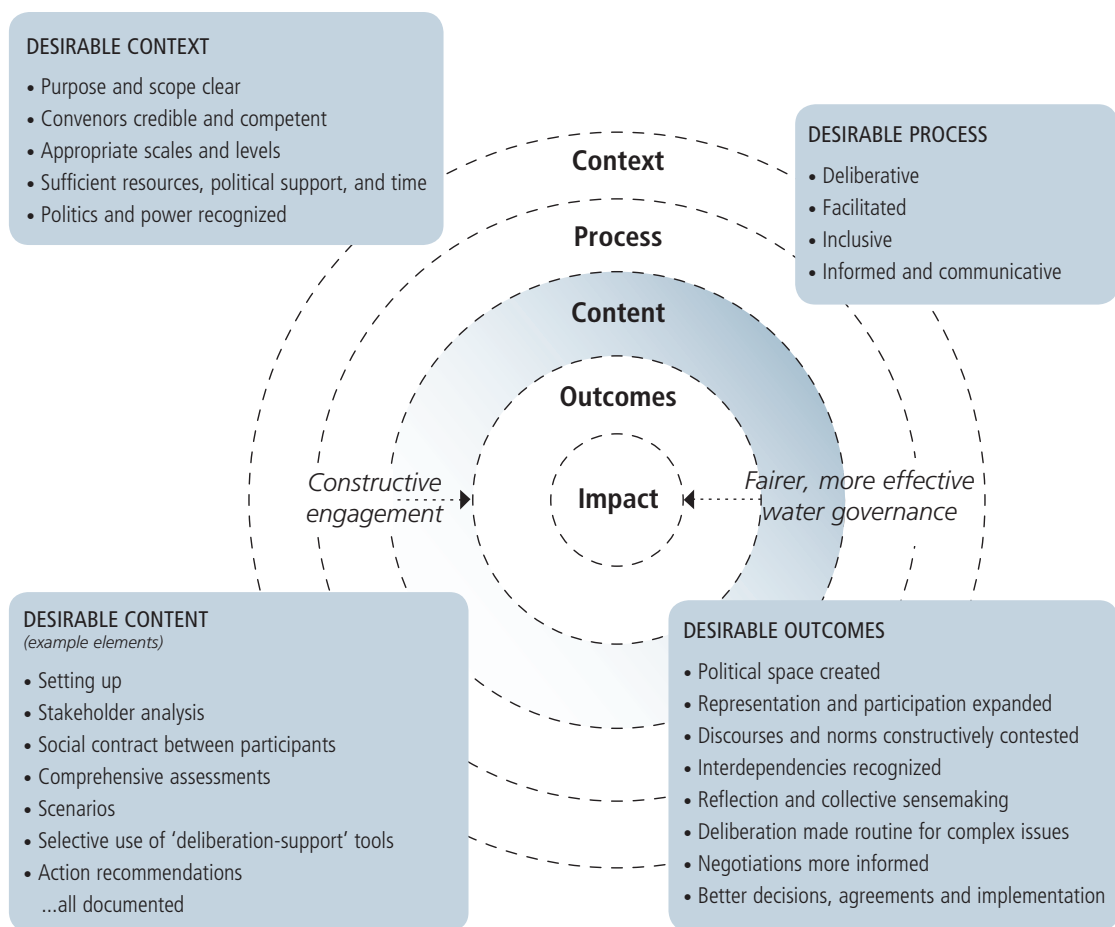
A way of focusing the MSP contribution to water negotiations is to use the 4Rs, (introduced in Chapter 1) as part of a systematic and semi-structured approach. Recapping, the 4Rs refer to rewards, risks, rights and responsibilities. For example:

- The rewards being sought from the care, use and further development of water resources, and the distribution of the full spectrum of the possible rewards/benefits/costs of various options.
- The involuntary and voluntary water-related risks.
- Water-related *rights*.
- The various water-related *responsibilities* of State and non-State actors.

While the 4Rs can always be useful as reference points, MSPs do not all need to follow the same format or structure. MSPs exist in different shapes and sizes. But, as a guide, there are desirable characteristics of MSPs. These are summarized in Figure 3.1 and explained in Sections 3.2–3.5 to provide an outline for an 'ideal type' of MSP that can contribute to fairer, more effective water governance.[19]

"MSPs EXIST IN DIFFERENT SHAPES AND SIZES"

Figure 3.1: MSP conceptual framework and desirable characteristics

DESIRABLE CONTEXT
- Purpose and scope clear
- Convenors credible and competent
- Appropriate scales and levels
- Sufficient resources, political support, and time
- Politics and power recognized

DESIRABLE PROCESS
- Deliberative
- Facilitated
- Inclusive
- Informed and communicative

Context

Process

Content

Outcomes

Impact

Constructive engagement

Fairer, more effective water governance

DESIRABLE CONTENT
(example elements)
- Setting up
- Stakeholder analysis
- Social contract between participants
- Comprehensive assessments
- Scenarios
- Selective use of 'deliberation-support' tools
- Action recommendations
  ...all documented

DESIRABLE OUTCOMES
- Political space created
- Representation and participation expanded
- Discourses and norms constructively contested
- Interdependencies recognized
- Reflection and collective sensemaking
- Deliberation made routine for complex issues
- Negotiations more informed
- Better decisions, agreements and implementation

3.2 Desirable context for MSPs

3.2.1 Clear purpose and scope

The purpose of an MSP needs to be clearly articulated in terms of its political and practical boundaries to enquiry, the derivation, extent and duration of its mandate, and a justification of how the MSP might improve existing governance.

Questions to consider include:

- Is the MSP trying to shape the higher-level discourse of the wider political and institutional environment, i.e., the 'big context'? Examples are MSPs focusing on climate change and its implications (including for the Earth's hydrological cycle), examining global drivers and possible societal responses, such as mitigation approaches, financing adaptation, and establishing equitable carbon markets. Other MSPs include the deliberations before, during and after global fora such as the World Water Forum and the World Water Congress.
- Is the MSP focusing on building a policy-shaping network and space for debate in a particular community or place, intending to catalyze reflection and action on some shared issues? An example is the MSP working with the many actors and institutions with a stake in improving river basin governance in Namibia and Botswana's Okavango floodplain; or the Mekong Region (see Case 3.1).
- Is the MSP focusing on informing and shaping a particular negotiation process? For example, devising a fair and effective water allocation and management regime in the irrigation systems of the Viet Nam delta; or the MSP informing the negotiation and review of the agreement to enable the continuation of mining –subject to more stringent Fly River pollution controls, and sharing of rewards – in the western provinces of Papua New Guinea.[20]

Answers to these questions should determine the design of the MSP and tactics to optimize engagement, particularly regarding choices of convenors, facilitators, invitees, agenda and tools. There are more ideas on how to clarify the purpose and scope of an MSP later in this chapter.

Case 3.1: 'Exploring Water Futures Together' in the Mekong Region

A new water governance paradigm was needed in the Mekong Region which encompasses Cambodia, Laos, Myanmar, Thailand, Viet Nam and southern China.

On main streams and tributaries disputes exist resulting from interventions to natural flow regimes and overt or default allocation decisions. These interventions are justified on grounds of: flood control, more irrigation for food or fibre production, urban or industrial supply, improving ease of navigation, or boosting energy production via hydropower. There are associated disputes about altered sediment and nutrient loads, fisheries, livelihood options, groundwater use, water re-use, and diversions (inter-State, intra-State, inter-basin and intra-basin).

An alliance of actors in the Mekong Region cooperated to convene and implement an MSP undertaken at national and regional scales. The convening coalition comprised: IUCN, the Thailand Environment Institute (TEI) – a national organization focused on sustainability; the International Water Management Institute (IWMI) – an international research organization; and the M-POWER regional knowledge network whose core membership is from, and focus is on, the six Mekong Region countries.

The purpose and scope has been to make it routine in the Mekong Region for important national and transnational water-related options and decisions to be examined in the public sphere from a range of perspectives. The MSP aimed to demonstrate this practice.[21]

3.2.2 Credible and competent convenors

Convenors are those who call people to come together and collectively engage in an issue. There are many possible convenors for MSPs and they can be either from within or outside of government (see Box 3.1). Credibility and competence are essential. Credibility will be linked to the 'social capital' of the convenor or convening coalition. Without the capacity to build new or upon existing relationships, convenors will be unable to establish an MSP constituency. Without competence, convenors will not be able to maintain the constituency or have an effective engagement.

Box 3.1: MSPs and dialogue tracks 1, 2, 3

The terminology of dialogue tracks 1–3 is one way of differentiating between water governance fora, some of which are MSPs, and the different convening possibilities.

Track 1 refers to processes of governments and associated bureaucracy, including inter- and intra-State fora. In the eyes of States these are 'official' and the most legitimate. The dominant logic is, for the most part, still implicitly accepting of rational, self-interested behaviour, particularly in international affairs. Track 1 dialogues are convened by State actors for State actors. The UN General Assembly is an example. They may be deliberative, but they are not multi-stakeholder.

Track 2 refers to governance processes involving State, UN family, donor/lender, civil society and business. These interactive forums are usually convened and led by an actor or coalition closely aligned with States ensuring government representatives remain privileged actors, such as with the International Assessment of Agricultural Science and Technology for Development (IAASTD). The convenors are usually focused on enhancing the effectiveness of States by widening the field of ideas and influences. Track 2 MSPs may be convened by State or non-State actors, but usually widen the range of stakeholder involvement.

Track 3 refers to research, dialogue and advocacy efforts led by civil society or business, less impeded by or less subordinate to State actors. These fora are committed to enlarging the political space and are often optimistic about the potential of MSPs to find and assist in negotiating better ways forward for society. The convening is led by non-State actors, and by design should bring in the full range of relevant stakeholders or possible contributors to addressing an issue. Convening coalitions are often a useful way of aggregating the social capital of the individual convenors. Tracks 2 and 3 are often now grappling with the idea and practices of deliberative MSPs. Practice may be less than ideal, but there are many promising efforts around the world where Tracks 2 and 3 are trying to improve the quality of their MSPs to inform and shape water-related debates, generate options, and inform and shape negotiations.

3.2.3 Appropriate scales and levels

Clarifying purpose and scope is a precursor to thinking about scales and levels.[22] Scales are the spatial, temporal, quantitative or analytical dimensions used to measure, or rank, and study an issue (see Figure 3.2). Levels are the units of analysis that are located at different positions on a scale.

Water management is often institutionalized around the spatial scales of government (i.e., administrative) or hydrology. The scale of government has different levels, for example: district, provincial, national, regional, global. The scale of hydrology also has different levels, for example: well, aquifer, stream, lake, reservoir, small watershed, larger national river basin, or international river basin. MSP convenors must be aware that analysis and action may best occur at various scales and levels – single or multiple. For complex water issues it is usually multiple. A strength of MSPs is that they can be flexibly constructed so as to fit any scale or level, but also to enable cross-level and cross-scale deliberations.
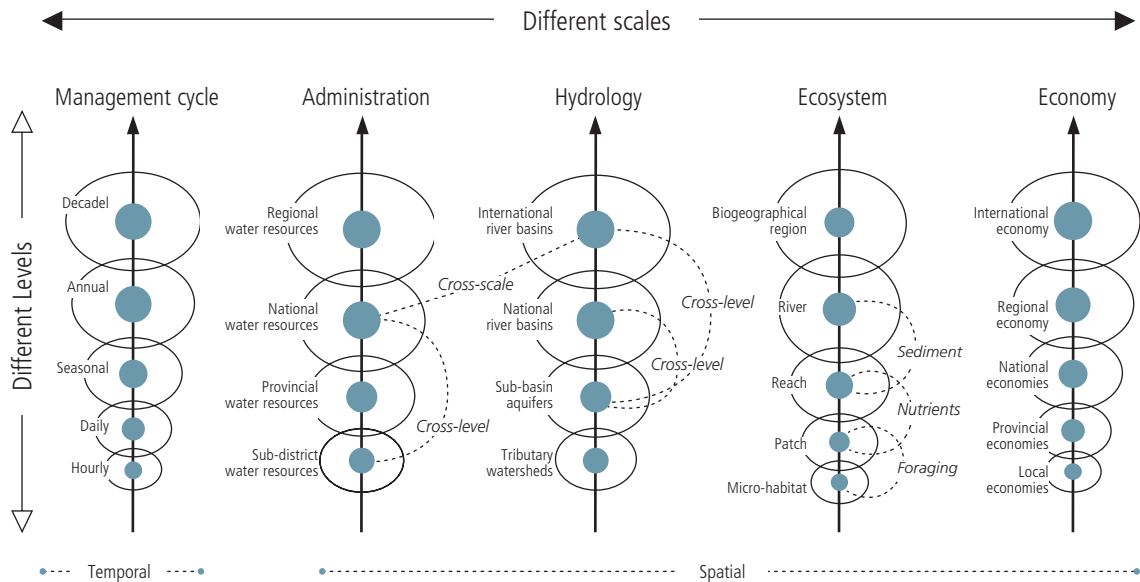
Figure 3.2: Scales and levels

Figure 3.2[23] shows some examples of typical levels on five different scales (one temporal and four spatial). Examples of cross-level and cross-scale interactions are given for a pair of spatial scales. Some multi-level processes are shown on the ecosystem scale.

Actors contest scales and levels, overtly through debates, media releases, lobbying and protests, and more subtly, through use and control of technologies, indicators, deliberations over measurements and controlling political sites. Thus, some actors push for hydrological scales – watersheds to river basins – as levels correspond to manageable units in the models or infrastructure they operate. Others promote conventional, area-based administrative hierarchies – districts to regions – arguing that this is where capacity, accountability and legitimacy already exist. Differences between administrative and hydrological scales, for example, are a common source of tensions in water resource governance.

Contests can arise in MSPs because different actors favour particular scales and levels in their analysis, arguments and responses. Convenors may take steps in selection of participants and format to ensure there are constructive exchanges and debate within and between relevant scales and levels.

The scales and levels used in an MSP should eventually be a joint product of biophysical and social processes. It is rarely possible, and probably undesirable, in an MSP being undertaken for a complex water issue, to be too strict, too early about scale and level choices.

The physics of flows, and the dynamics of ecosystems or social institutions can often be collectively better understood if scale and level boundaries are not overly constrained at the beginning of an MSP. For example, seasonal dynamics of flow regimes are important to fish (and thus fishers) on different temporal levels than the operational and planning logics of hydropower generation, irrigation and flood risk management.

3.2.4 Sufficient resources, political support and time

Without adequate resources – human, financial, informational and intellectual – an MSP will not reach its potential. Competent people will be needed to support the operation of the MSP. Costs will be incurred and so funding needs to be organized. Uncertainties will need to be addressed with information and people that have the knowledge that can help to move forward.

It is vital that any MSP has sufficient political space and momentum to permit or encourage establishment and support. The need for some degree of political support is unavoidable. This does not just refer to political support from the State, but rather is a reminder that an MSP must have some type of supportive stakeholder constituency with either influence or authority. In the case of Cape York, Australia (see Case 3.2) the political support wavered, but endured for long enough to ensure the MSP was given a chance to make its best contribution.

"IT IS VITAL THAT ANY MSP HAS SUFFICIENT POLITICAL SPACE AND MOMENTUM"

Case 3.2: Breaking down the wall in Australia's Cape York

The MSP of CYPLUS (Cape York Peninsula Land Use Strategy) was born in the 1990s after 20 years of intensifying conflict about major development proposals, mining, land rights, cattle grazing and Aboriginal land rights in the Cape York Peninsula of north-eastern Australia. CYPLUS was an intensive and extensive MSP to develop a land-use strategy – not water-focused, but undoubtedly complex – in a remote area of northern Australia covering 137,000 km^2 but home to only 18,000 people, the majority of whom are of Aboriginal or Torres Strait Islander descent. All levels of government were actively involved.

People who studied CYPLUS were told by one participant: 'Before CYPLUS there was a brick wall between graziers (cattle farmers), greens and aboriginal people on Cape York – they were all trying to cut the Cape up into little pieces for themselves but there wasn't enough to go around. CYPLUS broke down the wall'. The researchers also warned of the need for a long-term commitment, which for CYPLUS was envisaged as at least 10 years, during which time there would be (in the Australian political system) 'at least three elections and countless changes in policies, programs and players involved in the effort'.

"IF THE MSP IS NOT FOLLOWED UP, OR IS NOT TAKEN INTO ACCOUNT BY DECISION MAKERS, MANY PARTICIPANTS WILL BE DISILLUSIONED"

The saying 'Rome was not built in a day' also applies to MSPs which require an investment in time and patience, some degree of continuity, and then follow-up. If the time allowed is too short, it is hard for an MSP to do its job. If the MSP is not followed up, or is not taken into account by decision makers, many participants will be disillusioned and re-engaging with them in the future will likely be more difficult.[24] A key lesson noted by an observer of a Canadian MSP (see Case 3.3) was that: 'One of the main criticisms aimed at collaborative systems of governance is that whilst they provide opportunities for deliberation and wider participation in decision making, they often produce implementation failures because insufficient attention is given to outputs that will have an impact on the problem at hand. As a result, participants may lose enthusiasm for further collaboration if there is little sign of their efforts having a positive effect'. [25]

Case 3.3: Balancing power in the Fraser Basin Council in Canada

The Fraser Basin spans 13 watersheds in western Canada and supports more than 2.5 million people with an economy based on natural resources. The need for a more integrated approach to effectively and sustainably managing the land and water resources has long been recognized.

The Fraser Basin Council was established in 1997 as an MSP to pursue sustainable development through integrated river basin planning and management. It succeeded the Fraser Basin Management Programme, which was seen as being dominated by government interests.

The Council is a not-for-profit organization with a corporate structure that aims to address multi-jurisdictional issues to resolve disputes using a consensual rather than a legal or bureaucratic approach. It was specifically designed to complement, as opposed to duplicate, government management functions. A Charter for Sustainability was initially developed as a means of creating shared understanding among the diverse groups. The Charter outlines problems as well a vision, and articulates the values, principles and rules to guide collective action.

The institutional set-up of the Council was carefully crafted in order to create a space for equitable deliberative opportunity amongst diverse stakeholders to influence policy and programme decisions. It was recognized that a key challenge for collaborative governance is to provide fair representation, given that there are always economic and political power imbalances between groups that have legitimate interests in various facets of river basin management.

The Council included 36 directors drawn from three tiers of government (federal, provincial and local), First Nations, community groups, businesses as well as social, economic and environmental interest groups. To ensure fair local involvement, there were five regional committees for specific watersheds comprising representatives from local government, First Nations and sectoral interests.

3.2.5 Politics and power recognized

When scoping an MSP it is necessary to consider politics and power explicitly.

Politics is a slippery concept. Comments from almost 50 years ago remain useful: 'Politics is about policy, first and foremost; and policy is a matter of either the desire for change or the desire to protect something against change' and 'Politics is a natural reflex of the divergences between members of a society… [where]… there is a variety of perpetual disagreements which arise from fundamental differences of condition, status, power, opinion, and aim'.[26] Water sharing is not just about technical choices. Contesting different views is the realm of politics. MSPs are a place for this contesting. MSPs are one way of ensuring that political tussles include evidence and exploration of different values and perspectives.

Another elusive concept is power. It can be seen as the ability to shape the context and conduct of others. This is helpful, but it only gets you so far. It is useful also, and very relevant to MSPs, to think of power in terms of assets and power relations (see Figure 3.3).[27] Thinking of both can help in understanding the context.

"WHEN SCOPING AN MSP IT IS NECESSARY TO CONSIDER POLITICS AND POWER EXPLICITLY"

MSPs are likely to be more influential if they are endowed with adequate helpings of 'assets' including: resources, participants in strategic positions, individuals with leadership ability, and a rich inflow of ideas.

For some, politics and therefore political analysis, is focused on an analysis of power – identifying and interrogating its distribution, exercise and consequences. How power relations are manifested is just as important as whether particular actors have power – 'power to act', power with others', 'power over' and 'power to lead'[28] – all are important, as with the invocation of the wax, wick and flame metaphor in Box 2.1 in Chapter 2. MSPs are more likely to be agents of constructive engagement if the power relations manifested are a healthy mixture of these different forms. Perhaps most important and integral to the success of MSPs is fostering the acceptance by many participants that there is new and additional power in collectively working with others.

Figure 3.3: Assets that shape power and power relations

Power assets

Resources: resources available to further a cause, including: human, intellectual, financial, legal and physical force (e.g. State apparatus, military, wealth)

Positions: e.g. being high up in a hierarchy, giving leverage, opportunity, authority

Individuals: leadership or influencing qualities

Ideas: thoughts, assumptions, judgements, preferences

POWER

Ability to shape the conduct and context of others, either directly or indirectly

Power relations

Power to act: e.g. to set agendas, to make decisions, to shape preferences

Power over: e.g. to direct, control, regulate, penalize, marginalize

Power to lead: e.g. to inspire, motivate, facilitate, empower

Power with others: e.g. collective power by acting with others

3.3 Elements of good process

MSPs earn legitimacy, at least in part, by demonstrating high-quality process. To do so requires attaining and maintaining high standards of deliberation, facilitation, inclusiveness, information exchange and communication with the participants and wider constituency.

3.3.1 Deliberative

Deliberation is integral, by which we mean: 'deliberation is debate and discussion aimed at producing reasonable, well-informed opinions in which participants are willing to revise preferences in light of discussion, new information, and claims made by fellow participants. Although consensus need not be the ultimate aim of deliberation, and participants are expected to pursue their interests,

an overarching interest in the legitimacy of outcomes (understood as justification to all affected) ideally characterizes deliberation'.

MSPs are rooted in a belief in the value of 'authentic deliberation'[29] between people with different perspectives. In this way, MSPs give privilege to the power of argument, explanation and reason over other types of power. Therefore, it is important to note that stakeholders who do not have language and communication skills can be disadvantaged, unless adequately represented.

"MSPs GIVE PRIVILEGE TO THE POWER OF ARGUMENT, EXPLANATION AND REASON OVER OTHER TYPES OF POWER"

3.3.2 Facilitated

To enable deliberation, good facilitation is an essential characteristic if MSPs are to reach their potential. Ideally in a group of MSP facilitators, there would be a mixture of men and women of varying cultural backgrounds, united by having open minds. These facilitators need to possess a reasonable share of the following traits:

Listener: Ability to listen and create an atmosphere where others will listen (not just talk).

Enabler: Ability to see who is participating and who is not, and to find ways to enable all participants to contribute in an authentic way. This includes stopping any particular individual or group from dominating an MSP.

Linker: Willingness to prepare by thinking through the programme and backgrounds of participants, anticipating what might happen. It is important the facilitator link the steps in the MSP process, maintaining some direction/focus, whilst also being adaptable to the needs of participants.

Respectful: Respect and empathy for different people and the different world views that they hold. This includes respect for different forms of knowledge – engineering, agriculture, ecology, economic, cultural, social, national politics, local villagers.

Energetic: To maintain the enthusiasm of the participants to persist and work through what may be difficult tasks, the facilitator usually requires large reserves of personal energy.

Familiarity with appropriate 'facilitator techniques': There are many techniques to encourage creative expression, such as buzzing, mind mapping, rich pictures. A skilful facilitator can draw on these as components of the MSP method.[30]

"TO ENABLE DELIBERATION, GOOD FACILITATION IS AN ESSENTIAL CHARACTERISTIC"

3.3.3 Inclusive

MSPs should enable representation of a wide range of stakeholders and their disparate interests via a flexible process which may have many different facets. Inclusiveness implies being respectful of diverse ethics, ways of reasoning, world views and priorities of actors.

