



# Negotiating water agreements



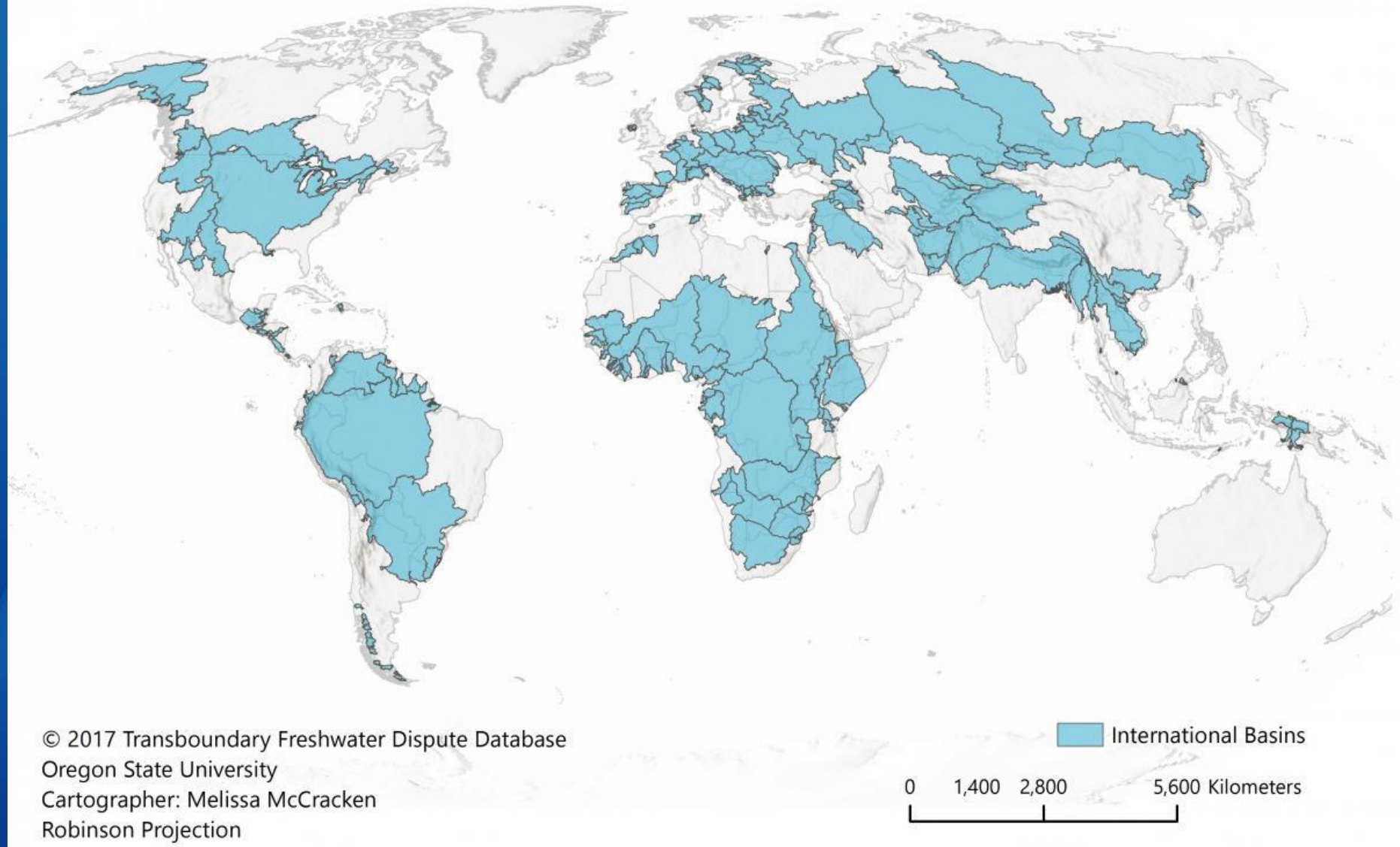
Diego Jara  
Environmental Law Programme  
IUCN | ELC  
[diego.jara@iucn.org](mailto:diego.jara@iucn.org)



