Conflict Avoidance and Dispute Settlement Mechanisms

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23 May 2017

Regional Workshop on Transboundary Water Cooperation in The Context of the SDGS in South Asia and Beyond
Pokhara, Nepal – 23-24 May 2017

Content

- Conflict

- Conflict avoidance

- Conflict resolution

- Negotiation theory introduction

Conflict management terminology

- *Prevention/avoidance*: active attempt to identify conflict causes and remove/minimise them (e.g. legal arrangements, awareness raising, public participation and institutional building)

- *Management*: use of a dispute resolution mechanism

- *Settlement*: alters symptoms of conflict though often not sustainable (conflict may re-emerge)

- *Resolution*: mutually acceptable and sustainable agreement eliminating the root cause of the dispute

Conflict

Why do we talk about water conflicts/disputes?

Water use influences the flow regime and has an impact, principally downstream, both in terms of quality and of quantity and timing

*Look **upstream** to assess availability and **downstream** to assess the effects of an activity (but also consider the other way around)*

At a transboundary level:

- Water crosses boundaries and creates challenges to cooperate

- River basins are characterised by *asymmetry* because water flows in one direction only

Conflict

- Unilateral implementation of water development projects by riparians to avoid interaction on a shared resource

- Implementation of the project impacts another riparian – usually a decrease in water availability/quality and possible timing issues

- In the absence of an agreed framework or institutions for conflict resolution there may be increased tension between riparians causing instability

Conflict typology

1. Conflicts between uses:

- existing uses

- between existing and new uses

- future uses

2. Conflict resulting from emergency situations – accidents/floods, duty to warn

Conflict – A definition

"any conflict of views or interests, which takes the form of opposing claims between the states, concerning the use of a transboundary water resource"

(*Vinogradov, Wouters and Jones, Transforming Potential Conflict into Cooperation Potential: The Role of International Law*)
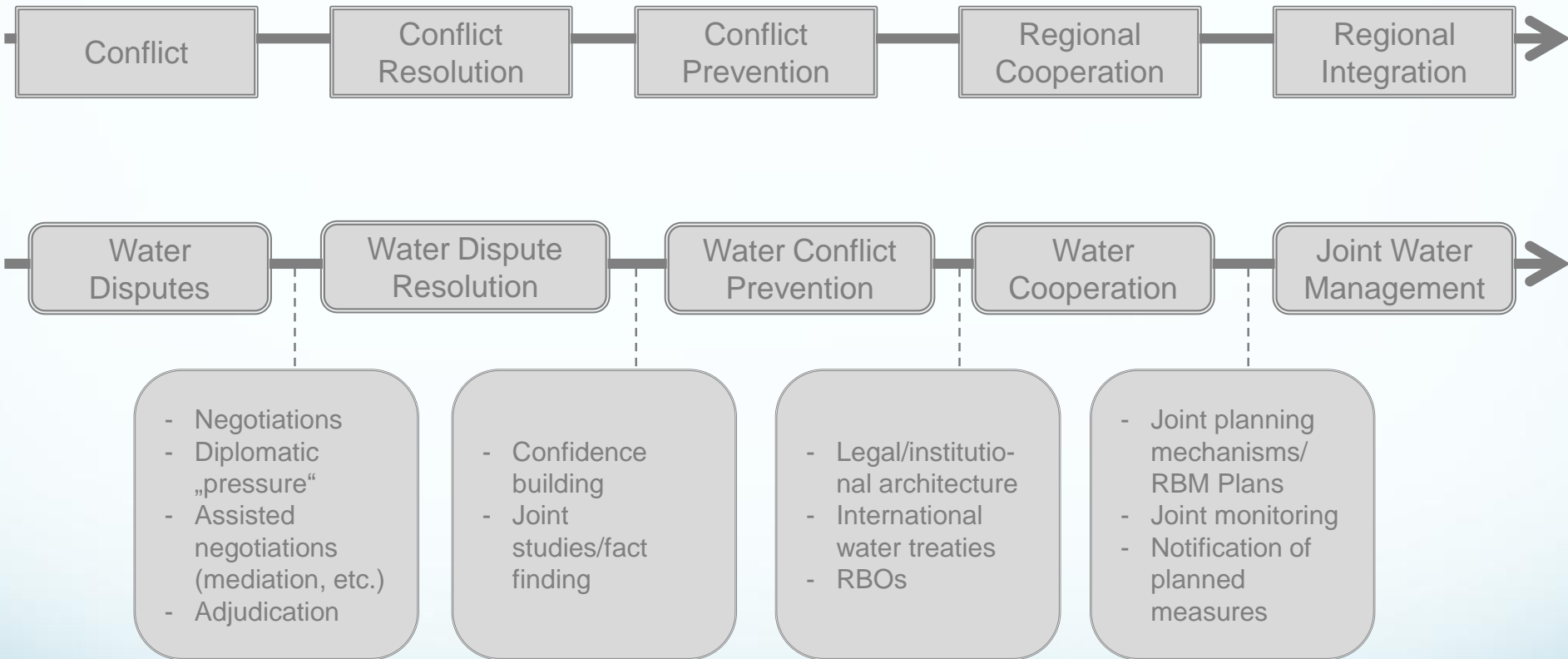
Conflict

