

The Conventions as a means for dispute settlements and prevention of conflicts

Zaki Shubber



UNESCO-IHE
Institute for Water Education



Twitter: @UnescoIHE

Outline

- 1. Definitions**
- 2. Dispute resolution in international law**
 - Key points
 - Overview of mechanisms
- 3. Provisions in the Conventions**
 - Conflict prevention/avoidance
 - Dispute settlement

1. Definitions

Art. 22 Water Convention/Art. 33 Watercourses Convention

Disputes between two or more Parties about the *interpretation* or *application* of the Convention

Dispute

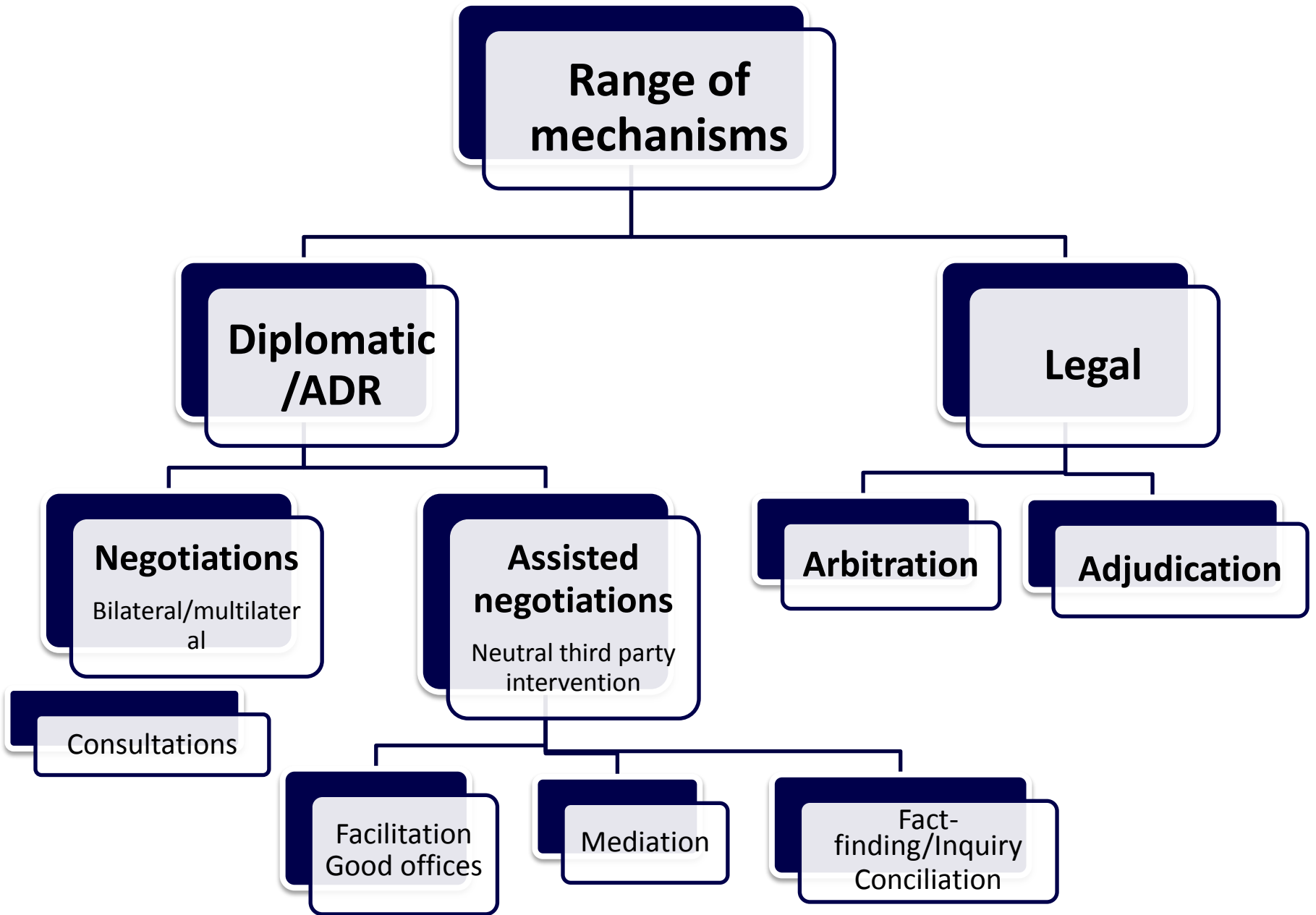
‘A disagreement or argument’ (*Oxford Dictionary*)

Conflict

‘A serious disagreement or argument, typically a protracted one’ (*Oxford Dictionary*)

2. Dispute resolution - Key Points

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



3. Conflict prevention provisions in the Conventions

Water Convention

Consultations (art. 10)