3.3.4 Informed and communicative

MSPs should use and share the best available information, building the knowledge base. MSP participants should become familiar with other relevant fora, plans, agendas etc. The MSP also needs to communicate effectively with the wider public sphere if it wishes to create and maintain a constituency.

3.4 Desirable MSP content

MSPs are not all the same. Figure 3.4 provides a practical example of a hypothetical MSP which shows a plausible flow from acknowledgement of a concern through to deliberation and agreement on next steps.

MSPs may involve regular meetings between core participants. These might be informal gatherings beside an irrigation canal, next to a wetland, or on the banks of a river. There might also be conferences/discussions open to the wider public, locally hosted field visits, electronic exchanges, government briefings, films, plays, historical texts, testimony, or commissioned research.

Despite differences in the way they are set up and implemented, examples of desirable content can be suggested.

Figure 3.4: Timeframe and sequence of hypothetical MSP [31]

Time frame in months
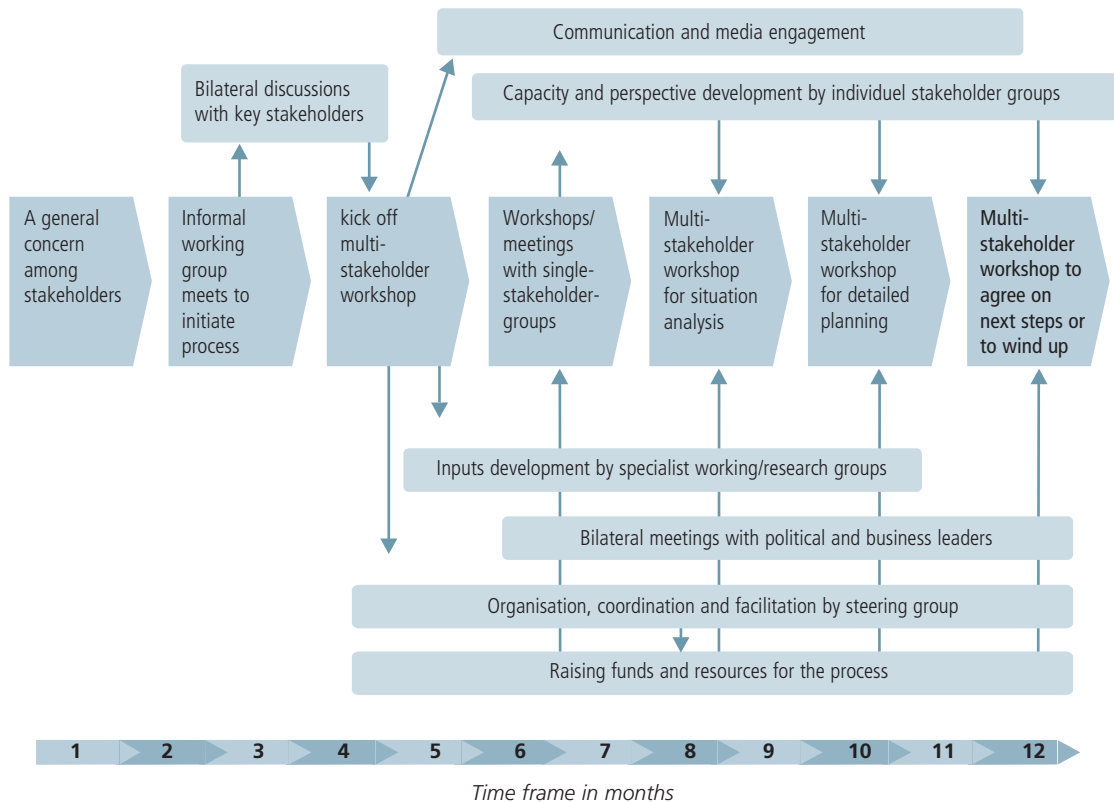
3.4.1 Setting-up

Setting up refers to the practical steps that must be taken in establishing an effective MSP.[32] Essential steps include:
- establishment of an interim MSP steering group
- articulating clear rationale for the MSP
- building a constituency for the MSP
- preliminary examination of the wider MSP context
- assessing potential MSP designs and mandates

Establishment of an interim MSP steering group

There are now hundreds of examples around the world of water-related MSPs. To get going has usually required an interim MSP steering group. Some say 'interim', others 'initial' or 'informal'. Some prefer 'working group' or 'committee' to steering group. It's important, though, not to get hung up at this early stage. The key is to start somewhere. Final convening, management and coordination responsibilities for the MSP are sorted out and adjusted during the setting-up phase (see Case 3.4).

Case 3.4: Improving agricultural knowledge, science and technology

A prominent recent example of an MSP was the International Assessment of Agricultural Science and Technology for Development (IAASTD). This was a five-year process from 2003–2008. Whilst not focused on water, it is nevertheless an excellent example.

In the beginning a Steering Committee of 40 representatives from governments, agencies, industry, farmers and other rural producers, consumers, environmental and other NGOs produced a basic document in August 2003 calling for the International Assessment. They chose to address this question: How can we reduce hunger and poverty, improve rural livelihoods, and facilitate equitable, environmentally, socially and economically sustainable development through the generation, access to, and use of agricultural knowledge, science and technology?

A design process soon followed. The first meeting of the parties (governments), five co-sponsoring UN agencies, the World Bank and civil society representatives took place in 2004. The government representatives (45 countries present) decided to go ahead with the Assessment. They agreed on the content and scope of the Assessment and adopted outlines and procedures, a timetable and a budget of US$ 10.7 million.

The process became a UN inter-governmental process, which means the participating member State representatives made the final decisions and were asked to adopt the final report. The initial Steering Committee morphed into a multi-stakeholder Bureau of 60 representatives of governments (30), civil society (22) and international institutions (8) to oversee the process.

The IAASTD then undertook a comprehensive global assessment that included five more detailed sub-global reports, of the role of agricultural science and technology in development, culminating in a final plenary in Johannesburg in April 2008 at which synthesis reports and summaries for decision makers were presented to all stakeholders.

Articulating clear rationale for the MSP

The need for an MSP has to be explained and accepted before people will agree to invest time and effort. What problems or opportunities will the MSP seek to address? How will an MSP fill a gap, or add value, to the existing efforts being made?

Diverse goals have catalyzed recent local, national, regional and global MSPs, including:
- Bringing some element of public deliberation into decision making about possible links between 37 major rivers across India (see Case 3.6).
- Micro-watershed equitable sharing of irrigation water in the Lingmutey Chu Watershed, Bhutan (see Case 3.7 Companion Modelling).
- Combining maintenance of the character of natural floods with hydropower generation in the negotiation of 'environmental flows' in the Senegal River Basin (see Case 3.9).
- Energy future – using national follow-up to the World Commission on Dams to address controversies about building large dams in Nepal (see Case 3.10).
- Better use and care for ground water in Umatilla County, USA.[33]
- Improving cooperation among interest groups and negotiating a water charter to guide land on water management in the Komadugu Yobe Basin of Lake Chad, northern Nigeria.[34]

"THE NEED FOR AN MSP HAS TO BE EXPLAINED AND ACCEPTED BEFORE PEOPLE WILL AGREE TO INVEST TIME AND EFFORT"

Building a constituency for the MSP

To reach its potential an MSP needs a constituency of diverse supporters. Providing early opportunity for involvement is important. Although people may constructively engage for different reasons, most will want to be convinced that the MSP is a genuine and worthy effort to search for fair and effective ways forward. Building a constituency means building a base of MSP supporters who are committed to engaging in a collective process. It is far more than 'engaging with stakeholders' or undertaking a 'stakeholder analysis' (see section 3.4.2).

"TO REACH ITS POTENTIAL AN MSP NEEDS A CONSTITUENCY OF DIVERSE SUPPORTERS"

Preliminary examination of the wider MSP context

The interim steering group needs to ensure that the wider MSP context is understood. Some call this the 'operating environment' or the wider 'political economy'. It is important to get a basic overview of the present and relevant history, including an initial understanding of the range of perspectives of the MSP stakeholders. This will provide guidance on the areas to be explored in more detail.

Assessing potential MSP operating structures

There are usually various choices for an MSP operating structure which will determine function, legitimacy and credibility. Links to existing authority structures need to be clear. For example, what is to be the link to existing levels of government (if any)? Taking the time to investigate and introduce an appropriate structure is vital.

Assessing MSP designs and mandates

In the words of one expert: 'MSPs, by any other name, are currently 'hot' in the water sector' attracting diverse actors to operate collectively – at least for a time – in a 'weird and wonderful panorama' of different multi-stakeholder processes.[35]
That said, there are many choices for the design of an MSP, which must match the purpose and scope. The design includes operating structures and plans for carrying out the MSP. The setting-up phase is critical in negotiating appropriate designs and mandates, so that the particular MSP can serve the needs of the part of society grappling with a particular issue, hoping to make water governance fairer and more effective via a well-intentioned platform.

3.4.2 Stakeholder analysis

Stakeholder analysis is essential to properly design and implement an MSP. It helps to clarify who to involve in an MSP and in what way. It should provide a foundation and plan for participation throughout the MSP making it easier for stakeholders to engage, be respected, and learn from each other.

MSP drivers – that is, the convenors, or steering group – must agree on criteria for determining stakeholders. For many MSPs, the 4Rs are a useful starting point. What are the benefits and who may be involved in reaping a reward or bearing a cost? What are the risks and who are the voluntary or involuntary risk bearers? Who has or may claim a right to be involved, recognizing that some will always say their 'right to participate' is greater than others? Who has a responsibility to be involved – legal or perhaps because of 'civic duty' – given the insights they possess and may be able to contribute?

List all the people and organizations that might fit the criteria. The list may need to be revisited several times to ensure that all key groups and people are given the opportunity to engage, either directly or via representatives. Allowing stakeholders to self-nominate can also ensure that those with an interest are not excluded. Decisions need to be taken on how best to involve people. It is sensible to hear from all parties likely to be interested in the MSP so as to hear how they think they can be optimally involved in different ways.

Various tools can be used to learn about stakeholders and their relationships, such as: brainstorming, actor mapping, interviews with key informants or producing 'rich pictures' with focus groups.

It can be helpful to make a stakeholder matrix with the stakeholders along one axis and 4Rs criteria along the other (see Table 3.1). In complex situations, it is often the case that there are contesting views. It can help to use the 4Rs to research the roles of different stakeholders in the MSP key issues.

Cross-checking with different people can lessen the risk of oversights or bias. If not too provocative, it can also be useful to prepare preliminary summaries of the influence and authority of different actors. Recognizing the dynamism of actor relationships, it can also help to use the 4Rs to reflect on the power (influence and/or authority of different stakeholders).

Photo 3.1 Dams and Development Dialogue meeting (Nepal).

Table 3.1: Stakeholder analysis using the 4Rs in a hypothetical water project

4Rs ⟶	Rewards: Potential benefits	Risks: Risks voluntarily being taken or involuntarily borne	Rights: Rights claimed	Responsibilities: Formal or informal responsibilities
Stakeholders (Examples) ⬇	*Examples of the rewards, risks, rights and responsibilities which should be explored during stakeholder analysis*			
Locally affected people	• Local rewards need to be assessed. They could include: equitable access to quality water or related resources; compensation for loss of access to resources; cessation or redesign of project with impacts that are too negative.	• May be involuntary risk bearers. Examples include: negative impacts related to reduced quality or quantity of water or ecosystems; threatened livelihood security etc.	• Right to free prior informed consultation. (Right to withhold consent is contested vigorously by State officials). • Right to be made better off, or at least not worse off.	• Recognition of the rights of others to try and improve their lives.
Developer	• Profit from construction or operation of a new facility.	• Construction cost overruns, or unprofitable operation. • Borrowing and investment risks.	• As per authorized contracts.	• Follow the laws. • Full disclosure of all anticipated impacts. • Construction and operation as per agreements.
Expert	• Fees, sometimes future profit share.	• Minimal, except for reputational if shown to be incorrect.	• Right to provide unbiased advice for consideration by decision makers.	• To operate within their fields of expertise, and to provide clear and impartial advice.
NGO representative	• Often negligible, but as with others, this should be examined. Inclusion of issues they feel are important.	• Risk of being marginalized from the political or legal process if not a directly affected person. • Reputational, if seen to be engaging in a less than ideal MSP or of making too great concessions.	• Right to explore, question and present their ideas and opinions.	• Political accountability to their stakeholder constituency.
Financier	• Return on investment.	• Loss of investment.	• To lend within the spaces provided within the law.	• Due diligence, adherence to internal and industry policies, including codes of conduct.
Government official	• Benefits should be restricted to those to be enjoyed by wider citizenry.	• Minimal, except for reputational if shown to support unwise or unfair development.	• To discharge their duties as authorized and employed citizens.	• Adjudicate wisely and fairly, upholding the spirit of just laws and guiding regulations.

3.4.3 Social contract between participants

The social contract is a summary of the rules of engagement in the MSP. A social contract [36] needs to be established between the convenors and all stakeholder representatives, which requires reaching some workable agreement on purpose, scope, political space, resources, time and process so that participants in an MSP understand the roles and responsibilities of all.

Social contracts – which are also usually negotiated – should make the 'participation promise' clear, to lessen the chance of a mismatch between reality and expectations. For example, are stakeholder representatives being invited to:

- Come together primarily to build relationships and share information?
- Set the agenda for subsequent public or private-sector action?
- To brainstorm and problem solve?
- Join a consensus-building initiative?
- To provide recommendations, or to take decisions?

The social contract needs to be unambiguous and documented, such as for the global Hydropower Sustainability Assessment Forum (see Case 3.5).

"THE SOCIAL CONTRACT IS A SUMMARY OF THE RULES OF ENGAGEMENT IN THE MSP"

Case 3.5: The 'social contract' of the Hydropower Sustainability Assessment Forum

In 2004, the International Hydropower Association (IHA) adopted Sustainability Guidelines, followed in 2006 by the adoption of a Sustainability Assessment Protocol (SAP). During 2008–2009, the Hydropower Sustainability Assessment Forum (HSAF)[37] examined whether it is possible to establish a broadly endorsed sustainability assessment tool to measure and guide performance in the hydropower sector, based on the IHA's SAP. The HSAF included on-ground assessments and meetings in USA, Zambia, China, Brazil, Iceland and Turkey. In August 2009 it released its draft Hydropower Sustainability Assessment Protocol (HSAP).

The Forum membership included representatives of developed and developing countries involved in hydropower as well as from the NGO, finance and industry sectors. At the beginning of the Forum, participants signed a Memorandum of Understanding and agreed to detailed 'Communications and Operating Procedures' including, for example, that:

- The HSAF will be transparent, conducted with goodwill, and will search for consensus.
- Where a consensus cannot be reached, the differences will be recorded and acknowledged in all HSAF documentation.
- The HSAF will only use the name and brand of participants in public communication after obtaining their permission.
- The decision on endorsement of the final product will be taken by each participant at the end of the process, after consultation with their respective constituencies.
- Participants reserve the right to withdraw from the MSP during the process. If this action is taken, the withdrawing participant will provide a written explanation to the Chair.

"THE SOCIAL CONTRACT NEEDS TO BE UNAMBIGUOUS AND DOCUMENTED"

3.4.4 Comprehensive assessments

There are many deliberation-support tools that can be helpful when negotiating water-related resource use and further development. It is axiomatic that MSPs should strive to ensure a comprehensive, meaning 'sufficiently thorough', assessment of issues, informed by all stakeholders, and ultimately of use to them all. There is now extensive experience in undertaking MSPs that have a substantial knowledge-assembly, contesting and building component.

Case 3.6: Civil society-led dialogue assessing river-linking schemes in India

River diversions and basin transfers are some of the most contested water issues globally. India's mega Interlinking of Rivers (ILR) project has proposed to provide 173 billion m^3 of water to irrigate 37 million hectares through 31 links in Himalayan and peninsula rivers and associated large dams, reservoirs and canals.

Proponents argue the merits of diverting water from 'surplus' rivers to 'deficit' rivers to increase irrigation and thereby food grain production, mitigate floods and droughts, and reduce regional imbalance in the availability of water. Critics cite the negative ecological, economic and social costs, and argue for more effective ways to address food security.

A coalition of civil society groups, led by the World Wide Fund for Nature (WWF), initiated an MSP in 2003 to comprehensively assess the benefits and risks of the project, and explore alternatives to river linking. An initial working group, including civil society, government representatives, political leaders and media, spent eight months negotiating the set-up of the forum, and especially its members. The resulting 'National Civil Society Committee' (NCSC) was comprised of eminent persons representing diverse views. The NCSC was expected to: generate public debate; facilitate and improve information sharing between civil society and government; make available past knowledge and experience; and generate new knowledge about the project through independent studies.

The NCSC successfully raised public debate on the issue and influenced government to rethink its procedures and actions. Although the establishment of the forum took longer than anticipated, the credibility and legitimacy of the process was largely due to the diversity of perspectives represented and the comprehensiveness of the analysis.[38]

3.4.5 Scenarios

Scenarios are stories that outline possible futures. For complex situations with associated uncertainty, scenario building in an MSP can help all participants think laterally and learn about each others' different interests, values, priorities, assumptions, constraints and options.

Scenario analysis has a history going back to the 1960s in the military and business. In recent times, as both the pace of change and uncertainty has increased, there has been renewed interest in scenario analysis and planning.

The basic principle of scenario planning is to try and understand plausible future trends to help make strategic decisions based on an analysis of the possible consequences. Some form of scenario analysis is highly relevant to many MSPs (see Box 3.2).

Scenarios are an interpretation of the present as well as an image of a possible future. Qualitative scenario storylines should be internally consistent and describe paths from the present to the possible futures. Where data exists, quantitative modelling is a way of making scenarios more explanatory and coherent by making important connections more explicit.

Box 3.2: Steps used in scenario building

Step 1:   Identify driving forces – from whatever source: politics, economics, social or ecological change, technical breakthroughs etc.
Step 2:   Identify predetermined factors – assessing what is inevitable about the future.
Step 3:   Identify critical uncertainties – assessing those areas where the future is uncertain, which can be prioritized according to importance and degree of uncertainty.
Step 4:   Develop scenario storylines – a series of plausible alternative futures.
Step 5:   Assess the implication of different scenarios – for the issue(s), organization(s), place(s) or sector(s) of concern.
Step 6:   Identify and use indicators – to enable continual reassessment and adaptation.

Formats and settings can be experimented with creatively. The Georgia Basin Futures Project, for example, drew on expert knowledge and community inputs to build tools and a game for exploring *what-if*-type scenarios for a basin on the west coast of Canada. Visioning is commonly used in scenario building and decision making, for example by policy makers and youth in Europe,[39] and for much longer by indigenous people grappling with water sharing in the High Atlas mountains and Negev desert.

Role-playing games can also help stakeholders explore each others' perspectives on water management options. Case 3.7 introduces Companion Modelling, which combines role-playing games with computerized modelling to explore scenarios.

Case 3.7: Companion Modelling

Companion Modelling combines role-playing games with computer model simulations to facilitate shared learning and explore scenarios in order to assist with collective decision making.

The approach has been successfully applied to resolve conflict amongst villagers on water allocation for rice irrigation in Bhutan and Thailand. Farmers in the Lingmutey Chu watershed in Bhutan played several sessions of the game to see the outcomes of various water-sharing strategies when applied both within their village and also in a collective approach between villages. Role swapping was particularly effective in building common understanding amongst participants of the situations of other parties.

The computerized multi-agent model allows rapid simulation of a more comprehensive set of scenarios of water-sharing rules. It examines the interactions among different actors (or 'agents') and between these actors

and the common resource to be shared. Researchers and participants can discuss the outcomes of the scenarios, and adapt the model so that scenarios genuinely reflect the on-the-ground situation.

Participants initially engaged in the games as an exercise, but soon realized the power of the tools for joint analysis of complex issues. Plenary discussions amidst the gaming sessions took the deliberations from simulation to reality. Villagers in Bhutan concluded their sessions with a formal agreement on how to allocate water more fairly, including the creation of a water management committee and steps to develop rules and procedures.[40]

Case 3.8: Scenarios in the Millennium Ecosystem Assessment

The Millennium Ecosystem Assessment (MA)[41] assessed the consequences of ecosystem change for human wellbeing. From 2001–2005, the MA involved the work of more than 1,360 experts worldwide. Their findings provide a state-of-the-art scientific appraisal of the condition and trends in the world's ecosystems and the services they provide, as well as the scientific basis for action to conserve and use them sustainably.

The MA Scenarios Working Group considered scenario development as a tool to explore possibilities for the future that cannot be predicted by extrapolation of past and current trends.

The MA considered the possible evolution of ecosystem services during the 21st century by developing four global scenarios exploring plausible future changes in drivers, ecosystems, ecosystem services, and human wellbeing:

• The Global Orchestration scenario depicted a worldwide connected society in which global markets are well developed and where there is a high degree of global cooperation.

• The Order from Strength scenario examined a regionalized and fragmented world preoccupied with security and protection.

• The Adapting Mosaic scenario explored a fragmented world resulting from discredited global institutions, in which local ecosystem management strategies are evolved and adopted by strengthened local institutions.

• The TechnoGarden scenario was characterized by a globally connected world relying strongly on technology and highly managed and often-engineered ecosystems to deliver needed goods and services.

Wetlands and water was a key part of the MA analysis, and many evidence-based key messages were distilled for policy makers. For example, noting and exploring the policy decisions that have to be made involving trade-offs between agricultural production and water quality, land use and biodiversity, water use and aquatic biodiversity, and current water use for irrigation and future agriculture production.

3.4.6 Selective use of tools

There are many tools to support water negotiations, including the previously introduced stakeholder analysis, comprehensive assessments and scenarios. Other tools are explored in companion books to NEGOTIATE, such as FLOW, PAY, SHARE and RULE.[42]

FLOW introduces the user to the essentials of environmental flows. Implementing 'environmental flows' requires establishing water flow regimes which recognize ecosystem needs whilst trying to satisfy social and economic demands (see Case 3.9). FLOW explores how societies define flow requirements, modifications that might be necessary to infrastructure design and operation, finance and incentives, policy and legal frameworks, and the necessity to generate and maintain political momentum. Environmental flows work requires the integration of a range of disciplines including engineering, law, ecology, economy, hydrology, political science and communication. An MSP approach is very suitable for informing the negotiations and decision making about how humans interfere with natural flow regimes.

Case 3.9: Negotiating environmental flows in the Senegal River Basin

Transboundary cooperation in the Senegal River Basin is led by OMVS (The Senegal River Basin Development Organization) which provides a forum for joint efforts by Mali, Mauritania and Senegal (and recently, upstream Guinea) to respond to development challenges while operationalizing integrated water resource management.

In 2002, the OMVS member countries adopted the first-ever River Basin Water Charter in sub-Saharan Africa, which was preceded in 2000 by the establishment of an Observatory of the Environment responsible for monitoring the state of the environment in the basin and impacts of development interventions. The Charter and Observatory were the culmination of a two-decade-long process marked by studies and debates on optimal ways of managing the river waters and investing in major water infrastructure projects.

The objective of the Charter is to provide for efficient allocation of the waters of the Senegal River among many different sectors, such as domestic uses, urban and rural water supply, irrigation and agriculture, hydropower production, navigation, fisheries, while paying attention to minimum stream flows and other environmental matters. It also establishes a process for approving new projects that may have significant impacts on those sectors, based on the provision of information to, and consultation with, all riparian stakeholders including local users.