Different riparians/user have different *interests* that need to be reconciled but:

- States have actual control over the waters within their territory

- Different political/administrative systems involved in the management of the water body

How can they cooperate and avoid conflict or where it has occurred resolve it?

Conflict continuum

| Conflict | → | Conflict Resolution | → | Conflict Prevention | → | Regional Cooperation | → | Regional Integration | → |

| Water Disputes | → | Water Dispute Resolution | → | Water Conflict Prevention | → | Water Cooperation | → | Joint Water Management | → |

Water Disputes
- Negotiations
- Diplomatic „pressure"
- Assisted negotiations (mediation, etc.)
- Adjudication

Water Dispute Resolution
- Confidence building
- Joint studies/fact finding

Water Conflict Prevention
- Legal/institutional architecture
- International water treaties
- RBOs

Water Cooperation
- Joint planning mechanisms/ RBM Plans
- Joint monitoring
- Notification of planned measures

Dr. Susanne Schmeier

Conflict avoidance/prevention

Stage *before* the conflict has actually occurred

2 scenarios:

- No agreed framework – no mechanisms in place

- Agreed framework between the parties in the dispute – agreed mechanisms in place

Conflict avoidance/prevention

General mechanism – Legal/institutional frameworks

- International water law: all its substantive and procedural principles aim at supporting cooperation and thus avoiding/preventing conflict; also suggests dispute resolution mechanisms

  general principles (UNWC, UNECE, customary law) treaties/agreements between states

- Institutions – river basin organisations: agreement substantive/procedural/dispute resolution framework

Conflict avoidance/prevention

Specific mechanisms

- Consensus building: involves all stakeholders seeking a common decision or outcome in certain processes (policy dialogue, planning, etc.); enabling environment to develop trust leading to a commonly agreed 'binding' position; facilitated based on agreed basic rules

- Consultations: conventional mechanism requiring parties to discuss a variety of issues to prevent/avoid disputes

