

SESSION 4 - Guidance on approaching the reporting, especially related to basin / arrangement level reporting
(Section II, questions 1 and 2 of the reporting template)

First meeting of the drafting group on the guide to reporting under the water convention and as a contribution to SDG indicator 6.5.2
Geneva, Switzerland, 9-10 May 2019

General points to consider

- There are a multiplicity of different scenarios that must be captured by the same reporting template
- Need to provide guidance on interpretation of agreements (implicit / explicit)
 - For example, a treaty might refer to ‘transboundary waters’.
 - Does this include aquifers?
 - Suggested approach: interpret text broadly and in line with implementation and with other agreements, e.g. Water Convention for Parties where no explicit reference?
 - Ultimately up to countries to provide an interpretation of their agreements and arrangements
- Check errors and inconsistencies
 - Provide a matrix of related questions, e.g. data exchange covered in question 2(d) (agreement), 3(g) (joint body), 6, and section IV(1) (difficulties and challenges)
- How to provide guidance on open questions while avoiding the risk of bias?
 - Keep quite general, ie., type of topics that might be included.
- How to ensure that the guidance is succinct and accessible?

Structure and approach to reporting

- *Calculation of SDG indicator 6.5.2 - methodology*
- *Table 1 - Transboundary river or lake basins*
- *Table 2 - Transboundary aquifers*
- **Consider the transboundary river, lake and aquifer basins listed to approach Section II.**

Section I Calculation of SDG indicator 6.5.2

Section II Questions for each transboundary basin, sub-basin, part of a basin, or group of basins (river, lake or aquifer)

- *Questions 1 - 13 to be completed for each agreement or arrangement in place covering a transboundary basin (river or lake basin, or aquifer), sub-basin, part of a basin, or group of basins.*
- **Consider your replies to questions 1, 2, 3, 4 and 6 to verify which transboundary basins are covered by a cooperation arrangement that is operational (cf. criterion set out in the Methodology for the calculation of SDG indicator 6.5.2).**

Section III Water management at the national level

- *Questions 1 and 2 relate to general information on water management at the national level as it relates to transboundary waters.*

Section IV Final questions

Some of the questions relate to who filled out the questionnaire and should be completed for SDG indicator 6.5.2 and reporting under the Convention.

Different ways to report on
transboundary waters – country
perspectives

Section II

Does your country have transboundary agreements or arrangements for the protection and/or management of transboundary waters (ie., rivers, lakes or groundwater), whether bilateral or multilateral?
Yes/No

If yes, list the bilateral and multilateral agreements or arrangements (listing for each of the countries concerned):

1. Definition/scope

- Provide a definition of what is meant by agreements and arrangement for the protection and/or management of transboundary waters based on the text provided in the guide to implementing the Water Convention
- Make the distinction between multilateral arrangements that are specific to a particular basin, and arrangements that are more general, such as EU WFD, Global Water Conventions and SADC Protocol

2. General guidance

- Provide a reference style for how to list agreements and arrangements. Reference style should include key information, including official title of the agreement or arrangement; date of adoption; date of entry into force (where different to date of adoption); and parties to the agreement or arrangement

- Provide a definition of what is meant by agreements and arrangement for the protection and/or management of transboundary waters based on the text provided in the guide to implementing the Water Convention
 - “The term “agreements” refers to formal agreements falling under the scope of application of the 1969 Vienna Convention on the Law of Treaties, therefore, they are to be in written form.” (Guide to implementing the Water Convention)
 - “The words “other arrangements” refer to less formal types of agreements as well as other forms of cooperation and mutual understandings between the Riparian Parties. It is to be stressed that “other arrangements” in no way are to be regarded as non-committal instruments” (Guide to implementing the Water Convention)

