

Settlement of int'l water disputes: mechanisms available

- mechanisms available
 - negotiation
 - mediation
 - adjudication
 - other
- examples
- compensation issues
- summary

mechanisms available

- negotiation
- mediation
- adjudication

negotiation

- negotiation is a problem solving process in which two or more people voluntarily discuss their differences and attempt to reach a joint decision on their common concerns

conditions favouring negotiation

- identifiable parties
- interdependence
- readiness to negotiate
- means of influence or leverage
- agreement on the issues and some interests
- will to settle
- unpredictability of outcome

conditions favouring negotiation cont.

- sense of urgency or deadline
- no major psychological barriers to settlement
- issues must be negotiable
- people must have authority to decide
- willingness to compromise
- agreement must be reasonable and implementable

conditions favouring negotiation cont.

- external factors favourable to settlement
- resources to negotiate

mediation

- mediation is the intervention into a dispute or negotiation of an acceptable, impartial and neutral third party who has not authoritative decision making power, to assist contending parties to voluntarily reach their own mutually acceptable settlement of issues in dispute

advantages of mediation

- Economical decisions
- rapid settlements
- mutually satisfactory outcomes
- high rates of compliance
- comprehensive and customized agreements
- practice in problem solving procedures

advantages of mediation cont.

- Greater control and predictability of outcome
- personal empowerment
- shadow of the future
- workable and implementable
- agreements better than simple compromise or win/lose
- hold over time

adjudication

- binding third part settlement of disputes

adjudication cont.

- compliance?
- See: University of Richmond Law Review, January, 1999, UNDERSTANDING COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL AGREEMENTS: THE BAKER'S DOZEN MYTHS, Edith Brown Weiss

adjudication continued

- Myth Number Ten: Formal dispute resolution procedures are essential to achieving compliance with an international environmental agreement
- the existence of the procedures may have the effect of encouraging the parties to resolve their disputes in more flexible ways. While this is difficult to prove, it is consistent with scholarship about the effect of courts in encouraging out-of-court negotiated settlements.

advantages adjudication

- final solution
- mere availability promotes constructive solution
- possibility of principles emerging to guide further conduct

disadvantages adjudication

- nature of subject not ideal
- issues raised not justiciable
- paucity of int'l law / vagueness of principles make adjudication difficult
- lack finality
- costly and time consuming

examples

- Columbia
- Mekong
- Mahakali

Columbia River

- Fourth largest river in North America
- Basin covers 640,000 square km. (15% in Canada)
- Length 1,952 km
- 40% of waters originate in Canada

Columbia dispute resolution

- Boundary Waters Treaty of 1909 and Treaty between Canada and the United States Relating to Co-operative Development of the Water Resources of the Columbia Basin, January 17, 1961, 542 U.N.T.S. 244; and Protocol to the Columbia River Treaty annexed to An Exchange of Notes dated January 22, 1964, between Canada and the United States regarding the Columbia River Treaty, 500 Dep't State Bull., 1964 at 201.

Columbia dispute resolution cont.

- ability to refer disputes to International Joint Commission either for investigation (article IX) or adjudication (articles III, IV and VIII)
- investigation role used extensively and apparently successfully
- adjudication role never exercised

Mekong

- world's twelfth longest river
- world's tenth largest river in terms of annual water yield
- third most biodiverse in terms of ichthyofaunal species.
- wettest monthly flows in the lower Mekong River fifteen times the driest monthly flows in an average year

Mekong dispute resolution

- Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin, Apr. 5, 1995, [Cambodia-Laos-Thailand-Vietnam, 34 I.L.M. 864 \(1995\)](#)
- dispute resolution first by Commission. If unable to resolve then referred to member governments and if necessary they may be mutual agreement request assistance of mediation through entity or party mutually agreed upon (articles 34-35)

Mahakali

- One of four very large int'l rivers in Nepal flowing into India
- forms part of border with India
- long the subject of controversy

Mahakali dispute resolution

- Treaty concerning the Integrated Development of the Mahakali River including Sarada Barrage, Tanakpur Barrage and Pancheshwar Project, Feb. 12 1996, India-Nepal, 36 I.L.M. 531 (1997)
- disputes over interpretation or implementation first to joint commission then panel of three arbitrators.

Mahakali cont.

- if not able to agree then third arbitrator appointed by PCA at the Hague

compensation

- principle of equitable utilization
- principle of down stream benefits
 - when a watercourse state does, or forbears the opportunity to do, an act that confers a benefit on another state sharing the watercourse, the latter state is obliged to share the benefit equitably with the former

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