

# Adjudication and Arbitration of Disputes Regarding Space Activities

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## ABSTRACT

With human presence in outer space including the moon and other celestial bodies, the exploration and exploitation of outer space became a reality.

The potentials of outer space activities and its obvious benefits, encouraged different governments, as well as private organizations to invest huge amounts of capital and resources for space commercialization. This gave rise to international cooperation, as well as competition and the inevitable conflicts and disputes. So far such disputes and conflicts have been limited to cases which have been resolved, by, or are with in jurisdiction of international space treaties or space laws. Such as 1972 liability convention and 1967 space treaty.

However with expected increase in future space activities, here will be a large number of spacefarers, or spacedwellers inhabiting space stations or planets. Therefore, there will be a need to analyse and address possible disputes among these communities.

In this paper the author will try to discuss the problem and propose some procedures to settle such conflicts of international space law.

## INTRODUCTION

In general, disputes arisen from space activities or during any residency in space, can be divided into two types:

civil and criminal.

In any legal dispute there will be three main issues: The substantive law, the procedure, and the administrative body. For example articles VI and VII of 1967 space treaty explains that: " Article VI states parties to the treaty shall bear international activities in outer space, including the moon and other celestial bodies wether such activities are carried on by governmental agencies or non governmental entities and for assuring that national activities are carried out in conformformity with the provisions set forth in the present treaty.

The activities of non governmental entities in outer space, including the moon and other celestial bodies shall require authorization and continuous supervision by the appropriate state party to the treaty when activities are carried on in outer space, including the moon and other celestial bodies by an international organization, and by the states parties to the treaty participating in such organization."

And according to article VII (( each state party to the treaty that launches or procures the launching of an object in to outer space, including the moon and other celestial bodies, and each state party from whose territory or facility an object is launched is internationally liable for damage to another state party to the treaty and to its natural or juridical persons by such object or its component part in earth, in air space or in outer space, including the moon and other celestial bodies.))

As it can be seen, any such articles can result into a dispute which would require a procedure to handle it. The selected location for judication of a dispute will have a significant influence on any suggested procedure aimed to settle the dispute. While space trips are very limited in duration at the present time, this will not be the case in future. Therefore earthbound courts can not be considered as a solforum for outer space disputes and alternatives have to be loocked into. The procedure for choosing a forum in general principle law, could be mentioned as follows:

- 1- The tribunal situated in the place residence of the plaintiff.
- 2- The tribunal where the disputed act, has taken place.
- 3- The tribunal situated in the place of residency of the difendent. Disregard the competency of the tribunals which are competent for the crimes comited in earth.

Of the above three, the second opption seems to be the most appropriate. In the multinational space settlements of the future different nationals with various customs and beleifs will form a community and therefore fallowing different state laws to apply, will result in confusion, to other argument in favour of the proposed option is the availability of the evidence and witnesses in the place of the dispute and the extra ordinary cost of transportation of the witnesses from their space residency to the earth.

It has been argued that with the advances in space, there will also be technological break through in telecommunication allowing earth bound courtrooms to deal with space disputes.

However, as it stands, there is no possibility of real time communication with a planet as distant as mars it takes more than ten minutes for a response to be received from the planet mars. Physical examination of any evidence will also not be possible and it may not be acceptable to courts. According to article 2 of liability convention " A launching state shall be absolutely liable to pay compensation for damage caused by its space object on the

surface of the earth or to aircraft in flight." Article 3 also mention an important principle " in the event of damage being caused elsewhere than on the surface of earth to a space object of one state to persons or property on board such a space object by a space object of another launching state, the latter shall be liable only if the damage is due to its fault or the fault of persons for whom it is responsible".

For the settlement of dispute the liability convention prescribed certain rules and procedures mentioned in articles 8 up to 23 of the convention.

In general the point concern will be the competence of authorities involved in judgement and assessment of the dispute. Obviously, the commander of any space vehicle or any specially trained personnel aboard of space ship should have the executive power to take necessary actions aimed to resolve a dispute or to contain and control any disputed situation until appropriate judicial measures can be taken.

Space environments and its influence a human social and physical behaviour would require specially trained and qualified people to judge any situation by its merits.

