IISL-96-IISL.2.07

TENDENCIES OF DISPUTE SETTLEMENT IN PRESENT „EASTERN EUROPEAN" SPACE LAW

Dr. Mahulena Hošková*

Abstract

The substantial socio-economic changes, which occurred in the countries of the former Soviet block in recent years brought about *inter alia* certain changes in the understanding of dispute settlement procedures. One of the best examples of this evolution is Intersputnik - the telecommunication organisation of the former socialist block. In contrast to its former legal basis, detailed dispute settlement procedures are under preparation as a result of the far-reaching re-construction of its organisational structure. Certain mechanisms of dispute settlement were introduced also into the bilateral space co-operation agreements concluded by the Russian Federation in the years 1992-1993. As regards international treaties concerning space activities concluded between the successor States of the former Soviet Union, both in the Agreement On Joint Activities in the Exploration and Exploitation of the Outer Space, entered into by 9 such states in Minsk in 1991, and the Agreement Concerning Arrangements for Maintaining and Using Space Infrastructure Facilities in Pursuance of Space Programs of 1992, specific negotiations mechanisms have been introduced. Furthermore, the European Space Agency has concluded a great number of agreements on various levels, with partners from the former COMECON states; they reflect ist long experience in formulating provisions on dispute settlement as shown by the pertinent regulations of the General Clauses and Conditions for ESA Contracts. Taking into account the available multi- and bilateral co-operation agreements as well as information on the dispute settlement procedures involving private subjects, this paper seeks to analyse these tendencies and endeavours to draw some general conclusions concerning these developments in relation with the legal subjects from the former COMECON states.

1. Introduction

Notwithstanding the political and economical barriers existing before 1989, there had been considerable co-operation among the specialists from various geographic areas with their counterparts from the Middle and Eastern European countries on various levels since the beginning of the space era. The strategical relevance of space exploration and the differences in the legal traditions lead, however, to a general reluctance of the co-operating partners to bind themselves by detailed justiciable legal obligations; as a consequence, the joint activities were usually performed on a rather informal basis: The duties of the parties, if at all formulated, were usually inserted into protocols on the sessions of the respective working groups or agreed upon by an exchange of letters. The legal character of these documents oscillated

* JUDr. (Prague), CSc.; Member IISL.
Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Germany.

between statements without legally binding force and special forms of agreement. Generally speaking, one of the consequences of this situation was that - as far one can judge on the basis of the information accessible - usually no mechanisms were provided for the settlement of disputes which might have occured during the implementation of the joint projects.

After 1989, the situation changed profoundly.: Privatisation dramatically diversified the scene of the Middle and Eastern European subjects involved in space activities and called for a more precise regulation of the legal framework of the international co-operation. This has been the case not only with regard to for the meritorial rules (obligations), but, as a consequence, also as regards for the dispute settlement procedures. More frequently, rules concerning the treatment of differences relating to the interpretation and implementation of such agreements were introduced into the texts of these legal instruments. The variety of these mechanisms reflects the diversity of the relations which occured in the course of the space co-operation - they represent almost all possible combinations of the relations between states, international organisations and legal persons[1].

2. Examples of Dispute Settlement Mechanisms in the Space Co-operation Agreements of the Former COMECON-States as Parties of these Agreements

a) The states of the former Soviet Union, among them especially Russia, inherited after 1991 one of the most monumental space programs. This „heritage" did not represent only the results of its indisputable successes and enormous experience, but also the desperate lack of financial resources. Thus, international co-operation, both on the level of agreements among the former USSR states and agreements, involving especially Russia, with the western partners became often the only possibility to save a part of this potential.

In conformity with these policies signed the Russian Federation in 1991/93 a group of bilateral agreements that established the framework for her co-operation with the space agencies of the - for future common activities most promising - countries[2]. Although all these documents create the legal basis for the implementation of the common projects, the models of the regulation of the dispute settlement mechanisms provided for vary to a considerable extent:

Article 8 of the Agreement between the Russian Space Agency[3] and the German Agency for Space Affairs (DARA) on Co-operation in the Exploration and Exploitation of Outer Space of 1 March 1993[4] stipulates that in case of disputes concerning the interpretation and implementation of this agreement „...the Parties shall enter without delay into consultations." If these fail, and unless otherwise provided by specially agreed procedures for particular projects, each unresolved problem will be brought to the attention of the Directors-General of both Agencies „...in order to reach a joint final solution."[5]

In contrast to the Russian - German Agreement, the Agreement between the Government of Japan and the Government of the Russian Federation on the Co-operation in the Field of the Exploration and Exploitation of Outer Space for Peaceful Purposes[6] of 13 October 1993 contains only a more general provision that calls for diplomatic negotiations in the event of differences concerning the implementation of the common projects.: According to its article 8, both governments shall, if necessary, address in diplomatic negotiations all problems which might arise in connection with this agreement[7].

