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POTENTIAL DISPUTES ARISING FROM SPACE ACTIVITIES: OPPORTUNITIES FOR INVESTMENT ARBITRATION

Abstract

In the recent course of time, many countries have adopted national legislation relating to space activities. Most of them aim at establishing a legal framework designed to facilitate the commercialization of space activities. Given the recent development, private actors are to play a major role in the exploration and use of outer space. However, due to international responsibility borne by states for national activities in outer space, space sector is highly regulated. In this context, private investors are exposed to significant political risk.

In the absence of a specialized arbitration, disputes arising from space activities are to be settled by national courts. However, this is not an attractive solution from the investor's perspective due to potential lack of impartiality, lack of expertise to deal with highly technical questions, doctrines of non-justiciability and political questions, and rules of state immunity. On the contrary, in investment arbitration, parties can select an arbitrator with appropriate degree of practical experience in space law.

Extra-territorial nature of space activities excludes application of international investment agreements (traditional source of investment protection). Most of the investment agreements protect only investments made in the territory of the contracting parties. Therefore, space activities would not be considered as protected investments and investors would not have a direct access to international adjudication.

With regard to settlement of deputes arising from space activities between a private investor and a state (authorizing respective space activity), the paper seeks to explore opportunities for investment arbitration. In this context, the paper also analyses whether a consent to investment arbitration should be enshrined in an international treaty or national law. In considerations of space investment dispute settlement mechanism, the paper will identify particular characteristics of disputes having an outer space component and provide analysis of:

a) analogous terrestrial examples such as the International Centre for Settlement of Investment Disputes, and b) potential applicability of the Optional Rules for Arbitration of Disputes Relating to Outer Space Activities of the Permanent Court of Arbitration.