The main issue regarding any space dispute is the pertinent laws to be used in order to resolve the problem. Many international conventions deal with possible arguments such as 1972 liability convention.

In case the settlement is not prescribed in the text of the convention or treaty the following international procedures can be used:

- 1- Negotiation: Where the parties involved try to settle any dispute through mutual understanding and agreement.
- 2- Arbitration: Where the parties cannot reach a satisfactory solution and agree to resolve the matter through an arbitrator body.
- 3- Trial: Where a solution has to be judged and dictated to both parties.

As we see clearly in the case of liability problem the legislator determine proper procedures for the settlement of civil dispute arising from space activities.

This is not a juridical principle. There are some other juridical civil problems in relation with the persons on board an spacecraft, space station, or persons residing and or working in outer space including the moon and other celestial bodies. In This respect, we must mention the text of article 8 of space treaty which explain that " A state party to the treaty on whose registry an object launched into outer space is carried shall retain jurisdiction and control over any personnel there of, while in outer space or on the celestial bodies.

In article 12 of the moon agreement it is mentioned "states parties shall retain jurisdiction and control over their personnel, vehicle, equipmen, facilites, stations and installations on the moon." The ownership of space vehicles, equipment, facilities, station and installation shall not be affected by their presence on the moon.

In my paper presented in 1961 under the title "The problem of applying terrestrial law in outer space" fourth colloquium". Under the title B=legal relation between persons aboard moving spacecraft it was explained that since a space craft like an aircraft

is used once, it has been registered over a portion of the territory of the state whose nationality it has, such aircraft as well as the persons on board should be subject to the law of the country of vehicle whenever the territorial law would be competent, while acts concerning the civil and personnel status of the individual on the board the vehicle will be governed by their respective national law.(1)

Concerning the criminal act committed in outer space, including the moon and other celestial bodies there is two major principles which should be concerned the terrestrial law which should be applied in outer space in respect to criminal acts:

First there are crime committed on earth which are not within the scope of this paper.

Second, crime committed against safety and security of space flight or sabotage in outer space; It seems that an international convention relating crime committed in outer space on board spacecraft, space station, or in celestial bodies, particularly in case of crime committed by permanent citizen of celestial bodies should be concluded.

#### INTERNATIONAL JURISDICTION FOR THE SETTLEMENT OF SPACE DISPUTE

The international conventions or treaties in several cases refer to international law.

According to article 3 of the 1967 space treaty

" state parties to the treaty shall carry on activities in the exploration and use of outer space, including the moon and other celestial bodies, in accordance with international law including the charter of the united nations in the interest of maintaining international peace and security and promoting international cooperation and understanding.

In paragraph 3 of article 15 of 1979 moon agreement it is mentioned that:

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(1) THE PROBLEM OF APPLYING  
TERRESTRIAL LAW IN OUTER  
SPACE 12 CONGRESS  
WASHINGTON D.C.  
OCTOBER.03.1961

" If difficulties arise in connection with the opening of consultations do not lead to a mutually acceptable settlement, any state party may seek the assistance of the secretary general, without seeking the consent of any other state party concerned, in order to resolve the controversy" consequently, the reference to international law is also one of the principle for settlement of international dispute.

Therefore, here we will discuss the international rules and procedures in relation with this subject.

In connection with this subject, chapter 6 of the charter of united nations devoted to pacific settlement of disputes provided that the party to any dispute the continuance of which is likely to endanger the maintenance of international peace and security shall first of all seek a solution by various means onlisted as anegotiation, equity, judical settlement, resort to regional agencies or arrangements or other peaceful means of their own choice."

The establishment of the international court of justice which represents the juridical organ of the united nations, can be considered as a valuable means available to settle international law dispute as submeitted to it.

According to paragraph 3 of article 2 of the charter of the united nations.