## 5. Negotiating Benefits



## Transboundary river basins of the world

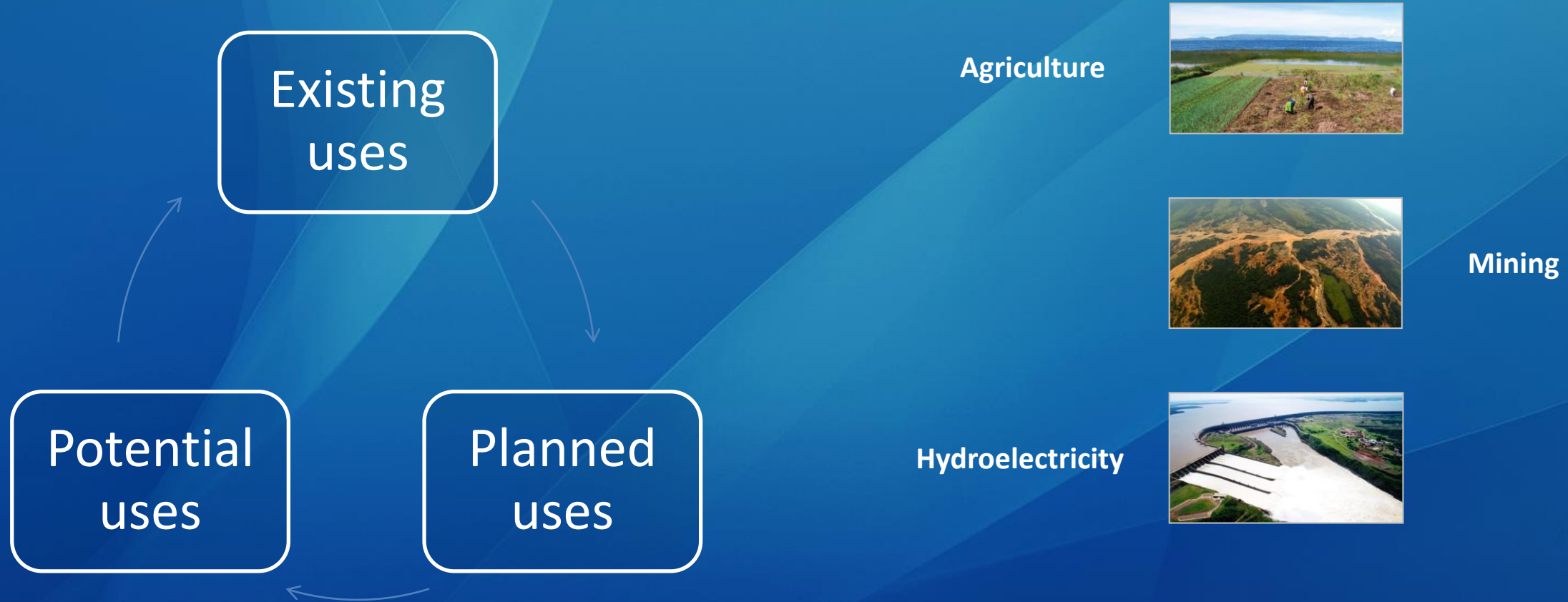




# Why negotiate?



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# Why negotiate?

- Transboundary waters account for 60% of global freshwater resources
- 60% of those waters lack any type of cooperative framework
- When cooperative frameworks exist, they are often bilateral, weak, do not consider a basin approach
- Existing frameworks provide little space for non-governmental actors to participate





# Why negotiate?

- Transboundary river basins are complex
- Fair, effective and sustainable water management requires negotiation
- It provides benefits which none of the countries could achieve on its own
- Promotes transboundary water cooperation, regional integration and peace



# What is negotiation?





# What is negotiation?

- A continuous process of dialogues aimed at reaching agreements



# Goal of negotiation

- The larger goal of water negotiation is to turn potential conflicts into constructive engagement and ideally into voluntary and fair lasting agreements that can be effectively implemented



# Pre-conditions for negotiation

- Divergence of interests
- Mutual interdependency
- Communication mechanisms





# Types of negotiation

- Competitive (positions)  
Generally places greater emphasis on trading, hard bargaining and distributing. (winners and losers situation)
- Cooperative (mutual interests)  
Generally places greater emphasis on collaborating and seeking consensus (win-win situation)

