



## SYSTEM FOR SETTLEMENT OF DISPUTES

Part XV of the Convention itself includes only provisions for the conduct of the states parties, procedures, and jurisdiction, while the whole structure of the dispute settlement system includes four of the Annexes to the Convention: Conciliation (Annex V), Statue of the International Tribunal for the Law of the Sea (Annex VI), Arbitration (Annex VII), and Special Arbitration (Annex VIII). States Parties must exhaust all local remedies before resort is made to the procedures provided in this section of the Convention<sup>1</sup>.

The basic tenet underlying the settlement of disputes is that the parties are bound to use only peaceful means<sup>2</sup> exchange their views without delay<sup>3</sup> behave in accordance with the requirements of the United Nations Charter<sup>4</sup> and seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, and judicial settlement<sup>5</sup> in good faith<sup>6</sup>. The final effort prior to official proceedings is a non-binding conciliation procedure<sup>7</sup>. But it is necessary that the parties agree to conciliation proceedings and to the procedure to be applied<sup>8</sup> except in cases where conciliation is compulsory<sup>9</sup> such as when a coastal state is required to submit certain marine scientific research disputes<sup>10</sup> and fisheries disputes<sup>11</sup> to non-binding conciliation.

For disputes concerning the interpretation or applicability of the Convention, the compulsory procedures entailing binding decisions apply<sup>12</sup> with two exceptions:

1. Cases where the coastal state has jurisdiction with regard to central questions of fisheries and marine scientific research<sup>13</sup>;
2. Those cases where states have declared that they will not accept dispute settlement procedures in one or more of the following causes of dispute:
  - sea boundary delimitations<sup>14</sup>;
  - military activities<sup>15</sup>
  - law enforcement activities of coastal state for fisheries and scientific research;
  - disputes before the United Nations Security Council<sup>16</sup>.

For procedural settlement of disputes<sup>17</sup>, the parties may choose among four fora: two courts (the International Court of Justice and the International Tribunal for the Law of the Sea) and two arbitration tribunals<sup>18</sup>. If no declaration to the contrary is in force, the state party is deemed to have accepted arbitration in accordance with Annex VII<sup>19</sup>. Disputes involving release of vessels from detention can be submitted to the Tribunal of the Law of the Sea within ten days from the time of the detention, if the jurisdiction of no other court or tribunal is established<sup>20</sup>. For disputes with respect to interpretation of the Area provisions of Part XI, the jurisdiction of the Sea-Bed Disputes Chamber, a

<sup>1</sup> Art. 295

<sup>2</sup> Art. 279

<sup>3</sup> Art. 283, Para. 1

<sup>4</sup> Art. 279

<sup>5</sup> UN Charter, Art. 33, Para. 1

<sup>6</sup> Art. 300

<sup>7</sup> Art. 284, Annex V

<sup>8</sup> Art. 284, Para. 2

<sup>9</sup> Art. 297; Annex V, 11-14

<sup>10</sup> Art. 297, Para. 2

<sup>11</sup> Art. 297, Para. 3

<sup>12</sup> Art. 286

<sup>13</sup> Art. 297, Para. 2-3

<sup>14</sup> Art. 298, Subpara. 1 (a)

<sup>15</sup> Art. 298, Subpara. 1 (b)

<sup>16</sup> Art. 298, Subpara. 1 (c)

<sup>17</sup> Art. 288, Para. 1-2

<sup>18</sup> Art. 287, Subpara 1 (a)

<sup>19</sup> Art. 287, Para. 4

<sup>20</sup> Art. 292, Para. 1

<sup>21</sup> Annex VI, Art. 14 and 35

<sup>22</sup> Art. 287, Para. 2; Art. 288, Para. 3

<sup>23</sup> Art. 188, Subpara. 1 (a)

<sup>24</sup> Art. 188, Subpara. 1 (b)

<sup>25</sup> Art. 290

<sup>26</sup> Art. 293

<sup>27</sup> Art. 294

<sup>28</sup> Art. 296

<sup>29</sup> e.g. Art. 280, 299(2)

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chamber of the International Tribunal of the Law of the Sea<sup>21</sup> is compulsory<sup>22</sup>, unless States Parties request that the dispute be submitted to a special chamber<sup>23</sup> or to an *ad hoc* chamber<sup>24</sup>.

Of some importance for procedure are further provisions covering provisional measures<sup>25</sup>, applicable law<sup>26</sup>, preliminary proceedings<sup>27</sup>, and the finality and binding force of decisions<sup>28</sup>. At all times of the dispute, the guiding principle is that the parties are free to choose any peaceful means of settling their differences<sup>29</sup>.

# THE FORA FOR THE SETTLEMENT OF DISPUTES

## GENERAL OVERVIEW

### I. FORA FOR DISPUTES NOT RELATED TO JUDGEMENTS INVOLVING INTERPRETATION OF THE CONVENTION

- (1) Special Arbitration, Annex VIII, Article 5, Fact-Finding
- (2) Conciliation Procedure, Annex V, Section 1 Pursuant to Part XI, Section 1, Settlement of Disputes (General Provisions)
- (3) Binding Commercial Arbitration
  - Interpretation of contracts and plan of work. Art. 188, Subpara. 2(a)
  - Financial terms. Annex III, Art. 13, Para. 15
  - Financial terms of technology transfer. Annex III Art. 5, Para. 4

### II. CHOICE BETWEEN ONE OR MORE OF FOUR FORA IN CASES OF COMPULSORY PROCEEDINGS (ART 287, PARA 1)

States Parties are free to choose among the fora (No. 4-7) for the settlement of disputes concerning the interpretation or applicability of the Convention (for limited court/tribunal jurisdiction on matters (a) sovereign rights of coastal states; (b) military; (c) boundaries; (d) Security Council, see Art. 297-298)

(4)	International Court of Justice	(5)	Arbitration (Annex VII)
(6)	International Tribunal for the Law of the Sea (Annex VI)	(7)	Special Arbitration (Annex VIII) Regarding: Fisheries, Environment, Scientific Research, Navigation
	Special Chamber (Annex VI, Article 15)		
(8)	Formed by the Tribunal for the Law of the Sea as necessary		

*NB:* If a State Party has not made a declaration or if the parties of the dispute have not agreed to a forum, the dispute is to be submitted to Arbitration (Annex VII). The parties can agree otherwise (Art. 287, Paras. 3-5). A question of the detention of a vessel may be submitted to the court or tribunal of the choice of the parties; otherwise, to the Tribunal for the International Law of the Sea (Art. 292, Para. 1)

### III. COMPULSORY FORA

- (9) Sea-Bed Disputes Chamber (Annex VI, Article 3)
    - Compulsory (Art. 287, Para. 2; Jurisdiction: Art. 288, Para. 3; Activities in the Area, Art. 187)
  - (10) *Ad Hoc* Chamber of the Sea-Bed Disputes Chamber (Annex VI, Article 36)
    - May be formed at the request of States Parties (Art. 188, Para. 1) with respect to seabed activities (Article 187)
  - (11) Conciliation Procedures (Annex V, Section 2, Articles 11-14)
    - Compulsory (Annex V, Section 2); On matters stated in Part XV, Section 3
    - Article 297, Paragraph 2 (Certain matters of marine scientific research)
    - Article 297, Paragraph 3 (Certain matters of fisheries)
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