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THE OPTIONAL RULES OF ARBITRATION OF DISPUTES RELATING TO OUTER SPACE
ACTIVITIES OF THE PERMANENT COURT OF ARBITRATION, A REAL OPTION FOR THE
SOLUTION OF CONFLICTS IN SPACE MATTER?

Abstract

For some years a project to create optional rules of arbitration of disputes relating to outer space activities had been discussed. The development of this project constitutes a fundamental step in the solution of conflicts in space matters and was adopted in December 2011.

Although article XIV of the Convention on International Liability for Damage Caused by Space Objects provides a system of solution of conflicts in space activities, this system has been highly criticized and rendered useless. Despite having some elements of arbitration, the failure of this system can be attributed to several major flaws. To begin with, the agreement does not foresee the creation of a real court but of a commission. Secondly, it lacks an adequate system of enforcing the award which is not obligatory until the States then accede to this. Finally, not all aspects of the procedure are clear and only states parties have access to the mechanism.

By contrast, the new regulation solves the problems addressed in the liability Convention. The current regulation foresees the creation of a real court with a very precise procedure as well as a strong enforcement of the awards. Also, parties must resign their immunity of jurisdiction, however more importantly, the regulation foresees the possibility of the submission of a diversity of conflicts and not only cases of liability. In addition, the system is flexible and applies to not just countries but also to individuals, which is fundamental in a world in which the development of space activities is exponential.

Therefore, the document seems to be a definitive solution to the “lagoon” in the corpus iuris spatialis that existed in this field and can be in an important mechanism for interested persons and as a model worldwide.

The analysis that will be done in this paper will demonstrate that the arbitration in space matters will become the principal method of solution of conflicts in space activities and it is probable that other courts, organisms and chambers of commerce will follow the movement.