

Sustainable River Basin Management
Dr. Franziska Steinbruch
Department of Civil Engineering
Indian Institute of Technology, Madras

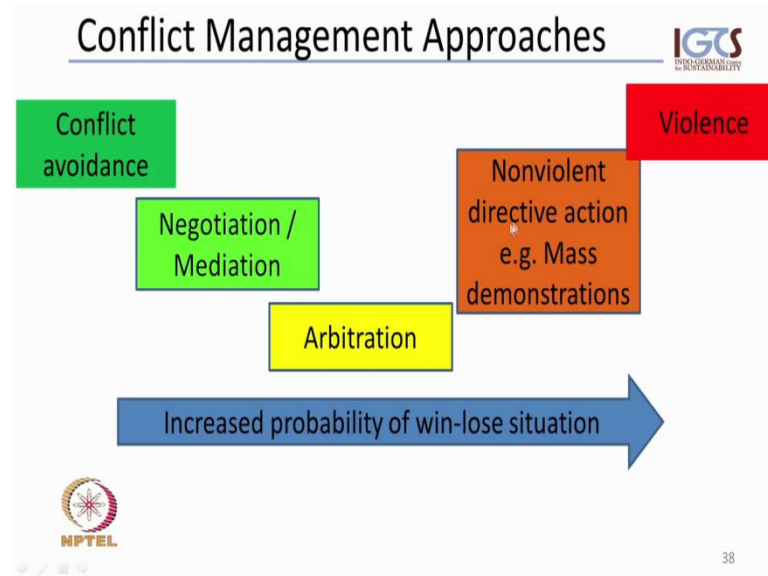
Module – 4 – 2

Lecture - 34

Part 4

Welcome everybody to sustainable river basin management; module 4- 2, part 4.

(Refer Slide Time: 00:20)

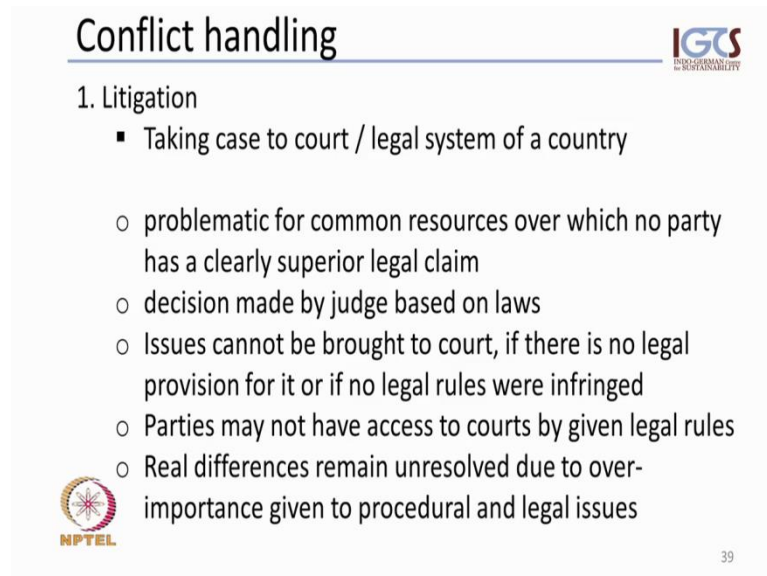


Now, let us look into the conflict management approaches today. There is an increase as our conflicts evolve from a hidden, letting small conflict, go along our conflict evolution pathway. There is an increase in probability that we will end up in a win-lose situation. There is one, the first step would be to avoid conflicts, but as said, they are inbuilt in our societies. So, we can, not in all of the cases, avoid our conflicts and ignore. It will come to the point that you simply, ignore the conflicts and end up in the same pathway as if the conflict would have been accepted loudly, and be handled with. On the other end, if no steps are taken in between, we will end up in hot or short violence.

