Designing substantive and procedural features of an agreement or other arrangement: general considerations

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Designing legal frameworks - Preliminary comments

• ‘Substantive rules’ are the rules in international agreements that establish substantive, or material, rights and obligations of riparian states utilizing the shared water body

• ‘Procedural rules’ are the means of implementing the substantive rules and of managing the shared water body

• Both sets of rules are complementary - procedures support achieving substantive objectives

Vinogradov et al, 2001
Designing legal frameworks – Substantive features

Module 3 – Substantive content of the agreement or other arrangement

1) General obligations and rights
2) Principles and other rights and obligations
3) Water management and protection issues
4) Sectoral and intersectoral issues
Designing legal frameworks – Procedural features

Module 4 – Procedural features

1) Regular exchange of data and information
2) Notifications and consultations
3) Public participation and stakeholder involvement
4) Environmental impact assessment
5) Joint monitoring and assessment
Challenges

1. Balance: finding the right balance between what should be included in the agreement/arrangement and what may be too detailed to be included
2. Flexibility: considering the ability of the agreement/arrangement to deal with changing situations or uncertainties
3. Language: wording the provisions of the agreement/arrangement clearly so that those charged with its implementation, not present in the negotiations, understand how to implement them
4. Implementation: ensuring that the agreed provisions are implementable – e.g. alignment with domestic legislation, other international obligations, financial sustainability, capacity, etc.
Lessons learned/recommendations

1. Substantial and procedural features – key elements of a treaty
2. Centrality of substantial and procedural provisions requiring careful drafting
3. Multi-disciplinary approach to the drafting (water resources managers, lawyers, hydrologists, diplomats, hydro-geologists, etc.)
4. Solid understanding of domestic and transboundary water resources management challenges of the water bodies under consideration
Thank you for your attention!