Internal waters are one of the eight or nine different existing maritime areas. They are part of the territory of the State and, as such, fall under its sovereignty. In other words, States exercise the maximum of their competencies therein. This is a feature internal waters share with the territorial sea and with archipelagic waters. Indeed, before the first half of the 20th century there was no distinction between internal waters and the territorial sea. The only two existing maritime areas were territorial waters and the high seas. This is an often-neglected aspect of the question, which deserves attention. Unsurprisingly, much of the argumentation used to exclude internal waters from the realm of the international law of the sea, in order to consider that these waters as simply governed by the domestic law of the coastal State, recalls the arguments employed to deny any international regulation of territorial waters, at the time when the distinction between territorial sea and internal waters did not exist.

As will be explained below, it has then been contended, in recent litigation, that the International Convention on the Law of the Sea (hereinafter, 'UNCLOS' or the 'Convention') does not govern internal waters. These waters would even escape international concern, to be governed exclusively by domestic law and subject to the same conditions as the rest of the territory under the sovereignty of the State. This is a common belief in part of the doctrine.¹ The purpose of this contribution is to demonstrate precisely the opposite. This is not a purely academic debate. It has practical importance, since the dispute settlement mechanism set out in Part XV of the UNCLOS, and particularly the compulsory procedures entailing binding decisions, only relate to disputes as to the interpretation or the application of this Convention.² Indeed, the attempt to exclude any question concerning internal waters from the UNCLOS essentially aims at equally excluding it from the dispute settlement procedures.

² See Arts. 279 and 286 of the UNCLOS.
The present contribution, which pays homage to the leading Argentine specialist in the law of the sea, will be divided into three parts. First, it will examine the arguments developed to deny the application of the UNCLOS to internal waters. Second, it will expose that it is the UNCLOS that determines the spatial and legal scope of internal waters. Third, it will specifically describe the rights and obligations of coastal and third States in internal waters as established or recognised by the UNCLOS. As a result, the logical conclusion that will follow is that the UNCLOS does contain regulations applicable to internal waters, and taken together, establishes a legal regime for them.

**Arguments Developed to Deny the Application of the UNCLOS to Internal Waters**

It has been asserted that in all the codification efforts of the law of the sea, it was decided to exclude internal waters. Counsel acting for Ghana in the *ARA Libertad* case (Argentina v. Ghana), emphatically asserted before ITLOS that

> [a]t each stage it was understood that the regime of ports and internal waters was excluded from the relevant instrument and from the 1982 Convention, on the basis, as one member of the International Law Commission put it in 1954, that it was ‘universally agreed’ that the regime of ports and internal waters was ‘different from that of the territorial sea’.3

As is known, the *ARA Libertad* case related to the detention of an Argentine warship, while in a Ghanaian port as a result of a State visit agreed upon by both parties, through an order of injunction delivered by a Ghanaian judge. One of the main arguments of the defendant was that the Convention does not regulate the immunity of warships in internal waters. In its written statement before ITLOS, Ghana contended that

> [i]nternal waters are an integral part of a coastal state and are therefore not the subject of detailed regulation by the Convention. The coastal state enjoys full territorial sovereignty over internal waters, and any foreign vessel that is located in internal waters is subject to the legislative, administrative, judicial and jurisdictional powers of the coastal State.4

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3 ITLOS, The *Ara Libertad* Case, 30 November 2012, ITLOS/PV.12/C20/4, p. 3, lines 39–43 (Sands).