

IISL-96-IISL.2.03

CASES AND METHODS OF DISPUTE SETTLEMENT IN SPACE LAW

By Dr. Hassan Safavi
President, Air Space Research
and Planning
International Arbitrator

ABSTRACT

The expansion of commercial and other beneficial uses of outer space inevitably will lead to disputes between various participants. States and other entities may have interests in particular disputes. In this regard, space law has substantial similarity to air law. Certain disputes arising from activities involving aircraft are resolved in domestic law, however, while others are resolved by international law.

The unification of domestic laws of various countries in the field of international activities facilitate their mutual cooperation and avoid any conflict arising from such activities. States tried to resolve their problems previously by negotiation, conclusion of bilateral or multilateral agreement, and finally by conclusion of international conventions or treaties. Alternatively, where the cooperation of various countries is based on the rules and procedures mentioned in international conventions or treaties, the contracting states prepare their domestic laws in accordance with such instruments. Consequently, the unification of domestic laws of the different countries is obtained. The liability rules mentioned in the Warsaw Convention concerning damage caused to passengers, cargo and mail which is textually mentioned in domestic flight is the best example to prove the necessity of unification of domestic laws of different countries.

In this paper, the various categories of cases and methods of dispute settlement in air and space law are compared and contrasted. Similarities as well as differences are identified, and the relative superiority of one legal regime over the other in specific circumstances is discussed. Finally, proposals are made for the formulation of necessary international rules to supplement the existing space law.

I. INTRODUCTION

In space law, disputes arising from space activities can be divided into different categories:

- A. Disputes occurring from civil space activities;
- B. Disputes occurring from criminal acts;
- C. A combination of the two above mentioned cases; and
- D. Disputes resulting from the application and interpretation of principles mentioned in international conventions and treaties.

The major sources of international rules regarding the cases and methods of dispute

settlement are mentioned in the 1972 Liability Convention.¹ In the preamble of this Convention it is written that "the establishment of [these] rules and procedures will contribute to the strengthening of international cooperation in the field of the exploration and use of outer space for peaceful purposes. . ."

In this Convention, after giving a definition of the term "damage" in article 1(a) as a loss of life, personal injury or other impairment to health or loss or damage to the property of States or persons, natural or juridical, or property of international intergovernmental organizations, prescribes a rule which is mentioned in articles 8 and 9 for the presentation to a launching state a claim for compensation of damage. According to article 9, "A claim for compensation for damage shall be presented to a launching state through diplomatic channels." The determination of disputes is generally the same as in arbitration procedures.²

1. The rules regarding the compensation of claims is mentioned in article 12 of the Liability Convention. According to this article:

The compensation which the launching State shall be liable to pay for the damage under this Convention shall be determined in accordance with international law and the principles of justice and equity, in order to provide such reparation in respect of the damage as will restore the person, natural or juridical, State or international organization on whose behalf the claim is presented to the condition which would have existed if the damage had not occurred.

1. Convention on International Liability for Damage Caused by Space Objects, March 29, 1972.

2. See generally articles 15 - 20 of the Liability Convention.

This principle does not have a counterpart in air law. In this matter the space law has superiority to air law.

2. Article 23, subsection 2 of the Liability Convention prescribes that "No provision of this Convention shall prevent States from concluding international agreements reaffirming, supplementing or extending its provisions." Subsection 1 of this article provides that "The provisions of this Convention shall not affect other international agreements in force in so far as relations between the States Parties to such agreements are concerned."

Different structures for the purposes of activities, and the organization, management and methods of settlement of disputes can be found in various international space conventions. Examples include the INTELSAT Agreement of 1971³, the INMARSAT Convention of 1976⁴, the EUTELSAT Convention of 1982⁵, and the EUMETSAT Agreement of 1983⁶.

Finally, in the case of disputes occurring between states parties to the Outer Space Treaty of 1967⁷ and 1972 Liability Convention, where

3. Agreement Relating to the International Telecommunications Satellite Organization, *entered into force* February 12, 1973.

4. Convention on the International Maritime Satellite Organization, September 3, 1976.

5. Convention Establishing the European Telecommunications Satellite Organization, *entered into force* September 1, 1985.

