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## **Maritime Dispute Settlement Practice UNCLOS Mechanism Explained**

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# Maritime Dispute Settlement Practice

## UNCLOS Mechanism Explained

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***Abstract:*** *Maritime dispute resolution has always proven to be a volatile field of international law. This article will examine the mechanism of solving disputes as set up by UNCLOS and will look at the tendencies or particularities resulting from the cases of states involved in such matters. Despite its initial promise, the use of these mechanisms has been limited, with many states opting for informal negotiations or avoiding adjudication altogether. The article explores the structural aspects of UNCLOS's dispute resolution system, highlighting challenges such as "forum shopping" and the reluctance of powerful states to comply with adverse rulings. It concludes by discussing the future viability of the UNCLOS dispute resolution system, raising concerns over the increasing resistance of major powers to international legal processes, and the potential long-term impact on global maritime governance.*

***Keywords:*** *Maritime Disputes, UNCLOS, Forum Shopping, Case law.*

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## **1. Introduction. Settlement of Maritime Disputes Before UNCLOS came into force**

Before the 1982 United Nations Convention on the Law of the Sea (UNCLOS)<sup>1</sup> entered into force in 1994, international maritime disputes were primarily resolved through customary international law, bilateral agreements, and adjudication by international courts and tribunals. The absence of a comprehensive legal framework led to uncertainty and inconsistencies in how disputes were handled, often resulting in prolonged conflicts and, in some cases, military confrontations. These types of situations led states to rely on different mechanisms for resolving their conflicts.

One of the primary ways maritime disputes were settled was through diplomatic negotiations.<sup>2</sup> States frequently engaged in direct bilateral or multilateral talks to resolve territorial and resource-related conflicts at sea. These negotiations sometimes resulted in treaties that established maritime boundaries, settled fishing rights, and gave access to strategic waterways. However, in cases where negotiations failed, disputes often remained unresolved for decades, increasing tensions between states. The “cold war” status quo that characterized these types of relationships had a lasting impact on economic and political development, furthering the divide between nations.

Another mechanism used before UNCLOS was arbitration and adjudication through international legal bodies, particularly the International Court of Justice (ICJ). The ICJ played a significant role in maritime dispute resolution by issuing rulings based on principles of customary international law and earlier legal agreements<sup>3</sup>, such as the 1958 Geneva Conventions on the Law of the Sea. However, states were not obligated to submit their disputes to the ICJ, and many major powers avoided legal adjudication to maintain flexibility in their maritime claims<sup>4</sup>. Additionally, the Permanent Court of Arbitration (PCA) occasionally handled maritime disputes through arbitration

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<sup>1</sup> Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

<sup>2</sup> Mwelwa Musambachime, *International Journal on World Peace*, vol. 18, no. 2, 2001, pp. 76–81. JSTOR, <http://www.jstor.org/stable/20753308>. Accessed 1 Mar. 2025.

<sup>3</sup> Malcolm Evans and Nicholas Ioannides, *The International Court of Justice and the Law of the Sea Dispute Settlement System* (July 19, 2023). Achilles Skordas and Lisa Mardikian (eds), *Research Handbook on the International Court of Justice* (Edward Elgar, Forthcoming), Available at SSRN: <https://ssrn.com/abstract=4514860>. Accessed 1 Mar. 2025.

<sup>4</sup> Bogdan Aurescu, Ion Gâlea, Elena Lazăr, Ioana Oltean, *Drept International Public, Scurta culegere de jurisprudenta pentru seminar*, Hamangiu, Bucharest, 2018, pp. 104-128

agreements between states, providing a less formal but legally binding avenue for settlement<sup>5</sup>.

In the absence of a binding global legal framework, states also relied on power dynamics and geopolitical considerations to assert their maritime claims. Some disputes have been settled through demonstrations of naval power, coercion, or even armed conflict. A notable example includes the "Cod Wars" between the United Kingdom and Iceland in the 1950s and 1970s<sup>6</sup>, where both nations engaged in naval confrontations over fishing rights. Such conflicts underscored the need for a more structured and enforceable legal system to prevent maritime disputes from escalating into hostilities.