# Gains from negotiation processes



## 1. Direct and tangible:

*Joint development of water infrastructure*

*Irrigation projects*

*Creation of protected areas for conservation*



## 2. Indirect and intangible:

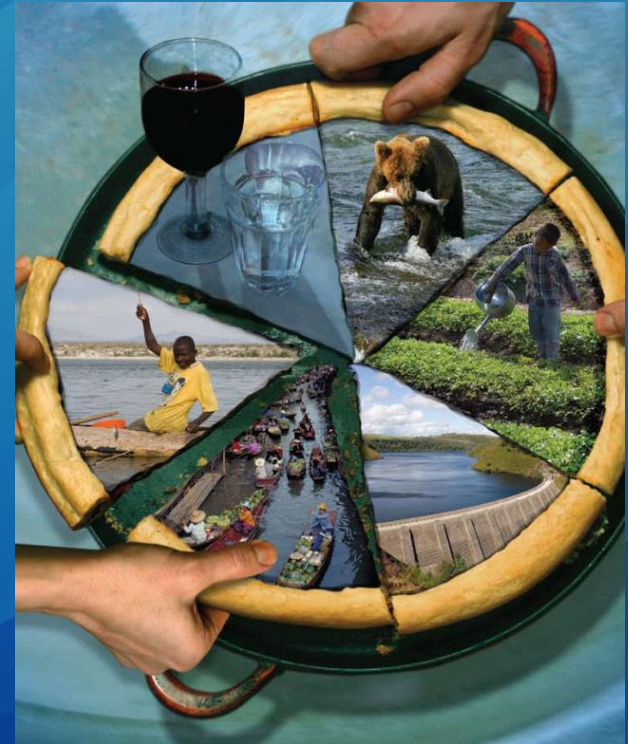
*Promotion of cultural values*

*Strengthening relationships between countries*



# Benefits for all

- A negotiation process where the concerns and interests from all stakeholders are taken into account will ensure benefits for all







# Equitable and reasonable utilization

- UN Watercourses Convention, Art. 5
- Watercourse States shall in their respective territories utilize an international watercourse in an *equitable and reasonable manner*. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining *optimal and sustainable utilization thereof and benefits therefrom*, taking into account the interests of the watercourse States concerned, consistent with adequate *protection of the watercourse*.



What do you consider to be an equitable and reasonable utilization of waters?



# Factors to be considered

- (a) Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;
- (b) The social and economic needs of the watercourse States concerned;
- (c) The population dependent on the watercourse in each watercourse State;
- (d) The effects of the use or uses of the watercourses in one watercourse State on other watercourse States;
- (e) Existing and potential uses of the watercourse;
- (f) Conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect;
- (g) The availability of alternatives, of comparable value, to a particular planned or existing use.





# Equitable and reasonable utilization

- Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both *the right to utilize the watercourse and the duty to cooperate in the protection and development thereof*



# How does cooperation manifest in transboundary waters?



# Cooperation

- Cooperation is essential to overcome transboundary water challenges
- Cooperation to be effective requires:
  - A common vision
  - Commitment from governments
  - Involvement of all interested parties
  - Permanent dialogue and exchange of data and information



### We would like to reflect on

What motivates cooperation?

How different actors in a basin interact and cooperate?

Why should an upstream country cooperate with downstream countries?

How agreements can facilitate cooperation?

Is it possible to cooperate without an agreement?

Is there potential for a broader cooperation based on water?

How can different riparian states upstream or downstream benefit from the use of waters?



# What is the road to build cooperation in transboundary waters?

To build cooperation it is essential first to understand the interdependencies and connectedness between the countries. These interdependencies can be of different nature such as Promotion of sustainable development of the region, Joint water Management, Accident prevention, Economic reasons etc.



# Incentives for cooperation

- States will cooperate when it is beneficial for their interests
- Interests could be of different nature:
  - Economical
  - Social
  - Political
  - Environmental
  - Cultural
- Benefits could increase when a distinction is made between those obtained from **individual** uses of transboundary waters and those deriving from **shared** uses of those waters



# Anchoring cooperation

- Water requires of regulations for its adequate use.
- Transboundary waters require States to negotiate and cooperate in order to achieve an integrated management
- Cooperation is anchored by the adoption of agreements which establish rights and duties to States
- Agreements serve to:
  - Memorialise and institutionalize cooperation
  - Establish the parameters to regulate shared resources
  - Provide a vehicle to maintain, enhance, and build relationships between States





# Types of Agreements

- **Binding**

- Convention
- Treaty
- Protocol
- Pact
- Act

- **Examples:**

- 1997 UNWC
- 1995 Mekong River

- **Non-binding**

- Declarations
- Codes of Conduct
- Guidelines
- Good practices

- **Examples:**

- Earth Charter
- Code of Conduct Volta Basin

# Type of Agreements



- **Global level:**
  - 1997 UN Watercourses Convention
  - 1992 UNECE Water Convention
- **Regional level:**
  - EU Water Framework Directive
  - SADC Shared Watercourses Protocol
- **Basin level:**
  - Amazon
  - Mekong
  - Plata
  - Rhine
  - Danube