All members shall settle their international disputes by peaceful means in such a maner that international peace and security and justice are not endangered, but according to paragraph 7 " nothing contained in the

present charter shall authorize the united nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present charter, but this principle shall not prejudice the application of inforcement measures under chapter 7, which concern the action with respect to treats to the peace breack of the peace and acts of agression. As we previously cited international space conventions and treaties propose the solution for the case of any dispute arising from the interpretation or application of agreement may be refferd by any contracting party. According to article 9 of 1967 space treaty " A state party to the treaty which has reason to believe that an activity or experiment planed by another state party in outer space including the moon and other celestial bodies, would cause potentially harmful interference with activities in peaceful exploration and use of outer space, including the moon and other celestial bodies, may request consultation concerning the activity or experiment".

The term of consultation is one of the major principle for amical settlement of dispute. This term is also used in paragraph 2 and 3 of article 15 of the 1979 moon agreement as follow:

" Article 15 " A State party which has reason to believe that another state party is not fulfilling the obligations, incumbent upon it persuant to this agreement or that another state party is interfering with the

rights which the former state has under this agreement may request consultation with that state party. A state party receiving such a request shall enter into such consultation without delay."

Any other state party which requests to do so shall be entitled to take part in the consultation.

Each state party participating in such consultation shall seek a mutually acceptable resolution of any controversy and shall bear in mind the rights and interests of all states parties. The secretary general of the united nations shall be informed of the results of the consultations and shall transmit the information received to all states parties concerned.

#### OBSERVATION

Taking into consideration the above mentioned explanations one can make the following observation that:

Current laws and codes of behaviour are designed for civilizations on earth with regards to the customs and historical background of the community.

Therefore new laws and codes have to be established to govern future communities in the space like current governing laws of the society, many future laws meant for space (astrolaws), may have to go through different evolutionary stages before its maturity.

A special legislative corp has to be established under the appropriate internationally recognized organization, such as copuos, to begin the task of codification of new laws.

Such a legislative body must benefit from the latest

experiences of studies in human reactions in outer space.

It should pay a special attention to social behaviour in close confinements, because most near future settlements in outer space will be of that type.

#### CONCLUSION

Settlement and work in outer space, including the moon and other celestial bodies is no longer a dream.

One can draw similarities and parallels on patterns of problems and disputes or any early settlements on land throughout the history of mankind. Many legal, social, and philosophical issues have to be considered. Legal regulations have to be established and laws have to be defined. Many legal terms have to be redefined in order to become qualified terminology in man's new environment. The outer space treaty of 1967, and the moon agreement of 1984 set broad and extensive principles dealing with many aspects of outer space activities.

However, many of the regulations need to be enhanced and clarified and detailed. In principle it has been agreed that the exploration and use of outer space shall be carried out for the benefit and in the interest of all countries, irrespective of their economic or scientific capabilities and advances.

The moon and its natural resources are common heritage of mankind, and is not subject to national appropriation.

These basic principles and agreements should be used to regulate the activities of human in outer space settlements.

Unlike any previous historical examples of new settlements in a new found land, space settlements will not start to expand quickly and out of proportion.

Extensive planning and preparation has to go into each expansion program. Therefore, there will be a plenty of opportunities to insure a gradual and comprehensive formation of a new "astrolaw" based on existing international laws. Many complications of existing terrestrial laws are the result of diverse local customs and environmental climates.

There are no existing customs issues in outer space as is currently known, hence there is a change for mankind to start a new beginning with a unilateral space constitution regulating public, civil, penal, laboral and commercial laws in outer space.

These can be pivoted on currently agreed international treaties and the U.N. charter.

Terrestrial laws should be applied to any disputes originated on the earth. However a different procedure is needed in order to simplify the process when parties involved in the dispute are not present on the earth.

Any other dispute originated in outer space is best dealt with in its place of origin and therefore, the new set of astrolaws will be appl-

ied.

All members of new space settlements should state their legence to a unique set of space laws so that current existing complications and interrelation of local, state, and international laws can be avoided.

## FOOTNOTES

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- 2 . The Convention on International Liability for Damages caused by space objects 1972.
- 3 . The Convention on registration of objects launched into outer space dated 14.January.1979.
- 4 . Agreement on the rescue of Astronauts, the return of Astronauts, and the return of objects launched into space, 22.April.1968
- 5 . Moon Agreement 1979.
- 6 . Convention on the law of the seas, 1982.
- 7 . Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water, 5.August.1983.
- 8 . The Antarctic Treaty 1959 dated 23.June.1961.
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