The Charter drew on comprehensive analysis of the effects of the Diama and Manantali dams and exploration of alternatives to their current operation. The studies revealed the considerable and diverse benefits of the natural flood system – in terms of wetlands, fisheries, agriculture, livestock, forestry and groundwater recharge – benefits which needed to be factored into the operation of the dams and in planning of future development interventions. This was particularly essential since the majority of those affected rely heavily on the exploitation of water-dependent natural resources (traditional agriculture, fisheries, livestock, and exploitation of forest and wetland products).

As a result, the Water Charter includes specific provisions for the release of water from the dams to help restore the floodplains and generate an annual flood, thereby recognizing the value of the floodplain ecosystem and traditional livelihood strategies.[43]

"WORKABLE RECOMMENDATIONS FOR FORWARD ACTION MUST BE SOUGHT"

3.4.7 Action recommendations

MSP content must provide action recommendations. There is no need to manufacture consensus if it cannot be reached, but workable recommendations for forward action must be sought, otherwise the MSP might end up being nothing more than an interesting discussion. If empowered to do so, the MSP might also take and implement decisions, but this is dependent on the extent of the mandate.

The World Commission on Dams (WCD) (see Case 3.10) is an example of an MSP that provided extensive action recommendations, without claiming decision-making authority.

Case 3.10: World Commission on Dams

Don't plan, build, protest, operate, decommission, propose, oppose or discuss a dam without it! By 2000, the world had built 45,000 large dams to irrigate a third of all crops, generate a fifth of all power, control floods in wet times and store water in dry times. Yet, in the last century, large dams also disrupted the ecology of

over half the world's rivers, displaced over 40 million people from their homes and left nations burdened with debt (Earthscan advertizing material promoting the WCD report)

The World Commission on Dams (WCD) was a high-profile MSP which emerged from increasing public criticism of large dams. It aimed to undertake a rigorous, independent review of the development effectiveness of large dams, to assess alternatives and propose practical guidelines for future decision making. The WCD attempted to conduct an ideal, deliberative multi-stakeholder learning process. Government participated, but with the same standing as civil society. There were many actors involved at the local, regional and international level – dam 'practitioners', economists, sociologists, ecologists, political scientists and the media. The process received enormous publicity and international recognition. In its own words it 'provided a unique arena for understanding complex choices facing societies in meeting their water and energy needs'.

The WCD commissioners produced a 'consensus' report, an informed and negotiated contribution, which was launched in a blaze of publicity in 2000, evoking a range of responses.[44] The 'WCD decision-making framework' has since been evaluated for use as both an implementation and advocacy tool. It is complex. The framework includes three grounding global norms, five core values, five key decision points, seven strategic priorities, 33 associated policy principles, and 26 guidelines. The task of trying to figure out how to combine these pieces of advice remains a challenge for post-WCD activity.

Following the release of the WCD report, there were numerous follow-up activities, including MSPs, undertaken around the world. The Dams and Development Dialogue in Nepal[45] is just one example where diverse stakeholders assembled and persisted over several years to explore sensitive large dam issues in the Nepal context.

3.5 Outcomes and impact

There is a suite of desirable outcomes possible from MSPs that successfully manage to read and respond to the context, establish a fair and safe process, and generally display the desirable characteristics outlined in the preceding sections.

In some places, the MSP approach has already become routine behaviour, but in other places an MSP is a new possibility. In an example from Peru, it is claimed that an MSP has provided a positive and 'unprecedented' experience: 'The multi-stakeholder platform is an unprecedented mechanism in the country. Throughout its history, Peru has developed a culture based on confrontation rather than one based on negotiation. Therefore, experiences such as that of Yakunchik imply 'learning to negotiate' after a long tradition of domination, submission and violence'. (The MSP 'Yakunchik', after the Quecha word for 'our water', was established at the end of 1998 in the central highlands of Peru). It was further claimed that: 'As a result of the platform's initiatives, irrigation has been placed on the regional agenda, and has led to the discussion of other issues such as the rural-urban relationship, conflict negotiation, organizational and institutional water management-related problems, and rural development. In other words, the platform is contributing not only to the development of a new social fabric, but also to activating the agenda of regional development'.

There is no attempt here to claim that all MSP experiences have been positive, but lessons have been learned, and there is sufficient evidence from around the world to conclude the following:

- MSPs can lead to the expansion of representation and participation of stakeholders in governance, potentially increasing the legitimacy of public decisions.
- MSPs can provide greater opportunity for discourses and norms to be launched and contested, ensuring that new and old perspectives are examined on their merits.
- MSPs can assist in the recognition and understanding of interdependencies. Societal learning about interdependencies is vital among stakeholders who will often have different values, motivations, perceptions and priorities.[46]

- MSPs enable reflection by representatives of various constituencies, clarification of existing accord and differences among stakeholders, and collective sense making.
- MSPs can help deliberation become routine, enabling complex issues to be more rigorously examined.
- MSPs increase the prospects of negotiations being more informed.
- By providing a pathway for deliberation, MSPs can lead to better decisions, agreements and implementation.

MSPs can be a valuable, collaborative addition to water governance when the issues are complex. It needs to be stressed that MSPs are a complement to other forms of governing, not a replacement, and not a panacea. There is potential for their wider use.

Establishing the link between the policy-informing and decision-searching processes of an MSP, and policy making and decision taking, remains a skilled task. However, by favouring deliberation, MSPs can give people of goodwill a better chance to constructively influence decisions that affect their lives.

Chapter 4 provides guidance on consensus building, an elusive but key element of MSPs. The construction and operation of MSPs, and the pursuit of consensus building, are central pillars of constructive engagement, improving negotiations, and a move towards fairer, more effective water governance.

"MSPs ARE A COMPLEMENT TO OTHER FORMS OF GOVERNING, NOT A REPLACEMENT, AND NOT A PANACEA"

Chapter 4

Consensus Building

4.1 Improving negotiation practice

There are negotiations underway in many parts of the world regarding the management of water resources. These cover allocation decisions as well as the measures that ought to be taken to ensure water quality and availability. Unfortunately, many of these negotiations have not produced fair, efficient, stable or wise agreements.[47] In part, this is because multi-party, multi-issue negotiations, especially those in which scientific and technical uncertainty levels are high, are inherently difficult. It is also because many of the stakeholders and officials involved have not embraced 'best negotiation practices' in the design of their deliberations. This chapter provides advice to the parties involved in on-going water negotiations regarding possible ways of shifting from the hard-bargaining techniques that characterize most (unproductive) negotiations to a consensus-building approach that is likely to be more effective.

To achieve best practice, six key questions need to be addressed:
1) Why is it so hard to reach equitable and sustainable water agreements?
2) What strategies are available to stakeholders and administrators involved in water disputes?
3) When and how should the consensus-building approach be used to make decisions, fashion agreements and implement partnerships?
4) When and how should facilitation or mediation (i.e., the services of 'professional neutrals') be used?
5) What can be done to hold negotiators to the commitments they make?
6) How should organizations involved in water negotiations go about building their negotiating capabilities over time?

4.2 Why the usual approach to water negotiation often fails

Multi-party negotiations in the public arena, within countries or between countries, often fail because the wrong parties are at the table, the process of negotiation is poorly designed and managed, or agreements do not incorporate an adaptive approach to resource management that can respond to changing conditions and scientific uncertainty.

When only high-level elected and appointed officials and not the full range of (self-selected) stakeholder representatives are at the table, negotiations are likely to overlook important information or forego the legitimacy necessary for effective implementation. In an effort to increase the 'manageability' of negotiation processes, public officials often limit the number of parties involved. However, if only a 'blue ribbon committee' of officials is selected, the membership may be insufficient to give adequate attention to the full range of scientific and technical considerations and on-the-ground experience. And, if only technocrats (i.e., appointed technical officials) are involved, agreements are likely to be insufficiently responsive to political or local considerations. Stakeholders, including advocacy groups, community representatives, business leaders, and independent scientific experts all have specialized or 'indigenous' knowledge as well as political sensitivities that are needed

to shape agreements and policies in an appropriately balanced fashion. In addition, unless the full range of relevant stakeholders is represented in developing water agreements, implementation can be much more costly and more difficult, as reluctant or unhappy groups dig in their heels and try to block implementation or keep raising objections to what has already been decided (for example, see Case 4.2 on the Florida Everglades). Only when all the relevant parties have been directly involved will the resulting agreements tap the appropriate knowledge and gain sufficient political credibility to ensure voluntary compliance.

"MULTI-PARTY NEGOTIATIONS IN THE PUBLIC ARENA OFTEN FAIL BECAUSE THE WRONG PARTIES ARE AT THE TABLE"

Most water negotiations consider one issue at a time. This can be a mistake. Often, it is only possible to get agreement when trades across issues occur. That is, unless each group knows that its interests will be served on the issues it deems most important, it is unlikely to respond favourably to requests from other negotiators, even on issues it considers less important. Thus, trading is the key to creating value in negotiations.[48]

Negotiating agendas should be set in a way that guarantees all participants that issues of greatest concern to them will be addressed as part of a package. This will not happen if negotiating fora only take up the most pressing political concern of the day, the most visible resource management emergency, or whatever issue is of greatest concern to the most politically powerful members of the group. The full array of concerns of the whole group needs to be considered together. The group as a whole needs to be involved in shaping a long-term agenda (and sticking to it) and negotiations concerning one issue should not be concluded until a full package of issues has been explored. Taking one issue at a time, as opposed to looking at the connections among issues or trying to 'nest' issues in an interlocking fashion usually yields sub-optimal agreements (or no agreement at all), as illustrated by Case 4.1 on the Danube Basin in Europe.

Case 4.1: Determining the agenda for negotiations on a sustainable water management agreement in the Danube Basin [49]

In the mid-1980s the Danube countries began cooperating to develop a legal basis for joint water management. This culminated in the 1994 Danube River Protection Convention (DRPC).[50] The legacy of mistrust from the Cold War and negotiators' desire to formulate a workable consensual agreement in a reasonable time led to a narrowing of the scope of the agreement. The parties decided to focus on the environmental aspects of water management and issues not addressed by existing agreements, and exclude those issues that were especially contentious or which did not affect the entire basin.

Although successful in many ways, conflicting visions about how the river should be used were not resolved. These differences contributed to the Danube's inclusion in the 2007 WWF list of the World's Top 10 Rivers at Risk due to risks posed by navigation infrastructure.[51] For example, coordination under the International Commission for the Protection of the Danube River (ICPDR, responsible for implementing the 1994 DRPC) could lead to activities directed at floodplain restoration and protection of fish spawning habitat in the same place where cooperation under the separate and older Danube Commission[52] aims to improve the river for navigation, requiring deepening and widening of the river banks. Both of these potential uses are not possible at the same time and in the same location. As a result, some development projects, such as the Bystroe channel through the Danube Delta, have become framed as issues of economic development versus environmental protection. Without a process for developing an integrated vision of the Danube that includes all relevant

participants and addresses all critical issues, these kinds of disputes will escalate as riparians are unable to link issues and create value through trades across their preferences.

The riparians are now in the process of addressing these limitations to cooperation. For example, through ICPDR involvement, the discussion on the Bystroe canal development was broadened to include other participants and issue areas. A multi-stakeholder forum has been created in which national governments can meet together with NGOs to conduct research, share data and develop a shared vision for management of the Delta. Similarly, a forum for cooperation in the international Sava sub-basin has been created under the ICPDR umbrella that enables participants to address a broader array of issues, including navigation, in parallel with sustainable water use. At the basin scale, the ICPDR is trying to address this issue through increased cooperation with the Danube Commission.

Such efforts and the dedicated fora now engage a larger number of stakeholders on a broader range of issues. NGOs can become official observers to the ICPDR and provide input into policy making. For example, the Danube Environment Forum is an observer and coordinates public participation in environmental decision making and sustainable development in the basin. Taken together, this enlarged group of participants works as ambassadors for the process and as intermediaries between the international forum and their governments or organizations, engaging and informing a broadened group of stakeholders on a wide variety of issues.

Water negotiations actually become harder than they need to be when they are framed in zero-sum (win-lose) terms: either one side gets the water it wants or some other party does. This is especially true when convenors do not pay enough attention to getting the right parties to the table, structuring agendas and ground rules properly, and ensuring effective meeting facilitation. In such cases, negotiators may be unable to create 'value' by, for example, linking issues together. If negotiations are framed as choices between 'the environment' winning and sacrificing economic development; or, agreeing to grow the economy while environmental and health concerns are set aside, they will surely become win-lose battles. Groups with the greater political clout will try to piece together a winning majority, while the weaker parties get little or nothing.

"WATER NEGOTIATIONS ACTUALLY BECOME HARDER THAN THEY NEED TO BE WHEN THEY ARE FRAMED IN ZERO-SUM (WIN-LOSE) TERMS"

Opportunities to create mutual gain, that is, to create value by managing common pool resources to the advantage of all, require an entirely different approach. This is as true at the local level as it is internationally. Indeed, when sovereign nations are at the table and the only option is voluntary agreement (because no sovereign nation can be forced to accept terms it finds objectionable), agreements must meet the concerns of all sides or countries will not agree to be bound by them.[53] Similarly, in sub-national negotiations involving different kinds of water actors, all stakeholders need to feel their interests have been addressed. Although the process may be arduous, unless each party feels that at least some of its concerns are met, they will not sign an agreement.

Most water negotiations often pit parties against each other as if there is no way that all can or will gain by managing shared water resources effectively. But mutual gains are, in fact, available if commitments are made to give parties what they want and need (i.e., that meet their interests). For example, through agreements to adopt water conservation measures now, all parties will have more water to meet their (growing) needs in the future. Or, upstream riparians may need a promise that food produced with the water flowing downstream will be available to them before they agree to a deal that lets more water flow to downstream parties. Or, the pricing of water purchased by downstream users may need to go up to ensure upstream parties that they can earn enough to meet all their needs. Water negotiations that aren't focused on such exchanges are likely to fail. Even weak

parties when pushed by politically powerful parties trying to exploit shared water resources unfairly, will find a way to push back. Often, they form coalitions with the political opponents of the most powerful party. Water negotiations that deteriorate into political battles over unrelated matters are also likely to fail.

Likewise, water negotiations that focus solely on who wants what and are not informed by credible scientific and technical analysis or local empirical knowledge will fall short. Information is needed to make considered decisions. If the group hasn't laid out a careful joint fact-finding process in advance of decision making, it is not likely to have the data it needs when decisions must be made. Agreement may be reached, but commitments will quickly erode when it becomes clear that assumptions about how much water will be available or how ecological systems will respond are wrong. Only by setting a systematic agenda, and developing an accompanying data-gathering plan, will informed trades across issues be possible. And, as noted above, only trades across issues can create value; that is, offer an incentive to each party to accept less than its ideal outcome on one issue in exchange for getting what is most important to that party on some other related issue(s).

"INFORMATION IS NEEDED TO MAKE CONSIDERED DECISIONS"

Most negotiation fora don't adopt even the simplest ground rules. Or, if they do, they don't enforce them. For example, if parties are not asked to come 'prepared' and 'ready to commit' (i.e., to have reviewed draft documents with their internal constituencies well ahead of scheduled meetings), negotiations can stretch out interminably. Many negotiation sessions are often given over to speech making rather than to effective problem solving. Written ground rules regarding how meetings will be run are essential and ought to be approved by all parties before any negotiations begin.

Individuals assigned to chair or moderate meetings are often unskilled in the techniques of facilitation. And, rather than pass the baton to someone better able to manage difficult conversations, these same individuals are inclined to hold on to power, thereby undermining the group's effectiveness. Even the obvious need to agree on who will prepare a written summary of each negotiation session is often overlooked. This means that each participant generates his or her own record of what was said, and who promised what. Unless the group develops a 'single text' to which they are all committed, confusion is sure to emerge. What is reported back to constituents needs to accurately reflect what was discussed and what was agreed, even if that is not flattering to all the group representatives.

"A HARD-BARGAINING APPROACH MAY LEAD TO DECISIONS IN THE SHORT TERM, BUT OFTEN PRODUCES LONG-TERM RESULTS THAT ALL PARTIES FIND UNSATISFACTORY"

Thus, a hard-bargaining approach which limits the number of parties involved, addresses only a narrow set of issues (usually one at a time), treats each decision as a formal zero-sum political bargaining game (emphasizing political wins and losses at the expense of collaborative inquiry), may lead to decisions in the short term, but often produces long-term results that all parties find unsatisfactory. In contrast, a consensus-building approach provides tools for overcoming these limitations (Table 4.1).

Table 4.1: Overcoming the limitations of hard bargaining

Limitations of hard bargaining	Merits of consensus building
Wrong parties at the table.	Stakeholders identified through situation assessment or self-selection.
Agenda too narrow and focused on positions – single issues create a win-lose (zero-sum) situation.	Mutual gains created by focusing on interests and trading across multiple issues.
Poor facilitation and management can pit parties against each other and cause negotiations to be inconclusive, or reach unworkable decisions.	A neutral facilitator guides the process to jointly develop the agenda, set ground rules, generate and assess options, and use a single text to reach a workable agreement.
Decisions often taken without credible (or trusted) information.	Joint fact finding and analysis of scientific data and empirical knowledge informs the negotiation.
Objectives are to 'win as much as possible' and reach agreement.	Objectives are to reach a mutually acceptable agreement that all parties can and will implement.

4.3 The consensus-building approach

There is nothing to stop water negotiators from adopting a better approach – one that ensures that all the relevant stakeholders are at the table, that negotiations are managed in a problem-solving (or value-creating) fashion, and that the parties commit to workable and adaptable agreements. Someone in a leadership role within the negotiating group must suggest that something besides the hard-bargaining approach is possible. Others within the group need to understand at least enough about the alternative approach to negotiation to know that they need not give up power if they agree to operate in a consensus-building fashion. The group as a whole needs to commit sufficient time and resources to allow a more effective negotiation process to succeed.

Consensus building is an approach to negotiation that empowers those most concerned about equity while simultaneously responding to the most politically powerful parties' concerns about preserving their prerogatives. This is accomplished by agreeing in the first instance to seek unanimity but settle for overwhelming agreement, as long as every effort has been made to meet the interests of those who express concerns about a nearly final agreement.[54]

Although there are significant differences between local, national and international water negotiations, especially as different regulatory and legal regimes apply, participants in all situations will benefit from using a consensus decision rule. Those parties who are politically less powerful are assured that their interests will be addressed, that they will not be forced to accept something they oppose (the way they might if a majority voting rule were in effect), and that even the most powerful parties at the table have agreed to make a good-faith effort to address their concerns. At the same time, the most politically powerful parties must be assured that they will have the equiva-

lent of a veto as long as they make every effort to meet the interests of all the other parties at the table. Under a majority-rule voting system, the interests of a minority are not protected. Fifty-one percent of the group can force the remaining 49 percent to accept their will. A consensus-building approach, however, protects the minority by avoiding votes and ensuring that the group as a whole accepts responsibility for doing everything it can to meet the interests of all the parties involved. The presence of an experienced and impartial facilitator can be reassuring in this regard. The facilitator (or mediator or moderator, as he or she is sometimes called) holds the parties accountable to their consensus-building commitments.

"A CONSENSUS-BUILDING APPROACH PROTECTS THE MINORITY"

Consensus building can be an especially effective tool for producing fairer and more effective water agreements because this requires both a commitment to take science and empirical knowledge seriously as well as a focus on achieving political accord. Managing for sustainability requires striking a balance between science, local knowledge and politics as well as formulating agreements among contending parties (who must commit to adapting their institutional behaviour). Seeking to build consensus means seeking voluntary agreement (i.e., there is no vote that can force the minority to accept something it does not want). Consensus building is therefore much more likely to produce lasting results that encourage individuals, groups and communities to live up to their commitments. In a consensus-building process that has incorporated joint fact finding and an agenda developed by the group as a whole, it is much more likely that scientific and empirical knowledge will be given its due. A powerful majority cannot force its political preferences on a minority and overlook what the technical or local empirical evidence suggests.

There are six steps in the consensus-building process,[55] as shown in Figure 4.1.

Figure 4.1: Six steps in the consensus-building process [56]
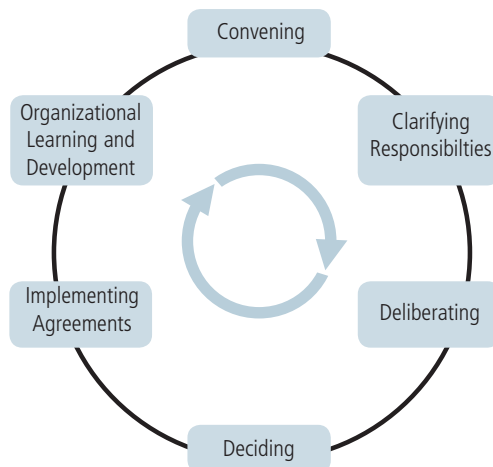
4.3.1 Convening – getting the right parties to the table

Successful water negotiations hinge on getting the right parties to the table. Most of the time, in the conventional hard-bargaining mode, a convening agency assembles the parties it feels ought to be involved. Consensus building, by contrast, usually begins with the preparation of a situation or con-

flict assessment by a professional neutral – someone who is mutually acceptable and who has no stake in the outcome of the negotiation – to identify which stakeholders should be invited to engage. Participant selection for negotiations or other dialogues depends in part on their intended purpose and format:

- When the purpose is to build relationships, share information, clarify areas of agreement and disagreement or to identify possible policy options to recommend to decision makers, participants ought to be selected who can speak primarily on the basis of their personal knowledge and skill.
- When the objective is to plan what should be addressed in negotiations, frame the agenda, or generate an agreement through a consensus-building process, then participants ought to have the capacity to make a commitment (i.e., speak for a certain group) or significantly influence the commitment of a particular constituency.

"SUCCESSFUL WATER NEGOTIATIONS HINGE ON GETTING THE RIGHT PARTIES TO THE TABLE"

However, even when the purpose of a dialogue is known, it is not always obvious who should participate in a negotiation. For example, in the Danube negotiations different countries participated in developing two multinational treaties. Countries that were historically on the main stem of the river participated in the 1948 Belgrade Convention focusing on navigation, which is implemented by the Danube Commission, whereas the Danube River Protection Convention, which came into force in 1998, takes a whole-of-basin approach and involves countries with more than 2000 km^2 in the river basin and the European Union as contracting parties.

Selecting the right participants determines not only if an agreement can be reached, but whether it will be implemented. This is apparent in negotiations within countries, such as early negotiations concerning the management of Florida's Everglades in Case 4.2 in which key water users, such as the sugar industry, and interest groups, such as environmental groups, were not included and subsequently blocked the implementation of the initial agreement.

Case 4.2: A consensus-building process for the restoration of South Florida's Everglades [57]

Natural water flows in the Everglades wetlands of Florida, USA have been altered by federal projects designed to control flooding and drain the land in order to make it suitable for agriculture, such as sugar production, and urban development. Agreements on how to restore ecosystem health that did not respond to the interests of key stakeholders, such as the sugar industry, Native Americans and environmental groups, were delayed by litigation. This led the Florida State government to convene the Governor's Commission for a Sustainable South Florida in 1994.

The Governor's office worked with State agencies to identify potential participants and a Chair, a former Speaker for the State Legislature. They identified key stakeholder groups and effective representatives. Commissioners included over 40 representatives from public interest, environmental, economic and business groups, Native American tribes, and county, city, State and regional agencies. The Chair was assisted by a team of professional neutrals. The broad scope of the mandate – to look at sustainable development, both in its spatial and issue breadth, and stakeholder diversity – was used to move stakeholders beyond disagreements that had prevented agreement in the past on water quality issues. The Commission made an effort to seek consensus from the non-voting participants from the Federal government and also directly cooperated with a parallel Task Force of government agencies. According to State law, the deliberations were open to the public.