Great diversity in agreements and arrangements

Framework convention	<p>Framework conventions tend to set out the main substantive and procedural rules and principles for governing a particular river, lake or aquifer system. This type of agreement also tends to establish joint institutional arrangements, such as a River Basin Commission.</p>	<p>2010 Guarani Aquifer Agreement 1970 Treaty on the Rio de la Plata Basin 1995 Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin 1994 Convention on Cooperation for the Protection and Sustainable Use of the Danube River 1998 Convention on the Protection of the Rhine 2000 Agreement for the Establishment of the Orange-Senqu Commission 2003 Convention on the Sustainable Management of Lake Tanganyika</p>	Memorandum of Understanding (MoU)	<p>MoUs tend to include broader principles of cooperation and are often adopted at the interministerial level. MoUs may or may not be legally binding.</p>	<p>2011 MoU for the Management of the Extended Transboundary Drin Basin 2015 MoU between Kenya and Tanzania for Joint Water Resources Management of the Transboundary Mara River Basin</p>
			Joint Declaration	<p>Joint declarations may cover one basin or several basins. Declarations tend to include broader principles of cooperation and are often adopted at the interministerial, rather than interstate, level. Joint declarations may or may not be legally binding.</p>	<p>2010 Joint Declaration on Understanding and Cooperation in the Field of Use of Water Resources on the Respective Territories of the Shared River Basins between Bulgaria and Greece</p>
Bilateral treaty	<p>Countries sharing several transboundary waters tend to adopt bilateral treaties. These treaties tend to set out general rules and principles covering all transboundary waters, and may establish joint institutional arrangements such as intergovernmental commissions or working groups. By covering all transboundary waters, groundwater is indirectly included.</p>	<p>2017 Agreement between Uzbekistan and Turkmenistan on Cooperation in the Field of Water Management 2017 Agreement between Poland and the Czech Republic on Cooperation on Transboundary Rivers in the Field of Water Management 1990 Agreement between Botswana and Namibia on the Establishment of a Joint Water Commission</p>	Exchange of Letters	<p>Exchanges of letters tend to set out specific commitments that may have been agreed at a particular meeting, or reflect an update of an existing agreement or arrangement.</p>	<p>2002 & 2009 Exchange of letters between the Ministers of Germany, the Netherlands, Lower-Saxony, and Nordrhein-Westfalen (implementing the EU Water Framework Directive and the Floods Directive)</p>
			Minutes	<p>Minutes tend to be records of commitments agreed at a particular meeting. They may assist in the interpretation of a treaty arrangement.</p>	<p>1980 Minutes of the Joint Iraqi-Turkish Committee for Economic and Technical Cooperation 1922-2017 International Boundary and Water Commission between US and Mexico has adopted 323 Minutes 2002 Minutes adopted by Algeria, Libya and Tunisia on the North-Western Sahara Aquifer System through the establishment of a Consultation Mechanism</p>
Protocols	<p>Protocols tend to be concluded on the basis of more general founding agreements.</p>	<p>2012 Great Lakes Water Quality Protocol 2003 Protocol for Sustainable Development of Lake Victoria Basin</p>			

Progress on Transboundary Water cooperation – Global baseline for SDG indicator 6.5.2 (2018), p. 44

- Make the distinction between multilateral arrangements that are specific to a particular basin, and arrangements that are more general, such as EU WFD, Global Water Conventions and SADC Protocol
 - For the purpose of reporting, “agreements and arrangements” differ from more general treaties, e.g. EU WFD, Global Water Conventions and SADC Protocol, as the former cover specific transboundary waters, and there is a joint body or mechanism for riparian Parties to *directly* follow up on the progress of cooperation.
- “Reference to “agreements and other arrangements” includes cases in which provisions on transboundary water cooperation are part of a wider agreement on environmental protection or an agreement on economic cooperation” (Guide to implementing the Water Convention)
 - See for example, *Border Integration, Development and Neighbourhood Agreement* between Ecuador and Peru

- Additional guidance

- Include agreements that have been entered into by sub-national entities

- For example:

- In addition to Belgium, France and the Netherlands, the Belgian regions of Walloon, Flemish and Brussels-Capital are also Parties to the 2002 Agreement on the River Scheldt.
 - The 2007 Arrangement on the Protection and Recharge of the Franco-Swiss Genevois Aquifer was concluded between the Republic and Canton of Geneva on the one part, and the Community of the Annemassienne Region, the Community of the Genevois Rural Districts, and the Rural District of Viry on the other

- Recognise that agreements might be for fixed periods or be interim

- For example:

- Tripartite Interim Agreement between the Republic of Mozambique and the Republic of South Africa and the Republic of Swaziland for Co-operation on the Protection and Sustainable Utilisation of the Water Resources of the Incomati and Maputo Watercourse, 29 August 2002
 - “This Agreement shall remain in force until 2010 or until superseded for the relevant watercourse by comprehensive water agreements on the Incomati and Maputo watercourses supported by joint studies, whichever is the earlier. The Parties shall adhere to the time frames set out in Annex V.”