The establishment of UNCLOS marked a turning point by providing a universal legal framework with compulsory dispute resolution mechanisms. Prior to its adoption, maritime law lacked uniformity, and while diplomatic negotiations, arbitration, and adjudication by the ICJ provided some avenues for settlement, they were often limited by states' unwillingness to submit to jurisdiction. UNCLOS aimed to address these gaps by offering clear legal rules and binding mechanisms for dispute resolution, reducing reliance on unilateral actions and military confrontations in maritime conflicts. However, the initial enthusiasm that characterized the international community when the UNCLOS emerged along with its dispute resolution mechanisms, has since diminished, the practice of states being to sway away from the said structure.

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) serves as the foundational legal framework governing maritime affairs, establishing rules for oceanic navigation, resource management, and territorial claims. One of its most significant contributions to international law was the introduction of a compulsory dispute resolution system—a groundbreaking step at the time—intended to provide structured mechanisms for resolving conflicts among states. Under this system, when a country joins the Convention, it must select from the available forums for resolving disputes<sup>7</sup>: the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea (ITLOS), arbitration under Annex VII, or specialized

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<sup>5</sup> Garth Schofield, "The Permanent Court of Arbitration: From 1899 to the Present." *The Cambridge Companion to International Arbitration*. Ed. C. L. Lim. Cambridge: Cambridge University Press, 2021. 349–388. Print. Cambridge Companions to Law.

<sup>6</sup> Sverrir Steinsson, "Do Liberal Ties Pacify? A Study of the Cod Wars." *Cooperation and Conflict*, vol. 53, no. 3, 2018, pp. 339–55.

<sup>7</sup> Emilia Justyna Powell and Sara McLaughlin Mitchell. "Forum Shopping for the Best Adjudicator: Dispute Settlement in the United Nations Convention on the Law of the Sea." *The Journal of Territorial and Maritime Studies*, vol. 9, no. 1, 2022, pp. 7–33.

tribunals handling scientific and environmental matters under Annex VIII. By creating these options, UNCLOS aimed to reduce the likelihood of unilateral actions or escalating conflicts over maritime issues.

Despite these ambitions, the dispute resolution system has seen relatively little used since the Convention entered into force in 1994. Many states have opted for informal diplomatic negotiations to resolve maritime disagreements, while others have simply left disputes unaddressed rather than submitting them to legal adjudication. Very few member states have made an official selection of a preferred forum, reflecting a broader hesitation to engage with the system. However, among the cases that have been adjudicated, emerging trends suggest that states strategically select forums based on legal, procedural, and geopolitical considerations—a practice commonly referred to as "forum shopping."<sup>8</sup>

## 2. UNCLOS Legal Framework

The starting point of dispute resolution under the UNCLOS is Part XV of the Convention<sup>9</sup>. It establishes the legal framework for resolving disputes between states concerning the interpretation and application of the Convention. Recognizing the potential for conflict over maritime boundaries, resource rights, and navigational freedoms, Part XV provides a compulsory and binding dispute resolution system, making it one of the most significant advancements in international maritime law<sup>10</sup>.

Various states, particularly those with competing maritime interests, recognized that without such a mechanism, disputes could escalate into coercion, intimidation, or even armed conflict. As a result, the inclusion of a formal dispute resolution system became a key element in securing widespread agreement on the Convention.

Western industrialized nations were particularly insistent on the need for a structured system to resolve disputes.<sup>11</sup> These states were wary of the

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<sup>8</sup> Markus Petsche, What's Wrong with Forum Shopping - An Attempt to Identify and Assess the Real Issues of a Controversial Practice, 45 INT'L L. 1005 (2011).