- Implementation Committee under UNECE Convention

Conflict resolution mechanisms

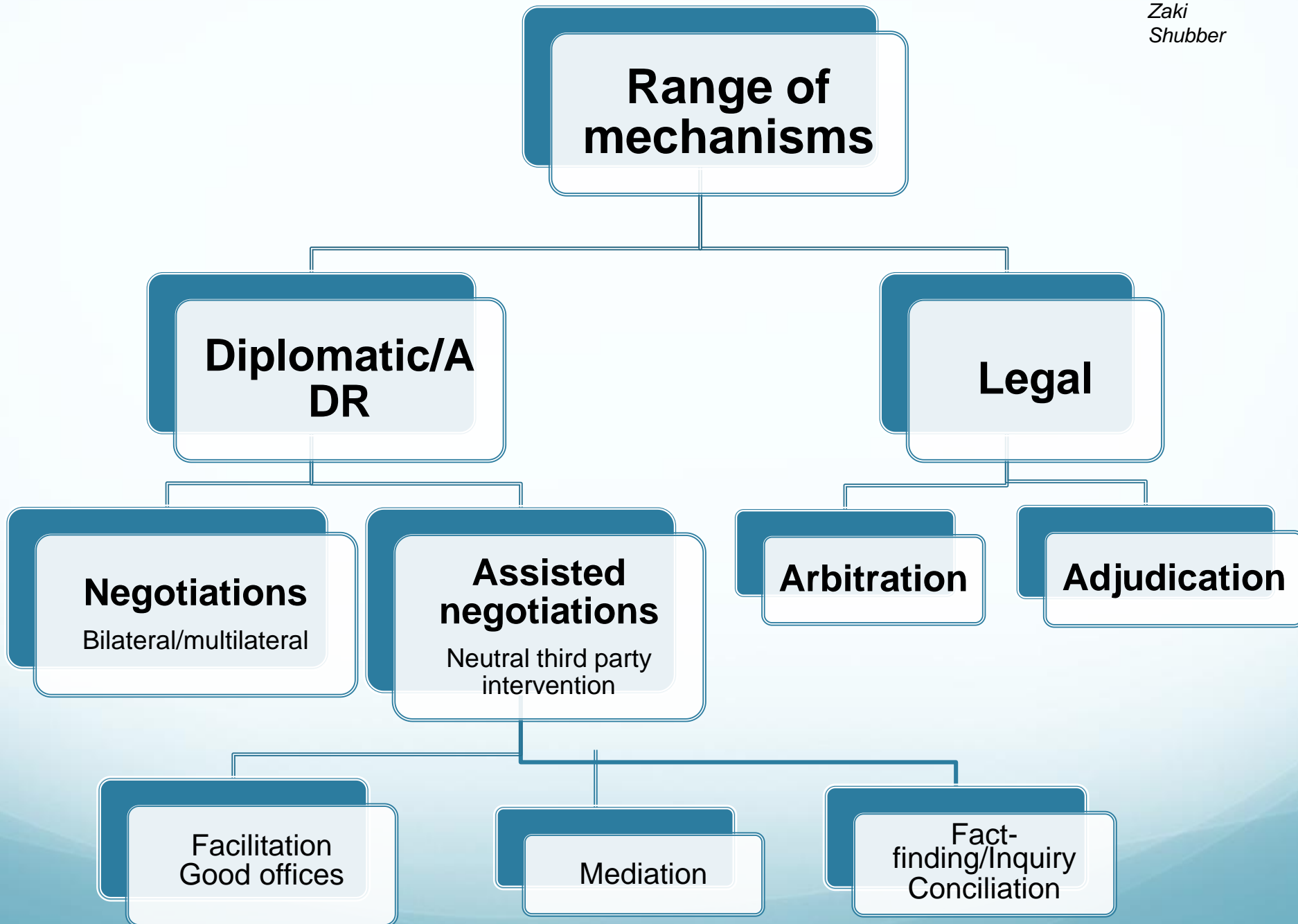Peaceful resolution of disputes at the heart of international law – key principle
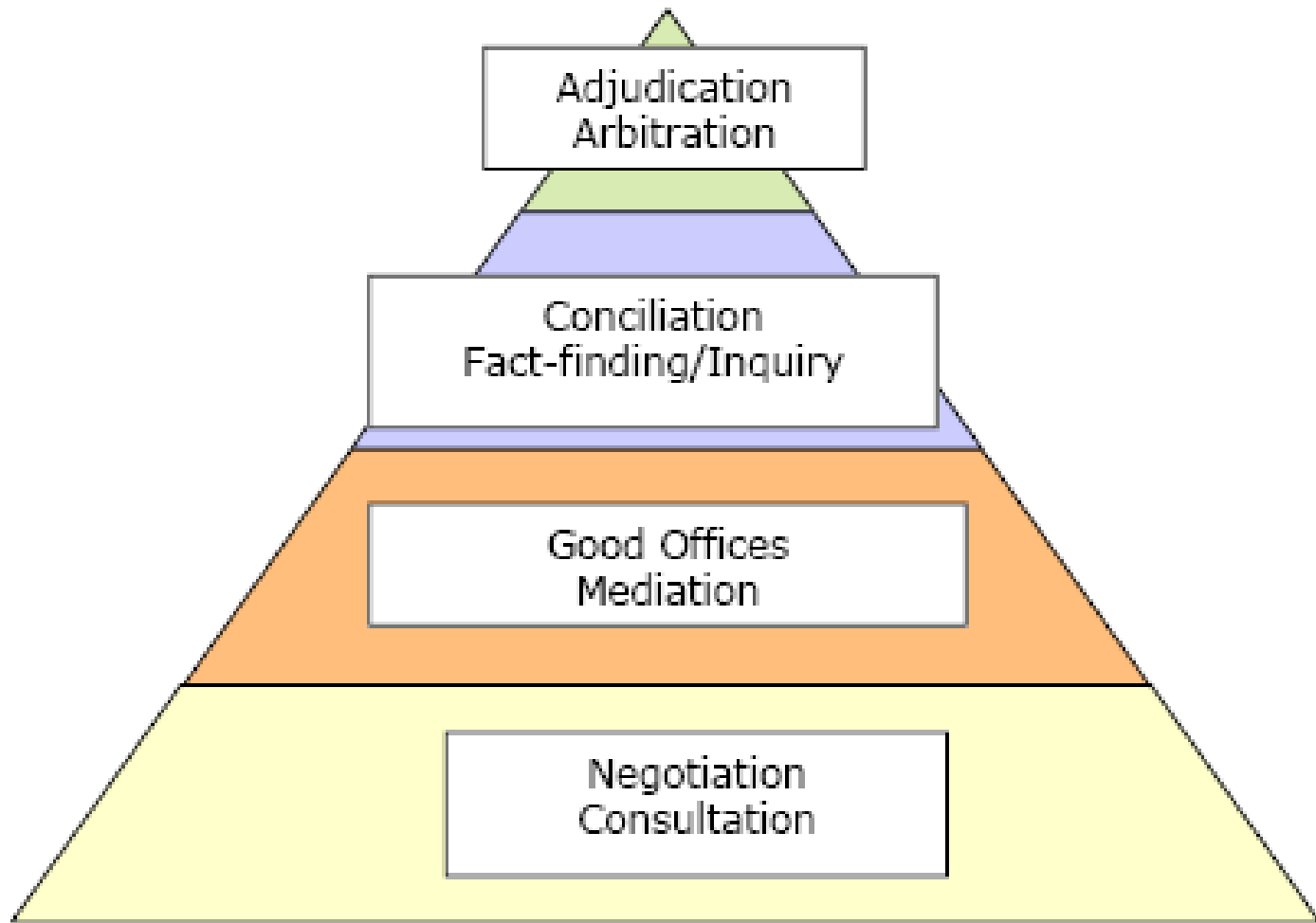
Different from national law