II. Questions for each transboundary basin, sub-basin, part of a basin, or group of basins (river, lake or aquifer)

Please complete this second section for each agreement or arrangement. You may coordinate your responses with other States with which your country shares transboundary waters, or even prepare a joint report. General information on transboundary water management at the national level should be provided in section III and not repeated here.

Please reproduce whole section with its questions for each transboundary **basin, sub-basin, part of a basin or group of basins** for which you will provide a reply.

Name of the transboundary basin, sub-basin, part of the basin or group of basins:

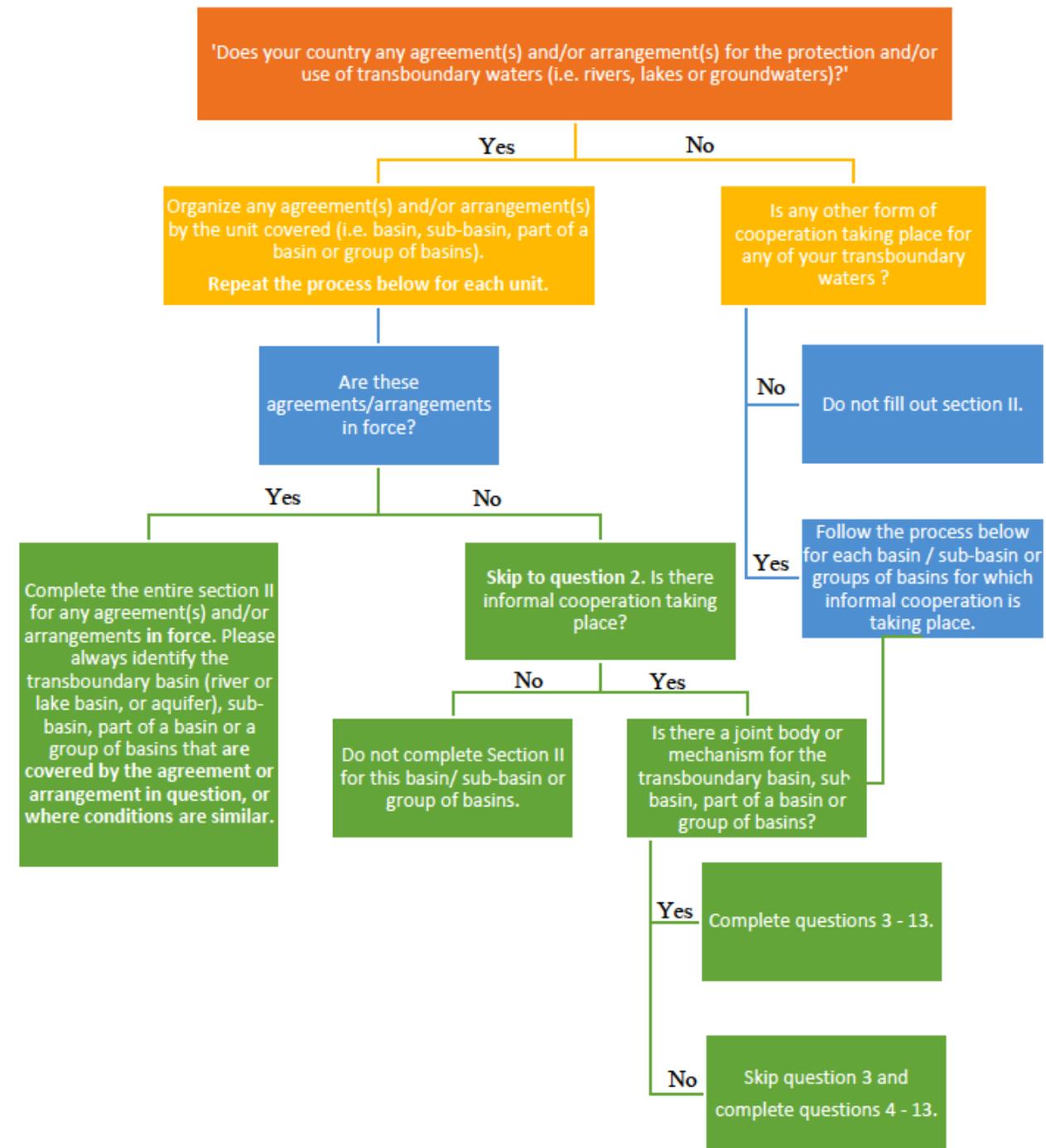
List of the riparian States:

In the case of an aquifer, what is the nature of the aquifer and its relation with the river or lake basin:

- Unconfined aquifer connected to the river or lake**
- Unconfined aquifer with no or limited relation with surface water**
- Deep confined aquifer**
- Other**
- Please describe**
- No information**

Percentage of your country's territory within the basin, sub-basin, part of a basin or group of basins:

- Explain logic of reporting by transboundary agreements or arrangements
- Explain that countries face different situations and show how these different situations are accommodated in the reporting template
- Encourage, for instance, that basin-specific agreements are reported first and then followed by bilateral agreements that cover all (or at least a group of) transboundary waters between two or more countries
- Explain that grouping of basins appropriate in certain (limited) circumstances, e.g. Finland example, but individual reporting generally preferred
- Develop chart to show different ways to report



- For the name of basin and sub-basins, and in order to ensure consistency between countries sharing the same basins or sub-basins, encourage states to use the list provided by the Transboundary Water Assessment Programme (TWAP)
 - Sometimes difficult to discern whether countries are making reference to the same basin or sub-basin (tributary) as different names may be used, e.g. Tejo (Portuguese) /Tajo (Spain)
- Provide a list of databases and their links that can be consulted for the identification of transboundary rivers, lakes and aquifers, e.g. TWAP and IGRAC-UNESCO database.

- Explain terms and difference between ‘basin, sub-basin, part of a basin, or group of basins’, drawing on examples from Water Convention, EU Water Framework Directive and 1966 ILA Helsinki Rules.
- Build on existing definitions to provide one definition for ‘basin’, ‘sub-basin’ and ‘part of a basin’, and highlight synonymous terms, e.g. ‘catchment’
 - Water Convention refers to ‘catchment areas’ (Art. 2(6)):
 - “The entire catchment area of a surface water body or a recharge area of the aquifer should be understood as the area receiving the waters from rain or snow melt, which drain downhill (on the surface or below the surface of the ground in the unsaturated or saturated zones) into a surface water body or which infiltrate through the subsoil (i.e. the unsaturated zone) into the aquifer.” (Guide to implementing the Water Convention, para. 74)
 - EU Water Framework Directive (Art. 2):
 - “River Basin” – “the area of land from which all surface run-off flows through a sequence of streams, rivers and, possibly, lakes into the sea at a single river mouth, estuary or delta”
 - “Sub-basin” - “means the area of land from which all surface run-off flows through a series of streams, rivers and, possibly, lakes to a particular point in a water course (normally a lake or a river confluence).
 - ILA Helsinki Rules
 - “International drainage basin” - “a geographical area extending over two or more States determined by the watershed limits of the system of waters, including surface and underground waters, flowing into a common terminus.

- Provide definition of ‘unconfined aquifer connected to the river and lake’.
 - Provide definition of ‘unconfined aquifer with no or limited relation with surface water’, and ‘deep confined aquifer’.
 - Explain what type of aquifers might be classified as ‘other’, e.g. ‘semi-confined aquifer’ or ‘shallow confined aquifer’.
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- ILC Draft Articles on Transboundary Aquifers
 - “Aquifer” – “a permeable water-bearing geological formation underlain by a less permeable layer and the water contained in the saturated zone of the formation”
 - British Geological Survey, Glossary of groundwater and groundwater-related terms
 - “unconfined aquifer” – “A partially saturated aquifer which contains a water table which is free to fluctuate vertically under atmospheric pressure in response to discharge or recharge”

1. Is there one or more transboundary (bilateral or multilateral) agreement(s) or arrangement(s) on this basin, part of a basin or group of basins?

