

Treaties and other Types of Agreements

Key Message

Agreements on transboundary waters encourage the efficient use and development of water resources, promote equitable distribution, and facilitate partnerships and cooperation between countries, helping them to avoid future disputes over water issues.

They can be treaties and conventions as signed and ratified by two or more States; or they can be other types of agreements between institutions across borders working at the national, sub-national and/or local level. These other types of agreements, like treaties, are a manifestation of commitments to cooperation to establish the rules of conduct for transboundary water management. A multi-level governance framework made up of treaties and other types of agreements provides for more effective water governance.



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Recommendations

- A treaty should contain several key criteria. It must have a defined scope (the purpose of the treaty, key terms, and the parties involved) and it must contain substantive (*the actual law*) and procedural (*how the law is followed*) rules. It must outline the key institutions for implementation as well as provide the framework for dispute resolution mechanisms. This general structure can also apply to other types of agreements.
- Treaties as well as other types of agreements should be negotiated in an open-ended manner with parties embracing flexibility. The *Mutual Gains Approach* is an ideal negotiation method as both parties seek a “win-win” outcome as a package of goals or issues is brought to the bargaining table rather than a single issue. This benefit sharing mindset allows for more sustainable agreements.
- Other types of agreements that are convened among water stakeholders within the basin can involve local communities, municipal governments, technical agencies, economic sectors and representatives of water users. They can be binding or non-binding and should be developed in ways that build on a framework agreed at ‘treaty’ level when they exist. Alternatively they set in place practical building blocks that augment and improve the potential for national governments to reach high-level agreements.
- Multi-level governance frameworks play a vital role in transboundary water management. While treaties are agreed and implemented in traditional methods of negotiations between states and subsequent implementation (top down), water governance is progressively shifting towards incorporating non-traditional actors and informal agreements, allowing for a horizontal power structure and implementation.

A multiplicity of agreements is needed for effective governance of transboundary waters, including intergovernmental treaties, but also a wide variety of formal and informal agreements.

Justification

There are 276 transboundary river basins in the world, however approximately 60% lack any type of cooperative agreement¹. A lack of regulation and organization is detrimental to the management of the transboundary waters because in the absence of proper rules and procedures for managing different users and interests, there is a greater chance of unilateral action which potentially can cause further conflict and less cooperation. Therefore, treaties and other types of agreements act as mechanisms to prevent conflict and improve the cooperation between States that share water resources. Experience shows that multiple agreements at different levels in a basin support cooperation among users through the implementation of joint management, facilitated by river or lake basin organizations.

Treaties provide security to signatories through a written document that can be referred to at a later date should confusion or misinterpretation of the water issues it regulates occur. Treaties are directly enforceable by the acting body (whether national government or international body). It serves as the basis for collective action and is an effective tool to consolidate any commitment. Treaties are essential in water governance as they aim to create a joint institution for water management, bringing governments together on shared issues. Enforcement of agreements is less contentious if a formal document exists that has support from all relevant parties and is legitimate under law.

Equally, other types of agreements influence actors and can serve as a guide to decision-makers in other areas. They can be binding or non-binding, depending on the nature of the consenting parties. Their strength lies in that they serve as a strong mechanism to influence behaviour and norms and reflect standards that States and other stakeholders aspire to. Typical examples of these agreements are ministerial and presidential declarations or codes of conduct and can incorporate a wider spectrum of actors into the negotiations, including non-traditional ones such as farmers' organisations, women's groups and other civil society organisations. With more stakeholders involved, a greater range of solutions can emerge that adequately address stakeholder needs and concerns. Given their flexible nature, these types of agreements can be more adaptable to changing circumstances.

1. UN Water, 2013



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Evidence for action

Creating a good agreement

A good agreement, for both treaties and other types of agreements, involves several key elements as shown in the table below. The scope of an agreement refers to its jurisdiction within the territory in which it will be implemented. Substantive rules are part of the main body of an agreement. They set up the rights and obligations of the parties involved. These are operationalised through procedural rules, which set up the process for engaging and implementing the treaty. In the event that parties to an agreement fail to comply with it, it is advisable for them to agree *a priori* on the mechanisms to resolve these potential conflicts.