<sup>9</sup> Carmen-Gina Achimescu (Puscasu), Ion Galea, Drept international public, Hamangiu, Bucharest, 2023, pp 151-154

<sup>10</sup> Andreas Østhagen, Maritime boundary disputes: What are they and why do they matter?, Marine Policy, Volume 120, 2020.

<sup>11</sup> Wolfgang Friedmann, "United States Policy and the Crisis of International Law: Some Reflections on the State of International Law in 'International Co-Operation Year.'" *The American Journal of International Law*, vol. 59, no. 4, 1965, pp. 857–71.

significant departures from customary international maritime law introduced by UNCLOS, particularly the expansion of coastal state jurisdiction over vast maritime areas such as the Exclusive Economic Zone and continental shelf. Given the potential for conflicting interpretations, these countries believed that a binding adjudicative process was essential to maintaining legal certainty and ensuring that their maritime rights and freedoms were protected under the new legal framework. The dispute resolution system ultimately became a critical factor in their willingness to accept the treaty's provisions.

On the other hand, smaller and less powerful nations saw the binding dispute resolution mechanism as a vital tool to assert their rights against larger and more influential states. Many of these nations lacked the military or economic leverage to enforce their claims in maritime disputes, making legal adjudication a crucial safeguard against domination by major powers. By ensuring that all states, regardless of size, had access to an impartial system for settling disputes, the mechanism has been perceived as a means of leveling the playing field in global maritime affairs.

The inclusion of this system was regarded as a necessary compromise to balance the competing interests at stake. While the Convention granted coastal states expanded jurisdiction over maritime zones, it also imposed legal obligations and oversight mechanisms to prevent unilateral assertions of power. By subjecting all parties to compulsory and binding dispute settlement procedures, the system was designed to reinforce legal stability and prevent the arbitrary exercise of maritime claims.

At the time of its adoption, the dispute resolution framework was considered one of the most innovative and ambitious aspects of UNCLOS. Legal scholars and policymakers expressed optimism that it would enhance global maritime governance by reducing reliance on force and fostering adherence to legal principles<sup>12</sup>. Though challenges in enforcement and participation have emerged over time, the system remains a cornerstone of the Convention, reflecting the international community's commitment to the rule of law in maritime affairs.

From a structural standpoint, the system is divided into three sections, each outlining different aspects of dispute settlement. It also establishes a three-tier method states can follow when faced with a disagreement. Firstly, states should attempt to resolve disputes through peaceful means, such as

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<sup>12</sup> Jolle Demmers, *Good governance in the era of global neoliberalism: Conflict and depolitisation in Latin America, Eastern Europe, Asia and Africa*, Routledge Studies in the Modern World Economy, ISBN 978-0-203-47869-1, Routledge, London.

negotiation, mediation, or conciliation. If diplomatic efforts fail, parties may mutually agree on another method of resolution outside of the formal mechanisms provided by UNCLOS. If no resolution is reached through negotiations, a state may unilaterally initiate proceedings under UNCLOS's compulsory dispute resolution mechanism. States must choose from one of four adjudicative bodies for resolving disputes. Should a state not select a preferred forum then the default mechanism available under Annex VII comes into play.

Part XV provides for exceptions from the compulsory settlement, such as disputes related to military activities, law enforcement actions at sea, and certain fisheries or marine scientific research matters. It should also be noted that coastal states enjoy a special status under UNCLOS, the convention providing the latter with special rights and exemptions, regarding disputes concerning their exclusive economic zone and continental shelf, whilst limiting the jurisdiction of international judicial bodies in these matters.

### **3. Practical effects: Forum selection**

Part XV establishes a clear and predictable process for states to resolve disputes, reducing the risk of conflict and unilateral actions. By providing a binding mechanism, it ensures that disputes are settled based on legal principles rather than power dynamics, while still respecting state sovereignty by allowing parties to attempt diplomatic solutions first. The inclusion of exceptions and limitations also acknowledges the sensitive nature of certain maritime disputes.