One or more agreements or arrangements exist and are in force

Agreement or arrangement developed but not in force

Agreement or arrangement developed, but not in force for all riparians

Please insert the name of the agreement(s) or arrangement(s)

Agreement or arrangement is under development

No agreement or arrangement

If there is no agreement or arrangement or it is not in force, please explain briefly why not and provide information on any plans to address the situation:

If there is no agreement or arrangement and no joint body or mechanism for the transboundary basin, sub-basin, part of a basin or group of basins then jump to question 4; if there is no agreement or arrangement, but a joint body or mechanism then go to question 3

- Explain what is meant by ‘in force’, particularly for those agreements and arrangements where there is no specific procedure for entry into force, and provide some examples.
 - Provide an explanation based on Art. 24 of the Vienna Convention on the Law of Treaties, ie., ‘A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.’
 - Look at whether provisions in the treaty state when entry into force occurs.
 - Might enter into force upon date of last signature or soon thereafter.
 - If no details in the agreement or arrangement then assumption that entry into force occurs when States demonstrate consent to be bound it.
 - Art 36(A), 1995 Mekong Agreement, states that, “this agreement shall... enter into force among all parties ... on the date of signature by the appointed plenipotentiaries”.
- Also explain difference between terms, ‘signatory’, ‘acceptance’, ‘approval’, ‘adherence’ and ‘ratification’

- Provide hypothetical examples of an agreement or arrangement developed, but not in force for all riparians; under development
 - Example of an agreement development but not in force:
 - Six countries have negotiated an agreement but it requires all countries to ratify the agreement before it will enter into force. Only five out of six countries have so far ratified the agreement.
 - Example of an agreement under development
 - Six countries have agreed the draft text of an agreement but the final text has not yet been adopted.
- Provide an indicative example of where a country might have established a joint body or mechanism but an agreement or arrangement is not in force
 - Example of Mexico Report – while International Boundary Waters Commission exists, and 1944 Treaty for Colorado and Tijuana Rivers, and Rio Grande, no specific treaty for several sub-basins (Agua Grande, Valle de San Lu s, Los Vidrios 1, Los Vidrios 2, R o Sonoyta 1, R o Sonoyta 2, R o Magdalena, Arroyo Los Nogales, R o Santa Cruz, R o San Pedro, R o Bavispe, Hacienda San Francisco-Juguete-Madero-Palomas y Desierto de Samalayuca)

Questions 2 and 3 to be completed for each bilateral or multilateral agreement or arrangement in force in the transboundary basin, sub-basin, part of a basin or group of basins.

2. (a) Does this agreement or arrangement specify the area subject to cooperation?

Yes /No

If yes, does it cover the entire basin or group of basins and all riparian States?

Yes /No

Additional explanations?

Or, if the agreement or arrangement relates to a sub-basin, does it cover the entire sub-basin?

Yes /No

Additional explanations?

Which States (including your own) are bound by the agreement or arrangement?
(please list):

1. General guidance

- Explain different approaches to geographic coverage that have been included in agreements and arrangements. Also make the point that while some agreements and arrangements explicitly define the area subject to cooperation, others only imply the area that is subject to cooperation based on the nature of the agreement, e.g. covering all uses within a particular river basin
- Make it clear that the question is different to asking if all riparian countries are party to an agreement. In other words, an agreement may cover the entire basin and all riparian States, but not all riparian States have become party to that agreement, e.g. Mekong Agreement.
- Explain that the countries must be party to the agreement or arrangement, rather than just signatories

- Explain different approaches to geographic coverage that have been included in agreements and arrangements
 - Agreement between two or more countries covering entire basin
 - Agreement between two countries covering several basins
 - Agreement between two countries covering a sub-basin
 - Agreement between two countries covering part of a basin, e.g. border area

- While some agreements and arrangements explicitly define the area subject to cooperation, others only imply the area that is subject to cooperation based on the nature of the agreement, e.g. covering all uses within a particular river basin

1998 Rhine Convention - Article 2 – Scope

This Convention applies to:

- (a) the Rhine;
- (b) Groundwater interacting with the Rhine;
- (c) Aquatic and terrestrial ecosystems which interact or could again interact with the Rhine;
- (d) the Rhine catchment area, insofar as its pollution by noxious substances adversely affects the Rhine
- (e) the Rhine catchment area, insofar as it is of importance for flood prevention and protection along the Rhine.