This meant that members of the public could attend all meetings and provide input through public comment periods, including sub-committees and ad hoc meetings convened to address difficult issues. Interested parties who were not Commissioners could also become members of working sub-committees and some were explicitly invited to do so.

Although the Chair was appointed by the Governor's initial planning group, the Commissioners accepted his legitimacy based on his impartiality in conducting the meetings. He was accepted because he ensured that all stakeholders were heard, designated representatives from a wide spectrum of interests to lead sub-groups, listened attentively, and demonstrated a sincere commitment to the group and to reaching consensus.

The Chair and facilitators conducted a conflict assessment, but it was ultimately the Commission that decided what issues should be on its agenda, and when and how to divide into smaller sub-committees. The group was able to agree that South Florida was currently 'not sustainable'. It developed a common vision of what long-term sustainability in the Everglades could mean and agreed that the water management regime would have to be modified to get to what they envisioned. Sub-committees worked on specific issues, presented drafts to the plenary of its in-progress document highlighting recommendations as well as topics on which its members still disagreed.

The Commission convened scientific advisory sub-committees to address controversial technical issues, especially matters about which there was considerable uncertainty. Membership was open to anyone who was interested and a report was prepared for the plenary to use. Some uncertainties could not be resolved and the Commission decided to move ahead with an adaptive management approach, establishing a monitoring programme and evaluating contingent options.

The facilitators introduced a single text technique and prioritization processes that helped the Commission negotiate a final Initial Report. After a year and a half of meetings, the Commission unanimously adopted this report. Afterwards, the Commission continued cooperating with federal agencies to develop a Comprehensive Ecosystem Restoration Plan (CERP) and identify how to prioritize and fund projects. At the end of the Commission's mandate, representatives from both environmental interests and the sugar industry lobbied the government to implement CERP. In the end, the Commission's recommendations were incorporated into CERP and into new legislation. Relationships built through participation in the Commission are still generally good and stakeholders continue to be involved in public participation efforts linked to CERP implementation.

Deciding whose interests should be considered can also extend to parties who do not currently wish to participate but who may have an interest in joining cooperative efforts in the future. In Case 4.5 on the Mekong River Basin, the four countries in the lower part of the basin – Cambodia, Lao PDR, Viet Nam and Thailand – negotiated the 1995 Mekong Agreement on water management. This treaty could be relevant for the entire basin and accommodate the interests of non-participating countries in the upper part of the basin, China and Myanmar, should they wish to join in the future. One participant observed:

'When we started the negotiations of the 1995 Mekong Agreement in early 1993, all four countries concurred that the contents of the agreement should be as equally fair and applicable to all riparians, even though two were not participating....Everyone acknowledged that planning and implementing sustainable development could only be successfully undertaken if you took into consideration the entire basin area and impacts, even though the two upper riparians were not members. It was discussed and well understood that those two countries could participate in the MRC,[58] and the 1995 Mekong Agreement made provision for their eventually joining the MRC.'[59]

The negotiating countries strove to make the Agreement inclusive by basing it on universally acceptable principles of international law and placing no prejudice on other riparians not party to the original agreement.[60] Similarly in the Volta Basin, the Code of Conduct signed by Burkina Faso

and Ghana includes explicit provisions to promote its adoption by other riparian states (see Case 5.3 in Chapter 5).

An assessment for the purpose of bringing the right parties to the table can be prepared as follows:

1. At the behest of a preliminary set of parties (the convenors of the negotiation), a neutral facilitator contacts various 'circles' of potential stakeholders to interview them on a confidential and not-for-attribution basis. In the first circle are the obvious players who have expressed an interest in being involved. When the facilitator interviews these individuals, he or she asks for their recommendations regarding other possible stakeholder groups to interview. This leads to a second, larger circle of contacts. The convenor also publicizes the fact that the assessment is underway. Groups that want to step forward can contact the facilitator directly. This group constitutes the third circle.
2. Based on all these interviews, the facilitator maps the situation, preparing a report identifying the most important categories of stakeholders and highlighting their key concerns. This is done without quoting any individual. This 'map' is sent to everyone interviewed so they can ascertain whether the issues they raised are adequately addressed.
3. Once all the parties have responded, the facilitator proposes a design for the consensus-building process based on the results of the assessment. That is, the facilitator proposes a list of the stakeholder groups that should be invited to caucus and select a representative to be part of the negotiations. In addition, the process design includes a proposed agenda, ground rules, work plan (including joint fact-finding priorities), and a budget. This, too, is sent to everyone interviewed for their comments.
4. Based on their reactions the facilitator either recommends that a consensus-building process (that the group has designed) proceed or not. At this point, the decision to go ahead is up to the convenor(s).

"ONCE THE PARTIES ARE AT THE TABLE IN CONSENSUS-BUILDING MODE, IT IS ESSENTIAL THEY REVIEW, FACE-TO-FACE, WHAT THEIR ROLES AND RESPONSIBILITIES WILL BE"

4.3.2 Clarifying responsibilities – roles, agenda, ground rules

Once the parties are at the table in consensus-building mode, it is essential they review, face-to-face, what their roles and responsibilities will be. The group as a whole, when it assembles for the first time, must approve the selection of the facilitator or chair as well as the agenda, work plan, budget, ground rules and joint fact-finding procedures. Despite any individual biases, facilitators should be able to provide impartial assistance to participants. If participants have persistent concerns about the neutral's impartiality, they should be able to engage a different facilitator.

For example, the Executive Agent of the Secretariat facilitated interactions between participants of the Interim Mekong Committee. However, some of the riparians became convinced that he and the Secretariat had lost their neutrality. They therefore excluded the Secretariat from negotiations toward a new agreement. Instead, UNDP took a more active role, assuming the Secretariat's facilitating role, convening a new meeting and eventually contracting with an acceptable mediator. Because they were perceived as neutral by all parties, UNDP and the mediator were able to move the discussion beyond a cooperation impasse and then through negotiations towards a new agreement that would address the parties' critical issues.

The group may ask the facilitator to prepare meeting summaries or designate one of its members to do so. They may select a group leader or chair to represent the process to the world at large, although this task is sometimes assigned to the facilitator. Finally, before they begin, they may decide that some category of stakeholders is inadequately represented and agree to reach out to additional individuals or groups to augment the parties at the negotiation table. For groups that have limited experience in negotiations, the facilitator, or another third party, may build their capacity to prepare for and engage in the process, as seen in Case 4.3 in Peru.

Case 4.3: Joint design of the negotiation process between BHP Billiton and affected communities over the Tintaya mine, Peru

A conflict between BHP Billiton and communities living near the Tintaya mine in Peru has centred on control and management of natural resources (expropriation of land), social and economic impact on communities (human rights violations, inadequate economic opportunities) and environmental impacts (to water and land). A series of dialogues was undertaken between 2001 and 2004 to bring the key parties together to negotiate the resolution of long-standing grievances and develop a more constructive relationship between communities and the mining company. In addition to representatives of the mining company and five neighbouring communities, the multi-stakeholder process involved national and international NGOs (National and Regional Coordinating Committees of Communities Affected by Mining (CONACAMI and CORECAMI Cusco), CooperAccion, Oxfam America and the Oxfam-Community Aid Abroad Mining Ombudsman's Office in Australia) who helped to facilitate the process and strengthen the capacity of the indigenous communities to adequately prepare for and engage in the negotiations.

The MSP involved a series of stages to jointly develop the agenda and inclusive process for the negotiations, build trust, undertake joint studies to build shared understanding of the grievances, and negotiate a set of commitments.

A draft agreement was written by a core committee representing all stakeholders and validated and amended through workshops with a wide number of representatives of the communities, company and NGOs where it was reviewed line by line. The final text was presented and approved in general assemblies in each of the five communities and signed by all parties.

The agreement addressed all grievances: it compensated community members with land (above and beyond what had been appropriated) together with technical assistance to help develop new livelihood opportunities; it formed an environmental oversight programme where community members played a key role in on-going monitoring of the company's compliance with measures to reduce or mitigate environmental impacts; it formed a working group to oversee the company's compliance with compensating confirmed victims of human rights violations and for assessing new allegations; it outlined steps to create and fund sustainable development plans to support medium and long-term development in affected communities; and committed the company to secure prior informed consent for future mining activities on new land.

A multi-stakeholder Coordination and Follow-Up Committee was given the responsibility to implement and oversee the agreement. All parties committed to continue to use the dialogue tables to address and resolve emerging difficulties. The participants acknowledged that while the dialogues and resulting agreement had greatly transformed the relationships amongst the previously conflicting parties, a true collaborative relationship depends on the effective and timely implementation of commitments and on-going engagement to resolve emerging issues. Achieving this transformation will require constant efforts to overcome the asymmetries of power that characterize relations between corporations and communities.

Consensus-building efforts only make sense if the participants involved make an on-going effort to stay in touch with the constituencies they ostensibly represent. For some groups this is easy – they have well established internal communication mechanisms. For other groups, it is much harder. This

is especially true for an *ad hoc* network of individuals or organizations cobbled together for the purpose of participating in a consensus-building effort. Such groups may need help from the facilitator to establish channels for regular interaction. The participants are often asked to initial the ground rules spelling out the obligations of participants to maintain contact with the 'constituencies' they are expected to speak 'for' or speak 'like'.

4.3.3 Deliberating – joint investigations, discussions, learning

Because many water ecosystems are complex and it may be difficult to assess current conditions, much less develop a shared vision for how they should function, negotiating parties typically engage in joint fact finding to inform their discussions. If participants know they want to cooperate but are unwilling to enter into negotiations towards an official agreement because they do not have enough information, they may start by creating mechanisms to collect data jointly.

> ## "NEGOTIATING PARTIES TYPICALLY ENGAGE IN JOINT FACT FINDING TO INFORM THEIR DISCUSSIONS"

The data-gathering activities of the Danube countries in the mid-1980s and of the Mekong Committee, mostly in the 1960s–1980s, show how countries can learn to work together at a technical level. In Case 4.3, community groups and NGOs worked with the mining company to define and undertake joint fact finding on key issues, prior to negotiating the action required. Similarly in Nepal, representatives from both pro- and anti-dam groups undertook a series of studies to jointly investigate the state of Nepal's hydropower experience as an initial step to developing a set of country-specific guidelines based on the WCD report. The experience of working collectively, as well as the data collected, can build confidence that an agreement can be reached that will protect participants' interests.

If participants can officially agree on common principles, they may decide to postpone technical matters for later official implementing agencies to handle. The Danube nations decided on this approach, initially creating a framework agreement and leaving specific water quality standards to be dealt with on the agenda of the commission they established, the ICPDR. In this case, parties may need to establish data-collecting mechanisms that will provide joint information to inform subsequent decisions. So-called 'third parties' can play an important role in financing these mechanisms and building needed technical and professional capacity. However, as the Danube riparians learned before they generated joint official data, unless all participants agree on how data are to be gathered, the information generated may not be accepted and useful later.

Participants may also be able to incorporate joint fact finding into on-going consensus-building negotiations. As described in the Mekong case, third parties can also help keep negotiations moving forward. When the four negotiating states reached an 'impasse' UNDP sponsored an informal consultation that led to each country reiterating its interest in cooperating. UNDP's active involvement by convening meetings, funding the Senior Advisor (neutral) and covering the costs of national delegates' participation was critical in moving the negotiations towards their eventual success in drafting a framework agreement.

As in the Florida Everglades case, with the help of a neutral facilitator, the group might begin by reviewing the interests of each of the stakeholder groups. Together, the stakeholders then usually decide what kinds of data are relevant and needed. Stakeholders work together to design studies and strategies for obtaining data, analyzing them, and creating forecasts that can inform consensus decisions. In order to meet the needs of different kinds of stakeholders, data often take a variety

of forms, such as technical studies from numerous disciplines as well as local or indigenous knowledge (i.e., things that people living in an area know that experts from outside might miss entirely). Consensus-building groups sometimes agree to invite a range of outside experts to present technical briefings, often highlighting disagreements about methods or assumptions. Technical sub-committees may be assigned to produce background reports for the group. Panels of experts may be assigned to help bring some members of the group up-to-speed on various technical considerations.

Once fact finding has been completed, the group typically engages in a brainstorming process. Informed by the results of joint fact finding, the goal is to invent options and packages that respond to the concerns of all the parties. Various tools can be used to assist participants in assessing options and reaching decision, as illustrated in Case 4.4 on water-use planning in British Columbia, Canada. Based on full group discussions as well as caucuses of various kinds, the neutral prepares a negotiating text that the group can review line by line. For some negotiations, this can involve simultaneous review of texts in multiple languages. Sometimes, if the group is large, there are on-line decision-making aids that can be used to clarify possible choices and the ways in which different participants rate them. Similarly, web-based tools can be used to allow participants to interact between meetings with their constituents and share detailed reactions to complex negotiating texts.

> ## *"THE GOAL IS TO INVENT OPTIONS AND PACKAGES THAT RESPOND TO THE CONCERNS OF ALL THE PARTIES"*

Case 4.4: Structured decision making in water-use planning in British Columbia, Canada [61]

The structured decision-making process of British Columbia's Water-Use Planning initiative highlights how a deliberative process can unfold and depicts some of the group decision-making tools available. BC Hydro, regulators and a wide range of stakeholders, including local citizens, aboriginal representatives, environmental interests, resource users, governments and regulatory agencies, worked to identify specific issues for joint fact finding through technical sub-committees. Together, the group created a road map for a process through which they could voice and examine claims, explore trade-offs and the implications of alternatives, and search for new mutually acceptable alternatives.

They were helped by specific decision-making tools: (1) objective hierarchies enabled all participants to contribute to identifying priorities and establishing criteria for evaluating alternatives; (2) influence diagrams helped participants use different techniques to explore the consequences of various alternatives, and to identify areas where mutually compatible gains were possible and where trade-offs remained; (3) ranking and weighting of trade-offs brought out value-based differences among stakeholders. Through this process, participants developed water-use recommendations that were linked to mechanisms for implementation. Finally, the process followed through with monitoring, capacity building, and a review of on-going policies to continue social learning and adaptive water management.

4.3.4 Deciding – negotiating fairer and effective agreements

Complex water negotiations may take months or even years to resolve. Consensus building works best when a group sets an agenda (and a timetable) and sticks with it. A large group might schedule monthly meetings for six or eight months after an organizational session (at which the agenda and timetable were approved) and before a final meeting to sign an agreed-upon text. Between monthly meetings, sub-committees or caucuses might convene with the assistance of a facilitator to prepare

statements or reports for the full group. Building in sufficient time is essential to create the space for mutual gains to be identified and trading across preferences to occur, as seen in Case 4.5 on the Mekong Agreement.

_*"COMPLEX WATER NEGOTIATIONS MAY TAKE MONTHS OR EVEN YEARS TO RESOLVE"*

Case 4.5: Trading across preferences in the Mekong River Basin [62]

In the Mekong negotiations, the four lower riparians reached an agreement for sustainable water resource use and development, and established the Mekong River Commission (MRC). In the context of other articles in the 1995 Mekong Agreement, they agreed to a package including the principle of reasonable and equitable utilization (Article 5). In particular, the countries wanted a flexible agreement that could adapt to future conditions but be specific enough to ensure that their interests were met on each one's priority concerns.

Thailand, initially concerned that other countries might try to veto proposed developments, advanced the position that each riparian should unilaterally be able to use tributary waters within its territory without the approval of the other riparians. Viet Nam, in agreement with Cambodia and Laos, was very concerned about maintaining flow levels in the mainstream during the dry season and advanced the position that the use of water from the mainstream should be agreed upon by a joint technical committee before any water was diverted. In negotiations, Viet Nam suggested '…expressly recognizing that such consultation is not a right of veto by any riparian' in subsequent iterations of the text for Article 5. Although this wording was eventually deemed unnecessary, it was an effort to address Thailand's concern through reassurances that none of the principles of cooperation would be used to veto any country's reasonable use of its rightful share of Mekong waters. The countries tentatively agreed in principle on the requirements for water use during the wet season in the tributaries and the mainstream, pending resolution of conditions on water use from the mainstream during the dry season. Article 6 of the Agreement details requirements for maintaining base flows on the mainstream, including during the dry season. In Article 26 the negotiating parties address the institutional framework and specify how the MRC Joint Committee would develop Rules for Water Utilization and Inter-Basin Diversions. The Rules include assurances that notification of proposed uses will provide sufficient time for planning before the onset of the dry season. They also stipulate improved monitoring through hydrological stations and mechanisms for monitoring intra-basin use and inter-basin diversions from the mainstream.

These points can be considered part of the package that made Article 5, including conditions for water use from the mainstream during the dry season, acceptable to the parties. The package the countries eventually accepted builds on differences in the location (tributary or mainstream), kind of use (inter- or intra-basin), timing (wet or dry season) and type of procedural requirements (ranging from notification to prior consultation to specific agreement). While requiring agreement only for inter-basin dry season diversions, the text also incorporates flexibility into the agreement by creating a provision under which the MRC Joint Committee can unanimously decide such agreement is not necessary. Although these details represent significant movement on the part of all parties from their initial positions, taken together they met each party's issues of greatest concern. This is the kind of trading across preferences that can create value for negotiating parties.

At various stages, the facilitator might take 'straw votes' to test levels of support or opposition to particular ideas or packages. But no one should be asked to commit to anything until a full text of an agreement has been distributed and each representative can check back with his or her constituents (in whatever way makes sense for that group). When it appears that an agreement has general support, the facilitator will ask, 'Who can't live with this package?' At that point, those who object

are usually asked to suggest 'improvements' that will make the package acceptable to them without making it worse for anyone who is already on board. Note that the facilitator does not ask whether everyone 'is in favour of the agreement'. When asked whether they can 'live with' the agreement each participant is being asked to compare the package to no agreement at all,[63] Once a draft agreement is formulated, each participant in a consensus-building process expects the others to check with all relevant stakeholders to be sure that they can, indeed, live with what is being proposed. Then, the negotiating group should come together one last time to 'ratify' the written agreement they have developed, often signing a statement committing the participants, if not their constituents, to work on behalf of the agreement and to support it publicly. In the case of binding international agreements, there are established procedures for signature and ratification.

When an authority, such as a regulatory agency or government body retains the right, indeed, the responsibility to make a final decision regarding negotiations, it is often necessary to submit what has been worked out in an *ad hoc* forum to formal administrative review. At that time, the informally negotiated agreement is presented to the relevant decision makers as a proposal for their consideration, (the neutral may present the agreement on behalf of the full group), not as a final decision. Participants may be asked to testify at follow-up hearings. An inclusive consensus-building process can generate proposals that decision makers can act on with confidence that their decision and later implementation will be supported by all relevant parties. Alternatively, decision makers usually feel obliged to offer convincing reasons should they have chosen to depart from the participants' proposal.

Before they are done, participants typically spell out the steps they think will be involved in implementing an informally negotiated agreement. The goal in a consensus-building process is to design 'nearly self-enforcing agreements'.[64] Ideally, a negotiated agreement will include a variety of contingent commitments that specify what the group's preference is under various sets of future circumstances. This is a way of dealing with scientific or political uncertainty. The negotiated agreement also ought to include a dispute-resolution clause. That is, for agreements to be nearly self-enforcing, provisions should be included that spell out how one party can raise concerns if it thinks that the others are not doing what they promised or, for whatever reason, it no longer feels it can complete all the tasks it promised to complete. Before the whole agreement unravels, the facilitator may be called upon to reassemble the original participants and try to work out a modified set of commitments.

> ### *"THE GOAL IN A CONSENSUS-BUILDING PROCESS IS TO DESIGN 'NEARLY SELF-ENFORCING AGREEMENTS'"*

4.3.5 Implementing agreements – holding parties to their commitment

By the time a negotiated agreement is signed (and before it is sent to a formal convening agency if required for final action) participants ought to have discussed how they expect it to be implemented. As in the Danube and Nigeria cases, participants may want to create carefully calibrated monitoring strategies (see Case 4.6) and develop regular schedules for reporting and meeting to share and evaluate results. Data that are collected, shared, analyzed and compiled through a transparent process are more likely to be accepted and considered legitimate. Regular meetings provide an opportunity for participants to reconvene and reconsider their agreement as well as any contingent provisions that are relevant in light of new data or changes in the basin. Sharing and discussing monitoring results can also build participants' confidence that others are meeting their obligations. When participants are unable to meet their obligations despite good-faith efforts, it may be necessary to make financial

or technical support available. At a minimum, participants should make plans for on-going communication, cooperation and coordination. In some cases, this will involve creating some permanent body to assist the parties to the agreement.

*"BY THE TIME A NEGOTIATED AGREEMENT IS SIGNED …
PARTICIPANTS OUGHT TO HAVE DISCUSSED HOW THEY EXPECT IT
TO BE IMPLEMENTED"*

Case 4.6: Implementation considerations of the Komadugu Yobe Basin Water Charter in Nigeria [65]

Nigeria has developed a Water Charter through a participatory process for the Komadugu Yobe Basin (KYB), a sub-basin of the international Lake Chad Basin.[66] The Water Charter specifically addresses the roles of different stakeholders in implementing the agreement as well as future mechanisms for cooperation among them. These include regular meetings, details about procedures for cooperating, and obligations for monitoring. The Charter includes institutional mechanisms for implementation that include the kinds of management bodies that are needed, their mandate and rules about their membership. It also details arrangements for funding implementation and how those funds will be administered. In the event of a dispute, the Charter specifies that the signatories (six Nigerian states and the federal government) first try to resolve their differences amicably amongst themselves. If they cannot, they are committed to refer their dispute to either the National Council of States or the Supreme Court of Nigeria, depending on whether the disagreement is between States or between a State and the federal government. Recognizing the international nature of the basin, the Charter refers disputes between the federal government and other riparian nations to the dispute-settlement mechanisms in the Nigeria-Niger Joint Commission and the Lake Chad Basin Commission Convention.

4.3.6 Organizational learning – adaptive management and building capacity

While most efforts to negotiate specific agreements end with the step listed above, on-going advisory committees or certain negotiating fora may convene on a continuing basis, via an assigned or created implementing organization. This is the case in the Mekong where the parties did not want a static agreement or formula for dividing water resources. Instead, the Mekong River Commission created a process that enables the parties to make water-sharing decisions based on changing conditions. The 1995 Mekong Agreement stipulates that the Rules (or Procedures) for Water Utilization may change based on hydrological conditions, such as drought, flooding, or water surpluses during the dry season:

The idea and expectations were to provide a broad and flexible framework of principles, objectives and institutional structure so that as different issues took on priority, the Council, [Joint Committee (JC)] and Secretariat could adjust and adapt to the new needs. That is why the agreement calls for rules or procedures by the Council and JC and allows for rule/procedure making by them so that they don't have to go back and get government approval or amend the agreement.

The Danube countries built similar flexibility for technical working groups and rule making into their framework agreement for sustainable and equitable water management.

Photo 4.1 Fishing in the Hadeja-Nguru wetlands. Wetland restoration is supported by the Komadugu Yobe Trust Fund as part of the Catchment Management Plan negotiated by stakeholders (Nigeria).