Another way of dispute settlement was chosen in the intergovernmental Agreement between the United States of America and the Russian Federation Concerning Co-operation in the Exploration and Use of Outer Space for Peaceful Purposes of 17 June 1992[8], the annex of which deals primarily with the problems connected with intellectual property. As in the German - Russian Agreement, article I lit. d of the Annex put the emphasis on consultation between the Parties; if, however, these fail, the dispute shall, on the basis of an agreement between the Parties, be submitted to an arbitral tribunal for binding arbitration in accordance with the applicable rules of the international law. Unless the Parties otherwise agree, the UNCITRAL arbitration rules will be applied[9].

The French national space agency CNES is intensively co-operating with Russian subjects on the basis of agreements or contracts. Nothwithstanding the fact that so far no real dispute settlement procedures have been initiated, the pertinent clauses constitute common elements of these documents. For instance, under the agreement between CNES and the Russian Space Agency concerning the SCARAB project, in case of a dispute the first step would lead towards an attempt to settle the matter by the program committee of the project. If necessary, the problem should be brought before the steering committee of the project; in the third instance, the president of the CNES would decide. The general policy is, however, even if problems occurr, not to interrupt the co-operation and instead of resorting to the formal dispute settlement procedure, to seek for a mutually acceptable solution that does not constitute an unbearable financial burden for anyone of the Parties.

b) A basically different approach with regard to the dispute settlement was taken by the signatories of the agreements concluded under the auspices of the Commonwealth of Independent States (CIS): Neither the Agreement on Joint Activities in the Exploration and Exploitation of the Outer Space of 30 December 1991[10] concluded in Minsk (the Minsk agreement), practically simultaneously with the CIS´s creation among nine successor states of the USSR, nor the Agreement concerning Arrangements for Maintaining and Using Space Infrastructure Facilities in Pursuance of Space Programs of 15. 5. 1992[11] (the Tashkent Agreement) concluded among 10 former USSR states, nor the Agreement on the Exploitation of System of Military Communication Satellites of 12 March 1993[12] contain any of the „traditional" dispute settlement clauses.

Nevertheless, certain mechanisms for the joint problem-management have been provided for:: Article 6 of the „Minsk Agreement" contains e.g. a statement that the States Parties will co-ordinate their activities aimed at the settlement of international legal problems of space research and exploitation[13]; obviously, the actual legal relevance of this rather general obligation of the Parties, namely „to co-ordinate" their activities with the view to settle these „international legal problems", depends upon its future interpretation and application. Another interesting solution has been provided in the already mentioned „Tashkent Agreement" of 1992; its article 5 incorporates the rules of the Convention on International Liability for Damage Caused by Space Objects of 1972[14] (Liability Convention): Under this agreement, a special multilateral commission set up by the States Parties for the determination of the amounts of compensation shall be created; as far as space activities are concerned, this Commission will follow the provisions of the Liability Convention. It would be interesting to see, however, if also its composition would correspond to the creation of the Claims Commission under Articles XV. and XVI. of the Liability Convention or if a different *ad hoc* solution would be found.[15]

Among the important bilateral agreements regulating the space activities of the former Soviet-block states, it is necessary to mention the Agreement on the Order of Exploitation the Baikonur Cosmodrome signed by the Russian Federation and the Republic of Kazakhstan on 25 May 1992[16], followed by the Treaty between the Government of the Russian Federation and the Government of the Republic of Kazakhstan on the leasing of the Baikonur Complex of 10 December 1994[17]. Because of the framework character of the first of these two agreements, its principles are referring in all sensitive points to special rules. Consequently, Article 4 of this Agreement stipulates that for the settlement of property and economy problems specified in article 2 (e.g. implementation of the right of use of the cosmodrome, implementation of the property rights) a special organ will be created on the cosmodrome, the composition and procedural rules of which will be governed by the law of Kazakh Republic[18].

