

## Resolving disputes over natural resources

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### Abstract

The last two decades have been marked numerous disagreements regarding the development and use of natural resources. Interest in finding effective means to resolve these disputes has postponed consideration of a variety of approaches besides traditional litigation. Environmental disputes have been particularly prominent in the current wave of interest in "alternative dispute resolution." "In many respects, alternative dispute resolution (ADR), can be seen as a momentary disappointment in a reform to the expense of litigation, its complexity and delays for solutions, periodically encouraged the search for alternatives". Considerable attention is now being focused on voluntary approaches, in which the parties themselves are directly involved in the search of a result. Often, the approach taken is in itself nothing new. What is new is the attempt to use this approach in situations where litigation has been the conventional method. In addition, there have been some new developments that have added to the options available for resolving disputes management of natural resources.

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### Entry

This article considers the sources and types of conflict for natural resources, general approaches to dispute resolution, and considerations in determining which approach should be applied. A number of enduring changes in the legal system resulting from the reform efforts at the time:

- The specialization of courts to handle small claims, domestic relations and juvenile;
- public defenders and legal aid societies;
- Administrative agencies with regulatory authority;
- Formalised arbitration. J. Auerbach, note 2, at 95-97. 4.

A range of options feeling Conventional wisdom can be obtained by looking at lists like she's found some author as (Marks, Johnson & Szanton), the system of litigation in America.

Resources development and utilization of natural resources are essential for all economies. As a general matter can be assumed that a company wants to develop its resources in a way that maximizes its welfare. At the same time, individual goals and preferences regarding natural resources are safe but will vary widely. Reasonable people can have different views about the future. These divergent viewpoints are likely to lead to different time preferences for the types and amounts of investments. For example, estimates of the rate constant with increasing demand for electricity was actively debated over the years 2013/14 in Kosovo. Those who believed that historical growth rates will continue favoring greater investments to expand capacity for generating base. Others argued that the increased costs will become to remove the application and that a combination of measures is economically efficient in storage and increased supplies from unconventional sources such as cogeneration that will significantly reduce the need for such additional capacity generated. A somewhat similar debate is taking place about adding today measures save additional water for Kosovo to supplied cities as well, which can be supplied through the construction of large storage tanks or through best management good use of existing supplies. Favorable costs and the relative importance attached to different outcomes will affect resources in solving the problems related to the use of water resources. Other use as mineral exploration and protection of habitats for endangered species can generate conflicts. Difficult decisions must be made in choosing between possible uses of public land resources. Resources issues often involve very complex and technical issues. Understandably, factual interpretations in such matters may differ among stakeholders, leading to conflict. For example, the transfer of a water right under the doctrine of separation is conditioned by a display of an injury to other priorities Downstream priorities may have a different view of the consequences of a proposed transfer. In such situations it is essential to have a forum where such conflicts can be resolved factual. A more difficult problem occurs when the conflict centers around things that are unknown and can not be determinable at the time. Environmental issues are fraught with such uncertainty. Exposure to low levels of radiation pose a risk to human health. The factual analysis is a necessary basis, but insufficient to resolve conflicts in such situations. In the context of environmental disputes noted that people often take opposing positions because they have different stakes in the outcome. An action that benefit some people can hurt others. For example, a company producing sand and gravel operation in favor of the land owner, operator and user of materials, but the noise, dust, traffic and other unwanted effects

may damage adjacent property owners. A waste disposal site benefits them in waste generation, but is likely to be resisted by neighboring property owners.

### **The mitigation or compensation**

Measures that provide a means to address such situations. Values are often in conflict issues in natural resources like air, water, and land that are such a fundamental part of human existence and their use is a matter of particular concern. Reasonable people can disagree about what is "right" use of these resources is particularly difficult to solve and probably best addressed through the political process. Types or the identification of the parties to a dispute provides a means of distinguishing types of disputes.

