The role of diplomatic means of solving water disputes: a special emphasis on institutional mechanisms

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The Role of Diplomatic Means of Solving Water Disputes: A Special Emphasis on Institutional Mechanisms

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I. INTRODUCTION

International law plays a significant role in the management of international watercourses. While the rule of law does not in and of itself provide solutions to the many concerns about water utilization, conservation or protection, it certainly provides a means of reaching potential solutions to international water problems. Some of the core features brought about by the rule of law are stability, predictability and sustainability. While it is true that international law cannot in itself guarantee cooperation over international watercourses, such cooperation is very unlikely to be established in a sustainable manner in the absence of the appropriate legal support. In providing stability and predictability to regulation, the law contributes to the prevention, avoidance and settlement of disputes.

The functions that the rule of law can play cannot be fulfilled efficiently in an area where the principles and rules remain vaguely elaborated or phrased, as is often the case in the field of international waters. It is therefore essential to build workable institutional and conventional frameworks, within which states can interact, consult and exchange information. It follows that the rules applicable to international water issues must not only be substantive and procedural, but also institutional – providing suitable mechanisms for ensuring cooperation and sustainable management of water resources.1

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This article will deal with international watercourses, as they have to date formed the principal object of the law applicable to freshwater resources in the international sphere. This does not mean that there is not a need for an expanded coverage of the rule of law in this area, dealing in a more complete manner with groundwater resources as well as with all other freshwater sources, be they terrestrial or atmospheric.

Until the General Assembly of the United Nations adopted the UN Convention on the Law of Non-Navigational Uses of International Watercourses ("UN Watercourses Convention"), which was opened for signature and ratification by member states in May 1997, the international community did not have at its disposal a set of written rules or principles dealing with non-navigational uses (whether agriculture, energy, industry, health or environment oriented) negotiated by states at the universal level under the aegis of the United Nations.

2. United Nations Convention on the Law of Non-Navigational Uses of International Watercourses (1997) [hereinafter UN Watercourses Convention], reprinted in 36 I.L.M. p. 700 (1997), reproduced as an Appendix in this volume, defines the term "watercourse" as "a system of surface waters and ground waters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus," and an "international watercourse" as "a watercourse, parts of which are situated in different States" (art. 2(a) and (b)), thus encompassing the main stream of an international river and its tributaries, as well as international lakes and ground waters connected with other parts of an international watercourse. The United Nations Economic Commission for Europe ("UNECE") Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 1992) [hereinafter UNECE Convention], reprinted in 31 I.L.M. p. 1312 (1992), defines "transboundary waters" as "any surface or ground waters which mark, cross or are located on boundaries between two or more States; wherever transboundary waters flow directly into the sea, these transboundary waters end at a straight line across their respective mouths between points on the low-water line of their banks" (art. 1(1)).


4. For a plea for a more comprehensive approach, see JOCHEN SOHNLE, LE DROIT INTERNATIONAL DES RESOURCES EN EAU DOUCE: SOLIDARITÉ CONTRE SOUVENANTÉ (La documentation française, Paris 2002).

5. UN Watercourses Convention, supra note 2.
Until that time, the Helsinki Rules on the Uses of the Waters of International Rivers ("Helsinki Rules"), adopted by the International Law Association ("ILA") in 1966, were the only set of written rules to which one could refer in order to identify the customary principles and rules applicable in this field.

However, the Helsinki Rules had not been endorsed by an inter-state political body, but only by a non-governmental agency. In addition, there had been much discussion centered around the status of the rules as customary law, that is, their binding character. The UN Watercourses Convention shed some light and clarification on this.

The codification effort initiated in 1970 by the International Law Commission of the United Nations ("ILC") took almost three decades. Although it was the result of political compromises among groups of states with differing interests, the UN Watercourses Convention helped to clarify and codify various rules and principles of the regime applicable to international watercourses.

Taking into consideration the role of the UN Watercourses Convention as a legal and policy framework which provides a common language at the universal level as well as a roadmap for negotiations (Part II), this paper will address the role of joint bodies and commissions (also referred to as institutional mechanisms) (Part III), in particular with respect to the promotion of cooperation and dispute settlement (Part IV).

