



Research Paper

Maritime Dispute Settlement in India & UK with special reference to ADR

Dr. Shaji. M

Assistant Professor, BSA Crescent Institute of Science and Technology

Abstract

Various legal problems may be resolved via Alternative Dispute Resolution (ADR), which experts, organizations, and the general public use. It deals with the issue of judicial courts delaying justice delivery, which might cause parties to wait years. On a global scale, ADR has become an acknowledged and important part of the legal and commercial spheres. The unique and varied character of these strategies allows them to assist parties in swiftly and cheaply resolving conflicts. Disputes that may be settled by due process of law can be addressed using these, whether they be civil, commercial, industrial, or family.¹ Alternative dispute resolution techniques provide workable answers to conflicts, according to this research, and they don't impede economic development. Their prominence in the fields of law and business is growing, both domestically and abroad. By integrating ADR methods into these frameworks, maritime issues may be resolved more amicably and with more stability. The resolution of issues involving the seas and oceans relies heavily on maritime law and the implementation of UNCLOS. The U.K. and India, both of which have coastlines, rely on these legal systems when dealing with marine disputes. Under UNCLOS, a variety of issues are addressed, including maritime boundaries, freedom of navigation, economic zones, conservation of natural resources, and resolution of disputes. The current state of maritime dispute law in the United Kingdom and India is the subject of this research.

Keywords: Maritime settlement, ADR, India, UK, UNCLOS.

Received 02 Dec., 2024; Revised 12 Dec., 2024; Accepted 14 Dec., 2024 © The author(s) 2024.

Published with open access at www.questjournals.org

I. Introduction

In order to maintain a healthy, peaceful, and harmonious social life, the process of conflict resolution is essential. The goal is to prevent, resolve, and lessen the impact of conflicts that arise from disagreements so that people, groups, and organizations may live in peace and work together effectively.² With this procedure, the aim of peaceful social living and the ability of people and groups to coexist would be attainable, making it a necessary condition for social life and the maintenance of social order.³ International law and ocean governance, in particular, place a premium on maritime conflicts. Maritime borders, navigational rights, resource distribution, and ecological preservation are all governed by the U.N. Convention on the Law of the Sea (UNCLOS). The interplay between local law and international marine law is shown by the ways in which UNCLOS has been implemented in the United Kingdom and India.

When compared to conventional litigation, ADR processes like mediation and arbitration may help keep costs down and timeliness high. When it comes to maritime disputes, both India and the U.K. have tried using ADR processes, and they've seen firsthand how effective they are: swiftly and peacefully. In order to show that you are committed to peaceful resolution and following international law, you should use the UNCLOS and ADR procedures. It has always been the overarching goal to resolve maritime problems in a manner that promotes stability and collaboration among nations while maintaining legal norms and honouring sovereign

¹IDA, *Hindu Marriage Act (1955), Industrial Dispute Act (1947), The Code of Civil Procedure (1908), The Family Court Act (1984)*.

²ADR, *Different Modes of Alternative Dispute Resolution (ADR)*, (Feb 20, 2017), [Http://Shodhganga.Inflibnet.Ac.in/Bitstream/10603/44117/9/09_chapter%203](http://Shodhganga.Inflibnet.Ac.in/Bitstream/10603/44117/9/09_chapter%203).

³Park, *PARK AND BURGER, INTRODUCTION TO THE SCIENCE OF SOCIOLOGY (Createspace Independent Publishing Platform, 2016), (735)*. (2016).

rights. The ever-changing nature of maritime affairs and the increasing complexity of disputes highlight the critical need for a robust legal framework and a commitment to international cooperation in their management. By focusing on the application of UNCLOS principles and the role of ADR processes, this research aims to give a comprehensive examination of the legal environment surrounding maritime conflicts in the U.K. and India.

This article delves into the efficacy of UNCLOS in settling maritime disputes between India and the U.K. The article delves into the ways in which mediation and arbitration are being used to resolve disputes in the marine industry. Conflicts continue to arise, even if there are systems of law and international agreements in place to address them. This often results in drawn-out court fights and heightened geopolitical tensions. The purpose of this paper is to examine the efficacy of arbitration and mediation as alternative conflict resolution processes, as well as to identify difficulties and potential solutions associated with the implementation of UNCLOS rules in marine disputes between India and the U.K. The study's overarching goal is to shed light on how the two nations might better implement UNCLOS and other forms of alternative dispute resolution when dealing with maritime conflicts.