3. Examples of Dispute Settlement Mechanisms in the Space Co-operation Agreements between International Organisations and former COMECON-States as Parties of these Agreements

a) An active role in the space co-operation with the Eastern partners has been played traditionally by the European Space Agency (ESA). Article XIV(1) of the Convention of the European Space Agency which entered into force in 1980, provides that „the Agency may, upon decisions of the Council taken by unanimous votes of all Member States, co-operate with other international organisations and institutions and with Governments, organisations and institutions of non-member States, and conclude agreements with them to this effect".[19] Pursuing this policy, ESA concluded already in 1990 the Agreement between the European Space Agency and the Government of Soviet Socialist Republics concerning Co-operation in the Field of the Exploration and Use of Outer Space for Peaceful Purposes[20] which entered into force on 25 April 1990 for the period of 10 years and substituted an Agreement constituted by an exchange of letters between the USSR Academy of Sciences and the European Space Research Organisation in 1971. Article 12 of the Agreement of 1990 contains a rather general clause that the Parties, in case difficulties arise in the implementation of co-operation under this Agreement, shall enter into consultations at the request of either Party of this Agreement[21].

In a diplomatic note to ESA dated 28 April 1992, the Government of the Russian Federation stated that it was taking over the rights and obligations arising out of the above-mentioned Agreement of 1990 and explicitly designated the Russian Space Agency for the implementation of that Agreement. With regard to the invitation extended to the Government of the Russian Federation on December 1993 by the signatories of the Intergovernmental Agreement on the Space Station to become a partner in the International Space programme under the relevant international agreements, ESA concluded on 5 October 1994 with the Russian Space Agency an Agreement on Co-operation on Manned Space Infrastructure and Space Transportation Systems[22].

Taking into account the vital dependence of the success of this project on the realisation of all of its elements, the agreement contains a relatively detailed procedure of dispute settlement. Its Article 12 provides that the parties shall consult in advance any matter likely to have a bearing on the arrangements for the Agreement. In case that, inspite of these consultations, a dispute concerning the interpretation or application of this Agreement or its annexes arises, it should be referred first to the co-chairmen of the established specialists-working groups and then to the Co-ordinating Committee

consisting of the directors in charge of the Programmes involved in the co-operation activities. If these negotiations fail, the next step should be the settlement by the Directors General of the agencies - parties of the Agreement.

In case that even these mechanisms do not lead to the envisaged result Article 12 provides for an arbitration clause: Any dispute that cannot be settled in accordance with the foregoing steps shall be referred,, at the request of either Party, to an arbitration tribunal which consists of two arbitrators appointed by the Parties and the third arbitrator who will be appointed by them and chair the tribunal. In case of failure to appoint the third arbitrator, he will be appointed by the President of the International Court of Justice. The seat and procedural rules will be chosen by the Tribunal itself; the only rule of procedure contained in the Agreement itself is that it shall take its decisions by a majority of its members, who shall not abstain from voting[23]. The decision of the tribunal shall be final and binding on both Parties.

This model of a two-steps settlement of disputes concerning the interpretation and implementation of an agreement allows enough space for consultations and negotiations before starting the arbitration procedure and does not limit e.g. the scope and time-limits of the „failure" of the negotiations, in connection of which the dispute could be submitted to arbitration. For these reasons, it has been introduced further agreements signed by the ESA on one side and the Russian Federation on the other side: e.g. in the Arrangement between the ESA and the Russian Space Agency for the Conduct of Joint Experiments on the BION-10 Mission of 13 March 1993[24] (Article 16) or in the Arrangement between the ESA and the Russian Space Agency Concerning Co-operation in the Development and Operations of the Service Module Data Management Systems (DMS) for the Russian Segment of the International Space Station (ISS), and of the Space Vehicle Docking System signed by the Parties on 1 March 1996 (Article 21).

b) A different category of relations and corresponding legal regulations represent the agreements of the ESA with the countries associated to the European Union such as Hungary and the Czech Republic. The Agreement between the ESA and the Government of the Republic of Hungary Concerning Co-operation in the Field of the Exploration and Use of Outer Space for Peaceful Purposes signed on 10 April 1991[25] remains in ist part concerning the dispute settlement mechanisms on a general level stipulating that disputes shall be settled in the course of consultations between the Parties[26].

