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PCA' S OPTIONAL RULES FOR ARBITRATION AND THEIR RELEVANCE TO DISPUTES
ARISING FROM ERRONEOUS NAVIGATIONAL SIGNALS

Abstract

The issues of dispute resolution and of liability arising from erroneous navigational signals provided from Global Navigational Satellite Systems (GNSS) have been topical lately. The existing literature thus far supports the view that current space law provisions do not cover disputes and damage scenarios resulting from erroneous navigational signals. For example, according to the prevailing legal analysis, the Liability Convention for Damage Caused by Space Objects does not cover disputes arising from erroneous navigational signals, given the fact that the navigational signal would not be qualified as a space object. Thereby, the existing literature further suggests the adoption of an international convention which would subject GNSS operators to a strict liability regime with a limitation on the amount and furthermore supplemented by a compensation fund. This contribution seeks to address the issues of damage and dispute resolution for erroneous navigational signals from a different perspective and most particularly under a new existing legal mechanism adopted recently, namely the Permanent Court of Arbitration's (PCA) Optional Rules for Disputes Relating to Outer Space Activities (adopted in December 2011). One interesting provision contained within these rules is article 1. Article 1 par. 1 provides that "the Outer Space Rules can be adopted by consent as the rules between any parties whatever their nature...". Furthermore, the last sentence of article 1 par.1 stipulates that "the characterization of the dispute as relating to outer space is not necessary for jurisdiction under these rules...". Hence, one would argue that the scope of application of the PCA rules would be quite broad depending exclusively on the will and the consent of the parties. This paper will examine the relevance of the PCA rules for disputes arising in the field of satellite navigation. In doing so, it will address some of the following questions: First, whether a dispute arising from erroneous navigational signals could be resolved under the new PCA rules. Thereafter, whether this new legal instrument could be considered as an efficient way to resolve disputes stemming from erroneous navigational signals. Finally, the paper will address whether the new PCA rules would be the appropriate resolution, rather than proposing the adoption of an international convention dealing exclusively with the concept of GNSS failure and GNSS damage.