

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Dispute Settlement (2)

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ARBITRATION FOR SPACE DISPUTES: THE WAY FORWARD

Abstract

The establishment of Dubai's Space Court -the very first institution specialised in dispute resolution for commercial space activities- in 2021 initiated a fireside chat among the international community of (space) lawyers. But what if the UAE simply underlined the need for the adoption of extensive, up to date international space norms and mechanisms for dispute resolution? The authors of this paper are seizing this opportunity and in light of the Artemis Accords, which mark a new era for space cooperation, will analyse not only the existing status of ADR method, in particular arbitration, available for space activities, but most importantly review the "Permanent Court of Arbitration Optional Rules for Arbitration of Disputes Relating to Outer Space Activities", which celebrated their ten year anniversary in 2021. Since the applicable international space treaties left a significant gap in the subject of dispute resolution, the community has been dichotomised. One side supports that arbitration in space related disputes is costly and time consuming and thereupon, it would not serve a significant number of start up and middle space companies lacking large resources. That said, only the very large companies would have the capacity to resolve matters through arbitral tribunals. On the other hand, however, upcoming cases regarding, for instance, failed launches, space debris damages or damages on earth, could via arbitration be kept afar from the International Court of Justice or even national courts, which would lack the expertise and would require a timely and lengthy process to produce a final decision. This ongoing debate is not merely theoretical, but extremely practical in nature in view of the New Space ventures which are defined by highly technical matters, the diversity of actors involved, have inherently high costs associated with great risks, and are usually undertaken by virtue of both private and public laws. The present contribution will untangle dispute settlement as the authors express their views on the value of arbitration (notably as part of multitiered clauses) for conflict avoidance and pacific settlement of space related controversies.