2001 Agreement between Kazakhstan and China on Cooperation in the Use and Protection of Transboundary Rivers, Article 1

“Transboundary rivers” – “all rivers and river flows that cross state borders of are located along the border between the Republic of Kazakhstan and the People’s Republic of China”

Article 2 refers to:

“..the use and protection of transboundary rivers”

- Explain how to deal with the situation where territorial scope of two or more provisions in the same agreement differs
- Agreement on the Nile River Basin Cooperative Framework (not in force), Article 2:
 - “Nile River Basin” means the geographical area determined by the watershed limits of the Nile River system of waters; this term is used where there is reference to environmental protection, conservation or development;
 - “Nile River system” means the Nile River and the surface waters and groundwaters which are related to the Nile River; this term is used where there is reference to utilization of water;
 - For purposes of question 2 (a), River Basin would be the appropriate unit of coverage

(b) If the agreement or arrangement relates to a river or lake basin or sub-basin, does it also cover aquifers?

Yes /No

If yes, please list the aquifers covered by the agreement or arrangement:

1. General guidance

- Include an explanation of how groundwater is included in river basin treaties

(c) What is the sectoral scope of the agreement or arrangement?

- All water uses
- A single water use or sector
- Several water uses or sectors

If one or several water uses or sectors, please list (check as appropriate):

Water uses or sectors

- Industry
- Agriculture
- Transport (e.g. navigation)
- Households
- Energy: hydropower and other energy types
- Fisheries
- Tourism
- Nature protection
- Other (please list):

1. General Guidance

- Explain that the sectors might be explicitly stated in the agreement, or implied from the substantive provisions of the agreement. Provide examples of the latter.
- Explain and provide examples for each.

- Explain that the sectors might be explicitly stated in the agreement, or implied from the substantive provisions of the agreement. Provide examples of the latter.
 - 2012 Dniester Treaty, Article 2
 - “The present Treaty shall apply to uses of waters of the Dniester River basin for purposes other than navigation and to measures of protection, preservation and management of water and other natural resources and ecosystems of the Dniester River basin related to those uses.”
 - 2000 ORASECOM Agreement, Article 7(2)
 - “Utilise the resources of the River System”

(d) What topics or subjects of cooperation are included in the agreement or arrangement?

Procedural and institutional issues

- Dispute and conflict prevention and resolution
- Institutional cooperation (joint bodies)
- Consultation on planned measures
- Mutual assistance

Topics of cooperation

- Joint vision and management objectives
- Joint significant water management issues
- Navigation
- Human health
- Environmental protection (ecosystem)
- Water quality
- Water quantity and allocation
- Cooperation in addressing floods
- Cooperation in addressing droughts
- Climate change adaptation

Monitoring and exchange

- Joint assessments
- Data collection and exchange
- Joint monitoring
- Maintenance of joint pollution inventories
- Elaboration of joint water quality objectives
- Common early warning and alarm procedures
- Exchange of experience between riparian States
- Exchange of information on planned measures

Joint planning and management

- Development of joint regulations on specific topics
- Development of international or joint river, lake or aquifer basin management or action plans
- Management of shared infrastructure
- Development of shared infrastructure
- Other (please list):

1. General guidance

- Explain that the sectors might be explicitly stated in the agreement, or implicit from the substantive requirements of the agreement. Provide examples of the latter.

(e) What are the main difficulties and challenges that your country faces with the agreement or arrangement and its implementation, if any?

Aligning implementation of agreement or arrangement with national laws, policies and programmes

Aligning implementation of agreement or arrangement with regional laws, policies and programmes

Lack of financial resources

Insufficient human capacity

Insufficient technical capacity

Tense diplomatic relations

Non-participation of certain riparian countries in the agreement

No significant difficulties

Other (please describe):

(f) What are the main achievements in implementing the agreement or arrangement and what were the keys to achieving such success?:

(g) Please attach a copy of the agreement or arrangement or provide the web address of the document (please attached document or insert web address, if applicable):

1. Examples

- Provide some indicative examples of achievements and keys to success.