Dispute Settlement in International Space Law

Prof. Stefano Saluzzo
University of Piemonte Orientale







Outline



- 1. The notion of spce related disputes
- 2. IDS in international law
- 3. Why dispute settlement in ISL?
- 4. The existing framework
- 5. Obstacles in space related disputes
- 6. PCA Optional Rules
- 7. An International Tribunal for Space Law?



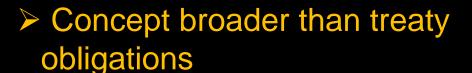
Notion of space related disputes



"A disagreement on a point of law or fact, a conflict of legal views or of interests" (PCIJ, *Mavrommatis*)

Space related disputes:

- Accidents occurring in space
- Events on Earth
- Breach of contract?

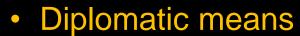




IDS in international law



UN Ch, art. 33: "The parties to any dispute [...] shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice"



Arbitral/judicial proceedings





IDS in international law



- Diplomatic means:
 - Non-binding
 - No procedural rules
- Arbitral/judicial proceedings
 - Binding on the basis of consent
 - Compulsory jurisdiction (ICJ, ITLOS)



Why dispute settlement in ISL?



Traditional rationale of IDS → to prevent **WARS**

Rationale of IDS in space law? -> to prevent





Why dispute settlement in ISL?



Modern conception of IDS

- stable international relationships
- legal certainty for public/private activities
- development of legal framework

- > Technical nature of disputes
- Private parties' interests



EUSPACE The existing framework



1967 Outer Space Treaty (OST)

Art. IX: If a State Party to the Treaty has reason to believe that an activity or experiment planned by it or its nationals in outer space [...] would cause potentially harmful interference with activities of other States Parties in the peaceful exploration and use of outer space [...] it shall undertake <u>appropriate</u> international consultations before proceeding with any such activity or experiment.

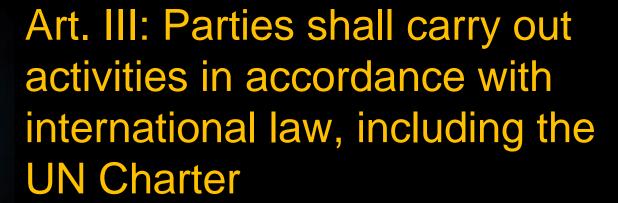


SPACE The existing framework



1967 OST

- Only diplomatic (non-binding) means
- 2. Purely preventive nature





SPACE The existing framework



1973 Liability Convention
Non-compulsory procedures:

Art. IX: claims through diplomatic channels

Art. XIV: Claims Commission

Private parties?



ISPACE The existing framework



Alternative DS mechanisms:

- 1. International Court of Justice
- 2. Ad hoc arbitration
- 3. Claims before national courts



SPACE The existing framework



International Court of Justice

- Unilateral claim for OST and LC→ 23
 States
- No access for private parties
- Exceptions and reservations



Obstacle in space related disputes



Confidential nature of States' space activities

- Procedure → disclosure of evidence (Corfu Channel Case)
- 2. Substance → essential security interests



Obstacle in space related disputes



Immunity of States (claims at national level)

- From foreign jurisdiction
- From enforcement of judgments



Obstacle in space related disputes



Private parties

- No access to international courts
- International commercial arbitration (UNCITRAL)





2011 PCA Optional Rules for Arbitration of Disputes Relating to Outer Space Activities

- The need for a flexibile international arbitration
- Drafting based on UNCITRAL rules
- Previous rules of the PCA (International organizations, private parties, natural resources and environment)





- Nature: not a new IDS mechanism
- Optional character: parties agree to submit a dispute to arbitration under the Rules (compromissory clauses in treaties, contracts...)

- Autonomy of the parties
- Final and binding award





Applicability

- All actors involved in "commercial" space activities
- "the characterisation of the dispute as relating to outer space is not a necessary pre-condition for the settlement of such dispute under the Rules" (art. 1 OR)
 - » "any rule, decision, agreement, contract, convention, treaty, constituent instrument of an organization or agency, or relationship out of, or in relation to which, the dispute arises"





- Confidentiality: "confidentiality adviser" (no absolute exception)
- Immunity: consent to arbitration → waiver of immunity
- Avoidance of unnecessary delays



- Applicable law
- Choice of parties
- International and national rules deemed appropriate





Scientific and legal expertise

- List of arbitrators with expertise in spacerelated matters
- List of experts to support arbitrators in the decision





Evaluation

- Flexible and neutral mechanism
- Broad applicability
- Address obstacles of space-related disputes
- Binding decision
- Indipendent right of action for private parties



» No mandatory IDS



International Tribunal for Space Law?



1978 ILA Draft Convention on Settlement of Outer Space Disputes

- Art. 37: "International Tribunal for Space Law"
- Based on ITLOS model
- Several exceptions and reservations allowed



International Tribunal for Space Law?



Multi-door courthouse for space related disputes

- DS ranging from arbitration to adjudication
- Experts screening (facts and features of the dispute)
- Determination of the mode of DS





International Tribunal for Space Law?



Multi-door courthouse for space related disputes

- Highly institutionalised mechanism
- Less flexibility for parties autonomy
- Ensure uniform interpretation and development of international space law





QUESTIONS

