

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Dispute Settlement (2)

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IMPROVING THE PERMANENT COURT OF ARBITRATION'S OUTER SPACE RULES - WHY WE
NEED MORE ARBITRATORS.

Abstract

It is a recognized lacuna that the international space law regime comprised of the 5 treaties do not expressly provide for dispute resolution between private parties. In light of this limitation, commercial entities have naturally opted for international arbitration to resolve their differences. Faced with a plethora of institutional rules to choose from, the Permanent Court of Arbitration's ("PCA") Outer Space Rules ("PCAOSR") should be the default option with its provisions crafted expressly to address the unique aspects of the domain. In spite of this however, no commercial parties have opted for the PCAOSR in the last 10 years since it came into force. With the PCA's reputation for addressing disputes with a public international law aspect being well-suited to tackling issues arising out of space, this bears a closer look at the shortcomings of the PCAOSR and/or its institutional support ecosystem.

This paper identifies that a deficiency of the system is the limited range of arbitrators available for appointment by the PCA. As of abstract, this specialised panel features 10 arbitrators from Brazil, Chile (2), China, Korea, Netherlands (2), Paraguay, Spain and Thailand. Although all existing members of the panel are eminently qualified, two limitations are identified from this restrictive pool. (A) There is a glaring absence of representatives from space-superpowers like the USA and Russia. This severely limits the number of disputes that can be heard under the PCAOSR as space technologies are highly sensitive and top-secret clearance is likely to be required for arbitrators to even hear the dispute notwithstanding the confidentiality provisions expected of them. (B) The low number of arbitrators that the PCA can draw upon renders it prone to parties being able to cherry-pick their arbitrator and reduces the trust of impartiality under the PCAOSR. This paper thus recommends that for the PCAOSR to truly come into force, the institution needs to expand and diversify its list of arbitrators.