Conflict Avoidance and Dispute Settlement Mechanisms

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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
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

- Negotiations
- Diplomatic „pressure“
- Assisted negotiations (mediation, etc.)
- Adjudication

- Confidence building
- Joint studies/fact finding

- Legal/institutional architecture
- International water treaties
- RBOs

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

- Diplomatic/ADR
  - Negotiations
    - Bilateral/multilateral
  - Assisted negotiations
    - Neutral third party intervention
  - Facilitation
    - Good offices
  - Mediation

- Legal
  - Arbitration
  - Adjudication
  - Fact-finding/Inquiry
  - Conciliation
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

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