

INTERNATIONAL LAW OF THE SEA

VII. Dispute Settlement

1. Introduction

- International law knows different means of non-judicial and judicial dispute settlement
- Art. 33 UN Charter lists negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements and other peaceful means of the parties' own choice
- Formal judicial dispute settlement provides for legal certainty and clarity concerning the sources of law, the procedure and the legal status of decisions
- The settlement of disputes by courts and tribunals is beneficial compared to arbitration with regard to costs but provides for decreased flexibility (although States may choose to have cases decided *ex aequo et bono*, i.e. without regard to the existing law, if both parties agree, e.g. → Art. 38 (2) ICJ-Statute

2. The settlement of disputes in the Law of the Sea Convention

a) General provisions

- regulated in Part XV UNCLOS
- The compulsory dispute settlement procedure and creation of the International Tribunal for the Law of the Sea are central to the “modern law of the sea” created by the Convention
- Section 1 of Part XV deals with the general obligation to settle disputes peacefully

b) Compulsory dispute settlement

- If States cannot settle their dispute concerning the interpretation or application of the Convention by other means, the dispute is submitted to judicial dispute settlement in accordance with section 2 (Art. 286)
- Art. 287 UNCLOS: choice of procedure
 - States are free to choose one or more of the means to settle their disputes: the ITLOS, the ICJ, an arbitral tribunal constituted in accordance with Annex VII, a special arbitral tribunal under Annex VIII (subjects: fisheries, protection of

the marine environment, marine scientific research, navigation including pollution and dumping)

- States have to make their declarations concerning which procedure(s) they choose in writing
- The list in Art. 287 does not indicate any hierarchy in options or choices
- limitations and exceptions to compulsory dispute settlement (Art. 297)
- States can also optionally exclude certain disputes (Art. 298), e.g. concerning boundary disputes

c) Prompt release of vessels

- The prompt release of vessels (Art. 292) has played a significant role in cases brought to the ITLOS
- The UNCLOS gives certain competences to coastal States to investigate foreign vessels (see Art. 226)
- If the investigation leads to the result that applicable laws and regulations for the protection and preservation of the marine environment have been violated, the coastal State is obliged to promptly release the vessel upon the payment of financial security (Art. 226 (b)) → disputes concerning the release and the reasonableness of the bond are subject to the prompt release procedure in accordance with Art. 292 by or on behalf of the flag State of the vessel
- Time limits in such cases are particularly strict to (provisionally) settle the issue concerning release as quickly as possible

2. ITLOS

- Seat: Hamburg
- 21 Judges, elected by secret ballot by the Meeting of States Parties to the UNCLOS (division in regional groups to provide for equitable geographical distribution: African States, Asian States, Latin-American and Caribbean States, Western European and other States, Eastern European States)
- 19 cases have been submitted to the ITLOS (one of them an advisory opinion of the Seabed Disputes Chamber)
- Current list of chambers for specific subjects:
 - Seabed Disputes Chamber
 - Chamber for Fisheries Disputes
 - Chamber for Marine Environment Disputes
 - Chamber for Maritime Delimitation Disputes