

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

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

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.