As will be seen, there is a need for further development of the regime applicable to watercourses from an institutional viewpoint, through regional and basin agreements, taking into account the special circumstances of each watercourse. The experience drawn from existing agreements helps to shape the future course of action necessary for a mature watercourses regime.

II. THE UN WATERCOURSES CONVENTION AS A FRAMEWORK FOR INTEGRATED MANAGEMENT OF INTERNATIONAL WATERCOURSES: LEGAL CHARACTERISTICS

The UN Watercourses Convention is the result of compromises between various state interests, be they upstream or downstream oriented, motivated by scarcity, anxiety, or economic or social factors. It nonetheless provides a reasonable framework for governing non-navigational uses of international watercourses. The elements of such an architecture have been negotiated at the universal level within the context of a so-called "framework convention." 7

Uncertainties and the lowest common denominators are the price to pay for any attempt to elaborate this type of legal regime, and the UN Watercourses Convention is no exception in this respect. Many framework conventions that are to be found mostly in the fields of international environmental law or disarmament regulation, present similar features. Such treaties contain elements of a regulatory, programmatic and institutional nature.

One of the virtues of these instruments is that they lay down the constitutive foundations for a legal regime, which is then supposed to be further elaborated through additional treaties, protocols, amendments, guidelines or other types of instruments.

It is interesting to note that international watercourses are all distinct from each other as a result of their geographic, climatic, human, or other characteristics. This makes the UN Watercourses Convention a framework convention for bilateral, regional or basin-wide agreements to be adjusted to specific cases. It contains a common legal and policy language negotiated at the universal level, to be specified and rendered more precise to meet particular needs in the context of each particular watercourse.

Another function of the UN Watercourses Convention is that, once in force, any subsequent bilateral and regional watercourse agreements among parties to the Convention might be negotiated in the light of its principles and rules,

7. As para. 5 of the preamble to the UN Watercourses Convention, supra note 2, clearly states:
"Expressing the conviction that a framework convention will ensure the utilization, development, conservation management and protection of international watercourses and the promotion of the optimal and sustainable utilization thereof for present and future generations."
taking into consideration the specificities of each river basin. The third and fifth paragraphs of Article 3 of the UN Watercourses Convention read as follows:

"3. Watercourse States will enter into one or more agreements, hereinafter referred to as ‘water agreements,’ which apply and adjust the provisions of the present Convention to the characteristics and uses of a particular international watercourse or part thereof."

"5. Where a watercourse State considers that adjustment and application of the provisions of the present Convention is required because of the characteristics and uses of a particular international watercourse, watercourse States shall consult with a view to negotiating in good faith for the purpose of concluding a watercourse agreement or agreements."

From a policy viewpoint, it is also interesting to note that both the UN Watercourses Convention (though not yet in force)\(^8\) and the works which led to its adoption (i.e., the ILC’s draft articles on the non-navigational uses of international watercourses)\(^9\) have been taken into account in formulating international agreements in a variety of contexts.

One such case is the draft of a cooperative framework for the sustainable and equitable use of the resources of the Nile Basin,\(^10\) produced in August, 2000 and developed with the support of the World Bank, the United Nations Development Program ("UNDP") and other multilateral and bilateral donors, which remains under discussion.

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8. As of October 15, 2002, only 8 of the 16 signatories had ratified or accepted the Convention, while 3 other states had acceded to it. Those 11 parties fall well short of the minimum 35 ratifications required for the Convention to enter into force.

9. The topic had been added to the ILC work program at its XXIIIrd session, following a recommendation of the General Assembly (U.N.G.A. Res. 2669(XXV), Dec. 8, 1970). The project was adopted on first reading, at the LXIIIrd session (1991).

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Another such case is the Revised Protocol on Shared Watercourses in the Southern Africa Development Community ("SADC"),\(^1\) adopted in 2000. These examples demonstrate the UN Watercourses Convention’s virtue as a legal roadmap for negotiations, willingly entered into, without any legal compulsion to do so.

