Dispute settlement in the context of international environmental law

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Types of disputes?

Relating to, e.g.:

- EIA
- Decision-making
- Permits
- Adverse effects on biodiversity and/or pollution arising from:
  - Construction/laying of pipeline
  - Operation/maintenance
- Decommissioning
Issues

- What is the nature of the dispute?
- Who are the parties to the dispute? (Only states? Others?)
- Are the parties to the dispute, party to a relevant agreement with dispute settlement provisions?
- What dispute settlement mechanisms are available? Which of the available mechanisms (if any) are the most appropriate? (Time; costs; remedies; other considerations?)
Some relevant MEAs

- Espoo Convention on EIA
- Aarhus Convention
- Convention on Biological Diversity
- Helsinki Convention
- Bonn Convention/ ASCOBANS
- 1982 LOSC
Dispute settlement provisions in MEAs - inter-state disputes

- Often weak
- In many MEAS, for disputes between Parties concerning the interpretation and application of the agreement binding third party adjudication is not compulsory
- Generally, provide for range of procedures:
  - Negotiation/consultation
  - Mediation/good offices
  - Conciliation (non-binding)
  - Arbitration or judicial settlement - but upon common agreement of parties to dispute
- In addition to dispute settlement provisions, MEAs increasingly provide for compliance procedures that are designed to assist Parties to comply with their obligations
Espoo Convention, Article 15

- Seek a solution by negotiation or any other method of dispute settlement acceptable to the parties to the dispute.

- Parties may declare that they accept as compulsory in relation to any Party accepting the same obligation:
  - Submission of the dispute to the International Court of Justice.
  - Arbitration in accordance with the procedure set out in Appendix VII to the Convention.
Espoo Convention,
Implementation Committee

- Objective of the Committee is to assist Parties to comply fully with their obligations under the Convention.

- Submission may be brought to Committee by:
  - One or more Parties that have concerns about another Party’s compliance with its obligations.
  - A Party in relation to its own compliance.

- The Committee itself may also initiate the procedure where it becomes aware (how?) of possible non-compliance by a Party.

- Committee reports to the Meeting of the Parties and makes such recommendations as it considers appropriate.

- Meeting of the Parties may decide upon measures to assist the compliance of the Party concerned.
Seek a solution by negotiation

If cannot reach agreement, seek good offices of or jointly request mediation by third Contracting Party, qualified organisation or a qualified person

If unable to resolve through these means, disputes shall be upon common agreement submitted to ad hoc arbitration tribunal, to a permanent arbitral tribunal or to the ICJ
Constitution on Biological Diversity, Art 27

- Seek solution by negotiation
- If cannot reach agreement, may jointly seek good offices of or request mediation by third party
- A Party may declare that it accepts as compulsory:
  - Arbitration (in accordance with Annex II)
  - Submission of disputes to ICJ
- If parties to dispute have not accepted the same or any procedure, the dispute shall be submitted to conciliation (Annex II) unless the Parties otherwise agree
Bonn Convention, Art XIII

- Negotiation

- If not resolved, the dispute may be submitted by mutual consent to arbitration, in particular by Permanent Court of Arbitration
LOS C 1982, Part XV

- General obligation to settle disputes by peaceful means (Art 33 UN Charter) (Art 279 LOSC)
- Compulsory procedures entailing binding decisions (cf. MEAs)
- Article 287 Choice of procedure
  - ICJ
  - ITLOS
  - Arbitration (Annex VII)
  - Special arbitration (Annex VIII)
- Arbitration (Annex VII) as ‘default’ option
Limitation and exceptions to compulsory procedures entailing binding decisions

- Not all disputes arising under LOSC are subject to compulsory dispute settlement procedures entailing binding decisions

- Article 297 – ‘general’ exceptions

- Article 298 – optional exceptions (subject to declaration by a Party)
LOSCE dispute settlement

- Coastal state consent to marine scientific research (surveys)?
- Laying of pipeline in EEZ?
- Protection and preservation of the marine environment?
- Management of living resources of EEZ?
Public participation


- Art. 15: Review of compliance
  - Non-confrontational, non-judicial, consultative
Aarhus Convention

- Compliance Committee established
- Can receive communications regarding compliance of a Party with its obligations:
  - Submissions by Parties
  - Referrals by the Secretariat (based on information in reports submitted by Parties)
  - Communications from the public
- Committee reports to Meeting of the Parties and may make such recommendations as it considers appropriate
- Pending consideration by Meeting of the Parties, Committee may take certain measures in consultation with Party concerned
- Meeting of the Parties decides upon (non-confrontational etc) response measures
- Growing practice in relation to communications from the public
Other relevant international courts and tribunals

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ECJ

ECHR

ICJ

Others
Range of possible dispute settlement mechanisms may be available depending upon nature of dispute and identity of parties.

Regional arrangements as mechanisms for consultation and dispute avoidance?