In the field of natural resource disputes are less likely to include both private parties and more likely to include a number of parties, including the government. Matters are less likely to be purely local and more likely to be regional and even national. Controversy is likely to focus on some actions or activities in connection with the policies set forth in the laws and regulations in Kosovo. Of course there is disagreement in the area of natural resources strictly involving private parties. Typically these include disputes related to business arrangements such as obtaining rental facility, oil and gas. A second type of disagreements of natural resources dispute involves a private entity and the government. In such a situation, disputes may arise because the government owns natural resources and the private entity seeking or has a right to development. On the other hand, disputes may arise from the role of government as the state regulator. In both cases the private entity must follow the procedures set by the government agency in the treatment of the agency in connection with a dispute.

A third type of natural resource disputes involving multiple parties, often including the government. Typically dispute is caused by a proposed private action. There may be objections to this action by one or more parties to the litigation. In many cases, the dispute centers on the necessary government permits or other forms of government control. On the other hand, the government itself may be proponent of the action or event in the establishment of dispute for example, when it builds a highway, water storage projects or when it applies the contrary, complex and unclear policies. Environmental legislation has generally followed the pattern of establishing common standards of environmental control leaving implementing agency, task specific tools fabrications achieved by these standards. EPA in particular has made some attempt to use negotiation as a tool for drafting

regulations. Most of these disputes involved in the problems of land use and types. Other categories, in order to deducting the number of cases, were natural resource management and use of public lands, water resources, energy, air quality and toxic substances.

An interesting conclusion of this study is that type of issue is not an important factor in whether a voluntary resolution of the dispute is likely to be successful.

### **General approaches to conflict resolution**

First successes can distinguish four forms as the "initial" different in scale of conflict resolution:

- Alternative way has to do with civil litigation that would normally be a solution judicial representation;
- Methods for handling interpersonal conflict and within organizational solutions usually will not judicial representation;
- Methods for addressing international conflict in which litigation is not really an option;
- Processes Supplements legislative, administrative, judicial and resolving differences over the allocation of public resources or the political establishment.

Nature of different initial conflicts tend to be quite different. Therefore the choice of methods for resolving conflicts or approaches are likely to change as already illusion is made with a wide variety of possible approaches to resolve disputes. In more complex issues they may choose to seek resolution through a process of negotiation where the postponement of representing mutual agreement. In an effort to achieve such a solution it may be helpful to include a neutral third party to act as an intermediary. In some situations where a final resolution is considered crucial by both parties matter may be submitted to the court of arbitration abroad for the parties shall be binding decisions. In any case, the parties have voluntarily entered into this process. In addition to these voluntary parties, mainly informal methods of resolving disputes, companies create more formal means a formal judgment involving the use of judges as decision makers.

The claim of a party can compel another to submit a dispute for resolution by earlier precedents set legal. When required or authorized by statute, certain types of questionable actions may be submitted in administrative proceedings by a government agency for an initial determination.

### **Trial and traditional approaches**

As a general litigation matters arising because someone wants something to happen is not happening, or not want something to happen is happening. Under a rule of law in moving party must be able to point or a legal duty or a legal right to compel the desired result. The rights and duties such legislation can be created by a political body, administratively by a legal agency (as a matter of common law) courts. However judiciary established was given final responsibility for determining the existence of such rights or obligations in a particular case and decide the outcome. "Fuller" in his book wrote under the decision in the following manner: (1) trial is a process, a decision that gives the affected party to a participation form consisting of the opportunity to present evidence and reasoned arguments.

(2) The party shall, if his participation is to be meaningful, assert some principle or principles principle with which his arguments are sound and his important evidence.

(3) An application differs from a claim of a right by the fact that the latter is a claim supported by a principle. Also, just an expression of dissatisfaction or dissatisfaction as distinguished from an allegation by the fact that lies at the end on some principles.

(4) Issues tried before a court tend to make the right claims or accusations of guilt. Thus the trial depends on the existence of a rational principle knowable application that the situation at hand determines the outcome.

