

56th IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Settlement of Space-Related Disputes (2)

Author: Dr. Henry Hertzfeld
Space Policy Institute, George Washington University, United States, hrh@gwu.edu

Mr. Timothy Nelson
Skadden Arps, United States, timothy.g.nelson@skadden.com

BINDING ARBITRATION AS AN EFFECTIVE MEANS OF DISPUTE SETTLEMENT FOR
ACCIDENTS IN OUTER SPACE

Abstract

This paper will explore the advantages, issues, and particular circumstances where adopting binding arbitration to proceedings that require the finding of fault and the awarding of damages for in-space accidents may be beneficial to all parties. The space treaties are particularly devoid of effective procedures for resolving disputes between private firms, international organizations, and other non-governmental entities with assets in outer space. As space becomes more crowded with active satellites that are both expensive and valuable orbiting and operating in regions now littered with abandoned satellites and human-created debris, the probability of serious interference with those spacecraft is increasing exponentially. In the existing space legal regime the first level of settling disputes is through diplomatic negotiations which have been sufficient but could easily become cumbersome and ineffective for private satellites involved in an accident. The process and techniques offered through binding arbitration offer an effective means of dispute resolution that is commonplace in international commercial dealings and also widely used in investor-state arbitration under ICSID or UNCITRAL Rules. Binding inter-state arbitration is also formally part of the UNCLOS and WTO dispute mechanisms. In space arbitration it has been agreed upon for enforcing contractual issues but it has not been applied to cases involving tortious actions such as a space accident. To implement this, national space laws and regulations across nations may have to be amended. But, new space treaties will not be necessary, nor will there be the need for any major innovations in international law.