II. Literature review

(Churchill, 2017)⁴ Within and outside of the United Nations Convention on the Law of the Sea, the most current annual research examines the methods by which various governments deal with maritime disputes. It covers the events of 2015 and 2016 as they pertain to maritime law and the International Tribunal for the Law of the Sea.

(Churchill, 2020)⁵ This article is the most recent in an annual series that examines methods for resolving maritime disputes, both inside and outside of the jurisdiction of the United Nations Convention on the Law of the Sea (Part XV).

(Teff-Seker et al., 2020)⁶ Protected marine areas (MPAs) and other area-based conservation measures (OECMs) tackle the spatial components of marine processes and characteristics, which may be challenging to do in regions without clearly defined authority

(Sheehan, 2005)⁷ An extensive mechanism for the settlement of disputes pertaining to the understanding and implementation of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) is laid out in Part XV of that treaty. It mandates, in accordance with the UN Charter, that the States Parties resolve their issues amicably.

(Nguyen, 2018)⁸ In Asia, the United Nations Convention on the Law of the Sea (UNCLOS) provides a crucial mechanism for resolving disputes, but its application has yet to be restricted. In this article, we propose that the United Nations Convention on the Law of the Sea (UNCLOS) may help nations in Asia work together to resolve maritime conflicts by establishing a framework for parties to follow, making the law more apparent and ultimately leading to a resolution.

(Østhagen, 2021)⁹ There are conflicts over ownership and rights to maritime space on every continent as its significance grows. Focusing on exclusive economic zones (EEZ) and their effects on industries, including fishing, oil and gas extraction, and conservation efforts, this article delves into the idea of maritime borders and associated conflicts.

(Bautista, 2014)¹⁰ The 1982 U.N. Convention on the Law of the Sea (LOSC) has a dispute resolution mechanism that establishes and maintains a framework for the peaceful settlement of any disputes pertaining to the ocean. Numerous territorial and maritime disputes persist throughout Southeast Asia, although there is a general reluctance to use the dispute settlement procedures laid forth in the Law of the Sea Convention (LOSC).

⁴Robin Churchill, *Dispute Settlement in the Law of the Sea: Survey for 2015, Part Ii and 2016*, 32 ESTU 379 (2017).

⁵Robin Churchill, *Dispute Settlement in the Law of the Sea: Survey for 2020* (2020).

⁶Yael Teff-Seker et al., *Do Alternative Dispute Resolution (ADR) and Track Two Processes Support Transboundary Marine Conservation? Lessons From Six Case Studies of Maritime Disputes*, 7 FRONT. MAR. SCI. 593265 (2020).

⁷Anne Sheehan, *DISPUTE SETTLEMENT UNDER UNCLOS: THE EXCLUSION OF MARITIME DELIMITATION DISPUTES* (2005).

⁸Lan Ngoc Nguyen, *The UNCLOS Dispute Settlement System: What Role Can It Play in Resolving Maritime Disputes in Asia?*, 8 ASIANJIL 91 (2018).

⁹Andreas Østhagen, *Troubled Seas? The Changing Politics of Maritime Boundary Disputes*, 205 OCEAN & COASTAL MANAGEMENT 105535 (2021).

¹⁰Lowell Bautista, *Dispute Settlement in the Law of the Sea Convention and Territorial and Maritime Disputes in S Southeast A Sia: Issues, Opportunities, and Challenges*, 6 ASIAN POLITICS AND POLICY 375 (2014).

(Naldi & Magliveras, 2020)¹¹ There is a combination of mandatory and optional methods for resolving disputes under the United Nations Convention on the Law of the Sea ("UNCLOS"), namely in part xv. This section is applicable to all governments who are parties to the treaty. The exact meaning of these laws requires expert interpretation due to their complexity.

(Wolff & Ireland-Piper, 2018)¹² The U.N. Convention on the Law of the Sea 1982 (UNCLOS) established a legal framework governing the world's waters. There has been a recent suggestion that when tiny countries engage in imaginative legal actions against powerful nations, it may pose a danger to the established order. This is because it may pressure dispute resolution agencies to adopt new and unexpected interpretations of the Convention.

(Churchill, 2015)¹³ This research is the latest in a series that has been looking at several ways to settle maritime conflicts, both inside and outside of the U.N. Convention on the Law of the Sea.

