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Legal Evidence from Outer Space (4)

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EVIDENCE FROM SPACE AND ITS VALIDITY IN LEGAL PROCEEDINGS: DISPUTE
SETTLEMENT IN LIGHT OF THE 2011 PCA PROCEDURAL RULES ON ARBITRATION (2011)

Abstract

A lot of water has gone under the bridge from the days a study on Earth Observation data in the legal sector, produced by the British Institute of International and Comparative Law (BIICL) in 2001, was referring to certain trouble arising from the use of satellite data in court and, therefore, questioning its validity as evidence. This announcement was based on experience in a few cases decided at the time by the ICJ and other international arbitrations concerning boundary disputes. This situation was beginning to conspire against the use of the many advantages provided by space technologies -particularly the precision of the information collected- which would be downgraded by suspicion or lack of transparency. The underlying problem was -and still is- the wide margin of interpretation of the technical expert called upon to interpret a digital map in court. The problem is aggravated in cases of international disputes over land and water involving highly sensitive issues of sovereignty. It follows that questions surrounding the authentication of satellite data submitted to court are of paramount importance. It is indeed difficult to assert the validity of this data once it has gone through a long chain of interpretations from the moment it is collected, as primary data which cannot be modified, to the time the end product is made use of in court. There are no international standards agreed on this topic. The problem, as it stands today, is a matter of concern to practitioners and to the academic world as well. In the first place, disputes are likely to occur. The objective of this paper is to explore ways and means of overcoming these situations. International standards would no doubt be helpful in case of dispute over the value of satellite evidence and related issues. Likewise the possibility of resorting to the new Optional Rules for Arbitration of Disputes Relating to Outer Space Activities, procedural in nature and specifically drafted, designed and adopted in 2011 by the Permanent Court of Arbitration for application in that field, will be open to discussion.