Introduction

The mechanism for the settlement of disputes arising out of the implementation and interpretation of the provisions of a treaty is an important part of any international treaty. This is especially true of the 1982 Convention on the Law of the Sea,1 which deals with so many complex issues concerning the governance of the seas and oceans that cover more than two-thirds of the globe. The Convention known as the ‘Charter of the seas and oceans’ is perhaps the most comprehensive of all international treaties resulting from intensive negotiations lasting for nine years. It deals with more or less every aspect of human activity in the seas and oceans of the world – these covering two-thirds of the area of planet earth. Equally elaborate, innovative and sophisticated is its dispute settlement mechanism designed to resolve different kinds of maritime disputes between States. As stated by Rothwell and Stephens, this complex mechanism “is unusual in public international law because it is comprehensive and compulsory, subject to limited exceptions.”

The development of the law of the sea has gone through three phases: articulation and acceptance of its major principles, such as the freedom of the high seas; codification of the rules and principles through international legal instruments, such as the four 1958 Geneva Conventions on the Law of the Sea; and the elaboration of the rules and principles through a comprehensive treaty with a provision for mechanisms for the resolution of disputes relating to the interpretation and application or implementation of the treaty. Accordingly, this Chapter is designed to examine the background to the mechanism

---

established by the Convention for the settlement of disputes concerning the matters covered by it, assess the nature and scope of the mechanism, comparing and contrasting it with other international dispute settlement mechanisms, and analyse how effective it has been in resolving disputes between States in order to maintain law and order in the seas and oceans around the globe.

**History of Maritime Disputes**

Much of the history of the law of the sea is the history of international law itself and there have been disputes between states since time immemorial with regard to the use and control of the seas and oceans. The desire to control the seas in order to control navigation and exploit maritime resources probably dates back to the days when the Egyptians first plied the Mediterranean in papyrus rafts. Over the centuries, countries possessing vast ocean-going fleets or small fishing flotillas, husbanding rich fishing grounds close to shore or eyeing distant harvests, have all vied for the control of the seas. When various missions of exploration or ‘discoveries’ were taking place, Spain and Portugal, two great maritime powers of the day, were competing for the control of the seas and oceans of the globe. In 1494, two years after Christopher Columbus’s first expedition to America, Pope Alexander VI met with representatives of these two nations and divided the Atlantic Ocean between them. Everything west of the line the Pope drew down the Atlantic belonged to Spain and everything east of it to Portugal. On the basis of this Papal decree, the Pacific and the Gulf of Mexico were claimed by Spain, and Portugal claimed the South Atlantic and the Indian Ocean, effectively dividing the world into two halves.

As other European countries such as the Netherlands, France and Great Britain expanded their maritime power, they began to challenge the division of the world’s seas and oceans between Spain and Portugal. It was around this time that Hugo Grotius published his monograph *Mare Liberum*, advocating the freedom of the seas rather than control by a few states.3 When Britain became more powerful, British authors such as John Selden sought to revive the idea of the closed sea, *mare clausum*. This idea was challenged by other maritime powers and legal scholars of the day. Consequently, the freedom of the high seas was accepted as a cardinal principle of the law of the sea.

However, when the balance of political power shifted and England emerged as a more powerful European state, an English legal antiquarian and politician,

---