This part of UNCLOS played a crucial role in shaping international maritime law, influencing court rulings, diplomatic negotiations, and regional dispute resolution frameworks. Its binding nature discourages military confrontations, helping to channel maritime tensions into legal and diplomatic processes. However, its long-term effectiveness, that depends on continued state participation and compliance, has seen oscillations.

It has been noted that states are reserved in engaging in formal adjudication. Powerful states (such as China, the United States, and Russia) have either rejected the jurisdiction of UNCLOS dispute resolution mechanisms or refused to comply with adverse rulings<sup>13</sup>. This raises concerns about the

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<sup>13</sup> Nong Hong, "The South China Sea Arbitral Tribunal Award: Political and Legal Implications for China," *Contemporary Southeast Asia*, vol. 38, no. 3, 2016, pp. 356–61.

enforceability of UNCLOS rulings and the potential for states to ignore or circumvent binding decisions.

The actual practice of forum selection has diverged significantly from their expectations. Despite this requirement, approximately a quarter of all UNCLOS signatories have formally declared their forum preference<sup>14</sup>. The overwhelming majority of states have either declined to make a selection, or remained strategically ambiguous, leaving the default dispute resolution process to come into play if needed.

In many instances, disputes are ultimately adjudicated in forums different from those initially designated by states. This is because states involved in a maritime dispute sometimes choose to bypass their stated preference and refer the matter to a different forum that both parties find more suitable.<sup>15</sup> In a case<sup>16</sup>, although neither country had explicitly chosen Annex VII arbitration, both states agreed to settle the dispute using that mechanism. The tribunal ultimately resolved the issue by drawing an equitable maritime boundary, which both states accepted.

In another case<sup>17</sup>, China refused to participate in the proceedings, and because the two parties had not pre-selected a forum under Article 287, the case was compelled into Annex VII arbitration. The tribunal ruled against China's claims, though China refused to recognize the decision.

Additionally, some states strategically select a venue where they believe they have the best chance of a favorable ruling. In a case<sup>18</sup>, Somalia brought its dispute against Kenya to the International Court of Justice instead of opting for UNCLOS mechanisms. Kenya, however, challenged the ICJ's jurisdiction and later withdrew from the proceedings, highlighting how states may attempt to avoid binding rulings by contesting jurisdiction.

The limited use of formal forum declarations and the frequent reliance on Annex VII arbitration suggests that states prioritize flexibility over procedural

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<sup>14</sup> Christopher Ward, "Question of the Delimitation of the Continental Shelf Between Nicaragua and Colombia Beyond 200 Nautical Miles from the Nicaraguan Coast (Nicar. v. Colom.)." *American Journal of International Law* 118.2 (2024): 324–331.

<sup>15</sup> David Anderson. "Bay of Bengal Maritime Boundary (Bangladesh v. India)." *The American Journal of International Law*, vol. 109, no. 1, 2015, pp. 146–54.

<sup>16</sup> Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Bangladesh v India, Final Award, ICGJ 479 (PCA 2014), 7th July 2014, Permanent Court of Arbitration [PCA]

<sup>17</sup> South China Sea Arbitration, Philippines v China, Award, PCA Case No 2013-19, ICGJ 495 (PCA 2016), 12th July 2016, Permanent Court of Arbitration [PCA].

<sup>18</sup> Maritime Delimitation in the Indian Ocean, Somalia v Kenya, Preliminary Measures, ICGJ 508 (ICJ 2017), 2nd February 2017, United Nations [UN]; International Court of Justice [ICJ].

certainty. While the UNCLOS framers envisioned a more structured selection process, states often prefer to maintain diplomatic maneuverability, reserving the ability to negotiate or contest jurisdiction based on evolving political and legal considerations.

In sum, while UNCLOS provided a clear framework for forum selection, state practice has introduced considerable variation in how disputes are actually resolved. This divergence underscores the complexity of international maritime disputes and the challenges in enforcing a uniform approach to adjudication under UNCLOS.

