

4 International Conventions Dealing with Dispute Resolution

There are various international conventions that deal with – or that include provision for – dispute resolution. Three of these are of particular relevance in the context of maritime disputes, investment disputes and international trade disputes generally:

- 1) The 1982 United Nations Convention on the Law of the Sea (UNCLOS III);
- 2) The International Convention on the Settlement of Investment Disputes (the ICSID/Washington Convention);
- 3) The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention).

A fourth Convention – the Vienna Convention on the Law of Treaties – is of significance in the context of public international law and is therefore of general importance in relation to supranational dispute resolution and the supranational bodies dealing with such disputes. The Vienna Convention is considered in Part II of the Manual in the chapter dealing with international law.

1) UNCLOS III

The third UN Convention on the Law of the Sea (commonly known as UNCLOS III) states in Article 2 that:

- “(1) The sovereignty of a coastal State extends beyond its land, territory and internal waters. . . to an adjacent belt of sea, described as the territorial sea.*
- (2) This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.*
- (3) The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.”*

Articles 3 and 5 deal with the breadth of the territorial sea and the ‘normal baseline’. Article 3 provides that:

“Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.”

Article 5 states that: *“The normal baseline for measuring the breadth of the territorial sea is the low water-line along the coast....”*

In addition to dealing with the territorial seas, the Convention also deals with contiguous zones, exclusive economic zones and continental shelves, and maritime delimitation.

Given the complexity of the subject matter of UNCLOS III, it is unsurprising that the dispute resolution processes contained within the Convention are themselves complex. Part XV contains provision for the settlement of disputes. Article 279 provides that States that are

parties to the Convention “shall settle any disputes between them concerning the interpretation or application of this Convention by peaceful means...”. Article 287 provides that States shall be free to choose one of the methods of dispute settlement set out in the Convention. These include Conciliation in Annex V, Arbitration in Annex VII and ‘Special Arbitration’ in Annex VIII.

UNCLOS III is considered in more detail in Part II of the Manual in the chapters dealing with supranational dispute resolution.

2) The ICSID / Washington Convention

The 1995 International Convention on the Settlement of Investment Disputes (ICSID) (also known as the Washington Convention) was formulated by executive directors of the World Bank.

The preamble to the Convention refers to the need for international cooperation in relation to economic development and investment. Such investment may give rise to disputes, which should be settled on the basis of international methods of dispute settlement. The Washington Convention established the International Centre for Settlement of Investment Disputes (ICSID Centre) for the purposes of dealing with such investment disputes.

The provisions of the ICSID Convention and the services of the ICSID Centre are now being widely used, particularly in relation to bilateral investment treaties.

An obvious difference between the resolution of investor-State disputes and the resolution of pure commercial disputes is that investor-State disputes must be decided in accordance with the provisions of the relevant treaty and in accordance with principles of public international law.

The ICSID Convention is discussed further in Part II of the Manual in the chapters dealing with supranational dispute resolution.

3) The New York Convention

The ultimate object of referring a dispute to international commercial arbitration is the enforcement of the award made by the Arbitral Tribunal. The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (commonly referred to as the New York Convention) is intended to provide for the mutual recognition and enforcement of arbitral awards made in countries that are parties to the Convention.

Most of the world’s trading nations have ratified the New York Convention. This means, for example, that if there is a dispute between companies based in England and Germany, an award made against the English company could be enforced by the German company in England through the English courts. And if the English company had assets in, say, France and Italy, the German company could likewise enforce the award through the French and Italian courts since both France and Italy have ratified the Convention.

The New York Convention is considered in Part IV in the chapters dealing with international commercial dispute resolution.