"Fuller" also known as the fundamental truth for certain types of human relations are material that is not appropriate in the first stage of the decision process is institutionally committed to acting on reasoned argument. He uses the illustration of "polycentric" so complex problems and "very center" as to exceed the ability rational principle-based approach to resolve. Voluntary approaches trials involving a highly structured process by which one party (the plaintiff) compels another party (the defendant) to submit a dispute to binding determination by a neutral judge. Otherwise, disputes can be resolved through processes and according to rules established by Disputants. Known methods are negotiation, mediation and arbitration. Negotiation almost always accompanies litigation, but it can also be taken separately. Discussion can be used to obtain broad consensus agreement or policy, and to reach agreement between private parties. Books are written as negotiations and negotiate courses that are taught. That obligation is not included, agreements reached through negotiations should reflect a belief by the parties that they are better as a result they believe they will be pursuing other alternatives mediation.

Since the determining factor for the negotiation and mediation is the agreement to settle, these approaches can be tested in any dispute. No matter how complicated the issues are, apparently, as long as the parties to the dispute are satisfied with the result, reasons for choosing not really important. At the same time, it is clear that such a process, volunteer work parties should find it in their interest to make the necessary effort to reach agreement. This suggests that there should be a recognition of the interdependence that the objective of each party that can best meet its obligations through mutual agreement. Moreover, the parties should see the process clearly preferable to any alternative.

"Cornick" offers a "complete list" but considers that the negotiation or mediation are unlikely to work:

- Are represent all parties who have an interest in the outcome of the negotiations?
- Are any excluded that could prevent an agreement from being committed?
- parties have reached general agreement on the scope of issues to be addressed?
- Are negotiators for each side able to talk about their areas?
- Is there reason to believe that if the negotiators reach an agreement, that agreement will be honored by the groups they represent?
- Are the immediate parties and the eventual decision makers commit to a good faith effort to reach a consensual agreement?
- A is assigned a realistic timetable for negotiations?
- Is there reasonable assurance that the most affected government agencies will cooperate in carrying out an agreement if one is reached?
- A brokerages operating from a base that is independent of both the immediate and decision makers with jurisdiction over the dispute?
- Do you have faith in mediation to carry messages when appropriate and to honor the confidential remarks?

### **Intervention and self-determination in environmental disputes**

Solution perspective and a mediator, (Winter 1984). 19881 Winter arbitral tribunal has probably more quality than negotiation or mediation proceedings.

Although the process itself is agreed voluntarily by the parties, or the postponement decision was made by some third party. Typically, in the arbitration the parties agree in advance that the decision

of the arbitrator (often a board or panel) will be final and binding in the same way that a court decision is final. Thus agreements between the parties is limited to a common desire to reach an agreement through this process mutually arranged. Unlike the process of trial, the parties reached a decision (s) and set other rules. Even in arbitration court, then, based on mutual resolve a dispute between the parties. One major difference between these methods is the degree of voluntary involvement in a settlement outside. Negotiation involves only one or their representatives of the parties. Mediation process adds a third party facilitator. In any case the Parties decide on the process to be undertaken. Each of these approaches offers advantages and disadvantages that can be evaluated through Disputants to decide how to deal with the dispute. Some new hybrid approaches and other experimentation and dispute resolution experimentation with dispute resolution processes has produced a rich variety of options enough. Options such great potential to make choices that may be suitable for the particular type of dispute in question. In general these new options are developments of existing approaches which can include numerous combinations of characteristics of these approaches. An example of so-called hybrid processes is referred to as process "medarb." Used to resolve labor disputes commercial, "medarb" subjects Litigation first issues to mediation and then arbitration uses to resolve issues that have remained unresolved. Usually, not always, the broker becomes the arbiter. Mediated negotiations have been used to handle disputes involving public sector traditionally public sector disputes are resolved by administrative means, legislative, and judicial. In many cases, mediated negotiations is found to be a very effective tool for resolving disputes due to the ability to more directly involved stakeholders and to tailor a suitable process for the problem. These authors use the term brokered negotiations "to emphasis the presence of a neutral Intervene to distinguish negotiations mediated by other consensual approaches to oppose the resolution that employ the help of a third party." Called "mini-courts" have been successfully used to solve a variety of disputes. As used in business disputes, representatives of each party are granted a limited period of time in which to present the most important points for senior executives from both sides. The leaders attempt to reach a negotiated settlement probably with the help of a neutral third parties ". Here the parties hire a retired judge to hear the case and issue a final opinion. Although in some countries the procedures and effect are exactly the same if the case had gone to court normal, the biggest advantage is the ability to speed up the hearing on the place and time. The use of an ombudsman to facilitate the resolution of disputes has gained acceptance in a number of areas. In several technical and legal issues are very important for the courts to have made use of special masters to prepare preliminary findings, often long sessions and review of materials. It is