Research gaps

Maritime conflicts and border disputes need to be understood in terms of the dynamics and efficacy of ADR processes, according to the evaluations. Mediation, arbitration, and civil society-driven conflict resolution processes are alternatives to UNCLOS that have received less attention despite the fact that UNCLOS has received much attention. The studies focus on the legal frameworks and processes that UNCLOS prescribes, but they need to look at how effective ADR methods are in actually settling complicated maritime disputes, especially ones with several parties involved or competing territorial claims. Additional investigation might delve into the intricacies of these alternative dispute resolution (ADR) techniques, including the percentage of success, difficulties faced, and how well they relate to official UNCLOS processes. Evaluating the changing character of dispute resolution processes over time is mainly hindered by the emphasis on individual cases and tribunals.

Objectives

- Examine and compare the Indian and United Kingdom legal systems that deal with marine conflicts.
- Investigate the practical application and execution of UNCLOS laws affecting maritime conflicts within the legal systems of India and the United Kingdom.
- To analyze a comparative analysis of the UNCLOS maritime dispute settlement systems in India and the U.K. to support legal studies.

III. Research methodology

In order to better understand how India and the U.K. handle maritime disputes, this study will compare and contrast their legal systems, the ways in which UNCLOS laws are applied, and the methods used for alternative dispute settlement. A literature review, legal analysis, interviews, and surveys with stakeholders, experts, and practitioners of maritime law will all be part of the study's comparative research strategy. We will evaluate and analyze the data using qualitative methods, looking for similarities, contrasts, and trends in how laws and conflict resolution systems are applied. A comparative framework will be created to examine and contrast the Indian and British legal systems, as well as their approaches to alternative conflict resolution and the application of UNCLOS. Ensuring data confidentiality, obtaining informed permission, and properly citing sources are all ethical issues. The study will look at things like ideas, principles, legislation, norms, book commentaries, articles, legal encyclopedias, textbooks, journals, ADR, All India and U.K. Reporters, high court websites, and legal websites. Potential biases in data collecting, difficulties in gaining access to specific legal papers, and challenges in gathering complete data from varied sources are among the limitations that will be highlighted.

Settlement of international disputes in UNCLOS

An obligatory dispute resolution framework is established to resolve issues between member nations under the United Nations Convention for the Law of the Sea (UNCLOS). Some think the United States will be unfairly disadvantaged and that international arbitration processes will be unsuccessful because of the obligatory

¹¹Gino Naldi & Konstantinos Magliveras, *Jurisdictional Aspects of Dispute Settlement under the U.N. Convention on the Law of the Sea: Some Recent Developments*, in *NEW ZEALAND YEARBOOK OF INTERNATIONAL LAW* 207 (2020).

¹²GLOBAL GOVERNANCE AND REGULATION: ORDER AND DISORDER IN THE 21ST CENTURY, (Leon Wolff & Danielle Ireland-Piper eds., 2018).

¹³Robin Churchill, *Dispute Settlement in the Law of the Sea: Survey for 2014*, 30 *THE INTERNATIONAL JOURNAL OF MARINE AND COASTAL LAW* 585 (2015).

elements, which require member states to give up too much authority to an international organization.¹⁴ Dispute resolution involving the interpretation or application of UNCLOS is addressed in Part XV of the Convention.¹⁵ Peaceful resolution of issues via the application of law and mutual agreement is emphasized once again. States are not required to follow the processes outlined in Part XV if they establish an agreement to resolve disputes using a method other than their preferred choice of dispute redressal. In place of the strategies outlined in Part XV, the dispute resolution procedures outlined in other agreements involving legally binding judgments will apply.¹⁶

The United Nations Convention on the Law of the Sea (UNCLOS) vests jurisdiction in four entities, as stated in Articles 286 and 287: the International Court of Justice, an arbitral tribunal based on UNCLOS's Annex VII, or a special arbitral tribunal.¹⁷ When a disagreement arises, a state may choose a tribunal from among these options. An arbitral tribunal will be appointed to hear the case if either party fails to make a declaration or agrees upon a mechanism for settlement.¹⁸

Mechanisms for UNCLOS Enforcement

Decisions issued by tribunals or courts under this provision are final and must be complied with by all parties concerned; this is stated in Article 296 of the Convention, which establishes the enforcement framework of UNCLOS. This clause is based on Article 94(1) of the UN Charter, which provides that all U.N. members shall follow the ruling of the International Court of Justice.¹⁹ Article 94(2) makes it clear that the Tribunal's decisions are not enforceable, and these provisions exclude any reference to the Security Council.²⁰ Under UNCLOS, any court or Tribunal may establish its jurisdiction, but it is up to the parties involved to decide whether or not to comply with any ruling. The state that feels wronged, however, has an honest duty to follow the legislation. Third states can legitimately take action in favour of the court's ruling. This view is backed by Article 39 of Annex VI, which regulates the execution of judgments made by the Seabed Disputes Chamber of ITLOS.²¹

International dispute resolution mechanisms

State parties to the U.N. Convention on the Law of the Sea are empowered to use diplomatic and negotiating procedures, among others, to settle issues involving the sea. To ensure that the Convention is interpreted and applied, Article 287 permits one state to adopt one or more methods for dispute resolution.

