Draft checklist on the development of legal frameworks for transboundary waters

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Virtual Workshop on designing legal frameworks for transboundary water cooperation
28-29 July 2020
Nur-sultan, 10-12 October 2018,
Meeting of the Parties to the Water Convention adopts programme of work for 2019-2021

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

28-29 July 2020,
Virtual Workshop
Tailored to support the preparation of the checklist

Next steps and further development
About the checklist

• Aimed at **supporting countries in the design and drafting** of agreements or other arrangements for transboundary waters

• Focus on **content and drafting options** rather than on process

• **Target audience**: country representatives involved in negotiation and drafting and other stakeholders working on transboundary water cooperation
Rationale and analytical framework

- Checklist to serve as an agreement/arrangement builder
  - 6 thematic modules
  - Building blocks: provisions/issues that countries may consider including within each module
  - Key aspects, help define content of building blocks
  - Supporting resources, assist in further developing the content
Considering building blocks

• Country representatives using the tool during negotiations will assess/negotiate whether the issue/provision is relevant to their context

• Some building blocks are especially advantageous to include within a legal framework
  E.g. help ensure that legal framework can be effectively implemented, help fulfill SDG target 6.5, indicator SDG 6.5.2

• To facilitate process of selecting building blocks, checklist will:
  1) Indicate advantages of including building blocks and key aspects
  2) Provide examples from existing instruments, including the two Conventions

• Many building blocks are interdependent and mutually supportive
  Value in preserving their integrity
Preparing the ground – key messages

1. The development of a legal framework is a process

2. There is wide diversity in international water law practice

3. Consider relevant international law

- Initiating cooperation
- Developing a shared understanding of the basin
- Negotiating a legal framework
- Evolvement over time
- Implementation, bringing concrete benefits for river basin/aquifer populations
- The question of form
- Diversity for geographical and material scope
- Adapting legal frameworks to the characteristics of the basin
- Effects of becoming a Party to a treaty
- Harmonizing elements in international water law
- Link with international environmental law
- Links with international human rights law
Draft annotated outline – modules and building blocks

Module 1: Preamble
- Context
- Vision, purpose

Module 2: General provisions
- Definitions/Use of Terms
- Objective
- Scope
- States and/or entities that can become Parties to the agreement
- Relationship with other agreements, rights, obligations
Module 3: Substantive content
- General obligations and rights
- Water management and protection issues
- Principles and other rights and obligations
- Sectoral and intersectoral issues

Module 4: Procedural features
- Regular exchange of data and information
- Notifications and consultations
- Public participation and stakeholder involvement
- Environmental Impact Assessment
- Joint Monitoring and Assessment
Module 5: Implementation, Institutional framework and dispute settlement

- Implementation at transboundary level, incl. establishment of joint bodies
- Implementation at national level
- Financing
- Compliance monitoring and dispute settlement

Module 6: Final provisions

- Ensuring evolvement over time
- Entry into force
- Withdrawal/termination

Module 5: Implementation, Institutional framework and dispute settlement

Module 6: Final provisions
Virtual workshop

Session 1: Preliminary considerations and general provisions

Sessions 2 and 3: Substantive content and procedural features

Session 4: Implementation, institutional framework and dispute settlement

Checklist

Module 2: General provisions

Module 3: Substantive content

Module 4: Procedural features

Module 5: Implementation, institutional framework and dispute settlement
### Draft annotated Checklist outline

<table>
<thead>
<tr>
<th>Thematic modules</th>
<th>Building Blocks</th>
<th>Key aspects [Draft in progress]</th>
<th>Advantages of the building blocks/key aspects (to be filled)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Preamble</strong></td>
<td>Context</td>
<td>- Explain the reasons that led to the development of the agreement/arrangement (e.g., cooperative efforts that led to the adoption of the legal framework). &lt;br&gt;- Put the agreement/arrangement into context by explaining its relationship with other instruments and institutions that operate at a global, regional and/or sub-regional level &lt;br&gt;- Refer to basin-specific conditions, if relevant</td>
<td></td>
</tr>
<tr>
<td><strong>Vision, purpose</strong></td>
<td></td>
<td>- Explain the vision and purpose, including by referring to principles.</td>
<td></td>
</tr>
</tbody>
</table>
Thank you for your attention!