

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
International cooperation on the way to the Moon and Mars (2)

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WHY DISPUTE RESOLUTION WILL BECOME A KEY FEATURE OF EXPLORATION
PROGRAMS?

Abstract

With government space program budgets reaching \$82.5 billion in 2020, a 10% increase over 2019, space exploration programs are seeing a surge in popularity as mankind is approaching outer space with more intent and intensity due to important advances in technology, the lack of space and resources on earth, and a desire to escape and travel. It is important to bear in mind that, these new space exploration programs (Moon Village, Mars exploration, asteroid mining programs, etc.) are becoming increasingly complex with specific features such as multiple international stockholders whose cooperation is essential to the success of the projects. Thus, it is evident that new types of disputes will be arising. Added to this, the current legal framework in place fails to sufficiently regulate these programs. In practice, the current treaties and international agreements, enacted several decades ago, during the cold war, with other objectives, have not been designed to address emerging issues such as property rights and liability of private actors. Indeed, until recently, there have been a limited number of disputes in the space sector because of the restricted number of stakeholders whom were mainly public and the very specific liability regime applicable to the space activities (waiver of liability, insurance coverage, etc.).

However, this is rapidly changing, disputes are increasingly foreseeable, which leads to questions on how to deal with them. The involvement of private investors and financiers will only be possible if proper dispute resolution mechanisms leading to foreseeable solutions are in place. Escalation procedures (i.e. multi-tiered arbitration clauses) and, when no agreement can be reached, arbitration, seem to be the way forward. While there could be some concerns about arbitration's suitability to resolve space disputes, the few published awards reveal that it is in fact possible and efficient to arbitrate space disputes. Furthermore, if alternative forums for dispute settlement in the field of space do exist, they remain theoretical and present certain inadequacies. This paper aims to present the rise in the complexity of space exploration programs, the increased probability of litigation in relation to such complex set-ups and the role arbitration will undeniably play in resolving space disputes.

Source of statistic: Euroconsult.