# Key elements

Main areas	Key elements
1. Scope	<ul style="list-style-type: none"><li>• Legal reach (what waters?)</li><li>• Definitions (watercourse; uses)</li><li>• Parties (States; RIEOs)</li></ul>
2. Substantive Rules	<ul style="list-style-type: none"><li>• Legal duties &amp; entitlements (equitable and reasonable utilisation; due diligence; protection)</li><li>• Rules of substance (general or precise)</li></ul>
3. Procedural Rules	<ul style="list-style-type: none"><li>• Rules of procedure (duty to cooperate)</li><li>• Notification / exchange of information</li></ul>
4. Institutional framework	<ul style="list-style-type: none"><li>• Joint bodies (RBOs)</li><li>• Conference of the Parties (MoP; CoP)</li><li>• Organisations / organs (Ministerial level; other)</li></ul>
5. Dispute settlement	<ul style="list-style-type: none"><li>• Dispute avoidance (consultation)</li><li>• Dispute settlement (Art. 33 UN WC; other)</li><li>• Compliance verification (reporting; facilitation)</li></ul>

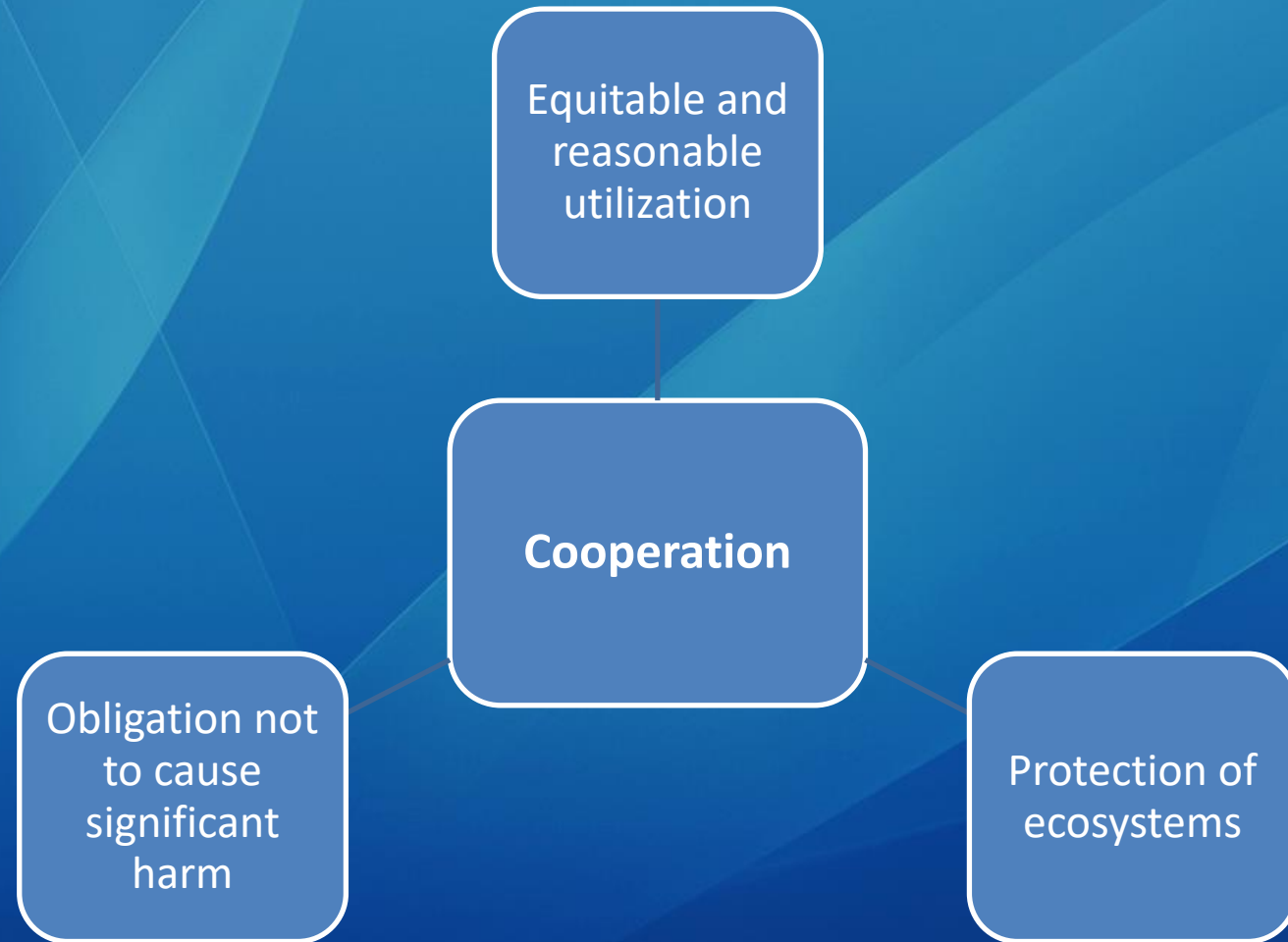


# Scope

- Defines the coverage of the agreement
  - Geographical and hydrological
  - Types of water uses and activities
  - Particular issues or challenges to be addressed
- ***Matters to be taken into account***
  - What waters are covered by the agreement?
  - Which uses of the waters may be allowed or which may be subject to control?
  - What issues or challenges are to be addressed by the parties?



# Substantive rules







# Substantive rules

- Define the rights and obligations of the parties.
- ***Matters to be taken into account***
  - What types of activities are permitted within a shared basin?
  - What types of activities are, or should be, forbidden within a shared basin?
  - Are there any priority levels in allocating the use of water within shared basins?
  - What are the benefits of co-regulating a shared basin between States?



# Procedural rules

- Provide practical means for implementing the agreement
- Establish an operational framework for the continuous management of a watercourse



# Procedural rules

- Duty to **exchange information and consult** others on the possible effects of planned measures .
- Duty to **notify and provide technical data** and information before the implementation of a project.
- Possibility to **evaluate** the potential effects of planned measures
- **Provide further information** if requested.
- Duty **not to implement** or permit the implementation of the project without consultation and negotiation to arrive at equitable resolution of the problem .
- Possibility to proceed with project implementation **without consent** in cases of public health, public safety and the protection of equally important interests .