6. Convention for the Establishment of a European Organization for the Exploitation of Meteorological Satellites, *entered into force* June 19, 1986.

7. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, January 27, 1967.

they do not arrive at agreeable conclusions, but where the subject nevertheless corresponds to the cases mentioned in the Charter of the United Nations,⁸ resort should be taken of article 33 which recommends negotiations, investigation, mediation, and other peaceful means of dispute resolution. Thus, the Complainant party can refer to the United Nations Secretary General, or to the Hague Tribunal, for appropriate measures to be taken for the settlement of the disputes.

II. PENAL ACTS

Crimes and offenses committed aboard spacecrafts are submitted to the domestic laws of countries, as there are no international rules in this subject. In air law, there are several international conventions relating to crimes and offenses committed against aircraft, crew, passengers, and cargo.

The Tokyo Convention of 1963 concerns any kind of crime committed aboard aircraft in flight which causes danger to aircraft, crew, passengers, cargo, etc.⁹ In 1970, the Hague Convention was adopted which, according to article 1, declares that any person aboard an aircraft in service who, by means of violence or threat of violence, takes in his possession control of the aircraft, commits a crime.¹⁰

In 1971, the Montreal Convention was adopted which concerns the security of an aircraft or causing damage to an aircraft in flight or to air navigation facilities. According to article 1 of this Convention, any person who intentionally commits the following acts is recognized as a criminal:

8. Charter of the United Nations, June 26, 1945.

9. Convention on Offenses and Certain Other Acts Committed Aboard Aircraft, September 14, 1963.

10. Convention for the Suppression of Unlawful Seizure of Aircraft, December 16, 1970.

A. By violence commits any act against passengers of an aircraft in flight which can put in danger the security of the flight;

B. To destroy an aircraft in service or to cause damage to said aircraft in some way that makes the flight impossible;

C. To put any material or substances in an aircraft in service which will destroy the aircraft or to cause danger to the aircraft in flight; and

D. To give any fictitious information which puts the security of the flight in danger.

These international rules do not exist in space law.

III. PROCEDURES FOR DETERMINATION OF CRIMINAL DISPUTES: COMPETENT AUTHORITIES

Among the primary objectives of all countries is to guarantee the security of their airspace and the safety of flight within that airspace. In order to achieve this, they try to restrain the accomplishment of crime, and take measures to prevent criminals from escaping from punishment. In international air law the following states are recognized as competent authorities for prosecuting and judgment of criminal acts:

A. State of registration of aircraft;

B. State in which the crime takes place and creates effects in its territory;

C. State in which the criminal resides permanently or is a subject of that state;

D. State in which the crime is committed against its subjects and matters;

E. State in which the crime puts the security of the state in danger; and

F. State in which the crime is committed against the rules of security of the flight.

IV. OBSERVATIONS

The use of outer space, including the moon and other celestial bodies, has many advantages for the people of all countries in the world. Among the important benefits currently obtained are the use of outer space for communications and transportation. The commercialization of outer space is becoming a reality.¹¹ The Liability Convention concerns the compensation of damages caused by space objects. But many problems regarding civil and penal acts as I mentioned above is submitted to the domestic laws of each country. This situation can cause conflicts between different states. In this regard, see article 8 of the 1967 Space Treaty.

The formulation of necessary international rules will facilitate international relations between developed and developing countries in outer space activities.¹² Therefore, for safeguarding the security of spaceflight and in order to protect the interests of all the countries it is necessary to conclude an international convention relating to crimes and offenses committed aboard spacecraft. Article 4 of the 1967 Outer Space Treaty forbids the placement "in orbit around the Earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction" but it does not forbid the carriage of arms, munitions or explosive materials adequate to single destruction. This act is prohibited in air law and is considered as crime. It should be prohibited in space law.