A similar agreement between the ESA and the Czech Republic is presently under preparation. With the view to the envisaged approximation to the European Union, it seems most probable that a more detailed provision on dispute settlement will be agreed upon by both Parties taking into account the general features of the relevant provisions in the above-mentioned instruments concerning the co-operation with the Russian Space Agency.

c) In 1971 the USSR and eight other COMECON member states founded the international intergovernmental organisation for space communications - Intersputnik. After 1989, the organisation became the subject of substantial changes: Its new composition was influenced not only by the German re-unification, but changed also due to the dissolution of the Soviet Union and of the former Czechoslovakia. Moreover, in 1989 the use of the Intersputnik system was opened also to non-members of COMECON such as Algeria, Iraq and India[27]. Not only these facts, but also the profound socio-economic changes within the member states themselves lead to the re-structuralisation of its legal system: The initial Agreement on the

Establishment of the „Intersputnik" International Organisation of Space Communications signed in Moscow on 15 November 1971[28] should be adapted to the new conditions and supplemented with an „operational agreement", the Parties of which should become various telecommunication entities of the member states. Presently, the final draft of these new documents has been prepared and will be submitted to the session of the Council of Intersputnik in the autumn of this year.

Corresponding to the structural changes in Intersputnik, a new system of dispute settlement is foreseen which will probably reflect, in its significant features, on the solutions adopted in Intelsat, Inmarsat or Eutelsat and will be inserted into the new operational agreement. Thus, the scope of the disputes which shall be settled under the mechanisms of this agreement will probably not differ from the solutions chosen in the agreements of these international telecommunications organisations, namely, it will be limited to the disputes arising in connection with the rights and obligations under the Agreement. In contrast to these texts, however, it is expected that the Intersputnik system will explicitly mention obligatory consultations between the Parties of the Operational Agreement as a first step of the procedure. Only if these fail within a certain time limit and if the parties will not come to a mutually acceptable solution by other means, each Party to the dispute might submit the matter to arbitration.

There is no serious doubt that with respect to the composition of the arbitration tribunal a solution will be accepted that does not differ substantially from the „classical" arbitration bodies. As usually, each Party will probably nominate one arbitrator within a certain time; these two persons (or more depending on the number of Parties to the dispute) will appoint the -"neutral" one(s); if they fail, such person(s) must be appointed by an impartial body - with regard to the composition of Intersputnik, probably by its Director General. It will be interesting to see whether the legal norms will be specified on the basis of which the arbitration body will render its decisions. It goes without saying that the provisions of the „basic" agreement of 1971 as well as of the operational agreement itself must be respected. Moreover, with a view to the general characteristics of such arbitration tribunal, it is to be expected that the decisions of the future Intersputnik arbitration body will be final and binding upon the Parties.

Obviously, the final form of Intersputnik's dispute settlement mechanisms depends on the position of the future Parties of the Operating Agreement; modifications are still possible. It would, however, be quite surprising if the final outcome would differ considerably from the solutions adopted within the framework of Intelsat, Eutelsat and Eumetsat.

4. Examples of Dispute Settlement Mechanisms in the Space Co-operation Agreements between an International Organisation and Russian Legal Persons as Parties of these Agreements

In order to simplify the process of concluding the contracts, the European Space Agency elaborated a document called „General Clauses and Conditions for ESA Contracts"[29] ; its Article 13 offers detailed rules for an arbitration negotiation between the contractors. Without mentioning any variant of the obligatory consultations, at the request of either party shall be any dispute arising out of the interpretation or execution of a contract submitted to the arbitration. The seat of the Arbitration Tribunal shall be specified in the contract itself; subsidiarily, it shall sit in a country of the legal seat of the Contractor or where the contract is to be executed. For the procedure of the arbitration the application of the rules of the Conciliation and Arbitration of the ICC are recommended, unless no other

arbitration has been foreseen in the contract itself. The award resulting from the arbitration procedure shall be final and binding on the parties; its enforcement shall be governed by the rules of procedure in force in the state in which it is to be executed.[30]