"ON-GOING ADVISORY COMMITTEES OR CERTAIN NEGOTIATING FORA MAY CONVENE ON A CONTINUING BASIS"

The wish to create an adaptive institutional framework that can address future issues that are not yet clear relies heavily on monitoring that provides data to on-going planning and decision-making meetings in which future policies can be revised. Participants in the Everglades negotiations decided to proceed in a step-wise manner and to view each policy intervention as an experiment that would provide information to inform subsequent actions. They therefore collaboratively developed a schedule and prioritized projects for incremental implementation. In this way the parties have recognized the scientific uncertainty about ecosystem dynamics, acknowledging that they didn't know what would happen as the ecosystem moved back to more natural hydrological conditions. Due to the spatial and temporal scales and complexity of the Everglades, scientists and resource managers have not been able to fully implement field experiments. Nevertheless, they have pursued an adaptive management strategy characterized by a focus on the learning process through monitoring and use of models to test scenarios that inform on-going decision making.

When this is the case, it is also important for all the stakeholders involved to spend at least some time together reflecting on how their negotiations have worked out and what they should learn from their experience, including from instances when consensus-building efforts fall short of expectation or meet serious barriers (see Box 4.1). This kind of social learning or capacity building is sometimes supplemented with further training in the techniques of group decision making. It would be a pity not to do everything possible to help each group improve its efforts if it is going to engage in on-going problem solving. All too often though, *ad hoc* negotiations, even those undertaken by advisory committees that will continue to interact, are seen as independent episodes and the opportunities for organizational development are lost.[67]

Box 4.1: Beware the pitfalls of adhocracy

The potential downside of consensus building is quite visible, especially where many agencies commit to 'collaborate' in a consensus-building style, but then violate the most important precepts of collaborative problem solving.

First, convenors sometimes 'hand pick' the stakeholder representatives they want at the table; i.e., rather than relying on a situation or conflict assessment prepared by a neutral, some convenors select the representatives they prefer.

Second, they do not always rely on professional neutrals to manage the consensus-building process; or if they do, the convenors independently select a facilitator without giving the participants a hand in selecting a facilitator they prefer (or giving the parties control over the continued payment of the neutral).

Third, some agencies focus on discussion rather than the preparation of a written agreement that all sides can endorse and sign. Thus, there is dialogue but no clear consensus generated by the stakeholders involved and no commitment to implement what has been negotiated.

A process that violates these fundamental precepts of best practice is seriously flawed. It may be more 'participatory' than traditional hard bargaining, and it may include more extensive and transparent deliberations than many win-lose negotiations conducted behind closed doors by a handful of stakeholders, but it does not meet the minimum standards of consensus building. In these instances, consensus building is used as a smokescreen, giving traditional hard-bargaining approaches the appearance of being more collaborative. There is a range of negotiating strategies available in water negotiations, extending from hard bargaining among a small group, to somewhat more participatory and transparent dialogue that ends with a vote in which the majority decides what will happen or the imposition of a decision by the agency-in-charge, to a consensus-building process that is more inclusive and aims to achieve a workable agreement through joint fact finding, facilitated problem solving and the techniques of consensus building.

The key question remains, is it possible to move in the direction of consensus building without shifting entirely away from the hard-bargaining approach? Or, is some participation by a limited set of stakeholders better than no participation at all? This is a choice that only those directly involved in each water negotiation must make. The barriers to consensus building, especially in places that have never operated in this way, can be substantial. The powerful parties will see any attempt to do things in a new and different way as a threat to their authority. They may misunderstand the role a neutral facilitator is supposed to play. The transparency and accountability that flow from joint fact finding may constitute a threat. And, finally, in many parts of the world short-term political concerns trump long-term considerations.

The argument is not that different from the debate over democratizing the operation of government in places that have traditionally been run autocratically. Is it better to have a 'little' democracy rather than none at all? Many believe that some participation of stakeholders in water negotiations is better than none at all. But those in positions of authority should not be permitted to claim that they are engaging in consensus building if they are not.

4.4 Advice to water agreement negotiators

For water negotiators who want to move away from traditional hard bargaining toward a consensus-building approach, there are a series of steps that can be taken. Each follows from the analysis above:

1) *Pay attention to process.*

- Although it may seem expedient to cut procedural corners, this often leads to delays or increased financial exposure caused by subsequent political and legal challenges or failed

implementation. By paying attention to the process of consultation, ensuring that the right parties are at the table in the first place (and are empowered to speak for their constituents), participants and decision-making authorities can generate fairer and more sustainable agreements that strike an effective balance between science and politics.

- Any decision about whether to adopt a consensus-building approach ought to be preceded by a situation or conflict assessment. An assessment maps out the stakeholders, their interests regarding the main issues, and may propose a design for the consensus-building process.
- A consensus-building process should seek to offer parties with differing interests and values a chance to produce agreements that are better for all of them than their 'no-agreement' alternatives. Consensus is reached when 'joint gains' have been thoroughly explored, and explicit efforts have been made to meet the needs of all parties – though parties are never asked to give up pursuit of their own self-interest.
- Consensus does not require unanimity, i.e., that all parties agree. It does, however, require that all parties will do their best to meet not only their own interests, but the interests of others as well.

2) *Commit to use neutral services. It is easier to hold parties to their agreements if the group as a whole has engaged the services of a neutral mediator/facilitator and adopted explicit ground rules.*

- A trained neutral, or mediator, is needed to manage group problem solving. The convenor or any other party with a stake in the outcome should not be in charge of the dialogue. There are a great many skilled professional neutrals operating around the world. Any negotiating group that wants a facilitator or mediator should be able to find someone qualified to assist.
- One responsibility of a professional neutral is to remind the stakeholders throughout a consensus-building process of the procedural commitments they have voluntarily made. As an unbiased party, the neutral has the legitimacy to keep participants on track and discussions constructive. Indeed, the reason for asking participants to sign a set of ground rules they have helped to draft is to give the neutral the authority to act on the group's behalf to rein in any participants who fail to abide by the norms the group has established.

3) *Consensus building can only work when stakeholders self-identify and 'own' the design of the collaborative process. Expand the number of parties involved and find ways to include 'unofficials'.*

- Stakeholders need to be able to help design the process in which they will be involved so they are confident that it is in their interest to participate. At a minimum, the first time they meet face to face they should formally adopt ground rules and agree on an agenda and timetable. They can revise these as necessary throughout the process.
- Unless all the key stakeholders support the results of a negotiation, implementation of common-pool resource agreements will be exceedingly difficult. Voluntary compliance reduces the difficulties of overseeing implementation, and 'compliance without enforcement' is much less expensive. The only way to get voluntary compliance is through direct participation by all relevant stakeholder groups. Some categories of stakeholders are best represented by individuals who have no other official responsibilities. This may mean that official representatives from one group will have to sit with individuals who don't have the same 'standing' as they do. Nevertheless, it is in everyone's interest to proceed in such a fashion.

4) *Share information about interests and look at packages of options to find ways to create mutual gains.*

Multi-issue, multi-party science-intensive negotiations are complex:
- Energy should be focused on sharing information about priorities and what each participant thinks are unacceptable outcomes.
- In order to be able to prioritize interests, participants need to be well prepared. They should know their 'Best Alternative to a Negotiated Agreement' (BATNA) and use it to evaluate all proposed agreements or packages generated by the group.
- By looking at packages of options covering all the issues in a negotiation, participants can offer to support something that they care less about, in exchange for 'getting' what they want on the issues they care most about. If possible, participants should look at several packages at the same time to understand why players prefer one package over another.

5) *Understand that any agreement will only be useful for a limited period and you will only get things partially right. It is almost always better to pursue an adaptive management approach in seeking to resolve water disputes or set water management policy, then to try to lay out a long-term comprehensive solution.*

- Support your arguments with the best data available. However, there is a lack of skill and knowledge to model most complex ecosystems with much precision. Thus, the assumptions upon which most negotiated water agreements are based are, at best, approximations.
- Given that the ability to model these systems is so limited, it makes sense to accept agreements as approximations and build into them contingent elements, provisions for on-going monitoring, and detailed arrangements for reconvening to update or fine-tune as new information becomes available.
- If contingent agreements are used, the parties need to have a clear understanding of how they will come into play at critical moments.

6) *Ask parties to sign the written agreement they have helped to craft.*

- The act of signing or ratifying a negotiated agreement is an important signal to the public that a legitimate accord has been reached.

7) *Don't neglect to link an informally negotiated agreement to whatever formal actions are needed by those in positions of authority to ensure its implementation.*

It is inappropriate to substitute adhocracy for representative democracy. Nevertheless, consensus-building efforts can generate proposals that elected and appointed officials may prefer because all the relevant parties have clearly supported them. If negotiated agreements are ultimately brushed aside with little concern for the effort that has gone into generating them, it is highly unlikely that stakeholders will participate in such efforts in the future (or re-elect the public officials who act in such a cavalier fashion). Confidence in government will erode if those in positions of authority don't offer convincing reasons to explain why they have decided to set aside the consensus proposals that have been put before them.

8) *Commit to capacity building (and organizational development) over time.*

All too often, subsequent rounds of negotiations get increasingly difficult. This is usually because little or no effort is made to learn from what happens during earlier rounds or to make the necessary organizational development efforts required to enhance working relationships in the future.

Agreements

5.1 Outcomes from constructive engagement

Constructive engagement can lead to fairer and more effective decisions about how water is allocated, used and managed. The most tangible direct product of a negotiation is an agreement that clearly captures the decisions reached and outlines the steps for its implementation. There are many different types of agreements that can apply at various scales and levels – from local to international, from wells to micro-watersheds to river basins – and between a diversity of actors.

"CONSTRUCTIVE ENGAGEMENT CAN LEAD TO FAIRER AND MORE EFFECTIVE DECISIONS ABOUT HOW WATER IS ALLOCATED, USED AND MANAGED"

Translating the agreement into action is at the heart of effecting change, and requires on-going commitment. Stakeholders must continue to work together to reflect on the fairness and effectiveness of implementation, resolve new differences and enhance cooperation. Negotiation about complex water allocation and management issues is an on-going process.

Finalizing and implementing an agreement are important results of negotiations, but not the only outcomes. The less tangible results – improved relationships, enhancing understanding and better processes for deliberation and decision making – are essential to enhancing water governance in the long run. These outcomes may start to appear long before an agreement is reached, and last long after a specific agreement is signed and enacted.

Where MSPs do not lead to a formal agreement, these other outcomes can still be highly influential in the way water resources are allocated and managed. With the door to participation by wider groups of actors opened, understanding of the perspectives of other stakeholders can improve, for example, on the 4Rs of rewards, risks, rights and responsibilities related to water. A key motivator for people to engage in MSPs is to be heard – to have their issues valued and their ideas respected – so as to inform and shape negotiations and constructively influence decisions. More trusting and respectful relationships can result, enabling differences to be raised and addressed more fairly and effectively. This can open up the space for more creative exploration of options, and ideally more equitable water decision making.

"MORE TRUSTING AND RESPECTFUL RELATIONSHIPS CAN RESULT"

Managing MSPs, consensus building and other negotiation processes so they effect real change means paying attention to how an agreement is finalized – and particularly its content, coherence with the existing legal and policy framework, and enactment. For MSPs that aim to shape and inform external water negotiations, participants need to consider how best to capture the decisions from their dialogue – be they specific recommendations, analysis of options or issues for consideration –

and effectively influence the relevant decision makers. Finally, water actors should consider what can be done to build on the momentum created during constructive engagement to influence water decision making and governance more broadly.

5.2 Understanding water agreements

5.2.1 What are water agreements?

An 'agreement' is the direct tangible product of negotiation that captures joint decisions and intentions. There are *many types* of water agreements: policies, laws, charters, codes of conduct, contracts or other agreements to manage and allocate water. Agreements can be formal or informal, legally binding or voluntary, verbal or written.

Water agreements are negotiated at *many scales and levels*: for example international conventions, river basin treaties, national laws and strategies, State or provincial regulations, watershed or catchment plans, and local agreements to manage or allocate water.

Water agreements include *different intents and degrees of authority*: some focus more on principles, guidelines or frameworks of cooperation, others specify the legally binding means to manage and use water or settle disputes.

Water agreements involve many *different actors* – State and non-State – in terms of who influences its development, who is a party or signatory, and who it affects.

Agreements are used to capture joint decisions and intentions on a wide range of issues related to water resource use, allocation and management. Such decisions can be reflected in a new water policy or law, in the establishment of a mechanism to manage waters, allocate them among different users and different uses, regulate shared water resources, or settle water disputes. They may address water issues in general, or apply to specific sectors or water uses, such as to electricity, water transfers, or agriculture.

Not all policies, laws or rules are the product of constructive engagement. However, to be legitimate – and ideally fair and effective – water resource agreements about complex allocation and management should be informed and shaped by processes where the range of interests are genuinely represented and deliberated.

"AN AGREEMENT IS THE DIRECT TANGIBLE PRODUCT OF NEGOTIATION"

5.2.2 Benefits of formalizing agreements

There are many reasons why it is worth the effort to capture the decisions from negotiations in a formal, signed document.

Agreements make public and explicit the goodwill of the parties involved in a negotiation to reach fairer and more effective use of water and care for water-related resources. A water agreement secures commitments from the parties, be they governments, corporations, civil society organizations (CSOs) or individuals.

Agreements bring more certainty and more transparency to expected rewards, risks, rights and responsibilities. They provide a clear framework for verifying implementation. Good agreements include clear steps to address future differences, inadequate implementation of the agreements, or breaches of them. The clearer the agreement, the less its provisions will be contested and the greater its legal strength in terms of its binding and enforcing effects.

The value of formalizing an agreement is highlighted by a case from Bhutan. Farmers in seven villages participated in role-playing exercises to help resolve long-standing conflicts over water sharing for rice irrigation. At the end of one of the exercises, farmers agreed on a fairer means for allocating water. However, during the subsequent planting season, upstream farmers failed to release water as per their verbal agreement. When confronted, the upstream farmers claimed they wanted a written, signed agreement. A further workshop was convened, during which farmers agreed to create a new committee to regulate the management of watershed resources. The constitution and bylaws for the watershed management committee were developed during the following months and signed by representatives from all villages.[68]

"AGREEMENTS MAKE PUBLIC AND EXPLICIT THE GOODWILL OF THE PARTIES INVOLVED IN A NEGOTIATION"

Agreements that result from inclusive and deliberative negotiation processes can be smoother to implement and avoid the setbacks and associated costs and time that can occur when people feel they have not been heard. This was seen in the Florida Everglades (case 4.2), where stakeholders who felt their interests had not been met used litigation to block a proposed Act. The agreement reached during the subsequent consensus-building process was used to develop the Comprehensive Ecosystem Restoration Plan. Resistance was even more dramatic during the Bolivian 'Water Wars' where conflict was violent prior to a turn towards constructive engagement. This constructive, deliberative shift eventually resulted in new 'water for irrigation' legislation being presented to and unanimously passed through the Bolivian parliament.[69]

5.2.3 Determining the agreement focus

Water agreements can take many forms, address a wide range of water and related issues and govern the behaviour of many kinds of actors. It is important that from the outset of negotiations, water actors should be clear on what type of agreement is sought. Determining the most suitable type of agreement can be done by asking a series of questions about issues, authority and influence, scales and levels, and actors. This will guide stakeholders on what type of agreement is required, for example a policy, law, charter or code of conduct, contract or other allocation and management arrangement.

"WATER AGREEMENTS CAN TAKE MANY FORMS"

Issues

The starting point when developing an agreement (or planning an MSP or negotiation) is the issues or problems that will be addressed. Why is an agreement desired? What will it achieve?

Agreements can span all water-related issues. They may be intended to provide strategic policy directions for water use in general such as Brazil's 1997 Water Law, or for a particular sector such as energy.

Agreements can map out the basis for cooperation between States on shared waters, such as the 1994 Danube River Protection Convention,[70] or specify institutional arrangements for water management as in the 1997 regulations that established the Tarim Basin Water Resources Commission in China.[71] Agreements can provide broad guidance on good practice in a particular sector as do the

2004 IHA Sustainability Guidelines [72] – that by 2010 have evolved into a Hydropower Sustainability Assessment Protocol – or address a range of land and water management behaviour as does the 2006 Volta Basin Code of Conduct in West Africa (see Case 5.3). They can specify mechanisms to allocate and manage water such as the 1987 Murray-Darling Basin Water Sharing Agreement.[73] Their time-frame may be long as in the Umatilla Sub-Basin 2050 Water Management Plan in Oregon USA,[74] or resolve a specific dispute as with the Community Mine Continuation Agreements in PNG (see Case 2.3).

All stakeholders engaged in creating an agreement need a common and specific understanding of its purpose.

"AGREEMENTS CAN SPAN ALL WATER-RELATED ISSUES"

Authority and influence

A second issue to consider is the degree of authority. This relates to whether an agreement is meant to influence through principles, guidelines or recommendations, or to serve as the authority by setting laws or specific rules.

Many agreements are guiding in nature, in that they set out broad policies or recommended actions. Parties are typically held accountable through peer or public pressure. Many international conventions aim to influence global behaviour, and States are responsible for enacting laws and programmes to implement them. Similarly, codes of conduct or charters set principles for specific members or signatories, for example transnational financiers in the case of the Equator Principles,[75] or institutions and individuals living within the Komadugu Yobe Basin (KYB) in Nigeria for the KYB Water Charter.[76]

Other agreements are very specific, and detail actions, rights and responsibilities. Many of these agreements are enforceable by law (traditional or conventional), and take the form of contracts, regulations or bilateral treaties.

Scales and levels

It is important to clarify the appropriate scale and level for the agreement. Scales are most often thought of spatially – what physical boundary or territory will be subject to the agreement. There can be administrative, hydrological or ecological scales. It may also be useful to consider the temporal scale of an MSP or agreement, and levels within them (Chapter 3). Scales and levels are important as they clarify the boundary for the agreement and, as a result, suggest key actors. Yet care must be taken so as not to exclude actors, issues or territory. Water-related MSPs and agreements may be purposefully cross-scale or cross-level to accommodate differences between administrative and hydrological scales for example.

Whilst acknowledging that there can be cross-scale and cross-level interactions, identifying the dominant territorial level of an agreement – local, national (and sub-national), international (and regional) or transnational – is one useful method to distinguish different types of agreement (see below and Table 5.1).

"IT IS IMPORTANT TO CLARIFY THE APPROPRIATE SCALE AND LEVEL FOR THE AGREEMENT"

Local

Local agreements govern behaviour at a specific location within a nation-state. They can apply to an administrative unit (municipality, district, village etc.), such as the 2006 Douglas Shire Water

Quality Improvement Plan in nothern Queensland, Australia or the contract between local authorities and women's groups for water system maintenance in Gujarat, India.[77] They can also be developed for a specific lake or watershed, as seen in the efforts of communities in Guatemala and Mexico to move towards integrated management of micro-watersheds near the Tacaná volcano.[78]

Some MSPs and negotiations target local governance processes and provide an important means of influencing more sustainable and equitable water management and use. Case 5.6 later in this chapter outlines the steps taken by community groups and NGOs to influence district policy in India.

National

National agreements apply within a single nation-state, governing the behaviour of citizens and others operating within a country. They include policies and laws at the various levels of jurisdiction that might exist in any country – national, provincial, etc. – as well as agreements that are specific to a river basin, watershed, lake or aquifer that fall entirely within a State such as Australia's Great Artesian Basin Strategic Management Plan. While some negotiations focus on the development or amendment of a specific policy or law, in many countries water-related reform occurs in a more comprehensive manner. As outlined in the IUCN toolkit RULE, reforms of policies, laws and institutions build a national water governance capacity. RULE provides detailed guidance on developing and implementing water governance reform processes. For example, in South Africa, substantial systemic overhauls created new policies and laws, and the institutions and processes to implement them (see case 5.1).

Case 5.1: Comprehensive water reform in South Africa

After the creation of the new South Africa in the mid 1990s, water issues were among many that were overhauled. Early negotiations produced a list of 28 'fundamental principles and objectives' for a new national water law. A national water policy was adopted by cabinet in 1997, and subsequently the National Water Act 1998 was drafted and adopted. This basic framework has since been enhanced by a National Water Resources Strategy, the first edition of which was finalized in September 2004. More detail is being added in each step – policy to law to management of implementation at different levels and scales. Further progress has seen the adoption of provincial water sector plans, such as in Mpumulanga Province in 2006. The point is that a package of agreements is required in South Africa (as in any other country), and at each stage various styles of negotiation become important.

A notable achievement in these reforms has been to specify how principles of decentralized and collaborative management of water and water resources will be put into practice. The National Water Act recognizes the importance of involving civil society, the private sector and industry in the management of water resources. It specifies the establishment of stakeholder participatory river basin management institutions such as the catchment management agencies, catchment management fora and water user associations. Catchments have become the primary units for negotiation over water resources management, and catchment management fora in particular have become river basin-wide institutional spaces where emergent representational possibilities and participatory action could shape new institutional forms and programmes. These fora address local interests and allow poor community members to participate more effectively in the management of water resources, as seen in the Kat River Valley Forum.[79]

International

International agreements are agreements between States, governing the behaviour of State actors. These include global, regional, multilateral and bilateral agreements, such as UN declarations of principles, conventions and treaties. There are examples of international agreements that govern

the behaviour of States in their entire jurisdiction such as the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1992), as well as agreements for specific transboundary basins, aquifers and lakes such as that to launch the Nile Basin Initiative in 1999,[80] and another to guide water-facility sharing for inter-State use of the Chu and Talas waters signed by the governments of Kazakhstan and Kyrgyzstan in 2000.

Regional water agreements are also increasingly being negotiated, such as the European Union Water Directive 2000, the Inter-American water cooperation agreement (2006) and a protocol to guide the Southern Africa Development Community (SADC) whose members share many rivers.

Transnational

Transnational agreements transcend nation states, and govern the behaviour of transnational actors wherever they operate. The critical feature of these agreements is that they focus on the behaviour of non-State actors, be they institutions or individuals, who commit to abide by the content. The role of individual countries, or the governments of these States, is not central.

Transnational actors come in many shapes and forms:
- NGOs such as WWF and International Rivers.
- Industry bodies such as the World Business Council on Sustainable Development (WBCSD), the International Water Resources Association (IWRA), and the International Hydropower Association (IHA).
- Financiers of development, including individual banks or international financing institutions.
- International organizations working on water such as the World Water Council (WWC), International Water Management Institute (IWMI) and IUCN.

Many transnational agreements are codes of conducts that set guidelines for behaviour. These are generally not legally binding and compliance can be more difficult to assess or enforce as it is done through peer or public pressure. Transnational water-related agreements also include the strategies, policies and programmes developed by non-State actors which guide their actions globally.

Actors and parties

The key questions from the perspective of formulating an agreement are who will sign and therefore be accountable, and who will be governed. Although many actors may participate in an MSP, the signatories will depend on the type of agreement.

Most international agreements and national policy and law are signed by State representatives. Transnational agreements are typically signed by specific transnational actors. Charters and codes of conduct can be signed by a range of actors, as can contracts and other allocation and management agreements.

Being clear on who will sign the agreement will guide actors in determining who needs to be engaged in negotiations, and how to design the process. However, when remembering the broader process of constructive engagement, MSP stakeholders can still negotiate and sign a set of recommendations aimed at informing decision making by external authorities.

