

3 Dispute Resolution

1) Introduction

This chapter briefly describes two areas that are dealt with in more detail in later chapters. First, it looks at some of the methods of dispute resolution used internationally, both in the context of inter-State disputes and in the context of international trade and commerce. Second, it reviews some of the organisations involved in international dispute resolution – again, in both inter-State and commercial dispute resolution.

2) Some Methods of Dispute Resolution Used Internationally

There is probably little doubt that the two major methods of dispute resolution in use are litigation and arbitration, both in the inter-State area and in the pure commercial area. However, it is clear that other dispute resolution processes are also being used, among them alternative dispute resolution (ADR) and – in fairly restricted areas – expert determination. One example of the use of expert determination is in the oil and gas industry in relation to measurement disputes.

Which type of dispute mechanism is to be used in a particular case will depend on the precise nature of the dispute. For example, a jurisdiction dispute arising out of an international contract is more likely to be settled by litigation (or arbitration) than by, say, expert determination.

There are certain areas where disputes between States and disputes between States and non-State bodies (such as corporations) may be resolved by way of methods specified in international conventions. Areas of particular importance globally are investor-State disputes and maritime and land boundary disputes. Such disputes are likely to be resolved by what may be described as supranational dispute resolution bodies such as the International Court of Justice (ICJ), the Permanent Court of Arbitration (PCA), the International Tribunal for the Law of the Sea (ITLOS) and the World Bank's International Centre for Settlement of Investment Disputes (the ICSID Centre).

In the case of the ICJ, the method of dispute resolution is litigation. In the case of the PCA and the ICSID Centre, the process used is international arbitration, administered under the rules prescribed by these organisations. The 1982 UN Convention on the Law of the Sea (UNCLOS III) contains provisions for a mixture of dispute resolution processes, some to be administered by ITLOS and some to be administered by other organisations (including the ICJ): litigation, arbitration and conciliation.

3) Organisations Providing Dispute Resolution Facilities

Dispute resolution bodies can be divided into what may be described as the supranational and the international commercial dispute resolution organisations.

i) Inter-State Courts and Tribunals

Among the supranational bodies are inter-State Courts and Tribunals such as those mentioned earlier: the ICJ, the PCA, ITLOS and the ICSID Centre. These are considered in Part III of the Manual.

ii) International commercial organisations

There are many international organisations concerned with commercial dispute resolution. It is not possible to consider them all, but they include the International Chamber of Commerce in Paris, the London Court of International Arbitration, the American Arbitration Association, the CPR Institute of Dispute Resolution, the China International Economic and Trade Arbitration Commission, the Arbitration Institute of the Stockholm Chamber of Commerce, the Netherlands Arbitration Institute and the UN's specialist intellectual property organisation, the World Intellectual Property Organization. The Chartered Institute of Arbitrators, in its role as a teaching organisation, plays a prominent part in commercial dispute resolution.

International commercial dispute resolution – together with the various international commercial arbitral institutions and other international bodies dealing with disputes in these areas – is considered in Part IV of the Manual.