It is in this context that the value added by the UN Watercourses Convention should be assessed, namely, that it allows for consolidation and development based on notions and principles which have been universally defined in a framework instrument.

III. THE BUILDING BLOCKS FOR INTERNATIONAL WATER MANAGEMENT AND THE ROLE OF INSTITUTIONAL MECHANISMS

The UN Watercourses Convention lays down the main building blocks for water management at the international level. These foundations, which delineate the means to achieving an integrated approach to water management, are composed of four main pillars, while a fifth, which is only slightly elaborated, still needs further exploration and refinement.

These pillars deal, respectively, with the sharing of international waters, the obligation to cooperate, the protection of the environment, and dispute settlement. The fifth pillar – public participation and the involvement of non-state actors – needs strengthening, as the UN Watercourses Convention is a state-oriented instrument with almost no provisions about the involvement of other stakeholders, notably the local communities and non-governmental organizations ("NGOs").\(^2\)

The establishment of institutional mechanisms is promoted explicitly in the UN Watercourses Convention via the obligation to cooperate, as well as through the dispute settlement provisions. This does not mean that joint bodies and commissions are not linked to the other pillars, as they are in fact necessary corollaries of a sound and sustainable application of substantial and procedural

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12. The only provision dealing with non-state actors is art. 32 of the UN Watercourses Convention, *supra* note 2.
principles and rules applicable to international watercourses – be they water sharing principles or environment related. The water sharing principles are the “equitable and reasonable use” principle\textsuperscript{13} and the “no-harm rule.”\textsuperscript{14}

A series of factors to be taken into account in the implementation of these principles is enunciated in Article 6 of the UN Watercourses Convention. They include social, economic, cultural, and historical considerations. The Convention calls for a mutually supportive application of these principles through the above-mentioned factors.

However, the absence of any priority ranking among the factors to be implemented, with the exception of the satisfaction of vital human needs as mentioned in Article 10, generates the risk of maintaining the status quo, there being no incentive for states to reach an agreement.

In such a context, joint bodies and commissions, where the concerned states can meet, exchange viewpoints and agree on the implementation of principles and rules in relation to water sharing issues, are crucial. They contribute to the furtherance of a dialogue to conclude an agreement.

The protection of the environment is also an important component of the regime applicable to international watercourses. The UN Watercourses Convention refers to obligations dealing with the protection of ecosystems of international watercourses and the prevention and control of pollution.

Phrased mostly in general terms, the environmental regime provided by the UN Watercourses Convention needs to be strengthened in order for it to be effective. It should, for instance, incorporate principles and rules of international environmental law, including the principles enunciated in the Rio Declaration on Environment and Development.\textsuperscript{15}

The UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes, signed in Helsinki in 1992, (the

\textsuperscript{13} The equitable and reasonable utilization and participation principle is enshrined in art. 5(1) and (2) of the UN Watercourses Convention, supra note 2.

\textsuperscript{14} Art. 7 of the UN Watercourses Convention articulates the “no-harm” rule. See Appendix in this volume.

“UNECE Convention”) is quite illustrative in this respect. In this area too, there is a need for an institutional support to ensure sound environmental management of watercourses, as institutional mechanisms are crucial for developing and monitoring the implementation of an environmental regime.

It is interesting to note that the UN Watercourses Convention has foreseen such a need, although it has done so in a rather timid way. Article 24 of Part IV (Protection, Preservation and Management) of the UN Watercourses Convention provides that:

1. Watercourse States shall, at the request of any of them, enter into consultations concerning the management of an international watercourse, which may include the establishment of a joint management mechanism.

2. For the purposes of this article, ‘management’ refers, in particular, to:

   (a) Planning the sustainable development of an international watercourse and providing for the implementation of any plans adopted; and

   (b) Otherwise promoting the rational and optimal utilization, protection and control of the watercourse.”

Thus, Article 24 indicates, albeit in rather loose terms, that a sustainable management of a watercourse is a collective process among riparians and that a joint management mechanism is a means to this end.

