specific problem-solving or development priorities. They can be developed in ways that build on a framework agreed at ‘treaty’ level, or that set in place practical building blocks that augment and improve the potential for States to secure high-level negotiations. Working across such a spectrum of agreements builds a practical, operational roadmap for change and improvement in water governance capacities that should be closely articulated with sustainable development in a basin.

For example, ongoing cooperation over water in the Andes Region contains various types of agreements and, as part of a regional initiative, has the potential for incorporating a ‘suite of agreements’ in the future. Ecuador, Peru and Bolivia have several formal treaties in place on the Zamarrilla, Catamayo-Chira, Puyango-Tumbes, Lake Titicaca and Amazon basins. In 1996, Lake Titicaca established a basin authority jointly managed between Bolivia and Peru, in 2011, Ecuador and Peru set up an IWRM Binational Commission for Zamarrilla, and in 2012, Ecuador and Peru signed a joint Presidential Declaration calling for a binational commission on the Catamayo-Chira and Puyango-Tumbes basins. Additionally in a regional agreement, the Andean Community began to implement the Andean IWRM strategy, focusing on transboundary issues as well as the water information system which incorporates participation from all Andean countries.

Examples from the field

In the Catamayo-Chira basin, the provincial and regional governments of Ecuador and Peru, in coordination with the national water authorities, elaborated an integrated plan of the river basin. One of the first steps of this cooperation framework was development of an information system for the basin. In February 2012, the Presidents of Peru and Ecuador signed a joint Presidential Declaration calling for the setting up of a binational commission for the basin. Based on the declaration and the momentum it created, a process has started toward the creation of an institutional entity (bi-national commission) for transboundary water management of the Catamayo-Chira River basin.

In the Goascorán, where BRIDGE works, a diversity of agreements, both binding and non-binding, support cooperation in the area. For example, the Framework Agreement signed by both Honduras and El Salvador and the EU for the implementation of the Transboundary Development Program Project created the Binational Management Group of the Goascorán River Basin in 2006. In a local and less formal setting, agreements between municipalities support cooperation in the environmental management of the basin.

Treaties and other Types of Agreements

Key Message

Agreements on transboundary waters encourage the efficient use and development of water resources, promote equitable distribution, and facilitate partnerships and cooperation between countries, helping them to avoid future disputes over water issues.

They can be treaties and conventions as signed and ratified by two or more States; or they can be other types of agreements between institutions across borders working at the national, sub-national and/or local level. These other types of agreements, like treaties, are a manifestation of commitments to cooperation to establish the rules of conduct for transboundary water management. A multi-level governance framework made up of treaties and other types of agreements provides for more effective water governance.

Recommendations

- A treaty should contain several key criteria. It must have a defined scope (the purpose of the treaty, key terms, and the parties involved) and it must contain substantive (the actual law) and procedural (how the law is followed) rules. It must outline the key institutions for implementation as well as provide the framework for dispute resolution mechanisms. This general structure can also apply to other types of agreements.

- Treaties as well as other types of agreements should be negotiated in an open-ended manner with parties embracing flexibility. The Mutual Gains Approach is an ideal negotiation method as both parties seek a “win-win” outcome as a package of goals or issues is brought to the bargaining table rather than as single issues. This benefit sharing mindset allows for more sustainable agreements.

- Other types of agreements that are convened among water stakeholders within the basin can involve local communities, municipal governments, technical agencies, economic sectors and representatives of water users. They can be binding or non-binding and should be developed in ways that build on a framework agreed at ‘treaty’ level when they exist. Alternatively they may be convened to place practical building blocks that augment and improve the potential for national governments to reach high-level agreements.

- Multi-level governance frameworks play a vital role in transboundary water management. While treaties are agreed and implemented in traditional methods of negotiations between states and subsequent implementation (top down), water governance is progressively shifting towards incorporating non-traditional actors and informal agreements, allowing for a horizontal power structure and implementation.
There are 276 transboundary river basins in the world, however approximately 60% lack any type of cooperative agreement. A lack of regulation and organization is detrimental to the management of the transboundary waters because in the absence of proper rules and procedures for managing different users and interests, there is a greater chance of unilateral action which potentially can cause further conflict and less cooperation. Therefore, treaties and other types of agreements act as mechanisms to prevent conflict and improve the cooperation between States that share water resources. Experience shows that multiple agreements at different levels in a basin support cooperation among users through the implementation of joint management, facilitated by river or lake basin organizations.

