

GROUP I

I. PREAMBLE

Definition:

The preamble is a clause containing a brief introduction on the context in which an MoU is being adopted, as well as the reasons and objectives sought to be accomplished with its implementation.

- ***Matters to be taken into account***
 - What is the main goal of the MOU?
 - Which existing frameworks may be essential to be referred to in the MoU?
 - What instruments and/or initiatives should be acknowledged in the text?

II. SCOPE

Definition:

The scope defines the coverage of an international instrument. In the context of transboundary waters, the scope of an arrangement normally defines:

- Geographical and hydrological coverage
- Types of water uses and activities
- Substantive measures guiding such water uses

- ***Matters to be taken into account***
 - What waters are covered by the MOU?
 - Which uses and activities may be expressly contemplated in the MoU?
 - What are existing and future potential challenges?
 - Environmental/Economic/Climate Change

III. OBJECTIVES

Definition

The objectives describe the expected results to be achieved through the MoU's implementation.

These objectives are based on a vision stated by the Parties to the MoU (e.g. achievement of pure and natural state of water; water cooperation as a catalyst for peace and security; improvement of livelihoods of local communities, etc.).

The set of objectives may be followed by a core set of guiding principles that should be followed to achieve those objectives. These principles ideally will aim to drive progress towards environmentally and economically sound practices under a scheme promoting effective water governance.

Matters to be taken into account

- What should the MoU promote?
- For example:
 - To foster cooperation among the Parties and ensure sustainable development and peace in the region.
 - To ensure technical capacities of the Parties
 - To promote the involvement and inclusion of local communities and civil society.

GROUP II

IV. GUIDING PRINCIPLES

a) Definition

The principles are the basic rules that guide the development of the commitments of the parties, the MoU implementation mechanisms, as well as any other provisions covered by the MoU.

These rules are fundamentally those deriving from international relations, and commonly accepted by States.

In the area of transboundary waters, the main rules to be considered are the following:

i. Cooperation

This is a basic principle of international law. The duty to cooperate comes from the idea of the community of interests that exists between the States that are part of a shared basin. It is only through cooperation between all of these States that sustainable development can be achieved and ecological integrity maintained.

The duty to cooperate only establishes a general obligation and does not specifically require that institutions be established in order to put this process into practice. This is an overall duty to negotiate in good faith as well as having the opportunity to participate in cooperative arrangements for a shared basin.

ii. Equitable and reasonable utilization

Equitable utilization is the most fundamental principle relating to the uses of transboundary rivers and lakes.

This principle entitles each riparian state to a reasonable and equitable share of the waters and for the beneficial uses of those waters within its own territory.

The concept of equitable and reasonable utilization is based on equity and not equal division, promoting the equality of rights between the riparians.

This equality of rights will take into account a number of relevant factors including the geography, hydrology of the basin, population, economy, social needs and existing and potential utilization of the waters.

iii. Prevention of harm

This principle implies that States have to establish the measures to control the sources that create negative transboundary impacts (to other States, its people and resources).

It is commonly accepted that the harm to be prevented should be “significant”, that is, not trivial. The most important aspect of this principle relates to the duty of the State to be diligent; in other words, introduce all the necessary measures to avoid causing the harm.

iv. Protection of shared watercourses and their ecosystems

This principle intends to promote the protection and conservation of the ecosystems of the watercourse individually or jointly by the riparians and thus ensure the integrity of river/lake systems in order for them to continue providing ecosystems services for human and the environment.

v. Public participation

This principle refers to the involvement of local communities, civil society and other relevant stakeholders in decision making on transboundary waters. This involvement is expected to promote more inclusive and effective actions, policies and laws; the empowerment of stakeholders and their legitimacy to manage waters and other resources associated to them.

vi. Other principles to be considered in the MoU are the following:

- Precaution
- Prevention
- Intergenerational equity
- Mainstreaming women and youth
- Sustainable development

b) Matters to be taken into account

- What are the main challenges affecting the Basin
- What are the benefits deriving from the uses of the waters?
- What are the possible measures to be adopted to address environmental degradation?
- Are there options or alternatives to existing or potential uses of the water of the Basin?
- What is the role of local stakeholders and the civil society?

V. COMMITMENTS

a) Definition

Guided by the objectives and based on the spirit of the guiding principles of the MoU, the commitments constitute the specific actions to be taken in order to materialise the cooperation arrangements. This section enunciates the duties to which the Parties are bound to act or not in a particular way in regards to the management of water resources.

b) Matters to be taken into account

- *What actions need to be promoted to achieve sustainable development in the Basin?*
- *What data and information needs to be collected and exchanged among the Parties?*
- *How can the Parties monitor the state of the Basin?*

GROUP III

VI. IMPLEMENTATION MECHANISMS

a) Definition

Implementation of the MoU depends on the clarity of its provisions and the design of the necessary mechanisms for the Parties to comply with them.

This process of operationalising the MoU is fundamental to the success of a cooperative framework. It should be a well-structured process that seeks to identify and align the interests of the Parties.

First, it requires stipulating the roles and responsibilities of the Parties to the MoU, and the commitments they enter into when signing the MoU. This could be included in this section or in the previous one (Commitments).

Second, it requires the establishment of a body or platform for ensuring the continuum of the cooperation and its sustainability, as well as to guarantee the fulfilment of the Party commitments. The level of complexity of this institutional framework will depend entirely on the Parties.

b) Matters to be taken into account

- a. What is the desired governance structure for the basin?
- b. What is the role of the Parties in the MoU implementation?
- c. How can participatory mechanisms involving civil society, local communities or NGOs be promoted?

VII. OTHER PROVISIONS

Following the objectives, commitments and implementation mechanisms of the MoU, this will need to include a set of instrumental provisions aimed at ensuring its correct application. These instrumental provisions commonly refer to financing the commitments, providing mechanisms to resolve potential disputes and final clauses.

FINANCING

a) Definition

All arrangements require funding of some sort, even those not focused on action require funding for parties to continue to meet to monitor the implementation of their arrangement or to take it forward. Unclear funding arrangements can quickly sour constructive relationships. The arrangement should specify which parties will provide which resources (cash or in-kind) or how external finances will be sought. It should further specify how funds will be administered.

DISPUTE RESOLUTION

a) Definition

Arrangements should specify actions to be taken by the Parties in case of differences resulting from the interpretation or implementation of the MoU. Ideally, the parties will be able to resolve their differences through negotiation. This reinforces the importance of regular meetings or fora to assess progress and negotiate. When the parties are unable to resolve their differences or conflicts amongst themselves, there are several mechanisms: using the legal system that governs the arrangement; applying public or peer pressure through diplomacy or campaigns; or seeking third-party mediation or arbitration.