The rather vague statement of the UN Watercourses Convention is to be contrasted with the UNECE Convention. As will be seen below, the latter is significantly more forward-looking and comprehensive in dealing with cooperation through institutional support in the environmental area.

16. Supra note 2.
18. See UNECE Convention, supra note 2, art. 9.
IV. COOPERATION, DISPUTE SETTLEMENT, AND JOINT BODIES AND COMMISSIONS

A. The Obligation to Cooperate

One may briefly recall the importance of cooperation in managing international watercourses. Article 8(1) of the UN Watercourses Convention provides that: "[w]atercourse States shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection of an international watercourse..."

The obligation of cooperation is multifaceted with regard to international watercourses as it involves their multiple uses. For example, in the 1999 Case Concerning Kasikili/Sedudu Island (between Botswana and Namibia), the International Court of Justice ("ICJ") pointed out some interesting features regarding the management of international watercourses.

The case focused on the determination of the boundary between the two African states, the apportionment of the island in dispute, and the method to be applied to resolve the matter in the light of the existence of a treaty between Great Britain and Germany concluded in 1890 and in accordance with the rules and principles of international law.

The decision emphasized the need to consider such watercourses also as spaces of cooperation, thus transcending the issue of the boundary. The Court reminded the two countries of the need to create mutually satisfactory conditions for their nationals through the establishment of a common regime.19

This concern is also addressed in the financing of transboundary water projects. The World Bank has a policy on international waterways which states that "[t]he Bank recognizes that the cooperation and goodwill of riparians is essential for efficient utilization and protection of the waterway."20


Chapter 18.4 of Agenda 21 – the Program of Action for the 21st Century as adopted by the UN Conference on Environment and Development ("UNCED") in June 1992 – states that: "[t]ransboundary water resources and their use are of great importance to riparian States.

In this connection, cooperation among those States may be desirable in conformity with existing agreements and/or other relevant arrangements, taking into account the interests of all riparian States concerned."

According to the UN Watercourses Convention, cooperation may be achieved by different means: by establishing joint mechanisms and commissions of which riparians are members; regular exchange of information and data; notification of planned measures; and consultations.

B. Institutional Mechanisms and Cooperation

All the above-mentioned cooperative measures are key elements for preventing disputes. Being a means for ensuring cooperation, the establishment of joint bodies and commissions is also a means of preventing disputes from arising and of contributing to their resolution. Since as early as the beginning of the twentieth century, calls were made by scientific
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associations,\textsuperscript{24} and later by international institutions,\textsuperscript{25} for the establishment of

24. The Institute of International Law's Resolution on International Regulations Regarding the Use of International Watercourses, adopted April 20, 1911, 24 ANN. IDI pp. 365–367 (1911), states, in para. 7:

"... that the interested States appoint permanent joint commissions, which shall render decisions, or at least shall give their opinion, when, from the building of new establishments or the making of alterations in existing establishments, serious consequences might result in that part of the stream situation in the territory of [another] State."


"It is recommended that Governments concerned consider the creation of river-basin commissions or other appropriate machinery for cooperation between interested States for water resources common to more than one jurisdiction.

(a) In accordance with the Charter of the United Nations and the principles of international law, full consideration must be given to the rights of permanent sovereignty of each country concerned to develop its own resources;

(b) The following principles should be considered by the States concerned when appropriate;

(i) Nations agree that when major water resource activities are contemplated that may have a significant environmental effect on another country, the other country should be notified well in advance of the activity envisaged;

(ii) The basic objective of all water resource use and development activities from the environmental point of view is to ensure the best use of water and to avoid its pollution in each country;

(iii) The net benefits of hydrologic regions common to more than one national jurisdiction are to be shared equitably by the nations affected;

(c) Such arrangements, when deemed appropriate by the States concerned, will permit undertaking on a regional basis;

(i) Collection, analysis, and exchanges of hydrologic data through some international mechanism agreed upon by the States concerned;

(ii) Joint data-collection programs to serve planning needs;

(iii) Assessment of environmental effects of existing water uses;

(iv) Joint study of the causes and symptoms of problems related to water resources, taking into account the technical, economic, and social considerations of water quality control;

(v) Rational use, including a program of quality control, of the water resource as an environmental asset;

(vi) Provision for the judicial and administrative protection of water rights and claims;"
joint bodies and commissions to achieve these ends.