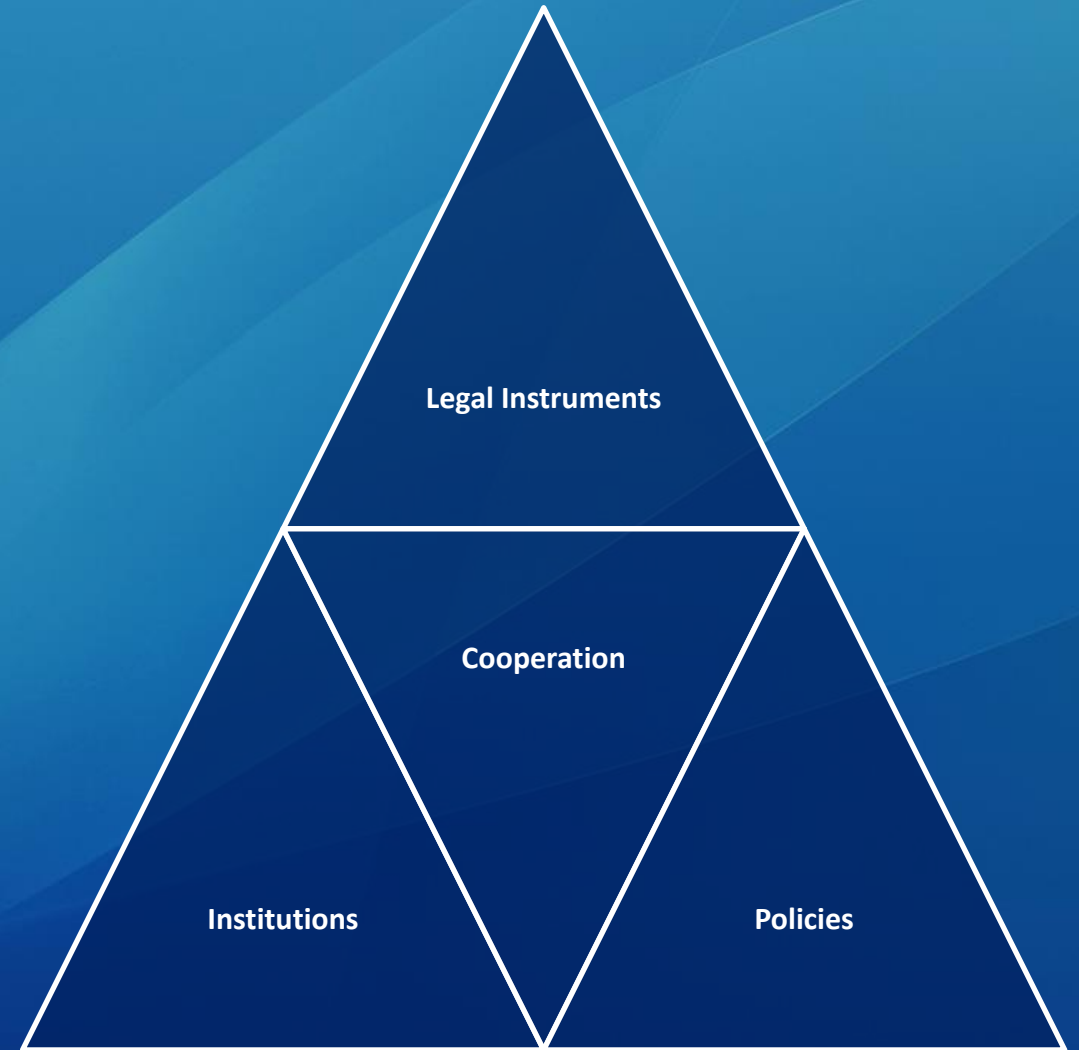
# Procedural rules

- Matters to be taken into account
  - What data should be exchanged by States sharing basins?
  - What are rights do States have, in cases where neighboring States are not complying with procedural obligations?
  - How is a cooperative process for the management of a transboundary basin developed between States?



# Institutions

- Entities responsible for the implementation and monitoring of agreements
- They may take different names:
  - Agencies
  - Commissions
  - Committees
  - Authorities
  - Departments
- May include not only formal organizational arrangements, but less formal meetings







# What makes an institution 'effective'?

- Level of authority conferred to the institution
- Economic and technical capacity
- Institutional design
- Public participation mechanisms



# Institutions

- Matters to be taken into account
  - Is it necessary to establish institutions for the management of shared basins?
  - What roles do the private and the productive sectors play in institutions entrusted with the responsibility of managing a shared basin?
  - What are the competences that joint institutions should have to effectively regulate a shared basin?
  - Who prepares and implements the management or operational plans?



# Dispute settlement

- In case of a dispute between two or more States about the interpretation or application of an agreement, the parties should try to solve this using peaceful means.
- If the parties cannot reach agreement by negotiation they may jointly use any of the following mechanisms:
  - Good offices, mediation, conciliation
  - Arbitration
  - International Court of Justice



# Dispute settlement

- Matters to take into account
  - Who is responsible in situations where a shared basin may be polluted, when this pollution derives from another State?
  - Who should pay for cleaning-up a polluted river/lake when the basin in question is shared?
  - Describe in a step by step manner the dispute resolution mechanisms provided



# Other provisions





# Financing

- The adequate governance of shared waters, the development of programs and projects, and the implementation of activities require financial resources