Now, in between we have approaches. We have steps to deal with the conflict. We can use negotiation techniques. We can use mediation. We could move up to arbitration and

we could end up when all of those have failed with non violent direct action; mass demonstrations for instance, which still could lead to ideas creation of the conflict and move back to another state, where we can negotiate or avoid the conflict from escalating or if nothing of this is successful or handled with care, you will end up with the violence situation.

(Refer Slide Time: 02:17)



Conflict handling

1. Litigation

- Taking case to court / legal system of a country
 - problematic for common resources over which no party has a clearly superior legal claim
 - decision made by judge based on laws
 - Issues cannot be brought to court, if there is no legal provision for it or if no legal rules were infringed
 - Parties may not have access to courts by given legal rules
 - Real differences remain unresolved due to over-importance given to procedural and legal issues

Now, conflict handling can take place in various steps and one of the conflict handling mechanisms probably, known to all of you is so called litigation. That means that we will take the case to the court. We have an issue. We know what are our legal rights are. We have a legal system in place in our country and we hand it over to our lawyer, or it may go to the court. Now, this works in many cases, but there are substantial limitations to it. They are very problematic for common resources; common resource such as water, which is a common over which, no party has a clearly superior legal claim.

It is, may be a matter of being, having been to the place first, and have claimed it first, but legally or otherwise, not a single party can actually, claim the common resource as his or her own. In such cases, court will be very limited in its decision taking. The decisions are made by a judge, based on law. This is again, if there is no law in place, then obviously, no decision can be made and it is also depending on an individual, the judge, depending on his or her level of approaching the case, the decision will be made.

It has to be accepted and acceptable by the parties, the conflicting parties. Not all of the issues can be brought to court if there is no legal provision for it or if no legal rules were

actually infringed, and this is very applicable to water resources and commons in general, but very often cannot actually, raise specific legal rule and still, there will be a conflict over the water resource, water scarcity, the way water is being allocated. So, parties may not have access to courts by given legal rules. This very often the case, if you have some financial restriction or if parties are not, have no legal access to the existing country courts or legal frames, may not be represented it properly.

Those parties could be (Refer Time: 05:08) or it could be individuals, could be communities, but it also could be something, like the environment as such, which will be affected or some wildlife may be affected, fishery industry and such that fishery industry or the wildlife population will not have access to the court. In such ways, the issue of claiming something cannot really, be expressed in the appropriate ways, through the court system. The real differences remain usually, unresolved due to over importance given to procedural and legal issues. That is another aspect, where many of the cases kept stuck, and are lost between the paper procedures and after all, given up or (Refer Time: 06:04) like a resource or the case has been completely lost, because water is completely, polluted or the water may simply, not be available anymore, because waters have dried up.

(Refer Slide Time: 06:15)



Conflict handling 

2. Alternative Dispute Resolution

Alternative to Litigation

- Consensus seeking
- collective or win-win solutions
- participatory approaches to dispute settlement
- Resonate with many traditional societies

 40

Now, this is not very satisfactory and for that reason, there are other conflict handling mechanisms. Such a mechanism is the alternative dispute resolution or ADR usually, in

the literature. It is an alternative to the litigation. It is aiding on consensus. It is trying to bring all parties together to agree upon something. It aims at collective or win-win solutions. It usually works in a participatory approach to dispute settlements. It also has its sources, very much in traditional legal systems and resonates, very much traditional societies and in many cases, dealing with comments are very appropriately to use.

(Refer Slide Time: 07:21)

Alternative Dispute Resolution - Tools

- Negotiation
Meetings of parties without facilitation or mediation trying to achieve mutually agreeable outcome
→ Negotiated rule making for e.g. industrial safety standards

- Facilitation
Impartial person helps define conflicting issues and design dispute resolution process

41

What are the tools of the alternative dispute resolution? One of them is negotiation. This means that meetings of parties, without facilitation or without mediation; those parties try to achieve mutual agreeable outcome. This is usually at the very beginning when people or parties are still, able to come together to work on common solution and in turn, has both sides developed interest of finding a solution. In many cases, this is being used as a kind of negotiated rule making especially, in applicable in the case of industrial safety standards or the so called white papers that we talked about earlier when you were dealing with water pollution.