"THE KEY QUESTIONS FROM THE PERSPECTIVE OF FORMULATING AN AGREEMENT ARE WHO WILL BE ACCOUNTABLE AND WHO WILL BE GOVERNED"

5.3 Types of agreements

Agreements can be broadly classified into policy, law, charters and codes, contracts and other allocation and management arrangements. These are broad categories with some overlap. The

language of agreements, and in particular law and policy, can be very confusing especially when operating in multiple languages. The same type of agreement can be called several things, depending on the actors involved and the legal and political context. The point is to be clear on what the agreement is intended to do, and how it will influence or govern behaviour, and not overfocus on its title. Types of agreements are summarized in Table 5.1. (see pages 86 and 87)

5.3.1 Policy

Policy sets out the general principles, objectives and strategic priorities that guide a government or organization in the management of its affairs. Policies are created at all levels of government and by other institutions. They are developed at all scales and levels, including documents to guide global practice. Although policy documents may be the responsibility of a single institution, they can be influenced by multiple actors.

There are many words associated with policy such as declarations, strategies, strategic plans and visions. Water policies (and strategies, plans, visions) provide the guiding framework for water-related care, use and management.

In Australia, the Great Artesian Basin Strategic Management Plan (2000), for example, set the strategic policies for managing the transboundary, multi-jurisdictional basin and laid the framework for more specific local plans, such as Queensland's Water Resource (Great Artesian) Plan (2006).

Negotiations between the governments of Algeria, Libya and Tunisia led to a joint Ministerial declaration in 2005 to establish a more formal institutional means of coordination and management for the Northwestern Sahara Aquifer System (better known as SASS, its French acronym), one of the first of its kind for transboundary aquifers.[81] While they may be limited in detail, such agreements can be important milestones in building understanding and trust, and therefore lay the foundation for more specific agreements in the future.

5.3.2 Law

Law transforms policy into operating rules. In most cases, policies are developed first, followed by laws which are usually more specific and action-oriented. However this is not a hard-and-fast rule as policy-type documents can also be developed together with procedures and regulations to implement law (see Case 5.1) There are many terms associated with law, and differences between them can be quite subtle. In general, conventions, treaties and accords are laws signed by several countries. The terms act, bill, statute, decree, regulation and procedure refer most commonly to national (or sub-national) legislation and their implementing rules.

5.3.3 Charters and codes of conduct

Charters and codes of conduct are typically used to establish a set of shared principles or guidelines that will guide the behaviour of a set of actors. They vary in their detail – from mapping out broad cooperation to specifying behaviours and actions that parties will abide by. The KYB Water Charter in Nigeria, for example, includes specific responsibilities and rules for land and water use and management in a particular basin in a single country (see Case 4.6 in Chapter 4).

Charters and codes can be location-specific and apply to all individuals or institutions in a given area, as is the case for the KYB Water Charter in Nigeria, the Volta Basin Code of Conduct (see Case 5.3) or the Fraser Basin Charter for Sustainability.[82]

Alternatively, they can focus on specific actors regardless of where they operate, such as the Hydropower Sustainability Assessment Protocol or the Equator Principles which apply to financiers of development.

Table 5.1: Types and examples of agreements

AGREEMENT TYPE	LOCAL	NATIONAL/SUB-NATIONAL	INTERNATIONAL	TRANSNATIONAL
Scope	Agreements governing behaviour at a specific location within a nation state. Can apply to an administrative unit (municipality, village etc) or a specific lake, watershed etc. Can be state-issued or an agreement between multiple parties (State and non-State).	Agreements within a nation state governing the behaviour of citizens and others operating there. Can apply to an administrative unit (nation, province etc) or a specific riverbasin, lake, aquifer etc. Can be state-issued or an agreement between multiple parties (State and non-State).	Global, regional or bilateral agreements between nation states, governing the behaviour of State actors in their entire jurisdiction. Agreements for transboundary basins, aquifers, lakes. Some non-State actors might be signatories.	Agreements which transcend nation states, governing the behaviour of transnational actors wherever they operate.
Policy Sets out general principles, objectives and strategic priorities that provide a guiding framework. Terms: policies, strategies, strategic plans, visions, declarations Key actor: State or non-State	Strategies and policies of local authorities (municipal, village etc.) or for local water bodies such as: • Long Term Vision for the estuary of the river Scheldt in Europe • Micro-watershed plans developed by communities in the Tacana volcano area of Mexico and Guatemala	National and sub-national policies and strategic plans for: • Water as a whole (e.g. South Africa National Water Policy 1997, Mpumulanga provincial water plan 2006) • A sector (e.g. Vietnam's Power Development Plans) • A specific water body within a country (e.g. Great Artesian Basin Strategic Management Plan 2000 in Australia between the member states that share the transboundary aquifer • Issues that impact water (such as climate change)	Global or regional statements that offer guiding principles such as: • Dublin Statement 1992 • Helsinki Water Rules 1966 • Berlin Water Rules 2004 • Inter-American water cooperation agreement 2006 • Southern Africa revised shared waters protocol (SADC) 2000 Policies or strategic plans for transboundary basins such as the Consultation Mechanism established for the Northwestern Sahara Aquifer System in Africa 2002	Strategies & policies of transnational water actors such as: • World Water Council • World Business Council on Sustainable Development • WWF (World Wide Fund for Nature)
Law Transform policy into specific operating rules. Terms: conventions, treaties and accords (multi-country): acts, bills, statutes, decrees, regulations (national legislation and regulations). Key actor: State	Municipal, town and village regulations such as: • The Watershed Management By-laws signed by Bhutanese farmers • The Statutory Regulations to manage water resources of the White Volta Sub-Basin signed by local governors in bordering areas of Ghana and Burkina Faso	National & sub-national laws & regulations for: • Water as a whole (e.g. South Africa National Water Act 1998) • A specific sector (e.g. Bolivia's 2004 irrigation law) • A specific water body within a country (e.g. China's 1997 Regulations to manage the Tarim Basin or Australia's 1985 Murray-Darling Basin Agreement)	Global & Regional conventions and treaties: • Ramsar Convention 1971 • Convention on the Protection and Use of Transboundary Watercourses and International Lakes 1992 • International Watercourses Convention 1997 • EU Water Directive 2000 • Mekong Agreement 1995	

AGREEMENT TYPE	LOCAL	NATIONAL/SUB-NATIONAL	INTERNATIONAL	TRANSNATIONAL
Charters and Codes of Conduct Establishes intent to cooperate or abide by shared principles or guidelines Terms: Water Charters, Codes of Conduct, Guidelines, Principles Key Actors: Multiple State and non-State		Examples: • Komadugu Yobe Basin Water Charter (for Nigeria) • Fraser Basin Charter for Sustainability 1997	Examples: • Volta Basin Water Code of Conduct • Agreement to frame and guide the Nile Basin Initiative	Examples: • Equator Principles regulating the lending processes of financiers. Sustainability Guidelines of the International Hydropower Association • China's 2007 Forest Sector Guidelines for Chinese companies operating outside China's borders
Contracts Agreements that are binding under contract law Key Actors: State and non-State	Public Private Partnerships such as Nam Theun 2, a build-own-operate-transfer hydroelectric project in Lao PDR. Contract between women's groups and municipal authorities in Gujurat, India for water system maintenance.	Contract between governments and power utilities to supply electricity.	Bilateral agreements to sell water (e.g. between Malaysia & Singapore, or Lesotho & South Africa). Various water-sharing agreements between USA, Canada and Mexico.	
Other allocation & Management agreements Other water sharing agreements Programmes & plans that guide action. Key Actors: State and non-State	Examples: • Chagga furrow system, Tanzania, • Impact & benefit agreements (e.g. between communities and the national government for the Ok Tedi Mine in Papua New Guinea) • 'Land for Labour' agreement in the Gambia between landless women and landowners • Programs, plans & budget allocations of local authorities (e.g. Douglas Shire Water Quality Improvement Plan 2006 in Australia)	Example: Murray Darling Basin cap on surface water extractions introduced in 1995	Example: Cooperation agreement between Kazakhstan & Kyrgyzstan on man-agement of facilities on the Chu and Talas transboundary rivers 2006	Programs and plans of transnational water actors from industry, NGOs etc.

In China, the Beijing-based Global Environment Institute (GEI), the University of International Business and Economics, and the Chinese Academy for Environmental Planning collaborated with government officials to develop a code of conduct for the forestry sector for Chinese enterprises operating outside China. The code was signed in 2007 by the Ministry of Commerce and the State Forest Administration and requires Chinese companies to adhere to the laws of the countries in which they operate, even if those laws are being only loosely followed by other forestry actors. Chinese companies now risk being in violation of Chinese law in addition to the law of countries hosting their activities. This may be a powerful deterrent to destructive business practices. Buoyed by the potential of the forestry sector guideline, another has been negotiated in 2008 aimed at improving the behaviour of Chinese companies operating around the world in other sectors, including energy and water. The negotiating parties again include Chinese NGOs, academia, government officials and business representatives.

"CHARTERS AND CODES OF CONDUCT ARE TYPICALLY USED TO ESTABLISH A SET OF SHARED PRINCIPLES OR GUIDELINES"

Charters and codes can be developed and adopted by a set of common stakeholders, as was the case for the Equator Principles and the original IHA Sustainability Guidelines, or be the product of a more multi-stakeholder process. In Canada, for example, a set of recommendations was developed based on the National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries. The roundtables were convened by the Government of Canada, and a multi-stakeholder advisory group, composed of representatives of Canadian industry and civil society, negotiated and signed a set of recommendations that aim to reduce the considerable potential negative social and environmental effects of the mining, oil and gas sectors in developing countries, and more equitably distribute its benefits. The recommendations include proposed CSR guidelines including standards, reporting and compliance mechanisms.

5.3.4 Contracts

Contracts are legally binding agreements that specify water allocation and management. They occur at multiple scales and involve a diversity of actors. Contracts are enforced through national contract law or international law.

"CONTRACTS ARE LEGALLY BINDING AGREEMENTS THAT SPECIFY WATER ALLOCATION AND MANAGEMENT"

National and sub-national authorities typically sign contracts with hydropower operators to supply electricity. Local authorities may use contracts to maintain village water systems, as is the case in western India where women's groups were hired to maintain water pumps.

Bilateral contracts can specify water sales or assurance of supply within or between countries. Examples of the latter include contracts between Malaysia and Singapore, Lesotho and South Africa, Canada and the USA.

Public-Private Partnerships are another example of contracts. The Nam Theun 2, Laos' largest hydropower project, is an example of a build-own-operate-transfer scheme. A private company owned by a consortium of international State-owned and private power companies will transfer the project facilities to the government after its construction and operation for 25 years.

5.3.5 Other allocation and management agreements

A final category includes other agreements that govern the allocation and management of water. They can involve various combinations of State and non-State actors. These types of agreements are commonly enabled by policy and law, and document specific operating rules, set forth programmes or workplans, or are used to resolve a dispute.

The 1987 Murray-Darling Basin Agreement, for example, is a water-sharing agreement between Australia's Federal government and five State/territory members. It is the largest integrated catchment management programme in the world, covering an area of over one million km². The agreement sets out the objectives, functions and composition of the new institutions and the procedures to be followed for improving natural resource management, water distribution, asset management and financial disbursements. The Murray-Darling Basin Initiative, as it is known, is also a partnership between State and communities. The organizational structure has changed during its first 20 years. For a period it included a Community Advisory Committee who advised the Ministerial Council from a community viewpoint on critical natural resource management issues including indigenous issues. More recently, in 2008, the Murray-Darling Basin Commission has been transformed into the Murray-Darling Basin Authority, with various shifts in power, in an on-going institutional experiment searching for sustainability. Although the troubles of the Murray-Darling Basin remain huge, and are worsening, after 20 years the agreement remains a key reference point for deliberations and decision making.[83]

Many local agreements fall under this category. Some are formal written agreements such as the agreement between farmers in Bhutan to manage watershed resources collectively, or the Memorandum of Agreement described in Chapter 2 between the government-operated Ok Tedi mine, affected communities and other stakeholders in PNG. The Memorandum captured the agreements of an 18-month review of Community Mine Continuation Agreements. They secured community consent for the on-going operation of the controversial mine, on the condition of adequate compensation to affected communities and the creation of a foundation to support new sustainable development actions (see Case 2.3).

Other agreements are less formal and can even be verbal. This does not necessarily translate into ambiguity or less rigour in implementation, as seen in Case 5.2 of the centuries-old furrow water management system established by the Chagga people of Tanzania.

Case 5.2: The locally negotiated nuances of furrow water management in Tanzania

The Chagga people of Tanzania are renowned for having established and maintained the Chagga furrow water management system, which has survived in some places for centuries and remains important in the Kilimanjaro highlands. The open furrow system continues to provide water for drinking and irrigation and is an important backup when new piped systems sometimes fail to deliver due to either poor maintenance or drought.

Detailed and site-specific water management rules were negotiated in the Chagga system to maintain the quality of water and to regulate its distribution. In one village where water is abundant, for example, the only limitation on using furrows is that the water is reserved for drinking between 5 and 6 a.m. In other areas, water is allocated to different villagers on different days of the week. In one upstream village, there are seasonal restrictions, so that downstream farmers can irrigate their fields.

Furrow management has survived Tanzania's post-independence period with many of its main features intact. The water is still largely managed locally through elected furrow leaders and furrow councils, some covering several villages. Since 1982 local authorities have been formally empowered (or re-empowered) to deal with breaches against local bylaws. This has given furrow managers greater authority to ensure compliance.

5.4 Formulating agreements

Once there is clarity on the most appropriate type of agreement for a specific negotiation, attention shifts to how to formulate the agreement. This involves three topics:
- ensuring coherence with the existing legal and policy framework
- determining the content
- steps needed to finalize and enact the agreement

5.4.1 Ensuring legal and policy coherence

Agreements at all levels must be developed in the context of the existing policy and legal framework. Without coherence with wider policies and laws, agreements are likely to be unworkable and a source of dispute rather than contributing to better water governance. To achieve coherence, it is critical that negotiators understand the implications of existing frameworks for a new agreement. A review of relevant policies and law is therefore a vital first step in the process of formulating a new water agreement.

Such a review must examine the legal framework that governs an agreement. As the IUCN toolkit RULE details, this framework encompasses international treaties and national laws which are legally binding, and 'soft law' agreements that are more difficult to enforce but represent commitments by governments and can offer useful guidance on best practice. Each is relevant to negotiations at both international level and within States, because they are obligations that a new agreement must not contradict if it is to be workable.

"AGREEMENTS AT ALL LEVELS MUST BE DEVELOPED IN THE CONTEXT OF THE EXISTING POLICY AND LEGAL FRAMEWORK"

There is now a developing body of global inter-governmental agreements with implications for water policy and law that need to be taken into account. Examples include:
- Dublin Principles, 1992
- Convention on the Law of Non-Navigational Uses of International Watercourses (International Watercourses Convention), 1997
- Millennium Declaration and Millennium Development Goals, 2000
- Johannesburg Plan of Implementation, 2002

At national and sub-national levels, a review is needed of laws and policies in all sectors relevant to an agreement. For water-related agreements, this means examining legislation and policies with direct application to water, for example, a national water law or water resources development strategy. It is vital, however, that the review extends to water-related components of law and policy applying to other sectors and issues, including agriculture, forest, land, climate change, environment, energy and hydropower.

Agreements thus do not operate in isolation. They must be developed while being cognizant of existing agreements and commitments, including those made in other sectors. Achieving coherence among agreements requires on-going analysis, negotiation and amendments. Agreements influence subsequent agreements, both in terms of their content and the process used.

5.4.2 Agreement content

While there is no blueprint or template, agreements should exhibit some core features, regardless of their type. The clearer the agreement, the more effective its implementation and more likely it is to achieve the desired outcomes.

A good agreement should define and describe:

Scope

What issues are to be addressed? Where does the agreement apply and whose behaviour does it govern? What are the rewards, risks, rights and responsibilities of all parties and those affected by the agreement?

The scope can cover geography, actors and issues. As demonstrated by the diversity of examples in this book, water agreements span a range of issues, places and people. The specificity and detail will depend on the intent of the agreement.

Governance mechanisms

How will the agreement be implemented in practice? Who has what responsibility? When and how will parties interact during implementation?

The roles and responsibilities of all actors regarding the governance of the agreement should be stipulated. An existing institution may be selected to manage the implementation of the agreement, or a new institution could be formed. Agreements are often used to create new water management bodies, such as a river basin organization or commission. There may be separate bodies created for policy decisions, implementation or advice (for example with community representatives or technical specialists).

Financing

Who will pay for the implementation of the agreement, including monitoring and learning? How will this financing be administered?

All agreements require funding of some sort – even those not focused on action require funding for parties to continue to meet to monitor the implementation of their agreement or to take it forward. Unclear funding arrangements can quickly sour constructive relationships. The agreement should specify which parties will provide which resources (cash or in-kind) or how external finances will be sought. It should further specify how funds will be administered.

"THE AGREEMENT SHOULD SPECIFY WHICH PARTIES WILL PROVIDE WHICH RESOURCES"

Data and information sharing

What is to be shared and how?

While this may not be a core component of all agreements, sharing of information is a common starting point for cooperation as it builds understanding and can facilitate improved planning and action. Due to its potentially sensitive nature, it is useful to clarify what information needs to be shared and how.

"SHARING OF INFORMATION IS A COMMON STARTING POINT FOR COOPERATION"

Compliance

How shall parties demonstrate effective implementation? How will they be held accountable?

There should be clear guidelines on how the implementation of the agreement will be monitored. Who will report what and when? Joint reviews enable all parties to reflect on progress and to approach monitoring as an opportunity for on-going learning and adaptive management. The agreement should also consider provisions to enable compliance, such as institutional support through capacity building or funding.

Enforcement and dispute resolution

What recourse is available to address non-compliance or breach of the agreement? What legal framework governs the agreement? How can affected parties express and resolve their grievances? How shall future differences or disputes be resolved?

Agreements should specify actions to be taken in the case of non-compliance or breach of the agreement. Ideally, the parties will be able to resolve differences through additional engagement and negotiation. This reinforces the importance of regular meetings or fora to assess progress and negotiate action to address issues.

When parties are unable to resolve differences or conflicts amongst themselves, there are several alternative routes: using the legal system that governs the agreement; applying public or peer pressure through diplomacy or campaigns; or seeking third-party mediation or arbitration. The agreement needs to include the full range of enforcement and dispute-resolution mechanisms (Box 5.1) and to specify the cases in which each will be used.

Box 5.1: Dispute-resolution options

Legally binding agreements such as contracts, treaties and law are governed by the relevant national or international law and associated courts of justice where civil and criminal law will be applied.

Non-legal agreements still represent a 'binding' contract between parties, but the recourse in case of non-compliance includes various kinds of peer or public pressure. For example, co-signatories can use diplomacy to hold parties to their word, or seek the intervention of a mediator or arbitrator. Public campaigns and other forms of advocacy are frequently used by external stakeholders to pressure State or industry actors to abide by their policies or codes of conduct. Elections are another means for citizens to express dissatisfaction with government policy and action.

Parties may also seek external support to resolve a conflict through mediation or arbitration. Sometimes referred to as Alternative Dispute-Resolution Mechanisms (since they are an alternative to litigation), these approaches are similar but differ in the role of the third party. Mediation involves an independent third party who works with the parties to assist them to reconcile their differences. During arbitration, a neutral third party hears the evidence and independently decides on action to be taken.

Date of effect, duration and amendment procedures

When does the agreement come into effect? When does it expire? How will changes to the agreement be made?

Date of effect can be as simple as a certain date, or be conditional on the signing or endorsement of a specific number of parties. The agreement can terminate on a specific date, or upon completion of specified tasks. Agreements should specify the process by which amendments can be made, for example, by mutual agreement by all parties.

There is no perfect agreement that can serve as a template. Each agreement must be tailored to specific issues and actors. Case 5.3 on the Volta Basin Code of Conduct and 5.4 on the Bhutan Watershed Management Bylaws are examples of comprehensive agreements.

Case 5.3: The Volta Basin Code of Conduct

A Code of Conduct between the governments of Burkina Faso and the Republic of Ghana was finalized in July 2006 for the sustainable and equitable management of shared water resources of the Volta Basin Development. The Code was supported by IUCN as part of a series of joint actions by the Directorate of Water Resources of Burkina Faso and the Water Resources Commission of Ghana, undertaken while the Convention on the Status of the Volta River and the Establishment of the Volta Basin Authority, a six-country framework agreement for managing and conserving the resources of the basin, was in its initial stages of establishment. (The convention was subsequently signed in 2007).

The Code of Conduct consists of eight parts and 59 articles that outline the principles, guidelines, joint activities and implementation mechanisms as follows:

Preamble

PART I: General Provisions

   Five articles on definitions, aims, objective, scope of application and legal nature.

PART II: Management Principles

   Twenty-five articles outlining principles related to sustainable development, integrated water resources management, cooperation and governance.

PART III: Guidelines

   Five articles with guidelines on: environmental flows, integrated strategies, harmonization of laws and policies, good environmental practices, and steps to create a multilateral convention for coordinated management of the Basin.

PART IV: Joint Actions

   Fifteen articles specifying joint actions including: development and implementation of policies, strategies and programmes; data and information sharing; research, monitoring and assessment; awareness building and capacity building; and conservation and sustainable use.

PART V: Institutional Arrangements

   Four articles that outline the establishment of a multi-stakeholder Consultative Commission responsible for coordinating and monitoring the implementation of the Code of Conduct. The detailed composition, functions and operational rules of the commission are to be developed in a separate addendum.

PART VI: Dispute Resolution

   One article that calls on parties to resolve disputes peacefully, first with the aid of the Consultative Commission and, if unsuccessful, using diplomatic channels.

PART VII: Promotion of the Code of Conduct

   One article requiring States to encourage other riparian basin States to adopt the Code.

PART VIII: Final Provisions

   Three articles stipulating how other riparian States may become members, how it will be amended and date of effectiveness (upon signature of respective Ministers of Water Resources).

The Lingmutey Chu Watershed Management Bylaws were developed following an MSP amongst farmers of seven villages in the watershed that used role-playing games to explore optimal and equitable means to share irrigation water (see Case 3.7 in Chapter 3). The bylaws, which were signed by representatives of all villages following their finalization and approval in a village meeting, pledge all residents of the watershed to work collectively to manage the watershed resources for the benefit of present and future generations. They further establish the Lingmutey Chu Watershed Management Committee and articulate the composition, responsibilities and specific operating procedures of the committee (such as frequency of meetings, basis for decision making, election of committee members, penalties for non-compliance, etc.).

"NOT ALL MSPs LEAD TO A FORMAL WRITTEN AGREEMENT... IT IS STILL IMPORTANT TO CAPTURE THE RESULTS OF MSPs IN ORDER TO INFLUENCE OTHER DECISION MAKERS"

Not all MSPs lead to a formal written agreement that encompasses all the elements listed above. However, it is still important to capture the results of MSPs in order to influence other decision makers. The content of such 'agreements' should include the issues discussed, options generated and recommendations for action. Parties should sign the agreement to clearly indicate their endorsement of its content.

Photo 5.1 Bhutanese villagers using a role-playing game to negotiate the allocation of irrigation water among seven villages in the Lingmutey Chu watershed (Bhutan).

5.4.3 How to finalize an agreement

Finalizing an agreement includes the following steps:
- Drafting
- Verification
- Endorsement
- Enactment

"ONCE NEGOTIATIONS HAVE CONCLUDED, THE ISSUES AND DECISIONS NEED TO BE CAPTURED IN A WRITTEN TEXT"

Once negotiations have concluded, the issues and decisions need to be captured in a written text. Drafting is usually done by a core group of people selected by all participants.

All stakeholders must check the text and verify that it accurately and adequately captures the scope and depth of the decisions taken. This may require returning to and consulting with their constituencies. Concerns need be clarified through further deliberation amongst the group and amendments made accordingly. This is not the time to introduce new items, but to ensure the text is clear and is acceptable to all parties. For provisions where there is not full consensus, parties may specify their reservations, as in Case 5.5.