- Resources from Member States or external actors
- Cost sharing
  - Equal parts
  - According to the basin territory in each State
  - According to the benefits



# External actors

- River Basin Organisations are established by States
- Other actors might often be involved in or at least affected by the decisions from the RBO
  - NGOs
  - Civil society
  - Academia
  - International organisations
- Mechanisms can be incorporated to ensure coordination between these actors



# Public participation

- This can be reflected in involvement in:
  - Information sharing
  - Access to information
  - Consultations
  - Involvement in discussions
  - Participation in meetings
  - Direct inclusion (voice and vote)



# Challenges

1. POLITICAL WILL
2. TECHNICAL CAPACITIES
3. FINANCIAL CAPACITIES
4. LEGITIMACY
5. IMPACT



# Practical session





# Structure of the Session

This practical session consists of four parts:

- An analysis of the potential to negotiate an Agreement for the Takong Basin
- A Plenary Session
- A Facilitated Discussion
- Way forward



# The Analysis Session

For this session, participants will break up in 2 mixed groups to review the main contents of the Agreement:

- **Group 1:** To develop: “Scope”, substantive rules, procedural rules
- **Group 2:** To develop : Institutions, Dispute Settlement.



# The Review Session

- Each group will gather and nominate three persons who will later present the results from their group review.
- Each group will review the parts of the Agreement that has been assigned
- Each group will read, analyse, discuss, comment and provide written input and observations



# Plenary Session

- Each group will nominate 3 speakers who will present the observations, comments and inputs to each element of MoU working text



# Facilitated Discussion

After each group has presented its findings, the rest of Participants will provide their observations and comments to the results of each group



# Way Forward

- In consensus, participants will determine the way forward for the preparation of the Takong Basin