Those are negotiated with rule making this stakeholders, groups of interest from industries or from the communities, rural communities, may come together, decide upon something and then, or follow exactly, what they decided; what is good for them. The next level to this is called facilitation. This means that there is an impartial person, helping to define the conflicting issues and to design a dispute resolution process. So, this means, it is not about the solution itself; this is simply to identify the conflict resolution pathway to understand what are the issues at hand and then, to come up with a process of how to deal with that conflict.

(Refer Slide Time: 09:20)

Alternative Dispute Resolution - Tools



- Mediation
 - A mutually accepted outside party oversees conflict settling process and guides it to reaching a mutually accepted solution
 - Includes creating a safe environment for information sharing and to vent emotions
 - Costs are shared by parties

- Arbitration
 - More informal and faster alternative to litigation
 - Process and outcome defined prior (as binding or not)
 - Parties choose arbitrator (can be a panel of neutral experts)
 - Hearings from each party and award making

42

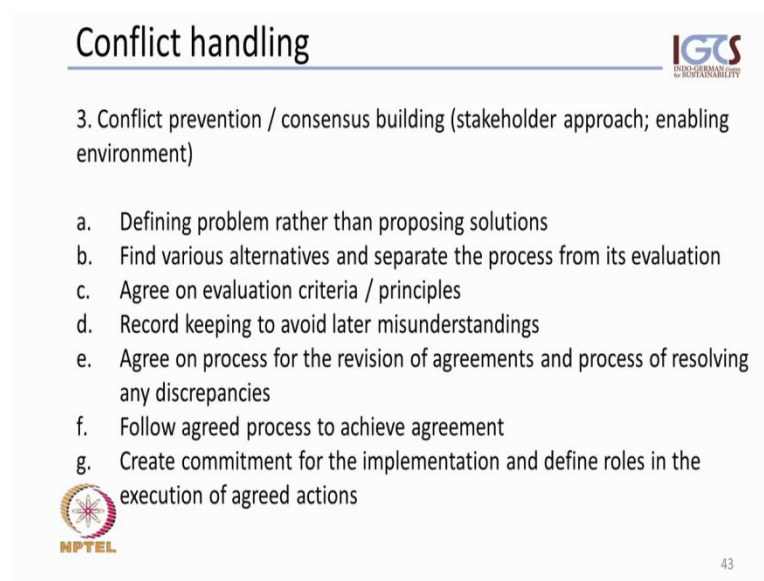
The next level to this is called mediation, and this is third level to this, which is being used usually, when the situation has been reached a point, where parties are not willing to come together anymore. There is no trust to meet at a specific point or through provide information and that is when mutually, accepted outside party is called in and call to oversee the conflict settling process. That person or group of persons, guides the whole process and guides it to a mutually, accepted solution.

So, this is very carefully phrased also, because it is in the first place, very hard to identify a group of people or a person individual, would be trustworthy and knowledgeable and acceptable by both of the conflicting parties. It must also be somebody, who is able to stay outside, neutral in the process and he is able to drive the entire process of conflict settling; not just advising, but leading the process itself. Although we may balance the outcomes in different ways and may be from outside, not to say it is a win-win solution; after all, the objective is an acceptable solution.

So, what is acceptable and what is win on one side and to see if it is win on other side; this is what this mediator has to figure out and bring to the desk and table to move for the conflict resolution. These are also includes the creation of a safe environment for information sharing and also, to generate to vent emotions. Usually, the cost of such a mediator and the process are shared by the parties, but has something that again, has to be clear upon, before going into such process. This can take years; it can take days, but usually, it takes quite a long time to achieve a final acceptable outcome through such a process.