Case 5.5: Noting reservations in agreements

The International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD) was a multi-stakeholder and multi-disciplinary examination of the role of agricultural knowledge, science and technology in reducing hunger and poverty, improving rural livelihoods and facilitating environmentally, socially and economically sustainable development. The findings and options from the global and regional assessments were discussed at an intergovernmental meeting in April 2008. The *Global Summary for Decision Makers* was approved in its entirety by 57 States, whereas three countries approved the opening statement but did not endorse the entire report. Their reservations on the full report together with reservations by all countries on specific passages are included in an Annex to the report.

The negotiating parties sign the text thereby indicating their endorsement and willingness to abide by its content. This is the last step in finalizing agreements where the negotiating parties have the authority and responsibility for implementation.

"ALL STAKEHOLDERS MUST CHECK THE TEXT"

For agreements where authority rests outside of the negotiating table, such as international agreements or national laws, a further enactment step is required.

Many global agreements require ratification to come into effect. In general, once an international treaty has been negotiated, States sign as an indication of their agreement and their intent to be bound by the treaty. States are not legally bound until the treaty enters into force and they have ratified the agreement. Treaties typically provide provisions for when they will come into force, through dates and/or numbers of States required to ratify or accept it. The ratification (or other acceptance, approval or accession process) is a State's official means of indicating its readiness to be bound by the treaty.

National and sub-national policy and law are also typically enacted by relevant State authorities. This can involve review and approval at various levels such as department, ministerial and parliamentary committees.

Some agreements are developed and signed by multiple State and non-State actors yet require official State approval to come into force. The KYB Water Charter in Nigeria, for example, was developed through a multi-stakeholder negotiation involving the governments of the six Nigerian riparian States, fishers, pastoralists, irrigators, traditional authorities and other community-based organizations as well as academia, professional bodies and other members of civil society. The draft Charter was publicly read, debated, amended and finally validated in a February 2007 multi-stakeholder forum. The Water Charter will come into effect once it has been endorsed as a legal document by the leaders of the six Nigerian riparian States.

Other agreements may be developed and signed by a small group of actors and are open to further endorsement by additional actors. Endorsement of the Equator Principles, for example, is done by individual financial institutions that do not sign the agreement per se, but formally declare they agree to abide by them.

5.5 Acting on the agreement – implementation and influence

Constructive engagement leads to many outcomes. Some processes lead to negotiated formal agreements. Effectively implementing these agreements is the next step in contributing to fairer and more effective water allocation, use and management.

Other MSPs aim to influence the decisions taken by other actors. Stakeholders may agree on a set of issues or actions that they would like to see a national policy enact, or a transnational actor abide by. The content of such recommendations is still a negotiated agreement that needs to be signed, but acting on these agreements requires developing strategies to translate recommendations into influence.

Constructive engagement can also strengthen relationships, build understanding and options, and demonstrate effective processes. Water actors should consider how to maintain and build on these relationships, and encourage the adoption of more multi-stakeholder and deliberative processes in decision making and more broadly in governance.

> *"WATER ACTORS SHOULD CONSIDER HOW TO ENCOURAGE THE ADOPTION OF MORE MULTI-STAKEHOLDER AND DELIBERATIVE PROCESSES IN DECISION MAKING"*

5.5.1 Implementing the agreement

For negotiations that lead to a formal agreement, attention then turns to steps needed for it to be effectively implemented.

Key considerations include:

- Communication of the content of the agreement to signatory constituencies (especially on the 4Rs of rewards, risks, rights and responsibilities).
- Putting in place institutional arrangements for implementation – technical and financial resources, planning and monitoring processes, management structures.
- Building capacity of implementers as required (individuals and institutions).
- Taking action according to agreed responsibilities.
- Developing a monitoring strategy with agreed-upon indicators of success (impact, effectiveness,

efficiency). Joint monitoring approaches are recommended to encourage reflection and learning.
- Celebrating successes and rewarding achievements; make changes as needed.
- Establishing mechanisms to raise and resolve emerging issues and deal with non-compliance.
- Maintaining and possibly expanding the constituency – continuing to communicate with all stakeholders and to a broader audience, and engaging with specific actors.

Key aspects of effective implementation are the mechanisms established to bring parties together to monitor progress, learn from implementation and adapt as necessary. It is important to clarify who has responsibility for overseeing implementation, whether this is an existing organization or a body formed from representatives of participating stakeholders.

5.5.2 Influencing decisions that affect water

For MSPs that aim to influence the decisions taken by other actors, a different approach is required to see recommendations translated into influence.

Developing a communication and influence plan involves considering the following:
- Who will be influenced? Identify decision makers who are most willing and able to take the recommendations forward to effect change.
- How will the message be communicated? Recommendations could be summarized in a brief document, presented in a detailed written report or shared through a verbal presentation. They can be shared formally or informally.
- What are the opportunities for influence? There may be events that can be used to bring attention to the issue, or individuals who can effectively access decision makers.
- How can broader constituency be fostered? Various channels can be used to raise awareness about the issues, such as media, meetings, websites, newsletters, etc.
- How can coalitions be built? Partnerships can be formed with other like-minded actors or groups.
- What support is needed? Put in place institutional arrangements for implementing the advocacy or influence strategy including technical and financial resources. Build capacity of implementers as required (individuals and institutions) in communication, advocacy, etc.

A key element of the strategy used by the Gomukh Trust in Case 5.6 in southern India, for example, was to bring district and State decision makers to see the concrete benefits of locally appropriate catchment management strategies prior to establishing MSPs to discuss alternatives to basin management. They also built local capacity and confidence to engage in water planning, and paid particular attention to groups typically marginalized during decision-making processes, such as the poor and women. Building the capacity of women to organize as well as gain technical skills was also emphasized in another case from India as a precursor to strengthening women's ability to negotiate a more equitable role in water management.

Case 5.6: Influencing basin policy in the Bhima River Basin, India

In the Bhima River Basin in southern India, community organizations and NGOs (including the Gomukh Trust) have successfully influenced basin policy and programming using a locally driven negotiated approach. The approach is characterized by coupling demonstrations with the creation of various platforms to negotiate local strategies and subsequently influence basin-level planning and policy.

The first step in the process was to create community fora to address the competing demands for water and explore options for more equitable and sustainable allocation and management in a severely water-stressed sub-catchment. The negotiations required trade-offs. Despite the potential individual gain, for example, farmers in 16 villages agreed not to use deep-bore wells for irrigation in order to preserve ground water.

The second step was to implement the selected strategies to demonstrate their viability. The interventions focused on locally appropriate technology and many built on traditional approaches such as restoration of traditional spring tanks and protection of sacred groves (forest patches with religious significance). The benefits were evident in a severe drought in 2003–4 when the valley was the only part of the basin to stay green.

The third step was to scale up local experience to influence water management on a basin scale. CSOs such as the Gomukh Trust played a facilitating role to bring parties together and help prepare community organizations to engage effectively. Their influence strategy included general awareness raising as well as targeted advocacy with district and State decision makers to show them the positive results. They also created platforms for community groups, local authorities, water 'experts', civil society and other stakeholders to discuss ways to improve watershed and basin management – a radically different approach from conventional top-down sectoral basin planning which may make space for technocrats but not communities. These platforms were proposed to help resolve conflicts, but also to discuss policy issues before conflicts arose. Through this strategy, the groups successfully advocated for the adoption of several watershed management interventions across the State.[84]

5.5.3 Influencing governance processes

MSPs and consensus building should have a specific aim or a specific agenda that they are trying to influence. Implementing an agreement or taking the recommendations from an MSP forward to influence a specific issue are therefore the most important outcomes of constructive engagement to change water use and management.

However, there may also be opportunities to build upon the momentum created in the MSP to influence other aspects of water governance, and governance more broadly (see Case 5.7). This could include reflecting on the process used during the MSP or negotiation and examining ways in which similar constructive engagement methods could be applied in other spheres of water-related (or more general) decision shaping.

Participants in an MSP can encourage the on-going use of constructive engagement within their own or partner organizations. This should build on an assessment of the strengths and weaknesses of the methods used, and build capacity in negotiation or the specific tools used in MSPs (for example, 4R analysis of rewards, risks, rights and responsibilities).

Water actors can also serve as the catalyst to encourage broader adoption of constructive engagement in other water-related issues or at different levels or scales.

Case 5.7: MSPs at various levels in the Volta Basin

The Volta river basin covers 407,000 km² and 85% is shared between Ghana and Burkina Faso. In 2007 the six basin countries (Benin, Burkina Faso, Ivory Coast, Ghana, Mali and Togo) signed a Convention on the Status of the Volta River and the Establishment of the Volta Basin Authority, a framework agreement for managing and conserving the resources of the basin.

While the ratification process is underway and the Volta Basin Authority is in a formative phase, a series of actions have been undertaken by a joint initiative of IUCN, the Directorate of Water Resources of Burkina Faso, and the Water Resources Commission of Ghana. This intervention not only adds value to the supranational institutional framework but builds a process in which all stakeholders, from communities up to national ministries, are involved. This governance initiative is known as PAGEV (French acronym) and is characterized by the

mobilization of partnerships with stakeholders including ministries, local government, NGOs and civil society. MSPs have been established at various levels including: the creation of village committees where communities worked together on integrated management issues such as riverbank protection; the establishment of national fora (made up of villagers, local government authorities, community-based organizations and CSOs); and the creation of a local transboundary forum (made up of representatives from the national fora as well as ministries, departments and agencies from the two countries).

The project also facilitated the formulation and adoption of a Code of Conduct for the sustainable and equitable management of shared water resources of the Volta Basin, which aims at stimulating basin-wide joint management. Local communities have affirmed their commitment to the Code by further developing and signing statutes and regulations to guide their actions on transboundary water management.[85]

5.5.4 Long-term change

Finalizing and acting on an agreement culminates the journey of constructive engagement and negotiation. Staying true to the principles and values of inclusion, fairness and deliberation will ensure that the product also reflects the process. Putting energy into relationships at all stages will strengthen the agreement being negotiated and lay the foundation for future negotiations. While the process may take more time up front as all stakeholders gain the capacity to effectively engage and represent their constituencies, a broadly supported agreement will lead to smoother implementation. There is no single perfect process or agreement; the best outcome is one where all stakeholders feel their issues have been heard and their interests and options adequately considered.

The reality is that it often takes a long time to effect significant positive change in water governance and on the ground in fairer and more effective water management and use. Multi-stakeholder water governance is a long-term process encompassing cycles of engagement and negotiation where new issues arise and need to be addressed and resolved. Each negotiated agreement is significant, yet it is also important to build on the momentum and relationships created during multi-stakeholder engagement to positively influence decision-making processes and institutions in the long run.

Cases and boxes

Tables and figures

Web cases and authors

The following NEGOTIATE case studies are available in full on the IUCN water website:
www.iucn.org/about/work/programmes/water/resources/toolkits/negotiate

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Glossary

A selection of terms that readers may find useful in understanding and designing negotiation processes.

accord – n.
an official agreement or treaty.

act – n.
a law passed formally by a parliament.

actors – n.
people at whatever level, 'acting' individually or collectively, taking part in any affair.

administration (water) – n.
the organization and running of a system to manage the supply, allocation, demand and care for water.

agreement – n.
negotiated arrangement; does not necessarily imply full satisfaction by all parties, nor unanimity on the reasons behind a decision, but reflects reaching an arrangement or product that is workable and acceptable to all.

agreement (water)
policy, law and other management arrangements that govern water-related behaviour; agreements (like negotiations) can be at different levels and scales, non-binding or binding (i.e., legally enforceable), formal or informal, verbal or written.

allocation (water) – n.
formal and informal decision processes (and non-decisions) that alter the physical distribution of water, and water-related rewards, risks, rights and responsibilities.

amendment – n.
a minor improvement; agreements can and should be amended over time as circumstances change, and adaptation is required.

arbitrator – n.
an independent person or body officially appointed to settle a dispute.

assisted negotiation – n.
as the number of parties and/or issues in a negotiation increases, it is often necessary to involve a neutral facilitator or mediator to help manage the negotiation processes of deliberation, problem solving, choice making, consensus seeking or optimization.

authority – n.
the power or right to give orders and enforce obedience; or, a person or organization having official power; or, recognized knowledge or expertise.

bargain – v.
negotiate the terms of an agreement. Example phrase, 'hard bargaining', meaning pressing forcefully for a deal in one's favour. Hard bargaining is often associated with competitive modes of negotiation.

best alternative to a negotiated agreement (BATNA)
concept developed by Roger Fisher and William Ury.[86] Rather than focus on a traditional 'bottom line', they argued negotiators should know what possible outcomes are available in the absence of a successful negotiation. By researching and thinking creatively about the non-negotiated options, it is possible to have a clear measure against which any negotiated agreement can be measured. Knowing your BATNA strengthens your position and if you know the other side's BATNA you have an even better chance of making the right decisions during a negotiation. If accepting this logic, parties doing better than their BATNA becomes a necessary condition for agreement.

bill – n.
draft of a proposed law presented to parliament for discussion.

breakthrough – n.
a sudden important development or success, such as a significant step forward in a negotiation which moves parties closer to an agreement.

charter – n.
a written constitution or description of an organization's functions; or, a written statement of the rights of a specified group of people.

coalition – n.
a temporary alliance.

code – n.
a systematic collection of laws or statutes e.g., the penal code; or, a set of conventions governing behaviour.

competition – n.
the activity of competing against others, where to compete (v.) is to strive to gain or win something by defeating or establishing superiority over others.

compliance – n.
the action or fact of complying, where to comply means to act in accordance with a wish, or command, to meet specified standards, which may have been defined in one or other type of agreement.

compromise – n.
an agreement reached by each side making concessions; or, an intermediate state between conflicting opinions, reached by mutual concession.

concession – n.
a thing conceded, or given up, or chosen to be left out.

conflict – n.
an incompatibility between opinions, principles, etc. Conflict is not necessarily bad, abnormal or dysfunctional, but rather an inherent element of human interaction. When thinking about the directions taken by society, the governance processes by which we deal with conflict are what really matter. Where there is conflict, parties may be less inclined or able to participate fully or constructively in negotiations until the conflict is adequately acknowledged.

consensus building – n.
the process of seeking unanimity in group decision making, through carefully managed dialogue and joint problem-solving negotiations. A consensus-building process may settle for a workable agreement, in which participants agree on a course of action, but for different reasons, after all parties have had a chance to express their views and no further investment of time or effort will improve the agreement from anyone's standpoint without disadvantaging others.

contract – n.
a written or spoken agreement intended to be enforceable by law.

convention – n.
an agreement between countries.

cooperation – n.
the action of cooperating, i.e., of working together towards the same end, purpose, or effect; joint operation.

deliberation – n.
deliberation is debate and discussion aimed at producing reasonable, well informed opinions in which participants are willing to revise preferences in light of discussion, new information, and claims made by fellow participants. Although consensus need not be the ultimate aim of deliberation, and participants are expected to pursue their interests, an overarching interest in the legitimacy of outcomes (understood as justification to all affected) ideally characterizes deliberation.[87]

dialogue – n.
discussion directed towards exploration of a subject or resolution of a problem.

discourse – n.
a discourse is a shared set of concepts, categories and ideas that provides its adherents with a framework for making sense of situations, embodying judgements, assumptions, capabilities, dispositions and intentions. It provides basic terms for analysis, debates, agreements and disagreements.[88] Discourses can embody power in that they condition norms and perceptions of actors, suppressing some interests while advancing others. Understanding discourses will enable greater understanding of the behaviour of different parties in any negotiation.

dispute – n.
a disagreement. A dispute refers to a more specific issue or disagreement than a conflict, and can be due to a particular incident where one or more party is aggrieved. Parties may be in dispute due to an incident without there being any significant underlying conflict (incompatibilities, etc.).

engage – v.
attract or involve (someone's interest or attention); or, (engage in/with) participate or become involved in.

equity – n.
the quality of being fair and impartial.

ethics (in water negotiation) – n.
the moral principles governing or influencing conduct. People's experience haggling over price in markets encourages many to think that it is acceptable to be untruthful in negotiations. It is common for negotiators to exaggerate the value of something, say that they have more attractive alternative offers, or to misrepresent information important to the negotiation. In negotiations over water issues, hollow threats and other dishonest devices may be used. Apart from the moral reasons for not being untruthful or exaggerating, there are practical reasons for being ethical. If people provide misleading information it is difficult to achieve outcomes that genuinely rely on what is of high value to one side and of low cost to the other. Also, long-term resentment can flow from dishonest negotiations as untruths often become evident as the negotiation progresses.

facilitate – v.
make easy or easier.

governance – n.
the action or manner of governing; the system of controlling, directing, or regulating influence; more than government, governance refers to the complex of processes and institutions by which society contests, makes and manages decisions.

governance (water) – n.
the range of political, social, economic and administrative systems that are in place to develop and manage water resources, and the delivery of water services, at different levels of society.[89]

hegemony – n.
dominance, especially by one State or social group over others.

high value-low cost – adj.
negotiators need to learn what is of high value to their own side and seek to claim it, and what is of low cost and be willing to concede it. They should also try to learn the same about the other side so that both sides can gain as much as possible of high value, while giving away what is of low cost.

institutions – n.
institutions are persistent, predictable arrangements, laws, processes or customs serving to structure political, social, cultural or economic transactions and relationships in a society. They may be informal or formal, and allow organized, collective efforts around common concerns. Although persistent, institutions constantly evolve.[90]

interests – n.
interests are what underlie stated positions and provide insight into needs, wants, desires, concerns, hopes, fears and values. Interests may be substantive (referring to the content of the problem/issue), relational (about ways of relating, and of valuing the relationship) or procedural (related to how

fair the process is, and the quality of participation and decision making).[91] Interests are not just re-worded positions. They can involve multiple layers, ranging from fulfilling basic needs to desire for understanding, creativity, stimulation, meaning, rationality, dignity, choice, control, autonomy and distributive justice (*see* 'positions').

issue – n.
an important topic for debate or resolution.

jurisdiction – n.
the territory or sphere over which the legal authority of a court or other institution extends.

law – n.
a rule or system of rules recognized by a country or community as regulating the actions of its members and enforced by the imposition of penalties.

law (soft and hard)
soft law refers to quasi-legal instruments which do not have any legally binding force, or whose binding force is somewhat weaker than the binding force of traditional law, often contrasted with soft law by being referred to as 'hard law'. Traditionally, the term 'soft law' is associated with international law, such as most resolutions of the United Nations General Assembly.

legislation – n.
laws collectively.

legitimate – adj.
confirming to the law or to rules; or, able to be defended with logic or justification.

litigate – v.
go to law, be a party to a lawsuit; or, take (a dispute) to a law court.

mediate – v.
try to settle a dispute between other parties.

multi-stakeholder platform (MSP) – n.
part of governance in which different stakeholders are identified, and usually through representatives, invited and assisted to interact in a deliberative forum that focuses on: sharing knowledge and perspectives, generating and examining options, and informing and shaping negotiations and decisions.

mutual gains – n.
the benefits from a negotiation should not be proscribed by the limitations of the basic objectives that are evident at the outset. Negotiators should seek ways of expanding the pie for the benefit of both (or all) parties. Such creative thinking can lead to mutual gains. The classic example is the story of the two sisters negotiating over how to divide an orange. Cutting it in half would give each the minimum benefit, but when the two girls question each other about the use to which the orange will be put, they discover that one needs the inside to make orange juice and the other needs the peel to make marmalade, with the result that they can both gain the full use of the orange for their respective purposes.

negotiation – n.
a process of interaction by which two or more parties, with differences to be reconciled or choices to be made, seek to do better through jointly decided action than they might do by acting individually; the main aim of negotiation is to reach a workable, acceptable agreement to all parties.[92] This is the definition included in Chapter 1.

neutral – n.
an impartial or unbiased state or person.

neutral (in water negotiations)
a person/organization deemed acceptable by all key parties to assist constructive negotiations move forward by acting as an intermediary; an independent who needs to have high-quality negotiation skills. Whilst all actors have views and biases, a person/organization engaged as a neutral must put aside their own biases and focus on supporting all negotiating parties. However, the neutral should declare and maintain their own process bias, such as their own commitment to unforced consensus seeking.

non-decisions – n.
decisions consciously avoided or 'not taken', either because they are too difficult, or perhaps because leaving something vague or ambiguous provides advantage to one or other party.

paradigms – n.
the fundamental orienting philosophies underpinning the ways we perceive, understand and inter-pret things, and thus informing our attitudes and behaviours. Often these can limit us from accept-ing alternatives or new ways.

paradigm shift – n.
a significant shift in our paradigm, such that not only do aspects we thought inconceivable all of a sudden appear possible, but often the 'impossible' becomes 'the obvious'.

Pareto plus principle – n.
a negotiation principle which holds that if proposing a new project or development, not only should no-one be made worse off, but all potentially disadvantaged peoples are made absolutely better off.

party – n.
a person or group forming one side in an agreement or dispute or negotiation.

plan – n.
a detailed proposal for doing or achieving something; or, an intention or decision about what one is going to do.

policy – n.
a course or principle of action adopted or proposed by an organization or individual.

positions – n.
specifically stated solutions (or offers) to a problem or situation. They describe what is wanted or sought. A position may be presented as if there is no other viable option, and can appear to be a party's main aim or goal (see 'interests').

power – n.
the ability to do something or act in a particular way; or, the capacity to influence other people or the course of events; or, a right or authority given or delegated to a person or body; or, political authority or control.

procedure – n.
an established or official way of doing something.

protocol – n.
the official procedure or system of rules governing affairs of State or diplomatic occasions; or, the accepted code of behaviour in a particular situation.

ratify – v.
give formal consent to; make officially valid.

regulation – n.
a rule or directive made and maintained by an authority.

responsibility – n.
the state or fact of being responsible; or, the opportunity or ability to act independently and take decisions without authorization; or, a thing which one is required to do as part of a job, role or legal obligation.

reward – n.
a fair return for good or bad behaviour; v. (to be rewarded) receive what one deserves.

right – n.
justifiable claim, or legal or moral grounds, to have or obtain something, or to act in a certain way.

risk – n.
exposure to danger or loss.

rule – n.
a regulation or principle governing conduct or procedure within a particular sphere

social learning – n.
social learning has been described as 'the interactive way of getting things done in theatres with actors who are interdependent with respect to some contested natural resource or ecological service. The interactive way of getting things done is based on conflict resolution, negotiated agreement, shared learning, convergence of goals, theories, and systems of monitoring, and concerted action'.[93] They are more than just participatory exercises, but, facilitated participation does play a key role. Building blocks of social learning are: the constructivist paradigm, an orientation towards reflection and action, and a commitment to try and take a systemic or holistic approach.[94]

stakeholder – n.
a person with an interest or concern in something.

stalemate – n.
a situation in which further progress by opposing parties seems impossible; an impasse.

statute – n.
a written law passed by a legislative body; or, a rule of an organization or institution.

strategy – n.
a plan designed to achieve a particular long-term aim.

subsidiarity – n.
the principle that a central authority should perform only those tasks which cannot be performed at a more local level.

sustainable – adj.
of, relating to, or designating forms of human economic activity and culture that do not lead to environmental degradation, especially avoiding the long-term depletion of natural resources.

trade-off – n.
a balance achieved between two desirable but incompatible features; a compromise.

transboundary waters – n.
waters that flow across a boundary, for example, a border between states or provinces or local juris-dictions; the sharing of transboundary waters, as with any other waters, is best negotiated.

treaty – n.
a formally concluded and ratified agreement between States.

vision – n.
the ability to think about the future with imagination or wisdom; or, a mental image of what the future will or could be like.