- Between Riparian States – at the request of a Party
- Purpose: cooperation regarding the issues covered by the provisions of the Convention
- General scope – may also include discussing activities that may have a transboundary impact
- Held on basis of reciprocity, good faith and good neighbourliness – should be substantive and take into account the legitimate interests of other Parties
- Through joint body if in existence

3. Conflict prevention provisions in the Conventions

Water Convention

Implementation Committee under the Water Convention (Dec. VI/1 2012)

- Established at sixth MoP (Nov. 2012) to support implementation and compliance
- Facilitates, promotes and safeguards the implementation, application and compliance with the Convention
- ‘simple, non-confrontational, non-adversarial, transparent, supportive and cooperative in nature’ – does not affect art. 22
- 9 members – legal/scientific expertise

3. Conflict prevention provisions in the Conventions

Implementation Committee

- Functions: considers requests for advice/submissions by Parties or MoP relating to specific issues concerning implementation or application difficulties
- *Parties* may request *advice* about their efforts to implement/apply vis-à-vis other Parties or non-Parties (subject to their consent to participate in the advisory procedure – kept informed if not participating in procedure)
- *Party submission* of inability to comply fully; submission by Party affected by other Party's difficulties to implement/comply (prior notification to that Party before submission)
- *Committee initiative* – including from information received by the public – request for information from Party allegedly not complying/applying
- Not confidential (unless agreed)

3. Conflict prevention provisions in the Conventions

Implementation Committee

Committee measures (para. 41):

(a) *Advise/facilitate assistance* to Parties to facilitate implementation/compliance:

- Suggestions/recommendations regarding domestic regulatory regimes and mobilizing relevant domestic resources;
- Assist to establish transboundary water cooperation agreements and arrangements to strengthen cooperation and sustainable management of transboundary waters;
- Facilitate technical and financial assistance (information and technology transfer, and capacity-building);
- Assist to seek support from specialized agencies and other competent bodies;

(b) Request and assist Parties concerned to develop an *action plan* to facilitate implementation of and compliance with the Convention within agreed time frame;

(c) Invite submission of *progress reports* by Party concerned on efforts made to comply;

(d) Recommend to MoP measures in para. 42.

3. Conflict prevention provisions in the Conventions

Implementation Committee

MoP measures upon reporting/recommendation by Committee (para. 42):

- (a) Take measures referred to in paragraph 41 (a)–(c);
- (b) Recommend that Parties provide financial and technical assistance, training and other capacity-building measures and facilitate technology transfer;
- (c) Facilitate financial assistance and provide technical assistance, technology transfer, training and other capacity-building measures, subject to financial approval, including seeking support from specialized agencies and other competent bodies;
- (d) Issue a statement of concern;
- (e) Issue declarations of non-compliance;
- (f) Issue cautions;
- (g) Suspend, in accordance with applicable rules of international law for treaty operation suspension, special rights and privileges accorded to the Party concerned under the Convention;
- (h) Take other non-confrontational, non-judicial and consultative measures as may be appropriate.

Committee monitors consequences of action taken pursuant to measures taken.

3. Conflict prevention provisions in the Conventions

Watercourses Convention

Consultation provisions:

- 4 - parties to watercourse agreements
- 6.2 - factors relevant to equitable and reasonable use
- 7.2 - obligation not to cause significant harm
- 17 - consultations and negotiations concerning planned measures
- 18 - procedures in the absence of notification
- 19 - urgent implementation of planned measures
- 24 - management
- 26 - installations
- 30 - indirect procedures

3. Dispute settlement provisions in the Conventions

Art. 22 UNECE Convention

Step 1:

- Negotiations *or*
- Any other means of dispute settlement acceptable to the parties

Step 2 (optional):

- ICJ *and/or*
- Arbitration – Annex IV

3. Dispute settlement provisions in the Conventions

Art. 33 UNWC Convention

Priority to existing agreement between Parties – if none

Step 1

- Negotiations

Step 2a

- If not successful: good offices, mediation, conciliation by third party;
or
- Joint watercourse institutions

Step 2b

- If no settlement by negotiations after 6 months one party may submit the dispute to a *fact-finding commission*

Step 3 (optional)

- International Court of Justice; and/or
- Arbitration (Annex – unless otherwise agreed)

Key messages

- Conventions offer specific conflict prevention and dispute settlement mechanisms
- Every mechanism has its advantages and disadvantages (control over process; time; cost)
- Options depends on the *consent* and *good faith* of the states concerned – and of course also on *political will*
- Some mechanisms – particularly the judicial ones – are a means of last resort to resolve a dispute

Thank you for your attention

z.shubber@unesco-ihe.org