

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Dispute Settlement in Space Law: Are We Ready for the Commercial Challenge? (2)

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SPACE COURTS: DO WE NEED A NEW DISPUTE SETTLEMENT BODY?

Abstract

Recent technological advancements made by government agencies and private industry have increased the feasibility of endeavours to establish permanent human settlements beyond Earth. While these activities offer great hope to humanity – as a safeguard for our species, for scientific endeavours, and for commercial purposes – they also carry with them the increased likelihood of disputes between participants in these ventures, as well as between participants and third parties.

This paper considers whether there is a need to establish a new dispute settlement body to adjudicate disputes relating to space activities, particularly those arising in connection with, or relating to, off-Earth human settlements. While any off-Earth human settlements will be established in an environment where the rules relating to State sovereignty do not apply in the same way as they do on Earth, this is not the same thing as a law-free environment. There will still need to be legal principles and rules governing the establishment and operation of the settlement. One of the key issues that needs to be addressed is who, in the absence of a responsible sovereign, will be responsible for enforcement of those legal principles and rules. This paper discusses the challenges posed by the existing international space law regime to the creation of a sui generis dispute resolution body for disputes relating to space activities, including the foundational issue of the jurisdiction of a new ‘Space Court’.

This paper considers how a sui generis ‘Space Court’ could be established consistent with existing international space law. The paper considers what the ‘Space Court’ might look like, how it could be funded, where it might be located, and how it might be established, staffed, and run. It also considers how judgments of the ‘Space Court’ could be enforced. The paper concludes with a suggested framework for a new ‘Space Court’.