

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

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ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION: MATCHING DYNAMICS AND
FLEXIBILITY FOR THE NEW SPACE AGE

Abstract

One of the main tasks of international law is to establish the foundations for peace and stability. As Art. 2, par. 3 of the Charter of the United Nations states: "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered". Keeping this objective in mind, one must consider the close correlation between the exponential growth of actors aiming to operate in the space market and the potential increase of possible disputes between them. Furthermore, emphasis must be placed on a consideration which is as important as it is obvious, namely that a peaceful environment is conducive to the well-being of the market and business. In this respect, the use of legislative instruments to define the parameters for a rapid and effective resolution of disputes arising from space activities, can contribute to the development of an environment which is able to coordinate the entry and permanence of all actors in the sector. Starting from this indefectible presupposition, this paper examines the peculiar position of the new private actors operating in the space market, which require rethinking of traditional dispute resolution dynamics, highlighting their specific needs, including agile paths in the attribution of competence with respect to the peculiarities of a dispute, a faster resolution of disputes and clarification and development of the applicable legal standards in the sector. This study continues with an analysis of the three means of dispute settlement that appear closer to these needs, shedding light to their pros and cons: arbitration, mediation and conciliation. On the basis of this analysis, particular attention is placed on the benefits of arbitration, also through a comparison of its use in other emerging industries that seem to have similarities with the space sector demands. This will lead to an inevitable reflection on the PCA Optional Rules for Arbitration of Disputes relating to Space Activities, ten years after their adoption. Starting from its key Provisions, this paper intends to point out the aspects that have caused a poor application of these rules and those that can lead in the near future to more assiduous and constant use of them. Our study concludes with a reflection on the adequacy of arbitration as a means of resolution of space-related disputes, with reference to the desirability of setting up ad hoc courts in this area.