The Ministerial Declaration on Water Security in the 21st Century, adopted at the Second World Water Forum at The Hague in March 2000, notes that one of the main challenges of the new century is "... to promote peaceful cooperation and develop synergies between different uses of water at all levels, whenever possible, within and, in the case of boundary and transboundary water resources, between States concerned, through sustainable river basin management or appropriate other approaches." In practice, riparian states have established institutional mechanisms whose structure and functions vary from one agreement to another and from one watercourse to another.

It is interesting to note that in the area of navigation, international commissions have been created from a very early date. The Rhine Commission and the European Commission for the Danube were created in 1815 and 1856, respectively. These mechanisms would also deal with issues concerning fishing regulation. In the course of the twentieth century, with the expansion of the various uses of watercourses, the need was felt to put in place new institutional mechanisms. A large number of such mechanisms have been created in Europe, but also in other regions of the world, especially in Africa since the early 1960s. However, it is also true that there are regions or watercourses for which no institutional mechanism has yet been put into place.

The calls for the establishment of joint bodies and commissions have since been numerous and repeated, making them appear quite incantatory in their...
reiteration. Within such a context it is surprising to see the content of the commitments made in Articles 8 and 24 of the UN Watercourses Convention. They are rather weak when one takes into consideration the above-mentioned practice. Article 8, paragraph 2, provides that:

“In determining the manner of such cooperation, watercourse States may consider the establishment of joint mechanisms or commissions, as deemed necessary by them, to facilitate cooperation on relevant measures and procedures in the light of experience gained through cooperation in existing joint mechanisms and commissions in various regions.”

This paragraph does not require states to achieve a particular outcome or result in terms of institutional settings. It is merely an indication of what could be done to pursue the cooperation envisaged by paragraph 1 of Article 8. One encounters similar language in the first paragraph of Article 24 which, as stated previously, envisages the possibility of establishing a joint mechanism for the management of an international watercourse from an environmental viewpoint.

The travaux préparatoires of the UN Watercourses Convention gives the feeling that there is no real obligation under international law to create such mechanisms and to manage watercourses through them. Institutional mechanisms are thus expected to flow from the development of a watercourses regime and even more so from the good will of riparian countries. It is also interesting to highlight the fact that Article 8, in its second paragraph quoted above, refers to the “experience gained through cooperation in existing joint mechanisms and commissions in various regions.” The experience drawn from past and existing agreements is thus seen as a way to induce states to strengthen cooperation through the establishment of institutional bodies. Although the UN Watercourses Convention, like other framework conventions, is generally conceived as a tool to initiate a process of cooperation among states, that process appears to be reversed for joint mechanisms: it is then the UN Watercourses Convention that should be nurtured by past practice — such practice being the indication of what cooperation should look like in the future. To say the least, one can discern in this area a certain timidity in promoting institutional cooperation.

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The UNECE Convention is much stronger in its plea for institutions, stating in Article 9, paragraph 2, that:

"The agreements or arrangements mentioned in paragraph 1 of this article shall provide for the establishment of joint bodies. The tasks of these joint bodies shall be, inter alia, and without prejudice to relevant existing agreements or arrangements, the following:

(a) To collect, compile and evaluate data in order to identify pollution sources likely to cause transboundary impact;

(b) To elaborate joint monitoring programs concerning water quality and quantity;

(c) To draw up inventories and exchange information on the pollution sources mentioned in paragraph 2 (a) of this article;

(d) To elaborate emission limits for waste water and evaluate the effectiveness of control programs;

(e) To elaborate joint water-quality objectives and criteria having regard to the provisions of article 3, paragraph 3 of this Convention, and to propose relevant measures for maintaining and, where necessary, improving the existing water quality;

(f) To develop concerted action programs for the reduction of pollution loads from both point sources (e.g. municipal and industrial sources) and diffuse sources (particularly from agriculture);