difficult to speak in general for resolving disputes, because so much have the difference between disputes. As discussed, within the area of natural resources and the types of disputes vary greatly. Consequently, this discussion will be limited to a few general observations concerning the first, problem solving, and then choosing among possible options. problem solving disputes parties to a dispute are looking to "earn" time that is, to achieve a result that carries their goals more important. Very often, when a dispute arises it is concentrating on things disputing parties who disliked. Indeed, opposition parties are "opponents" in litigation and usually communicate only through their lawyers. However, the fact that such a high percentage of cases are resolved before they arrange to pick the way to court shows that more decisions judicial representation disputes resolved without penalties. Formal dispute resolution alternative perspective requires a dispute moved from negative opposition positive problem solving. In many cases, the issues in dispute may be resolvable in a manner to produce significant benefits for both sides. Knowing that early resolution of disputes is essentially problem solving can help to promote a more creative options available. As discussed, there are a growing number of options for dispute resolution available.

"Goldberg and Sander" some point in some important considerations in choosing between these options: (1) the relationship of Disputants; (2) the nature of the dispute; (3) The amount at risk; (4) the importance of speed and cost; (5) the power relationship between the parties.

It is important to Disputants on a sequel in relationship to maintain constructive communication and jointly to resolve disputes. Parties to a mutually perceived interdependence such as the management and recognize the need to find a solution that allows their relationship basic to stay intact. The amount at risk is not limited to monetary concerns but rather focuses on novelty or complexity of the issues. Preliminary screening may be useful in sharing disputes under the procedure need to process and physical evidence. .

In some cases this inequality can have a significant effect on the outcome. Various options for resolving disputes and problems present opportunities to address these various concerns. For example, the attractions of a trial is the promise that disputes be resolved by an impartial judge by the general rules of law, regardless of the strength of the parties involved. On the other hand, the costs of complex litigation may actually favor the party with the resources available to hire the best lawyers and experts. Successful resolution of disputes in the field of dispute resolution has increased and there have been attempts to identify elements in the processes essential for its success. Factors apparently more important in determining the success of the results, voluntary

methods for resolving disputes such as negotiation and mediation are attractive in certain situations due to the possibility for a party to establish itself directly to the outcome.

Nine steps to resolve the disagreements are: (1) identification of the parties that have an interest in the outcome of the dispute; (2) ensure that the groups or interests you have in the outcome are adequately represented; (3) bridging the agenda and confront entirely different values and assumptions; (4) generate a sufficient number of alternatives or options; (5) agreeing on borders and time horizon for analysis; (6) grouped be judged on the costs and benefits; (7) determining the right compensatory actions; (8) the implementation of bargaining that are made; and (9) to hold the parties to their commitments.

### **Conclusion**

Kosovo's society is often characterized as a litigious society. A recent scientific counterattacking (by a lawyer) suggests that popular opinion is overrated too. However, there is little doubt that disputes are common and the resolution to be effective and the right of these disputes and that is desirable. Interest in expanding the available approaches for resolving disputes has produced some important new developments. Negotiation and mediation are successfully applied in a number of environmental disputes. Improvements in the application of these methods are becoming as experience gained. The number of professionals available to facilitate voluntary methods of resolving disputes is increasing. Innovative new techniques such as mini-trials are gaining increasing use. As "Auerbach" commented varieties dispute resolution and socially sanctioned elections in every culture, human ideals communicate cherish the different perception. Ultimately the fundamental values of society are revealed in its moods procedure.

"These new developments are a good solution disputes enriched opportunities for natural resources.

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