In the Lake Titicaca River Basin, shared between Bolivia and Peru, an agreement was created to form a binational entity that would take responsibility for implementing a plan to jointly manage the transboundary basin. In 1996, negotiations were finalised and the institution for jointly managing Lake Titicaca was formally recognized as the Lake Titicaca Authority. To give

| Key Elements | Details |
|-----------------------------|--|
| 1. Scope | Legal reach (what waters?) Definitions (watercourse, uses, etc.) Parties (States, RBOS, etc.) |
| 2. Substantive Rules | Legal duties and entitlements (equitable and reasonable utilization; due diligence: protection) Rules of substance (general or precise) |
| 3. Procedural Rules | Rules of procedure (duty to cooperate) Notification / exchange of information |
| 4. Institutional Mechanisms | Joint bodies (RBOs) Meetings of the parties |
| 5. Dispute Settlement | Dispute avoidance (consultation) Dispute settlement Compliance verification |

Further reading

- *Governance of shared waters: legal and institutional issues book (2011)*
- *International water governance: conservation of freshwater ecosystems. Vol. 1 : International agreements, compilation and analysis book (2004)*

it legal standing as an organization of integration between two countries, the Congress of each respective country approved and ratified the agreement. Since 2007, BRIDGE activities from training courses, leadership development and institutional issues workshops have provided input to the ongoing process of reforming the Lake Titicaca Authority.

Conducting multi-stakeholder negotiations to form agreements

The *Mutual Gains Approach*² to negotiation allows for multiple issues to be addressed – for example equitable benefit sharing as well as the protection of relationships and reputations. A well drafted and thoroughly negotiated agreement demonstrates that the parties considered a wide range of items or subjects and alternatives and arrived at mutually acceptable terms. While negotiating of a treaty involves two separate powers of the States, other types of agreements are negotiated by a range of actors which might include local communities, municipal governments, technical agencies, economic sectors and representatives of water users including for example farmers, fishers and power companies.

The Binational Management Group of the Goascorán River Basin came together in 2006 prompted by an agreement on border development between Honduras and El Salvador. The original agreement was negotiated by a small number of municipalities from Honduras and El Salvador. Since 2007, IUCN has supported expanding representation of the Binational Management Group through a series of stakeholder meetings and dialogue. Under the authority of both countries, reform of the institution has widened the stakeholder base to include local municipalities, public and private organisations, NGOs, and a range of government ministries beyond the water sector.

Negotiating treaties

Treaties often originate from a political process primarily involving States. They build foundations and institutional structures that foster good relations between parties, help achieve international legal obligations and attract considerable economic benefits through international investment. “Broader” agreements, such as those that incorporate benefit sharing mechanisms and flexible institutional arrangements, can produce even greater impacts than narrowly defined treaties.

2. Mutual Gains is an approach to collective bargaining intended to reach win-win outcomes. Roger Fisher (1981). *Getting to Yes*, Penguin Books.

The distinction between a broad and narrow approach to treaties, is that a well supported, interest based open approach allows for constructive problem solving and relationship building and is more likely to achieve an outcome that favours benefit sharing. Comparatively, a “narrow approach” may result in unproductive posturing and negotiation tactics that may act as a hindrance to achieving or realizing beneficial opportunities.

In 1995 in the Sixaola River Basin, the governments of Costa Rica and Panama ratified a Border Cooperation Treaty that included a Permanent Binational Commission. The objective was to expand, improve and deepen cooperation in all areas, and to contribute significantly to socio-economic, commercial, environmental and political development in the border region thereby strengthening the process of integration between the two countries. Since 2011, IUCN worked to strengthen the Sixaola Binational Commission through ensuring it is integrated by government institutions and civil society, and to incorporating the interests of indigenous people into the Sixaola Basin. Work is continuing to formalise the organization through the development of codes of conduct and an action plan.

Negotiating other types of agreements

Other types of agreements may originate not only at the national scale (like treaties) but also at the regional or local levels, where populations live in close proximity across political borders. Successful negotiations start with getting the right parties to the table. Communities that straddle political borders not only share natural resources but often encounter similar challenges despite existing within different States. This results in cooperation processes being segmented across various management projects. In the final steps, decisions are made and the parties formulate the agreements. This concept of decentralised environmental governance recognizes the need for inclusive participation and horizontal power structures while advocating strategies that promote local issues into national political agendas.

In the Coatlán Basin shared between Mexico and Guatemala, work at the local level in both countries has continued to make stepwise progress. IUCN, working through its partners, has taken a grass roots approach to water diplomacy engaging directly with microwatersheds under the BRIDGE. In 2011, the Buena Vista Microwatershed was established by local leaders. Through workshops and mutual exchanges with other watersheds, groups have begun to set up work plans and local committees, sharing data and information with themselves and provincial authorities in their respective regions.