(g) To establish warning and alarm procedures;

(h) To serve as a forum for the exchange of information on existing and planned uses of water and related installations that are likely to cause transboundary impact;

(i) To promote cooperation and exchange of information on the best available technology in accordance with the provisions of article 13 of this Convention, as well as to encourage cooperation in scientific research programs;"
(j) To participate in the implementation of environmental impact assessments relating to transboundary waters, in accordance with appropriate international regulations.\(^{30}\)

States are thus required to establish joint bodies and commissions. These institutional mechanisms should fulfill a number of tasks, the list of which is extensive but not exhaustive. Subsequent treaties negotiated on the basis of this UNECE Convention\(^ {31}\) gave even more teeth to the principle that the creation of institutional mechanisms with numerous functions is crucial for the sound management of an international watercourse. One thing to note, however, is that all these agreements are geared more towards environmental protection and sustainable development than is the UN Watercourses Convention. Such an emphasis certainly favors stronger cooperation, the actions and activities to be conducted in this field being collective by nature as well as by necessity. However, one should also note that other recent watercourses agreements negotiated in other regions of the world also put a strong emphasis on institutional cooperation.\(^ {32}\)

Such state practice indicates that one cannot regard the UN Watercourses Convention as a reflection of customary international law when it deals with the establishment of joint bodies and commissions. One should instead consider that the establishment of institutional mechanisms is required of riparian states. What still needs to be clarified under international law is the range of functions to be accomplished by those mechanisms. They should at least ensure cooperation through the exchange of information and data. They should also provide for a framework for notification of planned measures and consultations, and define action programs of common interest to improve water management and decrease pollution.

Another point to be made about joint bodies and commissions relates to their openness and inclusive nature. Efforts should be undertaken to open these

\(^{30}\) UNECE Convention, *supra* note 2.


institutional settings to all riparians. This might entail some elements of flexibility allowing all riparians of a particular international watercourse system – whether or not they are parties to a given watercourse agreement – to participate, as observers or in a similar capacity, in the work and activities of a joint mechanism established for such watercourse. As part of the confidence-building spirit which is crucial in promoting integrated and sound water management, the granting of such observer-type status would constitute a first step towards the further involvement of “outsider” states as parties to a possible future agreement encompassing all riparians. The resolution drafted by the ILA’s Committee on International Water Resources Law, and adopted by the ILA at its 57th Conference in Madrid in 1976, goes in this direction when it states in Article 3:

“Member States of an international water resources administration in appropriate cases should invite other States, including non-basin States or international organizations, which by treaty, other instruments or binding custom enjoy a right to, or have an interest in, the use of the waters of an international drainage basin, to participate in the activities of the international water resources administration.”

The special case of coastal states also deserves mention, as these might have an interest in being associated in the activities of a joint body. Such a possibility is contemplated in the UNECE Convention in Article 9, paragraphs 3 and 4:

“3. In cases where a coastal State, being Party to this Convention, is directly and significantly affected by transboundary impact, the Riparian Parties can, if they all so agree, invite that coastal State to be involved in an appropriate manner in the activities of multilateral joint bodies established by Parties riparian to such transboundary waters.

4. Joint bodies according to this Convention shall invite joint bodies, established by coastal States for the protection of the marine environment directly affected by transboundary impact, to cooperate in order to harmonize their work and to prevent, control and reduce the transboundary impact.”

33. See ILA REPORT, supra note 24, at p. 239.
A final point to be made about institutional mechanisms is that they should enable public involvement in the management of international watercourses. It is important in this respect to note the increasing role being played by water associations. The public can also be involved through hearings, briefings and working groups. Public participation and access to information are means by which awareness can be raised and support increased for water management policies. In addition, the growing body of human rights law provides important governance parameters necessary for ensuring that, in the end, an international watercourse is managed in the interest of all. Such parameters include, inter alia, the protection of minorities and indigenous peoples, as well as the right of access to information. The ever more vociferous affirmation of a human right to clean water is also worth noting in this respect.

