

UN Watercourses Convention

User's Guide Fact Sheet Series: Number 8

Dispute Prevention and Settlement

Introduction to dispute prevention and settlement

Article 33 of the Convention sets out a general obligation that States must settle their disputes by peaceful means, therein providing various options. Firstly, **where there is an existing arrangement between the parties, such as a joint institution, such a mechanism should be used.**

If no joint institution exists or the dispute remains unresolved despite negotiations in good faith, States may use one or a combination of various methods such as good offices, mediation and conciliation. These methods are non-binding as States control the process and the outcome.

Mediation, good offices and conciliation

Mediation and good offices are both diplomatic methods of dispute settlement involving third parties. The **good offices method is where the third party offers “good offices” to the conflicting States to facilitate dialogue and assist States towards peaceful settlement of the dispute.** The third party must be acceptable to all the parties involved and once the negotiation has started, the function of good offices is normally completed.

Mediation on the other hand involves more active third party participation in the negotiations. **The Mediator conducts the negotiations between contending parties on the basis of proposals made by the mediator aimed at a mutually acceptable solution.**

Conciliation is the process of settling a dispute by referring it to a **commission of experts whose task it is to investigate the dispute and propose ways to resolve it** by combining elements of inquiry and mediation. The commission seeks to objectively establish the facts and applicable law but may also investigate the problem more broadly. It can also submit proposals for resolving the dispute which the parties may then accept or refuse.

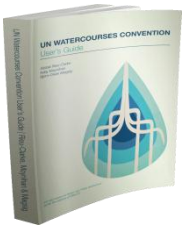
Arbitration and adjudication

Additionally or alternatively, States can seek a solution via Arbitration or Adjudication. **Arbitration is a legal method of dispute settlement which requires the prior consent of each party to the dispute.** This is usually done through a special agreement between the parties. **Article 33** provides rules for the establishment and operation of an Arbitral Tribunal, but parties are not bound to use this particular formula and may opt for other procedures.

UN WATERCOURSES CONVENTION TEXT

ART. 33 – Settlement of Disputes

1. In the event of a dispute between two or more parties concerning the interpretation or application of the present Convention, the parties concerned shall, in the absence of an applicable agreement between them, seek a settlement of the dispute by peaceful means in accordance with the following provisions.
2. If the parties concerned cannot reach agreement by negotiation requested by one of them, they may jointly seek the good offices of, or request mediation or conciliation by, a third party, or make use, as appropriate, of any joint watercourse institutions that may have been established by them, or agree to submit the dispute to arbitration or to the International Court of Justice.
3. Subject to the operation of paragraph 10, if after six months from the time of the request for negotiations referred to in paragraph 2, the parties concerned have not been able to settle their dispute through negotiation or any other means referred to in paragraph 2, the dispute shall be submitted, at the request of any of the parties to the dispute, to impartial fact-finding in accordance with paragraphs 4 to 9, unless the parties otherwise agree.
4. A fact-finding Commission shall be established, composed of one member nominated by each party concerned and in addition a member not having the nationality of any of the parties concerned chosen by the nominated members who shall serve as Chairman.
5. If the members nominated by the parties are unable to agree on a Chairman within three months of the request for the establishment of the Commission, any party concerned may request the Secretary-General of the United Nations to appoint the Chairman who shall not have the nationality of any of the parties to the dispute or of any riparian State of the watercourse concerned. If one of the parties fails to nominate a member within three months of the initial request pursuant to paragraph 3, any other party concerned may request the Secretary-General of the United Nations to appoint a person who shall not have the nationality of any of the parties to the dispute or of any riparian State of the watercourse concerned. The person so appointed shall constitute a single member Commission.
6. The Commission shall determine its own procedure.
7. The parties concerned have the obligation to provide the Commission with such information as it may require and, on request, to permit the Commission to have access to their respective territory and to inspect any facilities, plant, equipment, construction or natural feature relevant for the purpose of its inquiry.



Visit our on-line resource at www.unwatercoursesconvention.org

This fact sheet is based on the *UN Watercourses Convention User's Guide*:

- Electronic version available on-line at: www.dundee.ac.uk/water
- Hardcopy available to order by emailing: water@dundee.ac.uk



Adjudication means that the **disputing parties submit their dispute to the International Court of Justice which is the principal judicial organ of the United Nations**. The submission of the dispute happens with the agreement of all States concerned. The judgement of adjudication process is final, binding on the parties to a case, and without appeal.

Arbitration and Adjudication are both binding legal methods but arbitration is more flexible through the establishment of the Arbitral Tribunal and its procedures than the ICJ. The parties may choose to submit their dispute to the adjudication because it provides the certainty of a neutral, orderly and principled dispute settlement procedure and the increased certainty that the dispute will be resolved.

Compulsory fact-finding commission

If the States are unable to resolve the dispute within six months using the methods described above, one or both parties must submit the dispute to a fact finding commission. **The fact-finding commission is established to produce an impartial finding of disputed facts by engaging a third-party**. Fact-finding is the only element of the Convention's dispute settlement procedures which does not require every disputing party's prior agreement. Article 33 provides that **fact-finding commission will have three members, one from each disputing country and one from a third country who will act as chair and who must be agreed upon by both parties**.

The rationale behind inclusion of compulsory fact-finding in the Convention was to avoid a stalemate in the dispute settlement and to assist parties in moving forward with facts and an exchange of information which are essential components for the operation of the principle of equitable and reasonable utilisation. In-turn, it has the practical effect of hopefully enabling the resolution of a dispute in good faith with all the relevant facts available to all the parties to the dispute. **The fact-finding commission examines the facts to the dispute and subsequently produces recommendations for a resolution; these are not binding but must be considered by the States in good faith**.

UN WATERCOURSES CONVENTION TEXT

ART. 33 – Settlement of Disputes

8. The Commission shall adopt its report by a majority vote, unless it is a single-member Commission, and shall submit that report to the parties concerned setting forth its findings and the reasons therefore and such recommendation as it deems appropriate for an equitable solution of the dispute, which the parties concerned shall consider in good faith.

9. The expenses of the Commission shall be borne equally by the parties concerned.

10. When ratifying, accepting, approving or acceding to the present Convention, or at any time thereafter, a party which is not a regional economic integration organisation may declare in a written instrument submitted to the depositary that, in respect of any dispute not resolved in accordance with paragraph 2, it recognises as compulsory ipso facto and without special agreement in relation to any party accepting the same obligation:

(a) Submission of the dispute to the International Court of Justice; and/or

(b) Arbitration by an arbitral tribunal established and operating, unless the parties to the dispute otherwise agreed, in accordance with the procedure laid down in the annex to the present Convention;

A party which is a regional economic integration organisation may make a declaration with like effect in relation to arbitration in accordance with, subparagraph (b).

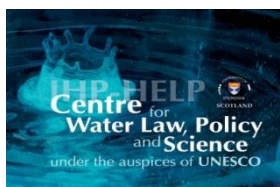
ADDITIONAL RESOURCES

FURTHER READING

Rieu-Clarke, A., Moynihan, R. and Magsig, B., *UN Watercourses Convention – User's Guide* (CWLPS 2012), at 234-260

RELATED UN WATERCOURSES CONVENTION SECTIONS

Arts 4, 6, 7, 8 17, 18, 19, 24, 26 and 30



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