V. CONCLUSION

The five space treaties such as the 1967 Outer Space Treaty, the Agreement on the

Rescue of Astronauts,¹³ the Liability Convention, the Registration Convention,¹⁴ and the Moon Agreement¹⁵ are the major principles of international space law. The 1967 Outer Space Treaty can be viewed as furnishing a general legal basis for the peaceful use of outer space and providing a framework for the developing law of outer space. The four other treaties could be said to deal specifically with certain concepts included in the 1967 Treaty. The 1984 Moon Agreement, for example, concerns the exploration, use and exploitation of its mineral resources and other benefits.¹⁶ This Agreement has been ratified by only 9 states as of January 1, 1994.¹⁷

The review of the Moon Agreement is necessary in order to establish an international regime acceptable to the international community.¹⁸ The methods of dispute

13. Agreement on the Rescue of Astronauts, the Return of Astronauts, and the Return of Objects Launched Into Outer Space, April 22, 1968.

14. Convention on Registration of Objects Launched into Outer Space, January 14, 1975.

15. Activities of States on the Moon and Other Celestial Bodies, *entered into force* July 11, 1984.

16. For a discussion of article 11, see, e.g., Matte, *Legal Implications of the Exploration and Uses of the Moon and Other celestial Bodies*, in PROCEEDINGS OF THE 35TH COLLOQUIUM ON THE LAW OF OUTER SPACE 471 (1993).

17. These are Australia, Austria, Chile, Mexico, Morocco, the Netherlands, Pakistan, the Philippines, and Uruguay. In addition, France, Guatemala, India, Peru, and Romania have signed the Moon Agreement.

18. Safavi, *Review of the Moon Agreement - Some Legal Considerations*

11. See generally H.L. VAN TRAA-ENGELMAN, *COMMERCIAL UTILIZATION OF OUTER SPACE - LAW AND PRACTICE* (1993).

12. Safavi, *Legal Aspects of International Cooperation in Space*, in PROCEEDINGS OF THE 26TH COLLOQUIUM ON THE LAW OF OUTER SPACE 255 (1984).

settlement occurring from execution of the subject mentioned in article 11 of the Moon Agreement should protect the rights and benefits of all countries irrespective of their economic or scientific development on the basis of equality and in accordance with international law.

In October, 1985, this author presented a paper concerning "Legal Problems Of Registration of Objects."¹⁹ In 1988 Dr. M. Bourelly presented a paper relating to the same subject²⁰. It is not possible to apply the rules and methods of dispute settlement in cases where the satellite launched into outer space is not registered in the United Nations' registration book. Other problems in international space law which will require dispute resolution include problems concerning space debris which cause danger to the active satellites in orbit around the earth.²¹

Concerning the Juridical Status of the Moon Agreement, presented to the 38th Colloquium on the Law of Outer Space, Oslo, Norway, October, 1995.

19. PROCEEDINGS OF THE 28TH COLLOQUIUM ON THE LAW OF OUTER SPACE 199 (1986).

20. *Is it Necessary to Re-Negotiate the Convention on Registration?*, in PROCEEDINGS OF THE 31ST COLLOQUIUM ON THE LAW OF OUTER SPACE 227 (1989).

21. Diederiks-Verschöor, *Legal Aspects of Environmental Protection Regarding Debris*, in PROCEEDINGS OF THE 30TH COLLOQUIUM ON THE LAW OF OUTER SPACE 131 (1987). See also Karl-Heinz Bockstiegel, *The Draft of the International Law Association for a Convention on Space Debris*.

The cases and methods of dispute settlement in space law are the consequences of space activities. If such activities do not exist, there are no rights, no responsibilities, and no dispute to be resolved in the human society. It is obvious that there is interconnection between different problems that exist in space law, and it is appropriate to an environment whose nature is so extraordinary. The extension of international law to outer space has been gradual and evolutionary commencing with the study of questions relating to legal aspects, proceeding to the formulation of principles of a legal nature, and then incorporating such principles in general multilateral treaties.

Taking into consideration different aspects of space law in relation with the methods of settlement of disputes, I do believe that the conclusion of a new international convention pertaining the rules and procedures to safeguard the security of spaceflight and to prevent the commitment of criminal acts against spacecraft, astronauts, passengers, cargo, and the establishment of an independent international organization for management of outer space activities such as International Civil Space Agency (I.C.S.A.) which I proposed several times in my previous papers, is the reasonable solution to resolve different problems in relations with space activities.