Then we have arbitration, which is informal, faster than litigation also. Usually, not is time intensive and expensive. The process and outcome has to be defined, prior to going into the arbitration and those outcomes could be defined as binding or they could as well, be left open. This is a matter of agreeing and defining beforehand. The parties chose an arbitrator; it can be a panel of neutral experts or again, it could be an elderly person that is respected by both sides; as knowledgeable about the case or situation and for that reason, he is trusted by both sides. Then the hearings from each party and finally, an award will be made; this is the process for it.

(Refer Slide Time: 13:11)



The slide is titled "Conflict handling" and features the IGCS logo in the top right corner. The main content is a list of steps for conflict prevention and consensus building, starting with "3. Conflict prevention / consensus building (stakeholder approach; enabling environment)". The steps are:

- a. Defining problem rather than proposing solutions
- b. Find various alternatives and separate the process from its evaluation
- c. Agree on evaluation criteria / principles
- d. Record keeping to avoid later misunderstandings
- e. Agree on process for the revision of agreements and process of resolving any discrepancies
- f. Follow agreed process to achieve agreement
- g. Create commitment for the implementation and define roles in the execution of agreed actions

The slide also includes the NPTEL logo in the bottom left corner and the number "43" in the bottom right corner.

Now, this is when conflicts have occurred already; the handling mechanisms. Then there is a last one to that which is conflict prevention, which based on the consensus building. It is a stakeholder approach and it also, builds on the creation of so called the enabling environments. What such conflict prevention would include is to define problems, rather than proposing solutions. It also find various alternatives and separate processes from the evaluation of the process itself. It also includes to agree on evaluation criteria and principles. This should not be junked also. It should follow a certain logic and procedure only if this one can achieve, the next can be achieved as well, successfully.

There should also be record keeping to avoid later misunderstandings. Those parties should agree on a process for the revision of agreements and a process of resolving any discrepancies. What we often see is that at some point, under very tense conditions, accords came into being and once those accords are expired, there is no provision or mechanism in place of what to do after the accord has expired. Those things are part of

process definition and should take place at such a beforehand, before signing such agreements.

There should be an agreement and follow up on the defined processes to achieve what was agreed upon. There should be a commitment, created for the implementation and role should be defined for the execution of agreed actions. Very often, we see in such accords, that just some technicians are mentioned to take responsibilities for this and that and this then, at the end, such institutions having such technicians, do not exist or that for the implementation and execution of the agreed actions from high level politician, will be appointed, which at the end, will not have the time and the priorities to focus on exactly, what the accord aims at and so on. So, there are many possible favors that can be built into agreements and should be avoided.

(refer Slide Time: 16:27)

Conflict Analysis

- Identification of issues
- Identification of actors
- History / geographical distribution
- Level and intensity
- Political, economic, social, institutional structures
- Impacts

IGCS
INSTITUTIONAL GOVERNANCE
FOR SUSTAINABILITY


NPTEL

44

Now, let us look in quickly, into conflict analysis in the context of the water management. So, first of all, this includes the identification of issues; then the identification of the actors, the parties. It should provide history and geographical distribution of the conflict. There should be analysis and understanding of the level and intensity. There should be a list and analysis of the political, economic, social and institutional structures and the impacts should be clearly, understood and traced.


(Refer Slide Time: 17:13)

Conflicting issues on water



- **Access** to water (open, restricted, regulated, closed)
- Spatial or temporal **dependency** on water
- **Purpose** of access to water
- **Impact** of this access on other groups (who are those groups)

- **Ownership** of water (traditional rights, commons, private, public)




45


Now, typical conflicting issues on water, are about access to water; that access to water could be open or restricted, regulated or closed. They also raise about spatial or temporal dependency on water. They raise around the purpose of access to water and the impact of this access on other groups and who those groups are, who are impacted by this. They raise around ownership of water in a, may be, traditional rights or commons, might be a private or public legal frame for water.

