DISPUTE SETTLEMENT IN INTERNATIONAL LAW AND SHARED/DIVIDED WATER RESOURCES

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There are several examples that suggest that the management of shared water resources (being the borderline or transection of two or more states) is an extremely sensitive issue. Some estimates indicate that this issue will become even more pressing as the utilization of water resources on the territory of one state may jeopardize the vital interests of the other or more of them. What is more, there is a prevailing stance in the literature on water resources that the state of the water resources, manner of managing water resources and various other circumstances are to become, to even greater extent, a cause of disputes between the states. The conflict potential grows as water needs increase and relations between states complicate due to various other reasons. Hence, the question of dispute settlement may become extremely important for relations between the states and international security. Examples from the current practice of the states' conduct and certain indicators from the relations between the states in some regions clearly confirm this. In an analysis of ways of settling disputes, it should be borne in mind that this issue is strongly linked to the several other questions. One of the key issues is that of liability/responsibility, but when it comes to water resources also the question of how to define the notion of water resources and other concepts (integrated management, surface water, groundwater, etc.), the question of regulating the state borders on the rivers, historical circumstances and development of the ways of using water resources, waste management, biodiversity protection, climate change impact, international treaties enforcement, etc. may also become the subject of the preliminary discussions. When it comes to liability, aside from classical rules of the states' liability for the violation of the norms of international law, in the field of environment and water resources, liability rules for damages caused by the activities not prohibited by international law could be of the particular significance.

Rules on dispute settlement between the states were established under various international agreements, including international agreements in the field of water resources management. Although the obligation to respect international treaties is considered to be one of the fundamental principles of the legal order, disputes concerning the interpretation and application of international treaties may occur due to several circumstances. Among these circumstances may be unclear provisions of the contracts, gaps in the contracts, changed circumstances, etc. Changes in the level of technological development may affect the new (subsequent) consideration of the interests of the relevant states and the manner of interpretation of certain obligations and rights stipulated by the international agreement.

As a general framework, modern international law provides with several ways of resolving disputes by peaceful means: 1) diplomatic (negotiations, good services or mediation, conciliation, inquiry commissions) and 2) judicial (arbitration, the International Court of Justice, etc.). Some awards of the arbitral bodies and of the International Court of Justice in some previous cases represent an inexhaustible example of variations in the interpretation of certain rules of international treaty law pertaining to water resources management. Recent international agreements which have for their object the regulation of the particular issues in the field of shared natural resources or international agreements in the field of water resources and the environment, in a similar way regulate these issues. Most frequently, Member States undertake to settle their disputes concerning the interpretation or application of an international agreement through negotiation processes, but if they fail, two general ways of resolving disputes are offered. These are the arbitration or submission of the dispute to the International Court of Justice (United Nations Framework Convention on Climate Change, Art. 14; the Convention on Biological Diversity, Art. 27; the United Nations Convention to Combat Desertification in those countries

experiencing serious drought and/or desertification, particularly in Africa, Art. 28; the Basel Convention on the Transboundary Movement of Hazardous Wastes and their Disposal, Art. 20, etc.) At the same time, Member States of the contract at the time of its ratification, acceptance, approval, accession or at some time later are often provided with the possibility to opt for one of these two ways of judicial settlement of disputes. Generally speaking, such a practice also exists in the international multilateral treaties of direct relevance to the region of Southeast Europe. Convention on the Law of the Non-navigational Uses of International Watercourses also provides for the possibility for countries to opt for one of the two ways of disputes settlement. It is similar situation also in the cases of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes ("Off. Gazette FRY–International Treaties", no. 1/2010), the Convention on Cooperation for the Protection and Sustainable Use of the Danube River ("Off. Gazette FRY–International Treaties", no. 2/2003), the Framework Agreement on the Sava River Basin ("Off. Gazette SCG", no. 12/2004). However, there are some differences. The Convention on Cooperation for the Protection and Sustainable Use of the Danube River in its Article 24 provides for the obligation of Member States to find a solution to the disputes through negotiations or through some other form of dispute settlement acceptable to the Contracting Parties to the dispute. The possibility that the assistance is rendered by the International Commission for the Protection of the Danube River is also available. However, if the parties to the dispute are unable to resolve the dispute within 12 months after the International Commission has been notified about the dispute by the parties, the dispute shall be solved in one of the quiet ways: through the International Court of Justice, or the arbitration in accordance with Annex V to this Convention. Arbitration is preferred if the state parties to the dispute have not accepted the same means of dispute settlement, or in the event that a Member State has not opted for one of the available means of dispute settlement. However, in the case of the Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes preference is given to resolving the dispute before the International Court of Justice (Art. 22 of the Convention). Framework Agreement on the Sava River Basin firstly enumerates all the "classic" methods of dispute settlement (negotiation, "good services, mediation or conciliation from a third party"), and then leaves the possibility of resolving the dispute through arbitration or the International Court of Justice. This agreement provides for the opportunity to introduce the possibility that any Party concerned "may request that an independent fact-finding expert committee be established" if, within six months from submitting a request, the concerned parties are unable to resolve the dispute through negotiation, good services, mediation or conciliation (Art. 22 -24).

The main objective of this paper is the assessment of the specificities in regulating the ways of dispute settlement concerning interpretation and application of international agreements in the field of water resources, of importance to the region of Southeast Europe.