In the relations with the legal persons from the Russian Federation, these General Clauses and Conditions for ESA Contracts have been applied with certain modifications which lead *inter alia,* in case of a dispute, to the exclusion of the application of the presently still evolving domestic Russian law. Thus, as regards the contractual relations, the General Clauses are, as a rule, applicable; however, with respect to the law pertaining to arbitration, some contracts provide for the application of the „neutral" legal system of a third country, preferably Sweden, as in the case of the Hermes Project of 1992 or of the Contract between the ESA and the RKK Energia concerning EUROMIR Missions of 7 July 1993. In the EUROMIR Contract, the provisions of the „General Clauses" of the ESA have been, moreover, substituted by the following model (Article 13): The first step of the dispute solution should be negotiations; only if these fail - it should be noted that there is no time limit set - the dispute shall be referred to the Arbitration Tribunal in Stockholm. Each of the disputing Parties appoint an arbitrator; if any of these Parties fails to appoint its arbitrator, he will be chosen by the President of the Chamber of Commerce in Stockholm who will also appoint an umpire, if the Parties fail to do so. The decision taken by a majority of votes of the Tribunal shall be final and binding upon both Parties.

According to Article 6 of the Agreement on Co-operation on Manned Space Infrastructure and Space Transport Systems of 1992[31], the General Clauses and Conditions for ESA Contract shall also apply - unless the Parties otherwise agree and with the exception of the provisions concerning intellectual property issues - to the contracts awarded by ESA to the Russian industry.

5. Examples of Dispute Settlement Mechanisms in the Space Co-operation Agreements between Legal Persons as Parties of these Agreements

In the relations between two legal persons if one of them is a contractor from the former USSR and the other a subject from an EU-state, the Rules on Conciliation and Arbitration of the Swedish Chamber of Commerce and Stockholm as a „neutral" seat of the Arbitration Tribunal are generally agreed upon: The common model of an arbitration clause in such a case includes usually negotiations as the first step of the dispute settlement procedure; if these fail, such dispute will be settled by one or more arbitrators appointed in accordance with these Rules. By settling a dispute, the arbitrators shall apply the Swedish law for the interpretation of the agreements.

A frequent alternative to the Swedish law as the legal system used for dispute settlement procedures is the law of Switzerland. In such a case any dispute arising in connection with or out of the performance or the interpretation of the contract which could not be settled amicably shall be finally settled under the rules of Arbitration of the International Chamber of Commerce by the arbitrators appointed in accordance with these Rules. The seat of the litigation will be Geneva, the applicable law the Swiss Code of Obligations.

It is interesting to note that the English legal system (as the London Court of Arbitration) have been hardly chosen for dispute settlement procedures involving legal persons from the Russian Federation. With the view to the only limited range of available data it seems, however, not possible to draw any

general conclusions from this result of the present study.

In November 1992 the USA, Japan, the Russian Federation and the European Community signed the Agreement Establishing the International Science and Technology Center. With respect to the specific structure of this entity, the Draft Model Agreement for Projects of the International Science and Technology Center with Institutions in the Russian Federation and in other Interested States of the CIS from 1994 contents a specific regulation concerning the disputes settlement procedure: Article 12 of this draft agreement defines the scope of its dispute settlement procedures by the term „the disputes arising during the performance of the Agreement"; as examples of these disputes it mentions first a claim by the Institute for any payments deemed due, second an interpretation of a provision of the Agreement and finally a request for relief or approval related to the Agreement. These claims, demands or requests shall be submitted to the Chief Procurement officer of the Centre who will respond to them generally in four weeks. The decision of the Centre is not necessarily final,: it might be appealed to the Governing Board of the Centre within four weeks of the communication of the Centre's decision. Only the decision of the Governing Board shall be final and binding; pending the final settlement of disputes, the performance of the Agreement shall proceed diligently.

6. Conclusions

The last sentence of Article 12 of the Draft Model Agreement for Projects of the International Science and Technology Center with Institutions in the Russian Federation and in other Interested States of the CIS from 1994 might be symptomatic, to a certain extent, for the dispute settlement mechanisms involving a subject from the former COMECON countries. The general policy seems to be aimed at not to endanger the implementation of the common projects and not to interrupt the co-operation. In practice, the primary reason for this approach is, without any doubt, the interest to continue the good co-operative relations, the preparedness of the partners from the former COMECON-States to offer an alternative solution, together with the flexibility of their counterparts to adapt the mode of implementation of the projects to the changed conditions. Moreover, a certain role could play the differing financial possibilities of the respective partners and the fact that even a positive arbitration award would not always lead to the expected financial results.