Key point - *state sovereignty*:

- Fundamental element of dispute settlement in international law

- States remain in control of the process: they have to *consent* to any of the mechanisms to resolve a dispute

Conflict resolution mechanisms

UN Charter mechanisms: negotiations, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or other peaceful means (art. 33)

Art. 33 UNWC – Settlement of Disputes

- Negotiations

- Good offices

- Mediation

- Conciliation

- Joint watercourse institutions

- *Fact-finding commission/inquiry* – Art. 33(3)-(9)

- Arbitration - Annex

- International Court of Justice

Art. 22 + Annex IV UNECE Convention

- Negotiations

- Any other means of dispute settlement acceptable to the parties – freedom of choice of means of settlement from art. 33 UN Charter

- ICJ

- Arbitration – Annex IV

Draft Articles on TB Aquifers

- Currently no provision relating to dispute resolution

- Commentary indicates that this would be necessary when the second step of the Draft Articles happens

- Commentary suggests that some of the provisions are intended to support dispute avoidance (e.g. art.7(2) – joint mechanisms of cooperation; art. 15 – planned activities)

Negotiations theory

Positional negotiations	Interest-based negotiations
• Based on *positions* – solutions framed as falling within an acceptable settlement range • Zero-sum game • Goal is to win as much as possible • Concession is weakness	• Identify *interests* before propose solutions - focus on interests not positions • Collaborative - search for solutions to satisfy all interests • Jointly meet each other's needs and satisfy mutual interests • Mutually generate agreement • Search for objective/fair standards

Concluding remarks

- Range of means available each with their advantages/disadvantages

- Every option depends on the *consent* and *good faith* of the states concerned – and of course also on *political will*

- Focus on prevention – through substantive and procedural rules

"Water disputes actually will never be resolved….Water management is conflict management."

Aaron Wolf

Any questions?

Thank you for your attention

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