

Dispute settlement and the role of third Parties in supporting implementation

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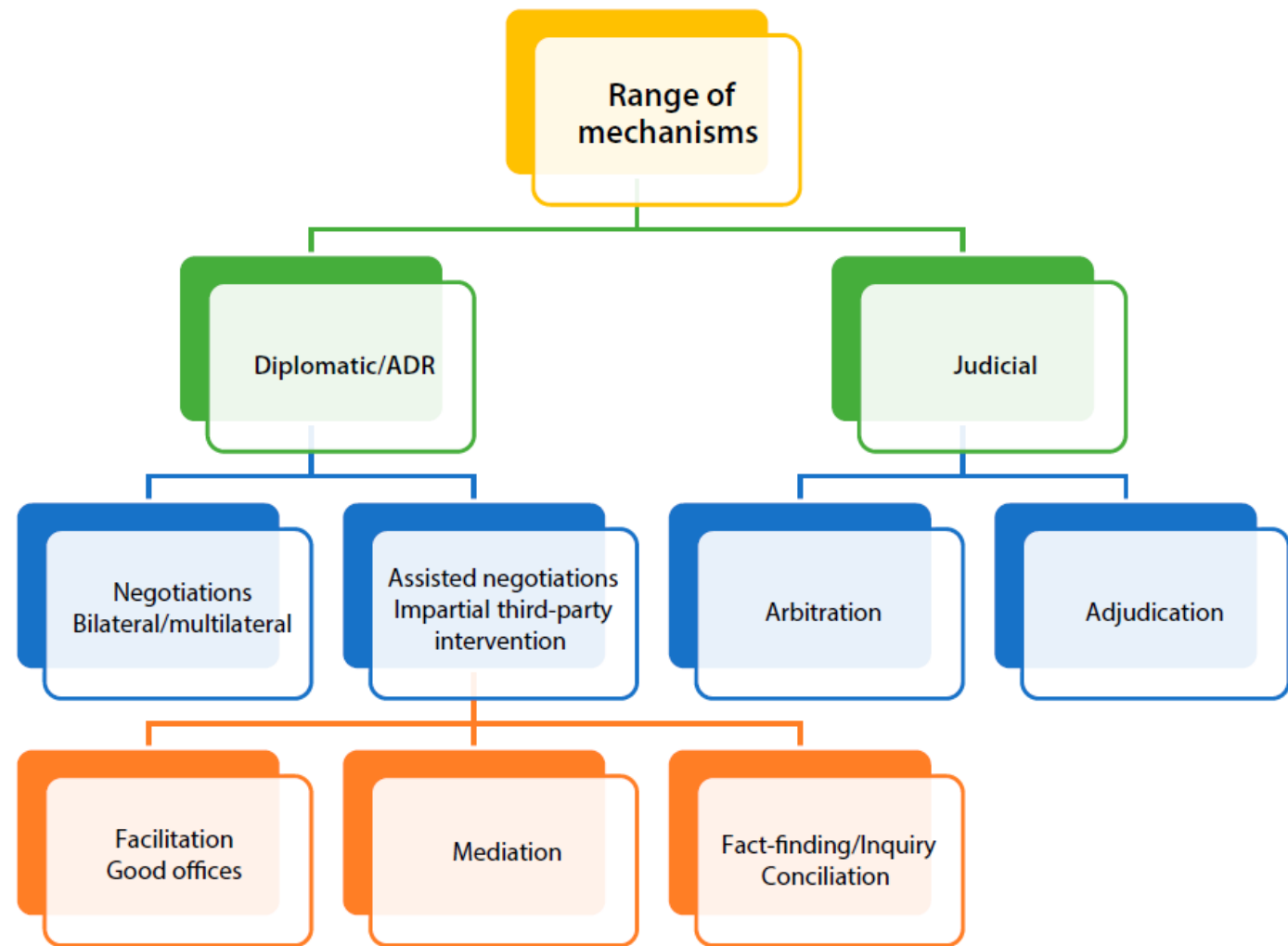
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Building block: Dispute settlement

Key aspects:

- Dispute prevention. e.g., through a joint body, recourse to the Water Convention Implementation Committee
- Avenues for dispute settlement e.g., through a joint body, negotiation, mediation, good offices, arbitration, impartial fact-finding, ICJ, judicial bodies at the regional level (i.e. African Union, ECOWAS, etc.)