Therefore, the impact in all these legal documents, irrespective of their nature and contents, has been laid primarily on consultations which serve in many of these agreements as the only means for dispute settlement. In other types of agreements, only if the consultations fail, they will be followed by another form of procedure. Since most agreements do not set a time limit within which such consultations have to yield success or otherwise must be declared as having failed, consultations might be - in reality - the only means of dispute settlement. Only with regards to the few agreements that provide for such time limits, arbitration is in fact a viable means for dispute settlement.

Specific forms of solving mutual problems were chosen among the states of the former USSR the legal form of which could be as a whole described as „negotiations".

Also as regards the relations with subjects from the former COMECON-states the general principle remained unchanged: The more concrete the obligations, the more important the financial engagement - the more detailed the procedure of dispute settlement. Finally, it should be stressed that it seems less important that - on the basis of this limited empirical research - the „classical" mechanisms have - until now - never been applied in the practice of space co-operation

with subjects from or among the former COMECON countries and that the tradition of informal problem management continues to play its dominant role - a fact that could also serve as proof for the quality of the mutual co-operative relations. What should be pointed out, however, is the indisputable value of the above-discussed dispute settlement regimes that consists in their function as a guarantee that, if all efforts fail to bring about a mutually acceptable solution by means of consultation or negotiation, the way to obtain a justiciable result remains open.

[1] For the general overview of dispute settlement mechanisms in space law see Böckstiegel, Karl-Heinz, Arbitration of Disputes Regarding Space Activites, in: American Institute of Aeronautics and Astronautics (ed.), Proceedings of the 35th Colloquium on the Law of Outer Space, October 1993, Graz, (8 pp). (1994).

[2] Zickler, Achim, Schrogl, Kai-Uwe, Aspekte deutsch-russischer Raumfahrtkooperation (Das deutsch-russische Agenturabkommen vom 1. März 1993 im internationalen Kontext), ZLW 43 (1993), 268-292.

[3] See Decree of the Council of Ministers (the Government of the Russian Federation) of 25. 3. 1993, No 250.

[4] The German text of this agreement is reproduced in ZLW 43(1993), 288-291.

[5] Article 8 reads as follows (Translation by the author):
„Dispute Settlement:
In case of disputes about the interpretation and implementation of this agreement the Parties enter without delay into consultation and use all efforts in order to find a consensus for possible differences of their opinions. If for a particular case, no special procedure for the settlement of the differences of their opinions was established, all disputes concerning the implementation of this agreement and the realisation of the agreed projects, which could not be settled through consultations, will be brought to the Directors-General of the RKA and the DARA, or to. persons whom they appoint, for a joint review in order to reach a joint final solution."

[6] The German text of this agreement is reproduced in ZLW 43(1993), 291-292.

[7] Article 8 reads as follows:
„Both Goverments address, if necessary, through diplomatic negotiatins various problems which arise from this agreement."

[8] See ZLW 43(1993), 285-288.

[9] " I. Scope
d) Disputes concerning intellectual property arising under this Agreement should be resolved through discussions between the concerned participating institutions or, if necessary, the Parties or their designees. Upon mutual agreement of the Parties, a dispute shall be submitted to an arbitral tribunal for binding arbitration in accordance with thee applicable rules of international law. Unless the Parties or their designees agree otherwise in writing, the arbitration rules of UNCITRAL shall govern."

[10] Russian text in Moskovskij zurnal mezdunarodnogo prava (1994) 4, 165-168.

[11] English text see ECSL (Bulletin of the European Centre of Space Law) 10(1992), Russian text in Moskovskij zurnal mezdunarodnogo prava (1994) 4, 169-171

[12] Bjulleten mezdunarodnych rozgovorov (1994) 5, 7-10.

[13] Article 6 reads as follows:
„The States Parties to the present Agreement undertake to develop their activities in space research and exploitation in accordance with existing international norms, and to coordinate their activities aimed at settling international legal problems of space research and exploitation."

[14] The United Nations Treaties on Outer Space (1984), 13-22.

[15] Article 5 reads as follows:
„Compensation for damage resulting from breaches of the normal operating procedures for space infrastructure facilities and buildings and relating to the implementation of space programmes shall be made by the responsible Party to the victim. The compensation amounts shall be determined by the special multilateral commission set up by the States Parties to this agreement under the aegis of the Inter-State Space Council. The commission shall, with regard to space activity, be guided by the provisions of the Convention on International Liability for Damage caused by Space Objects."