- A tribunal that oversees maritime law - ITLOS
- The ICJ, or International Court of Justice
- A tribunal that hears arbitration cases by virtue of Annex VII
- An Ad Hoc Arbitral Panel Established Per Annex VIII

The International Law of Sea Tribunal (ITLOS)

The UNCLOS dispute resolution system is meant to be fully operationalized by the International Tribunal for the Law of the Sea (ITLOS), an impartial judicial entity based in Hamburg, Germany. There are 21 neutral members of the Tribunal, chosen from among those who have earned respect in maritime law for their honesty, fairness, and integrity. Anyone may participate, including states, NGOs, and non-state Parties. The Tribunal has the authority to hear and decide on any issues referred to it under the Convention or any other agreement that so specifies.²² In cases involving the urgent release of ships and sailors as per the Convention's Article 292 and interim measures until an arbitral tribunal is established as per Article 290, paragraph 5, the Tribunal's power is obligatory unless otherwise agreed.

¹⁴Brower, Julia Brower, Christina Koningisor, Ryan Liss, and Michael Shih, *UNCLOS Dispute Settlement In Context: The United States' Record In International Arbitration Proceedings*, YALE L.J. 253, (2012). (2012).

¹⁵*Id.*

¹⁶UNC, *United Nations Convention on the Law of the Sea*, Art 282, 1982, 21 ILM 1261.

¹⁷UNC, *United Nations Convention on the Law of the Sea*, Art 287, 1984.

¹⁸UNC, *United Nations Convention on the Law of the Sea*, Annex VII, Art 11, 1982, 21 ILM 1261.

¹⁹UNC, *United Nations Charter*, Art 94, Para. 1, June 26, 1945, 1 UNTS XVI.

²⁰Boyle, Alan E. Boyle, *Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction*, 46 INT'L & COMP. L.Q. 37, 51 (1997).

²¹Rao, P. ChandrasekharaRao, *International Tribunal for the Law of the Sea: An Overview*, THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA: LAW AND PRACTICE 1, 11, (2001).

²²Unnamed, *Unnamed, The Tribunal*, INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA, 2, (Mar 11, 2017), <https://www.itlos.org/the-tribunal/>.

The International Court of Justice (ICJ)

The central U.N. judicial department, the International Court of Justice (ICJ), was formed in 1945. In compliance with international law, it adjudicates disputes brought before it by nations and offers advice on other legal issues addressed to it by other U.N. institutions and agencies. The United Nations General Assembly and Security Council choose the fifteen judges that make up the court-court; no two judges may be citizens of the same country. The court, which replaced the Permanent Court of International Justice and is aided by a Registry, is a more recent institution. There is a set procedure for matters brought before the ICJ, and the primary constitutional text is the Statute of the ICJ.²³

The cases that are presented before the ICJ adhere to a consistent format.

- Arbitration
- Special Arbitration
- Negotiation

Here are the steps involved in a negotiation:

- i. Preparation
- ii. Discussion
- iii. Clarification of goals
- iv. Negotiate towards a win-win outcome
- v. Agreement
- vi. Implementation of a course of action

IV. Conclusion

By delving into the legal aspects of maritime disputes, we can better understand how these conflicts impact economic activity, resource usage, and marine ecosystems. This, in turn, can provide light on how these conflicts affect bilateral and multilateral relations between states. Worldwide, the findings could have an impact on legislation, policymaking, and conflict resolution efforts by marine affairs stakeholders, legal practitioners, and politicians. The authors suggesting to improve stability and cooperation among governments by investigating peaceful resolution solutions for maritime disputes. Its promotion of a better understanding of legal processes that aid in conflict alleviation is beneficial to regional and global peace initiatives. The overall impact on international law, diplomatic relations, peaceful conflict settlement, and maritime area stability may be amplified via research on maritime conflicts under the UNCLOS framework.

²³Unnamed, *Unnamed, The Court, INTERNATIONAL COURT OF JUSTICE, 1, Mar 11, 2017*, [Http://Www.Icjcij.Org/Court/Index.Php?P1=1](http://www.icj-cij.org/Court/Index.Php?P1=1).