The 1999 Protocol on Water and Health to the UN/ECE Convention appears to refer to this right when it states that “equitable access to water, adequate in terms both of quantity and of quality, should be provided for all members of the population, especially those who suffer a disadvantage or social exclusion.”

C. Institutional Mechanisms and Dispute Settlement

The contribution of institutional mechanisms to dispute avoidance and settlement among riparians is to be considered, within the broader context of the variety of available dispute settlement procedures. In its catalogue of the classical means of diplomatic and judicial dispute settlement available to states, the UN Watercourses Convention mentions the use of joint water institutions. Article 33, paragraph 2, provides that:

“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

35. Such elements have been codified in the UNECE Conventions: see Branko Bosnjakovic, UN/ECE Strategies for Protecting the Environment with Respect to International Watercourses: The Helsinki and Espoo Conventions, in INTERNATIONAL WATERCOURSES, supra note 20, at p. 62.
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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.

In practice, some of these joint bodies and commissions have been granted dispute avoidance and settlement functions. While in other situations such prerogatives may not have been specifically conferred, recourse to the implied powers doctrine should enable institutional mechanisms to participate in providing a framework for consultations, negotiations and good offices. This point should be highlighted in a context where recourse to third-party dispute settlement procedures for resolving non-navigational issues has been rare in practice. In this context, the dispute over the Gabčíkovo-Nagymaros project concerning the erection of two dams on a portion of the Danube shared by Czechoslovakia and Hungary, is a noticeable, albeit special case. The resort to diplomatic means for resolving disputes seems to be more attractive to states. Joint bodies and commissions provide good opportunities in this context to exchange views, consult, and reach agreement.

V. CONCLUSION

The adoption of the UN Watercourses Convention constitutes an important step towards co-management of international watercourses. Even if the Convention never enters into force, it is and will remain a reference document for negotiations. As stated by the ICJ in the Gabčíkovo-Nagymaros case, it also contains rules of a customary nature, namely those regarding the principle of

equitable and reasonable sharing of natural resources. However, cooperation remains to be developed further towards an effective co-management of international watercourses in line with the concept of "Integrated Water Resources Management," as delineated by the Ministerial Declaration of The Hague on Water Security in the 21st Century:

"The actions advocated here are based on integrated water resources management, that includes the planning and management of water resources, both conventional and non-conventional, and land. This takes account of social, economic and environmental factors and integrates surface water, groundwater and the ecosystems through which they flow. It recognizes the importance of water quality issues. In this, special attention should be paid to the poor, to the role, skills and needs of women and to vulnerable areas such as small island states, landlocked countries and desertified areas."

In the same direction, a more optimal regime for international watercourses should aim at promoting institutional frameworks that provide for adequate and regular exchange of information in all areas covered by a watercourse agreement, as well as for numerous tasks ranging from pollution abatement to

41. See id., para. 85:
"... In 1929, the Permanent Court of International Justice, with regard to navigation on the River Oder, stated as follows:
‘[the] community of interest in a navigable river becomes the basis of a common legal right, the essential features of which are the perfect equality of all riparian States in the user of the whole course of the river and the exclusion of any preferential privilege of any one riparian State in relation to the others’ (Territorial Jurisdiction of the International Commission of the River Oder, Judgment No. 16, 1929, P.C.I.J., Series A, No. 23, p. 27).
Modern development of international law has strengthened this principle for non-navigational uses of international watercourses as well, as evidenced by the adoption of the Convention of 21 May 1997 on the Law of the Non-Navigational Uses of International Watercourses by the United Nations General Assembly. The Court considers that Czechoslovakia, by unilaterally assuming control of a shared resource, and thereby depriving Hungary of its right to an equitable and reasonable share of the natural resources of the Danube – with the continuing effects of the diversion of these waters on the ecology of the riparian area of the Szigetköz – failed to respect the proportionality which is required by international law."

42. Supra note 26.
flood control. These mechanisms constitute a natural corollary of a cooperative system, and they contribute to allowing the riparians to manage the watercourse in the interests of all. Such management should involve, to the greatest extent possible, the various different stakeholders. The voices are many, and institutions can help them to find expression and to be heard.