Evidence for action

Creating a good agreement

A good agreement, for both treaties and other types of agreements, involves several key elements as shown in the table below. The scope of an agreement refers to its jurisdiction within the territory in which it will be implemented. Substantive rules are part of the main body of an agreement. They set up the rights and obligations of the parties involved. These are operationalised through procedural rules, which set up the process for engaging and implementing the treaty. In the event that parties to an agreement fail to comply with it, it is advisable for them to agree on the mechanisms to resolve these potential conflicts.

<table>
<thead>
<tr>
<th>Key Elements</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Scope</td>
<td>Legal reach (what waters?) Definitions (watercourse, uses, etc.) Parties (States, IBIS, etc.)</td>
</tr>
<tr>
<td>2. Substantive Rules</td>
<td>Legal duties and entitlements (equitable and reasonable utilization; due diligence; protection) Rules of access (general or special)</td>
</tr>
<tr>
<td>3. Procedural Rules</td>
<td>Rules of procedure (due to cooperation) Notification / exchange of information</td>
</tr>
<tr>
<td>4. Institutional Mechanisms</td>
<td>Joint bodies (IBIS) Meetings of the parties</td>
</tr>
<tr>
<td>5. Dispute Settlement</td>
<td>Dispute avoidance (consultation) Dispute settlement Compliance verification</td>
</tr>
</tbody>
</table>

In the Lake Titicaca River Basin, shared between Bolivia and Peru, an agreement was created to form a binational entity that would take responsibility for implementing a plan to jointly manage the transboundary basin. In 1996, negotiations were finalised and the institution for jointly managing Lake Titicaca was formally recognized as the Lake Titicaca Authority. To give it legal standing as an organization of integration between two countries, the Congress of each respective country approved and ratified the agreement. Since 2007, BRIDGE activities from training courses, leadership development and institutional issues workshops have provided input to the ongoing process of reforming the Lake Titicaca Authority.

Conducting multi-stakeholder negotiations to form agreements

The Mutual Gains Approach to negotiation allows for multiple issues to be addressed – for example equitable benefit sharing as well as the protection of habitats and ecosystems. A well-drafted and thoroughly negotiated agreement demonstrates that the parties considered a wide range of items or subjects and alternatives and arrived at mutually acceptable terms. While negotiating of a treaty involves two separate powers of the States, other types of agreements are negotiated by a range of actors which might include local communities, municipal governments, technical agencies, economic sectors and representatives of water users including for example farmers, fishers and power companies.

The Binational Management Group of the Gosaçor River Basin came together in 2006 prompted by an agreement on border development between Honduras and El Salvador. The original agreement was negotiated by a small number of municipalities from Honduras and El Salvador. Since 2007, IUCN has supported expanding representation of the Binational Management Group through a series of stakeholder meetings and dialogue. Under the authority of both countries, reform of the institution has widened the stakeholder base to include local municipalities, public and private organisations, NGOs, and a range of government ministries beyond the water sector.

Negotiating treaties

Treaties often originate from a political process primarily involving States. They build foundations and institutional structures that foster good relations between parties, help achieve international legal obligations and attract considerable economic benefits through international investment. “Broader” agreements, such as those that incorporate benefit sharing mechanisms and flexible institutional arrangements, can produce even greater impacts than narrowly defined treaties.

The distinction between a broad and narrow approach to treaties, is that a well-supported, interest-based open approach allows for constructive problem solving and relationship building and is more likely to achieve an outcome that favours benefit sharing. Comparatively, a “narrow approach” may result in unproductive posturing and negotiation tactics that may act as a hindrance to achieving or realizing beneficial opportunities.

In 1995 in the Sisua River Basin, the governments of Costa Rica and Panama ratified a Border Cooperation Treaty that included a Permanent Binational Commission. The objective of the treaty was to improve relations and cooperation between the two countries, thereby strengthening the process of integration between the two countries. Since 2011, IUCN worked to strengthen the Sisua Binational Commission through ensuring it is integrated by government institutions and civil society, and to incorporating the interests of indigenous people into the Sisua Basin. Work is continuing to formalise the organization through the development of codes of conduct and an action plan.

Negotiating other types of agreements

Other types of agreements may originate not only at the national scale (like treaties) but also at the regional or local levels, where populations live in close proximity across political borders. Successful negotiations start with getting the right parties to the table. Communities that straddle political borders not only share watersheds, groups have begun to set up work plans and local leaders. Through workshops and mutual exchanges with other communities that straddle political borders not only share watersheds, groups have begun to set up work plans and local communities, sharing data and information with themselves and other international organizations.

The benefit of various types of agreements that work together

Water diplomacy takes place under the authority of sovereign governments, but since water is a resource used by everyone and managed at multiple scales, agreements that work on the ground need the consent of water users. This implies that many kinds of agreements are therefore needed for effective governance of transboundary waters. These are often very practical and focused on concrete actions around...