Source: Zaki Shubber, IHE Delft

Water Convention Implementation Committee: Objective and principles

- Legal basis: Decision VI/1 adopted by the Meeting of the Parties (Rome, 2012)
- The objective of the mechanism is to **facilitate, promote and safeguard the implementation** and application and compliance with the Convention
- The mechanism is to be **simple, non-confrontational, non-adversarial**, transparent, supportive and cooperative in nature



Water Convention Implementation Committee: Members


- Serve in their personal capacity and objectively, in the best interest of the Convention
- Recognized expertise, including legal and/or scientific and technical expertise
- Geographical distribution of membership and diversity of experience and expertise
- Elected by the Meeting of the Parties among candidates nominated by the Parties (Signatories and NGOs may propose candidates to Parties)



Water Convention Implementation Committee: Functions

- Consider **requests for advice** (from a Party or Parties jointly on difficulties to implement)
- Consider **self-submission** (unable to comply fully) or **Party-to-Party submission** (affected by another Party's difficulties in implementing and/or complying with)
- Consider undertaking a **Committee initiative** (when it becomes aware of difficulties in the implementation or the possible non-compliance by a Party with the Convention, including from information received from the public)

The Committee may also :

- Examine **specific issues of implementation** of and compliance with the Convention at the request of the MoP
 - **Take measures, including recommendations**, as appropriate
 - Carry out any other functions that may be assigned to it by the MoP, incl. examination of **general issues of implementation** and compliance that may be of interest to all Parties.
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Water Convention Implementation Committee: Measures

The Committee may decide to:

(A) Provide advice and facilitate assistance, including:

- Assistance in establishing transboundary water cooperation agreements and arrangements
- Facilitating technical and financial assistance, including information and technology transfer, and capacity-building
- Assistance in seeking support from specialized agencies

(B) Request and assist the Party(ties) concerned to develop an action plan to facilitate implementation and compliance

(C) Invite the Party concerned to submit progress reports to the Committee

(D) Recommend to the Meeting of the Parties that it takes measures



Example: Advisory procedure: Montenegro and Albania



- In early 2020 the Committee initiated advisory procedure in response to a request from Montenegro concerned about the possible transboundary impact of the planned construction of additional small HPPs on the Cijevna/Cem River in Albania. Albania had consented to participate in the procedure.
- The Committee:
 - Gathered information
 - Held several separate and joint online consultation sessions with the countries
 - Prepared detailed Legal and Technical Advice to countries
 - Both countries, in a joint session, accepted the advice of the Committee (Feb. 2021)

Example:

Advisory procedure: Montenegro and Albania

- The Committee's Legal and Technical Advice to the countries includes:
 - Clarification of obligations under the Convention
 - Establish a joint technical working group "Monitoring & Assessment"
 - Develop and implement an information exchange protocol
 - Use meetings of the bilateral commission to exchange information on planned measures
- The Committee designated one member to assist the countries on technical matters
- Committee regularly follows up on implementation of its advice
- 2 members participated in meeting of bilateral joint technical working group to provide advisory assistance "on the spot"



Committee members visit **Murras and Dobrinje small hydropower plants** together with delegations from Albania and Montenegro

Example:

Advisory procedure: Montenegro and Albania

- The Committee provided practical, solution-oriented advice
- Not about compliance but supporting implementation
- The Committee addressed systemic issues, emphasized step-by-step approach
- The Committee's composition (lawyers and technical experts) allowed it to deal with complex issues in a speedy way
- Demonstrated the capabilities and usefulness of the Advisory Procedure as a conflict prevention tool in multilevel governance framework



The Implementation Committee promotes law and cooperation

- Supports the Secretariat in **answering questions** from countries interested in accession
- On a pilot basis, the Committee assists the secretariat in **supporting countries to negotiate an agreement** (Senegal-Mauritanian Aquifer Basin)
- Promotes the implementation mechanism and its use by Parties and non-Parties through **communication efforts and specific events**
- Exchanges experiences **with other relevant bodies** that support implementation of and compliance with other agreements (joint session with the Compliance Committee under the Protocol on Water and Health)



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Annex

Replies of the Implementation Committee to questions on the Water Convention received from several Latin American countries

The Committee provides the replies to the questions referred to it by the secretariat being fully aware of the Latin American regional context. In particular, special regard has been given to the compulsory jurisdiction clause under article XXXI of the 1948 American Treaty on Pacific Settlement (Pact of Bogotá) and several cases before the International Court of Justice (ICJ) with participation of Latin American countries that involved transboundary water issues.



Thank you!

Water Convention secretariat:

<https://www.unece.org/env/water/>

**Contact the Water Convention
Implementation Committee:**

water.convention (at) un.org

