Dispute settlement mechanisms in international water law

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1. Preliminary points
2. The provisions of the UNECE Convention for dispute settlement
3. A range of means for dispute settlement
4. Key messages
Key Points

• Dispute settlement in international law is different from national law

• Mechanisms in international law reflect those of general international law – see Articles 2(3) and 33 of the UN Charter

• Fundamental element of dispute settlement in international law: state sovereignty - states remain in control of the process; they have to consent to any of the mechanisms to resolve a dispute
1. If a dispute arises between two or more Parties about the interpretation or application of this Convention, they shall seek a solution by negotiation or by any other means of dispute settlement acceptable to the parties to the dispute.

2. When signing, ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party may declare in writing to the Depositary that, for a dispute not resolved in accordance with paragraph 1 of this article, it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:
   (a) Submission of the dispute to the International Court of Justice;
   (b) Arbitration in accordance with the procedure set out in annex IV.

3. If the parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2 of this article, the dispute may be submitted only to the International Court of Justice.
Range of mechanisms

Diplomatic /ADR

Negotiations
Bilateral/multilateral

Assisted negotiations
Neutral third party intervention

Legal

Arbitration

Adjudication

Facilitation
Good offices

Mediation

Fact-finding/Inquiry
Conciliation

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• Discussions between the interested parties with a view to reconciling divergent opinions (Shaw, 2003)
• No third party involved – direct engagement
• Bilateral/multilateral talks
• May be a conventional duty – as with the UNECE Convention - and may be conducted within an institutional mechanism
• Obligation for the negotiations to be meaningful and conducted in good faith
Assisted Negotiations – Third party involvement

Use of a neutral third party – individual, state, international organisation

**Facilitation/good offices**
- Attempts to influence the parties to enter into negotiations/facilitates the dialogue between the parties (can be very practical: e.g provision of a venue for the parties to meet and discuss)
- Role usually ends once the parties start to negotiate – no active role in terms of content

**Mediation**
- Neutral third party with active participation in the negotiation process between the parties (involved in communication between the parties, clarifying issues, finding common ground, drafting proposals, etc.)/may make suggestions to the parties to find a mutually acceptable solution

**Fact-finding/inquiry**
- Conducted by panel of experts or one expert: investigate and make impartial finding of disputed facts
- Terms of settlement may be suggested to the parties

**Conciliation**
- Impartial third party often a formal, institutionalised and impartial commission
- Elements of inquiry and mediation: seeks to investigate and establish objectively the facts and applicable law
- May also submit proposals to the parties, which they may chose to accept
Outcome legally binding

Formal consent of the parties required to trigger either mechanism

**Arbitration**
- Arbitrators and procedure are chosen by the parties
- Confidentiality

**Adjudication**
- International Court of Justice – principal UN judicial organ
- Parties have no discretion over the composition of the court nor its rules of procedure
Key messages

• UNECE provides for specific dispute settlement mechanisms and gives discretion to the parties for others
• Every mechanism has its advantages and disadvantages (control over process; time; cost)
• Every option depends on the consent and good faith of the states concerned – and of course also on political will
• These mechanisms – particularly the judicial ones – are a means of last resort to resolve a dispute
Thank you for your attention

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