

## 5 Introduction

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Disputes that involve States or in which one of the parties is a State may conveniently be labelled 'supranational' so as to distinguish them from pure commercial disputes. As suggested earlier, there are three particular types of supranational dispute that are of considerable significance in today's world: disputes involving land, disputes involving maritime boundaries and investor-State disputes (or investment treaty disputes, as they are often described). These are considered in later chapters of this part of the Manual.

One significant factor that distinguishes these supranational disputes from pure commercial disputes is the type of Tribunal that deals with them. They are likely to be dealt with by one of the supranational bodies considered in Part III of the Manual: the International Court of Justice (ICJ), the Permanent Court of Arbitration (PCA), the International Tribunal for the Law of the Sea (ITLOS) or the International Centre for Settlement of Investment Disputes (ICSID Centre). Pure commercial disputes, on the other hand, are likely to be dealt with in national courts or by one of the international commercial arbitral bodies considered in Part IV of the Manual.

Another distinguishing factor between supranational disputes and pure commercial disputes is that the former are likely to arise out of a treaty: a maritime delimitation dispute may be governed by the 1982 Law of the Sea Convention (UNCLOS III), for example, and an investor-State dispute by the ICSID Convention.

A further broad distinction is that supranational disputes may be subject to international – as opposed to national – law. The function of the ICJ, for example, is to decide "*in accordance with international law such disputes as are submitted to it*". The Court is to apply international conventions, international customs and the general principles of law recognised by civilised nations (Article 38 of the Statute of the ICJ).

Another distinction lies in the area of enforcement. An international commercial arbitral award is enforceable – provided the relevant criteria are satisfied – in accordance with the provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). Enforcement may be radically different in the case of a supranational dispute. In the area of investor-State disputes, for example, an ICSID award does not depend for enforcement on the New York Convention. The ICSID Convention contains a self-enforcing mechanism.

Supranational disputes, therefore, differ from pure commercial disputes in a number of significant ways: they are likely to involve a State; they are likely to be heard by one of the supranational dispute resolution bodies such as the ICJ; the issues may require to be decided in accordance with the provisions of a treaty; the principles of international law are likely to be applied; and, in the case of an ICSID award, the provisions of the New York Convention are not relevant to enforcement.<sup>4</sup>

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4. Major textbooks dealing with international law, territorial boundary disputes and maritime delimitation disputes – some of the topics covered in this Part of the Manual – include Ian Brownlie, *Principles of Public International Law*, Oxford University Press, 2003 (6th edition) and Malcolm Shaw, *International Law*, Cambridge University Press, 2003 (5th edition).