

# Dispute Settlement in International Space Law

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# Outline



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2. IDS in international law
3. Why dispute settlement in ISL?
4. The existing framework
5. Obstacles in space related disputes
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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?

➤ Concept broader than treaty obligations



# 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”



- Diplomatic means
- 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

**STAR  
WARS**



# 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



# 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 **appropriate international consultations** before proceeding with any such activity or experiment.





# The existing framework



## 1967 OST

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

Art. III: Parties shall carry out activities in accordance with international law, including the UN Charter

# The existing framework



## 1973 Liability Convention

Non-compulsory procedures:

Art. IX: claims through diplomatic channels

Art. XIV: Claims Commission

Private parties?



# The existing framework



## Alternative DS mechanisms:

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



## 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

1. 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)



# PCA Optional Rules



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

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





# PCA Optional Rules



- **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”

# PCA Optional Rules



- **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 space-related 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
- Independent 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