#### **4. The Future of Binding Dispute Resolution under UNCLOS**

The outcomes of *Arctic Sunrise*<sup>19</sup> and *The South China Sea Arbitration* raise concerns about the long-term viability of Part XV. If major powers such as China, Russia, and the United States continue to reject the legitimacy of the dispute resolution system when rulings go against them, other states may be less inclined to submit to adjudication when faced with unfavorable outcomes. These cases appear to reinforce each other, demonstrating how states can effectively evade international tribunal decisions by invoking Article 298 declarations<sup>20</sup>. Given that Russia and China have faced no significant consequences for their refusals to comply, it will likely become increasingly difficult for ITLOS and the PCA to ensure adherence to the system in future cases.

Recent geopolitical developments further illustrate this challenge. Russia has withdrawn from the Rome Statute, rejecting the jurisdiction of the International Criminal Court<sup>21</sup>, while China recently seized a U.S. Navy research drone operating outside its *Nine-Dash Line* claim in the South China Sea<sup>22</sup>. These actions signal a broader rejection of international legal mechanisms by both countries and a preference for unilateral approaches to disputes rather than engaging in peaceful resolution through established institutions. Considering their prior resistance to UNCLOS proceedings, such

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<sup>19</sup> The Arctic Sunrise Case, Netherlands v Russian Federation, Provisional Measures, ITLOS Case No 22, ICGJ 455 (ITLOS 2013), 22nd November 2013, International Tribunal for the Law of the Sea [ITLOS]

<sup>20</sup> Douglas Gates, "International Law Adrift: Forum Shopping, Forum Rejection, and the Future of Maritime Dispute Resolution," *Chicago Journal of International Law*: Vol. 18: No. 1, Article 8.

<sup>21</sup> Natasha Kuhrt and Rachel Kerr. "The International Criminal Court, Preliminary Examinations, and the Security Council: Kill or Cure?" *Journal of Global Faultlines*, vol. 8, no. 2, 2021, pp. 172–85.

<sup>22</sup> "United States Confronts China over Seizure of Unmanned Drone in the South China Sea." *American Journal of International Law* 111, no. 2 (2017): 513–17.

behavior appears to reflect a consistent pattern of dismissing international legal authority.

A shift in the U.S. stance on UNCLOS could serve as a strong counterbalance to the positions of Russia and China.<sup>23</sup> Ratifying the convention would bolster the legitimacy of U.S. efforts to enforce maritime law and strengthen its ability to hold other nations accountable. However, the likelihood of such a shift remains low.

## **5. Conclusion**

This analysis has demonstrated that UNCLOS Part XV has played a significant role in resolving maritime disputes through its structured approach to forum selection. Over the past two decades, it has contributed to the advancement of international law, particularly in the realms of maritime law enforcement and territorial boundaries. While some procedural mechanisms have not functioned as originally envisioned, Part XV continues to offer peaceful means for dispute resolution.

Recent years have introduced a serious challenge to the system: the refusal of major global powers to participate in dispute resolution processes. As Russia and China have adopted a stance similar to that of the United States regarding international courts, they have weakened the effectiveness of the UNCLOS dispute settlement framework and deprived smaller states of meaningful legal recourse. While Part XV may continue to function in certain capacities for the time being, the next high-profile dispute could mark a turning point for the system's credibility and longevity.

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<sup>23</sup> Nengye Liu and Shirley Scott. "China in the UNCLOS and BBNJ Negotiations, Yesterday Once More?" *Leiden Journal of International Law*, 2024, 1–20.