(Refer Slide Time: 17:57)

Identifying conflicting issues



- **Water use analysis**
 - ❖ Ways, quantities, frequency of water resources use
 - ❖ Impact of human activity on water resources
 - effluent discharge
 - use of chemicals (fertilizers, pesticides/herbicides)
 - solid waste disposal
 - dredging / canalization of rivers

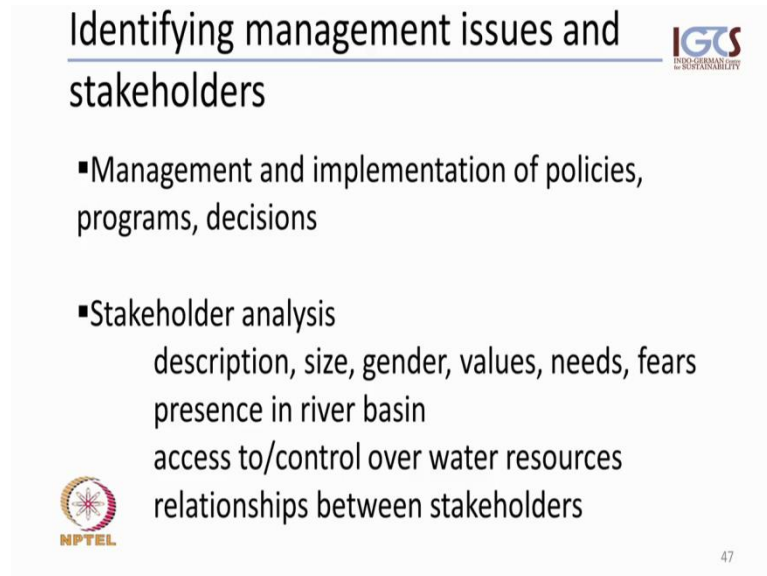


46

So, such conflicting issues, which should be analyzed or also, the water use as such; the various quantities, frequency of the water resources use and the impact of human



activities on water resources; that could be effluent discharges; could be the use of chemicals, fertilizers, pesticides, herbicides, etc. It could be due to solid waste disposal or it could even include dredging or canalization of rivers for various purposes.

(Refer Slide Time: 18:35)



Identifying management issues and stakeholders

- Management and implementation of policies, programs, decisions
- Stakeholder analysis
 - description, size, gender, values, needs, fears
 - presence in river basin
 - access to/control over water resources
 - relationships between stakeholders


 

47

Now, also important is to identify the stakeholders, dealing with management. This includes the management and implementation policies, programs, the decisions, which are in place the frame to it and that includes the stakeholder analysis that specifically, should outline a description of the stakeholders, who are those people, the size, gender, values, needs, fears, the presence representation within the river basin. It should include access to water resources and control over water resources, who are out of this stakeholder list, has access then, and how often, and who controls those water resources. Also, we should understand and map out the relationships between the stakeholders.

(Refer Slide Time: 19:44)

Suggestion



Continue on your case of a river basin having to deal with conflicts:

Compile a list of events in the order of occurrence which eventually led to the current situation.

Try to differentiate between latent conflict and open conflict
Identify tipping points in the history of this conflict.

Identify points/ moments at which the situation could have been de-escalate and how.

48

Now, at this point, I want to conclude on conflict resolution. This was just a brief overview and I suggest you to continue on the case that you picked from last time; the river basin, and compile a list of events in the order of occurrence, which eventually, led to the current conflict situation, to conduct a conflict analysis as per the points that I just presented to you. Try to differentiate between latent conflicts and open conflicts and identify the tipping points in the history of this conflict; at which point, something got accelerated or got out of control or became much more apparent. Also, identify points or moments in this pathway of conflicts at which, the situation could have been deescalated and how should the process has been guided. With this, we conclude for today and I see you next time again.