[16] For the text see Moskovskij zurnal mezdunarodnogo prava (1994) 4, 120-123.

[17] For the text see Moskovskij zurnal mezdunarodnogo prava (1994) 4, 125-126.

[18] Article 4 reads as follows:
„The Republic Kazakhstan shall create under her valid legislation a special organ on the cosmodrome for settling all property and economy questions connected with the Art. 2 of the Agreement."

[19] Convention of the European Space Agency, ESA (1991).

[20] ESA/LEG/123, Paris 18 May 1990.

[21] Article 12 reads as follows:
„The Parties shall enter into consultations at the request of either Party in case difficulties arise in the implementation of the cooperation under this agreement."

[22] ESA/C(94)52.

[23] Article 12 reads as follows:
„1. The Parties shall consult each other in advance on any matter likely to have a bearing on the arrangements for and conditions of cooperation under this agreement. Any dispute about the interpretation or application of provisions of this Agreement and the Annexes thereto shall be referred first to the co-chairmen of the working groups referred to in Article 5 and than to the Coordinating Commitee. Any dispute that cannot be resolved at that level shall be referred for settlement to the Directors General of these two agencies.
2. Any dispute that cannot be settled in accordance with the provisions of section 1 shall be referred, at the request of either Party, to an arbitration tribunal as provided for in sections 3 to 7.
3. The Party initiating arbitration proceedings shall notify the other Party of the name of its designated arbitrator. Within thirty days of such notification, the other Party shall communicate the name of its arbitrator. Within thirty days of the appointment of the second arbitrator, the first two arbitrators shall appoint the third arbitrator (who shall not be a national of a country of either Party and shall not be of the same nationality as either of the first two arbitrators). The third arbitrator shall chair the tribunal.
4. If the second arbitrator is not appointed within the stipulated time limit or the two arbitrators fail to agree within the stipulated time limit on the appointment of the third arbitrator, such appointment shall be made at the request of either Party by the President of the International Court of Justice at the Hague from among persons of international reputation who are not of the same nationality as either Party.
5. The arbitration tribunal shall decide where it is to sit and shall adopt ist own rules of procedure. It shall be the judge of ist own jurisdiction and shall apply the provisions of this Agreement or any other relevant agreement concluded between the Parties, as well as the regulations applicable under international law.
6. The tribunal shall take its decisons by a majority of its members, who shall not abstain from voting and shall be free to explain the reasons for their votes or not. The tribunal shall deliver its decisions in writing. Such decisions shall be final and binding on both Parties. The arbitration tribunal shall interpret its decisions at the request of either Party.
7. Save where the arbitration tribunal otherwise decides by reason of the special circumstances of a case, the costs of the tribunal and the remuneration of its members shall be borne equitably by the Parties.. Notwithstanding the foregoing, each Party shall bear ist own representation and procedural costs.
[24] ESA/LEG/153.
[25] On file with the autor.
[26] Article 7 reads as follows:
„Disputes:
Disputes concering the interpretation or application of this agreement shall be settled by mutual consultations between the Parties."
[27] See Hošková, Mahulena, Intersputnik - new legal developments; in: American Institute of Aeronautics and Astronautics (ed.), Proceedings of the 38th Colloquium on the Law of Outer Space, October 2-7, 1995, Oslo 1996, (11 pp). (1995).
[28] See TIAS 859/860 (1973), No. 123343.
[29] ESA/C/290 Rev.5.
[30] Article 13 reads as follows:
„Clause 13: Arbitration
13.1 Any dispute arising out of the interpretation or execution of the contract shall, at the request of either party, be submitted to arbitration.
13.2 The contract shall specify the country where the Arbitration Tribunal shall sit; normally the Arbitration Tribunal shall have its seat in the country where the Contractor has its legal seat or where the contract is to be executed.
13.3 If no other arbitration is foreseen in the contract, any dispute arising out of the contract shall be finally settled in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one of more arbitrators designated in conformity with those rules.
13.4 When arbitration other than in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce is provided for in the contract, the procedure of the Arbitration Tribunal shall be that of the country mentioned in subclause 13.2.
13.5 The award shall be final and binding on the parties; no appeal shall lie against it. The enforcement of the award shall be governed by the rules of procedure in force in the state/country in which it is to be executed."
[31] ESA/C(94)52.