## Bibliography

### Books and Articles

- Angel Horna, *Law of the Sea and Maritime Delimitation, State Practice and Case Law in Latin America and the Caribbean*, Routledge, 2023
- Alex G. Oude Elferink, Tore Henriksen and Signe Veierud Busch, *Maritime Boundary Delimitation: The Case Law*, Cambridge University Press 2018
- Bogdan Aureescu, Ion Galea, Lazar Elena, Ioana Oltean, *Drept international public, Scurta culegere de jurisprudenta pentru seminar*, Editura Hamagiu 2018
- United Nations, *Handbook on the Delimitation of Maritime Boundaries*, December 2000
- Mwelwa Musambachime, *International Journal on World Peace*, 2001
- Malcolm Evans and Nicholas Ioannides, *The International Court of Justice and the Law of the Sea Dispute Settlement*, 2023
- Garth Schofield, "The Permanent Court of Arbitration: From 1899 to the Present." *The Cambridge Companion to International Arbitration*. 2021
- Sverrir Steinsson, "Do Liberal Ties Pacify? A Study of the Cod Wars." *Cooperation and Conflict*, 2018
- Emilia Justyna Powell and Sara McLaughlin Mitchell. "Forum Shopping for the Best Adjudicator: Dispute Settlement in the United Nations Convention on the Law of the Sea." *The Journal of Territorial and Maritime Studies*, 2022
- Markus Petsche, *What's Wrong with Forum Shopping - An Attempt to Identify and Assess the Real Issues of a Controversial Practice*, 2011
- Andreas Østhagen, *Maritime boundary disputes: What are they and why do they matter?*, Marine Policy, 2020
- Wolfgang Friedmann, "United States Policy and the Crisis of International Law: Some Reflections on the State of International Law in 'International Co-Operation Year.'" *The American Journal of International Law*, 1965
- Jolle Demmers, *Good governance in the era of global neoliberalism: Conflict and depolitisation in Latin America, Eastern Europe, Asia and Africa*, Routledge Studies in the Modern World Economy, 2021
- Nong Hong., "The South China Sea Arbitral Tribunal Award: Political and Legal Implications for China." *Contemporary Southeast Asia*, 2016
- Christopher Ward., "Question of the Delimitation of the Continental Shelf Between Nicaragua and Colombia Beyond 200 Nautical Miles from the Nicaraguan Coast (Nicar. v. Colom.)", 2024
- David Anderson. "Bay of Bengal Maritime Boundary (Bangladesh v. India)." 2015
- Douglas Gates, "International Law Adrift: Forum Shopping, Forum Rejection, and the Future of Maritime Dispute Resolution," 2017
- Natasha Kuhrt and Rachel Kerr. "The International Criminal Court, Preliminary Examinations, and the Security Council: Kill or Cure?" 2021
- United States Confronts China over Seizure of Unmanned Drone in the South China Sea, 2017
- Nengye Liu and Shirley Scott. "China in the UNCLOS and BBNJ Negotiations, Yesterday Once More?" 2024

**Treaties**

United Convention on the Law of the Sea

Charter of the United Nations.

**Case law**

Delimitation of the Maritime Boundary in the Gulf of Maine Area, Canada v United States, Appointment of Expert, Order, [1984] ICJ Rep 165, ICGJ 120 (ICJ 1984), 30th March 1984, United Nations [UN]; International Court of Justice [ICJ]

Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Bangladesh v India, Final Award, ICGJ 479 (PCA 2014), 7th July 2014, Permanent Court of Arbitration [PCA]

South China Sea Arbitration, Philippines v China, Award, PCA Case No 2013-19, ICGJ 495 (PCA 2016), 12th July 2016, Permanent Court of Arbitration [PCA]

Maritime Delimitation in the Indian Ocean, Somalia v Kenya, Preliminary Measures, ICGJ 508 (ICJ 2017), 2nd February 2017, United Nations [UN]; International Court of Justice [ICJ]

The Arctic Sunrise Case, Netherlands v Russian Federation, Provisional Measures, ITLOS Case No 22, ICGJ 455 (ITLOS 2013), 22nd November 2013, International Tribunal for the Law of the Sea [ITLOS]