The benefit of various types of agreements that work together

Water diplomacy takes place under the authority of sovereign governments, but since water is a resource used by everyone and managed at multiple scales, agreements that work on the ground need the consent of water users. This implies that many kinds of agreements are therefore needed for effective governance of transboundary waters. These are often very practical and focused on concrete actions around



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| Agreement type | Local | National/Sub-national | International | Transnational |
|----------------|---|--|--|------------------------------------|
| Scope | Agreements governing behaviours at a specific location within a 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 State and other stakeholders. Can apply to an administrative unit (province, municipality) or to a specific river basin, lake, aquifer, etc. Can be State-issued or an agreement between multiple parties (State and non-State). | Global, regional or bilateral agreements between States. Agreements for transboundary basins, aquifers, lakes, etc. | Agreements which transcend States. |

specific problem-solving or development priorities. They can be developed in ways that build on a framework agreed at 'treaty' level, or that set in place practical building blocks that augment and improve the potential for States to secure high-level negotiations. Working across such a spectrum of agreements builds a practical, operational roadmap for change and improvement in water governance capacities that should be closely articulated with sustainable development in a basin.

For example, ongoing cooperation over water in the Andes Region contains various types of agreements and, as part of a regional initiative, has the potential for incorporating a 'suite of agreements' in the future. Ecuador, Peru and Bolivia have several

formal treaties in place on the Zarumilla, Catamayo-Chira, Puyango-Tumbes, Lake Titicaca and Amazon basins. In 1996, Lake Titicaca established a basin authority jointly managed between Bolivia and Peru, in 2011, Ecuador and Peru set up an IWRM Binational Commission for Zarumilla, and in 2012, Ecuador and Peru and signed a joint Presidential Declaration calling for a binational commission on the Catamayo-Chira and Puyango-Tumbes basins. Additionally in a regional agreement, the Andean Community began to implement the Andean IWRM strategy, focusing on transboundary issues as well as the water information system which incorporates participation from all Andean countries.

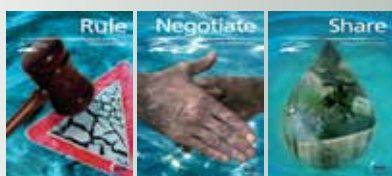


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Examples from the field

In the Catamayo-Chira basin, the provincial and regional governments of Ecuador and Peru, in coordination with the national water authorities, elaborated an integrated plan of the river basin. One of the first steps of this cooperation framework was development of an information system for the basin. In February 2012, the Presidents of Peru and Ecuador signed a joint Presidential Declaration calling for the setting up of a binational commission for the basin. Based on the declaration and the momentum it created, a process has started toward the creation of an institutional entity (bi-national commission) for transboundary water management of the Catamayo-Chira River basin.

In the Goascorán, where BRIDGE works, a diversity of agreements, both binding and non-binding, support cooperation in the area. For example, the Framework Agreement signed by both Honduras and El Salvador and the EU for the implementation of the Transboundary Development Program Project created the Binational Management Group of the Goascorán River Basin in 2006. In a local and less formal setting, agreements between mayors of the border municipalities support cooperation in the environmental management of the basin.



Learn more

WANI Toolkits

RULE – Reforming Water Governance
NEGOTIATE – Reaching Agreements over Water
SHARE – Managing Waters Across Boundaries

Websites

www.waterlawandgovernance.org
www.iucn.org/bridge

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About IUCN

IUCN, International Union for Conservation of Nature, helps the world find pragmatic solutions to our most pressing environment and development challenges. IUCN's work focuses on valuing and conserving nature, ensuring effective and equitable governance of its use, and deploying nature-based solutions to global challenges in climate, food and development. IUCN supports scientific research, manages field projects all over the world, and brings governments, NGOs, the UN and companies together to develop policy, laws and best practice. IUCN is the world's oldest and largest global environmental organization, with more than 1,200 government and NGO Members and almost 11,000 volunteer experts in some 160 countries. IUCN's work is supported by over 1,000 staff in 45 offices and hundreds of partners in public, NGO and private sectors around the world.

About BRIDGE - Building River Dialogue and Governance

BRIDGE (Building River Dialogue and Governance) supports the capacities of countries sharing a river basin to implement effective water management arrangements through a shared vision, benefit-sharing principles and transparent, coherent and cost-effective institutional frameworks. Its goal is to enhance cooperation among riparian countries through applying water diplomacy at multiple levels.



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