Zone of Possible Agreement (ZOPA)
the BATNAs (Best Alternatives To a Negotiated Agreement) of all parties define a zone of possible agreement. The wider the ZOPA, the more possibilities for negotiating a workable agreement.

Photo credits

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1   The difference between participation and negotiation, and many other thought-provoking messages, are taken from: Both ENDS and Gomukh. (2005). *River Basin Management: A Negotiated Approach*. Amsterdam: Both ENDS; and Pune: Gomukh. Personal communication with Danielle Hirsch (Both ENDS) has also been appreciated.

2   Mehta, L., Leach, M., Newell, P., Scoones, I., Sivaramakrishnan, K. and Way, S.-A. (1999). *Exploring understandings of institutions and uncertainty: new directions in natural resource management.* IDS Discussion Paper 372. Brighton: Institute of Development Studies, University of Sussex.

3   Rogers, P. and Hall, A.W. (2003). *Effective Water Governance*. Technical Advisory Committee Background Paper #7. Stockholm: Global Water Partnership (GWP) Secretariat.

4   WCD. (2000). *Dams and Development: A New Framework for Decision Making*. Cape Town: World Commission on Dams.

5   See also Scanlon, J., Cassar, A. and Nemes, N. (2004). *Water as a Human Right?* Environmental Policy and Law Paper No. 51. Gland and Cambridge: IUCN. Examples of international rights declarations:

    •   Universal Declaration of Human Rights which says that the lives of all people have equal value and that all individuals should be respected and have basic rights, see UN (1948). "Universal Declaration of Human Rights". New York: United Nations;
    •   Right to Development which says that all peoples, but particularly those in need, have the right to try and improve their living situation, see UN (1986). "Declaration on the Right to Develop". New York: United Nations;
    •   Rio Declaration on Environment and Development which greatly raised the profile of sustainability as a core concern for global society, see UNCED (1992). "The Rio Declaration". Statement of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992. New York: United Nations; and
    •   The Earth Charter which articulates values and principles for a 'sustainable future' with an action agenda framework of: respect and care for the community of life; ecological integrity; social and economic justice; democracy, non-violence and peace, seeECC (2000). "The Earth Charter". San José: Earth Charter Commission c/o University for Peace.

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8   Raiffa, H. (1982). *The Art and Science of Negotiation*. Cambridge MA: Harvard University Press.

9   *Ibid*.

10 Based on IAP2 (2007). "Spectrum of Public Participation". Thornton CO: International Association for Public Participation.

11 Decades of conflict over wastewater management were only resolved once a government was elected that was more open to engagement with local stakeholders. See *NEGOTIATE* case study on the IUCN Water website: *Learning to listen – government openness to work with community members resolves decades of conflict over wastewater treatment in Coffs Harbour*, Australia by Pam Allan .

12 Fisher, R., Ury, W. and Patton, B. (1992). *Getting to Yes: Negotiating an Agreement without Giving In.* 2nd edition. London: Arrow Business Books.

13 See Lewicki, R., Barry, B., Saunders, D. and Minton, J. (2003). *Negotiation*. 4th edition. New York NY: Irwin/McGraw-Hill, for numerous examples of competitive negotiating tactics.

14 See *NEGOTIATE* case study on the IUCN Water website: *The Challenge of International Watercourse Negotiations in the Aral Sea Basin* by Richard Kyle Paisley.

15 Wertheim, E., Love, A., Peck, C. and Littlefield, L. (2006). *Skills for Resolving Conflict. Second Edition*. Cowes VIC: Eruditions Publishing.

16 See for example, Emerton, L. and Bos, E. (Eds) (2004). *VALUE – Counting Ecosystems as Water Infrastructure*. Gland: IUCN. *VALUE* describes how different types of economic and ecosystem values can be linked. If the relationships between ecosystems, water demand and supply can then be given consideration and 'integrated' into water management decision making, this can lead to new incentives, investment opportunities and value chains that incorporate ecosystem values. This opens new pathways for increasing the sustainability of agreements and of global development goals.

17 See *NEGOTIATE* case study on the IUCN Water website: *How the Weak Prevailed – Nepali Activists Engage the World Bank over Arun-3 and From "No Dams!" to "No Bad Dams!" Nepal's Engagement with the World Commission on Dams* by Dipak Gyawali.

18 For details on the process, lessons and outcomes of the review, see NEGOTIATE case study on the IUCN Water website: *Ok Tedi and Fly River negotiation over compensation: using the mutual gains approach in multi-party negotiations* by Barbara Sharp and Tim Offor.

19 The figure guiding the chapter uses earlier work on MSPs (see Dore, J. (2007). "Mekong Region water-related MSPs: Unfulfilled potential". In: Warner, J. (Ed.) *Multi-Stakeholder Platforms for Integrated Water Management*, 205–234. Aldershot: Ashgate); and relates it to outcome mapping by Earl, S., Carden, F. and Smutylo, T. (2001). *Outcome Mapping: Building Learning and Reflection into Development Programs*. Ottawa: International Development Research Centre; and re-presentation of this mapping by Ricardo Wilson-Grau (unpublished). This latter conceptualization introduces 'spheres of control' that are useful to keep in mind when considering the possibilities and limitations of MSPs. The core of this outcome mapping approach is the focus on the importance of changing the social behaviour of actors. Context is only partially within the control of the MSP, as context is partly inherited. Process, content and outcomes are within the control of the MSP and its participants. Impact (higher-order than outcomes) is usually dependent on changing the behaviour of actors beyond the MSP participants.

20 See IIED and WBCSD. (2002). "Ok Tedi Riverine Disposal Case Study (Appendix H)".In: Mining for the Future. London and Conches-Geneva: International Institute for Environment and Development and World Business Council for Sustainable Development; and NEGOTIATE case study on the IUCN Water website: *Ok Tedi and Fly River negotiation over compensation: using the mutual gains approach in multi-party negotiations* by Barbara Sharp and Tim Offor.

21 For a summary of a Mekong MSP see IUCN, TEI, IWMI and M-POWER. (2007). *Exploring Water Futures Together: Mekong Region Waters Dialogue. Report from Regional Dialogue*, Vientiane, Lao PDR. IUCN, Thailand Environment Institute, International Water Management Institute and Mekong Program on Water Environment and Resilience. At http://www.mpowernet.org/download_pubdoc.php?doc=3274

22 The section on scales and levels is adapted from Dore, J. and Lebel, L. (2009). "Deliberation, scales, levels and the governance of water resources in the Mekong Region". M-POWER Working Paper, Chiang Mai University, who drew on earlier work of Lebel; and that of Gibson, C., Ostrom, E. and Ahn, T.K. (2000). "The concept of scale and the human dimensions of global change: a survey". Ecological Economics 32: 217–239; and Sneddon, C., Harris, L. and Dimitrov, R. (2002). "Contested waters, conflict, scale and sustainability in aquatic socio-ecological systems". *Society and Natural Resources* 15: 663–675.

23 Dore and Lebel, ibid.

24 A case on an MSP for a water and sanitation project in Bolivia illustrates the importance of timing to enable MSP recommendations to be acted upon (see *A Multi-Stakeholder Platform to solve a conflict over a Water and Sanitation Project in Tiquipaya, Bolivia* by Vladimir Cossio on the IUCN Water website

25 This quote is taken from from Watson, N. (2007). "Collaborative capital: a key to the successful practice of integrated water resources management" (in Warner (2007)), from which Case 3.6 about the Fraser Basin Council is derived. More background information can be found at http://www.fraserbasin.bc.ca/

26 Miller, J.D.B. (1962). *The Nature of Politics*. Harmondsworth: Penguin Books.

27 Hay, C. (1997). "Divided by a common language: political theory and the concept of power". Politics 17:1, 45-52.

28 VeneKlasen, L. and Miller, V. (2002). *A New Weave of Power, People and Politics: The Action Guide for Advocacy and Citizen Participation*. Oklahoma City, OK: World Neighbours.

29 To the deliberative democrat, Dryzek, deliberation is 'multifaceted interchange or contestation across discourses within the public sphere' (see Dryzek, J.S. (2001). "Legitimacy and economy in deliberative democracy". *Political Theory* 29(5): 651–669) where discourses are seen as 'shared sets of assumptions and capabilities embedded in language that enables its adherents to assemble bits of sensory information that come their way into coherent wholes' (Dryzek, J.S. (1999). "Transnational democracy". *The Journal of Political Philosophy* 7(1): 30–51, at 34). MSPs pro-

vide a mechanism for such 'contestation across discourses'. In so doing, they are in accord with the social learning perspective, the 'building blocks' of which are: the constructivist paradigm, an orientation towards reflection and action, and commitment to a holistic approach, see Maarleveld, M. and Dangbegnon, C. (2002). "Social learning: major concepts and issues". In: Leeuwis, C. and Pyburn, R. (Eds) *Wheelbarrows Full of Frogs*. Assen: Koninklijke Van Gorcum. Just as MSPs are diverse in their purpose and emphasis, so too is the 'broad church' of constructivism which 'both seeks and serves to restore politics and agency to a world often constituted in such a way as to render it fixed and unyielding' (Hay, C. (2002). *Political Analysis: A Critical Introduction*. Basingstoke and New York: Palgrave). So it can be seen that the deliberative democrats, the social learning school, and constructivists, have much in common. Each emphasize the role of ideas as significant in reshaping the world.

30 Wageningen International in the Netherlands maintains a very helpful MSP portal which includes excellent information about techniques, but also a regularly updated compilation of experiences from around the world.

31 The figure is adapted from Vermeulen, S., Woodhill, J., Proctor, F.J. and Delnoye, R. (2008). Chain-wide learning for inclusive agrifood market development: a guide to multi-stakeholder processes for linking small-scale producers with modern markets. International Institute for Environment and Development, London UK, and Wageningen University and Research Centre, Wageningen, The Netherlands, 111. The figure is taken from page 57.

32 The text on setting up, stakeholder analysis and scenarios draws heavily on Dore, J., Woodhill, J., Keating, C. and Ellis, K. (2000). *Sustainable Regional Development Kit: A resource for improving the community, economy and environment of your region*. Yarralumla ACT: Greening Australia [Resource book + CD].

33 See *NEGOTIATE* case study about Umatilla ground water on the IUCN Water website.

34 See *NEGOTIATE* case study about Komadugu Yobe Basin on IUCN Water website.

35 See Warner, J. (Ed.) (2007). *Multi-Stakeholder Platforms for Integrated Water Management*. Aldershot: Ashgate. This quote is taken from the preface to this highly relevant book which provides 16 chapters exploring water-related MSPs from all corners of the world.

36 The notion of the social contract for the participants is similar to the IAP2 'promise to the public' (discussed in Chapter 2). An elaboration of this typology – looking at whether participants are invited to speak based primarily on their knowledge and skill (experts?), or based on their capacity to commit (authority?) or significantly influence the commitment of a constituency – can be found in Susskind, L.E., Fuller, B., Ferenz, M. and Fairman, D. (2003). "Multi-stakeholder Dialogue at the Global Scale". *International Negotiation* 8: 235–266.

37 http://www.hydropower.org/sustainable_hydropower/HSAF.html

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41 http://www.millenniumassessment.org/en/Index.aspx. For the conceptual approach and detail of the MA scenarios, see Millennium Ecosystem Assessment. (2005b). *Ecosystems and Human Well-being: Scenarios, Volume 2.* Washington, DC: Island Press, with particular attention to Chap. 8 by Cork *et al*. Water and wetland findings and recommendations are synthesized in Millennium Ecosystem Assessment. (2005a). *Ecosystems and Human Well-being: Wetlands and Water Synthesis*. Washington, DC: World Resources Institute.

42 Dyson, M., Bergkamp, G. and Scanlon, J. (Eds) (2003). *FLOW - The Essentials of Environmental Flows*. Gland: IUCN; see also Smith, M., de Groot, D. and Bergkamp, G. (Eds) (2008). *PAY – Establishing payments for watershed services*. Gland: IUCN; and Sadoff, C., Greiber, T., Smith, M. and Bergkamp, G. (Eds) (2008). *SHARE – Managing water across boundaries*. Gland: IUCN. All available at http://www.iucn.org/about/work/programmes/water/wp_resources/wp_resources_toolkits/index.cfm. *SHARE* provides a practical guide to water sharing across boundaries (or borders), with a focus on the 260 river and lake basins shared worldwide by two or more countries. It explores potential costs and benefits of cooperation, and of non-cooperation, and principles and mechanisms for incentive creation and benefit sharing. Transboundary negotiations about water are an important issue between States. An infusion of

deliberation, whether multi-stakeholder or not, would often improve the basis of negotiations and decision making. *PAY* provides ideas about payment systems that can be established to maintain or restore watershed services critical for downstream water users. When upstream services are valued, it provides an incentive for market systems to be explored as one way of encouraging land and water use that meets the needs of more than just upstream users.

43   For more information see the Senegal contribution to the 1st World Water Development Report (OMVS. (2003). "Chapter 20. Senegal River Basin, Guinea, Mali, Mauritania, Senegal". In: UNESCO-WWAP (Ed.) Water for People, *Water for Life: The United Nations World Water Development Report, 1st Report*, 450–461. Barcelona: Bergahn Books).

44   There was a huge knowledge base assembled and debated by the WCD platform which informed the final report of the Commissioners (WCD. (2000) *Dams and Development: A New Framework for Decision Making*. Cape Town: World Commission on Dams). All reports, including details of the process, can be found online at www.dams.org. Critiques abound, but any reviewer of this process should include Dubash, N.K., Dupar, M., Kothari, S. and Lissu, T. (2001). *A Watershed in Global Governance? An Independent Assessment of the World Commission on Dams*. World Resources Institute, Lokayan and Lawyer's Environmental Action Team.

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47   For a detailed explanation of the four criteria for measuring the results of public policy negotiations see Susskind, L. and Cruikshank, J. (1987). *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes*. New York NY: Basic Books.

48   For a detailed discussion of how to create value in negotiations by trading across issues see Raiffa, H. (1982). *The Art and Science of Negotiation: How to resolve conflicts and get the best out of bargaining*. Cambridge MA: Harvard University Press.

49   For a more detailed discussion see the *NEGOTIATE* case study on the IUCN Water website.

50   The Danube River Protection Convention (DRPC) was initially signed in 1994, and came into force in 1998. In 2007 the contracting parties include the States of Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Germany, Hungary, Moldova, Romania, Serbia and Montenegro, Slovakia, Slovenia and Ukraine. It aims to ensure that surface waters and ground water within the Danube River Basin are managed and used sustainably and equitably. The International Commission for the Protection of the Danube River (ICPDR) is the platform for the implementation of the DRPC. See http://www.icpdr.org

51   The report can be accessed at http://assets.panda.org/downloads/worldstop10riversatriskfinalmarch13.pdf. Although the merit of listing the Danube in this report can be debated, it does signal the need to address unresolved conflicts between different ideas of how the river should be used and developed.

52   The Danube Commission was established to supervise the implementation of the 1948 Convention regarding the Regime of Navigation on the Danube (known as the Belgrade Convention). The 11 member States are Austria, Bulgaria, Croatia, Germany, Hungary, Moldova, Romania, Russia, Serbia, Slovakia and Ukraine. It has its origins in the Paris Conferences of 1856 and 1921 which established an international regime to safeguard free navigation on the Danube. It is recognized that the Convention needs to be updated to reflect present-day circumstances where there has been a change in the politics of the region, with new States and territories. See http://www.danubecom-intern.org/

53   Susskind, L.E. (1994). *Environmental Diplomacy: negotiating more effective global agreements*. New York NY: Oxford University Press.

54   See Susskind, L., McKearnan, S. and Thomas-Larmer, J. (1999). *The Consensus-Building Handbook: a comprehensive guide to reaching agreement*. Thousand Oaks, CA: Sage Publications; and Susskind, L.E. and Cruikshank,, J.L. (2006). *Breaking Robert's Rules: The new way to run your meeting, build consensus and get results*. New York NY: Oxford University Press, for a detailed definition of consensus.

55   *Ibid*.; and Susskind, L.E., Levy, P.F. and Thomas-Larmer, J. (2000). *Negotiating Environmental Agreements: how to avoid escalating confrontation, needless costs, and unnecessary litigation*. Washington DC: Island Press.

56   Derived from : Susskind, L., McKearnan, S. and Thomas-Larmer, J. (1999). *The Consensus-Building Handbook: a comprehensive guide to reaching agreement*. Thousand Oaks, CA: Sage Publications

57   This case study draws largely on private communications with B.W. Fuller and material from Fuller, B.W. (2005). "Trading Zones: Cooperating for water resource and ecosystem management when stakeholders have apparently irreconcilable differences". Dissertation, Department of Urban Studies and Planning, Massachusetts Institute of Technology; and Boswell, M.R. (2005). "Everglades Restoration and the South Florida Ecosystem". In: Scholz, J.T. and Stiftel, B. (Eds) *Adaptive Governance and Water Conflict: New Institutions for Collaborative Planning*, 89–99. Washington DC: Resources for the Future. For a more detailed discussion see the *NEGOTIATE* case study on the IUCN Water website.

58   Mekong River Commission, the implementing organization for the Mekong Agreement.

59   Radosevich. G.E. (2007). Private Communication.

60   Radosevich, G.E. (1995). "Mekong Agreement History and Commentary", 29. Unofficial Report.

61   See the NEGOTIATE case study on the IUCN Water website: *Using Structured Decision Making in Collaborative Planning Processes for Better Water Management: An Innovative Approach to Water Use Planning in British Columbia*, Canada prepared by Lee Failing and Graham Long, Compass Resource Management.

62   This text box draws on private communications with Dr G.E. Radosevich; material from the case *Mekong River Basin, Agreement & Commission* (see *NEGOTIATE* case study on the IUCN Water website; and from an unofficial 1995 report *Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin: Commentary & History*, both prepared by George E. Radosevich.

63   For a detailed discussion of Best Alternative To a Negotiated Agreement (BATNA) see Fisher, R., Ury, W.L. and Patton, B. (1981). *Getting to Yes: Negotiating agreement without giving in*. New York NY: Penguin Books.

64   For more on this see Susskind *et al.*, 2000, *supra* note 9.

65   See the *NEGOTIATE* case study on the IUCN Water website: *Komadugu Yobe Basin: A case study of participatory water charter development for sustainable and equitable management of water resources* prepared by D.K. Yawson, H.G. Ilallah and I.J. Goldface-Irokalibe.

66   At the time of writing, a change in government had delayed the Charter's entry into force as some of the top officials required to endorse and implement the agreement had been replaced. Nevertheless, it is hoped that these new leaders will support the Charter when they learn about the multi-stakeholder process through which it was created and the overwhelming support it garnered

67   The Social Learning Group. (2001). *Learning to Manage Global Environmental Risks. Volume I: A Comparative History of Social Responses to Climate Change, Ozone Depletion, and Acid Rain*. [Clark, W.C., Jäger, J., van Eijndhoven, J. and Dickson, N.M. (Eds)]. Cambridge MA: The MIT Press.

68   See *NEGOTIATE* case study on the IUCN Water website: *Sharing Irrigation Water in Bhutan: Companion Modeling for Conflict Resolution and Promoting Collective Management* by Tayan Raj Gurung, Francois Bousquet, Aita Kumar Bhujel, Gyenbo Dorji and Guy Trébuil.

69   See http://www.idrc.ca/en/ev-85928-201-1-DO_TOPIC.html.

70   See Case 4.1 in Chapter 4.

71   See NEGOTIATE case study on the IUCN Water website: *Mekong River Basin Agreement and Commission* by George E. Radosevich.

72   http://www.hydropower.org/sustainable_hydropower/IHA_Sustainability_Guidelines.html

73   http://www.mdbc.gov.au/about/murraydarling_basin_initiative__overview

74   See *NEGOTIATE* case study on the IUCN Water website: *Community-Based Approaches to Conflict Management, Umatilla County Critical Groundwater Areas* by Todd Jarvis.

75   http://www.equator-principles.com/index.shtml

76   See *NEGOTIATE* case study on the IUCN Water website: *Komadugu Yobe Basin: A Case Study of Participatory Water Charter Development for Sustainable and Equitable Management of Water Resources* by D.K. Yawson, H.G. Ilallah and I.J. Goldface-Irokalibe.

77 See *NEGOTIATE* case study on the IUCN Water website: *Negotiation Processes in Institutionalising Grassroots Level Water Governance: Case of Self Employed Women's Association, Gujarat, INDIA* by Smita Mishra Panda.

78 See *NEGOTIATE* case study on the IUCN Water website from WANI projects in Guatemala, Mexico and El Salvador.

79 A catchment in the South African context is equivalent to a river basin as well as part of a river basin. See *NEGOTIATE* case study on the IUCN Water website: *Multi-stakeholder Platforms and Negotiation: The Case of Kat River Valley Catchment Management Forum* by Eliab Simpungwe.

80 For more information see http://www.nilebasin.org/

81 A *'mécanisme de concertation permanent pour le Système Aquifère du Sahara Septentrional'*. See *NEGOTIATE* case study on the IUCN Water website by Kerstin Mechlem.

82 http://www.fraserbasin.bc.ca/about_us/documents/FBCcharter.pdf

83 See http://www.mdbc.gov.au/about/the_mdbc_agreement. For an excellent analysis, see Connell, D. (2007). *Water Politics in the Murray-Darling Basin*. Annandale NSW: Federation Press.

84 See case study prepared for a BothEnds publication, also on the IUCN Water website: *Negotiating our way through Livelihoods and Ecosystems – The Bhima River Basin Experience* by Vijay Paranjpye and Parineeta Dandekar (http://www.bothends.org/strategic/RBM-Boek.pdf).

85 See Case 5.3 for more details on the Code of Conduct.

86 Fisher, R., Ury W. and Patton B. (1992) *Getting To Yes: Negotiating An Agreement Without Giving In*. (2nd edition). Arrow Business Books, London.

87 Chambers, S. (2003). 'Deliberative Democratic Theory', *Annual Review of Political Science* 6, 307-326.

88 Dryzek, JS. (2006). *Deliberative Global Politics: Discourse and Democracy in a Divided World*. Polity Press. Cambridge.

89 Rogers, P. and Hall AW. (2003). 'Effective Water Governance'. *Technical Advisory Committee Background Paper #7*. Global Water Partnership (GWP) Secretariat. Stockholm.

90 Dovers, S. (2005). *Environment and Sustainability Policy: Creation, Implementation, Evaluation*. Federation Press, Sydney.

91 Moore, C. (2003). *The Mediation Process: Practical Strategies for Resolving Conflict*. 3rd edition. San Francisco, Jossey-Bass.

92 Menkel-Meadow, C. (1984). 'Toward another view of legal negotiation: the structure of problem solving'. *UCLA Law Review* 31: 754-842. Lax, D. and Sebenius, J. (1986). *The Manager as Negotiator: Bargaining for Co-operation and Competitive Gain*. The Free Press. New York.

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Water practitioners are increasingly called upon to negotiate workable agreements about how to best use, manage and care for water resources. *NEGOTIATE* makes the case for constructive engagement and cooperative forms of negotiation in dealing with complex water issues. It unpacks constructive approaches such as Multi-Stakeholder Platforms (MSPs) and consensus building, and finally focuses on the diversity of agreements which can be produced to regulate or encourage fairer and more effective water allocation and use.

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