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DISPUTES IN SPACE: INTERNATIONAL DISPUTE RESOLUTION MECHANISM

The increasing number of players active in space sector necessitates a more robust framework for their responsible behavior. Existing international agreements like the Outer Space Treaty and the Liability Convention have limitations due to their non-binding nature, making their effectiveness limited and necessitating their revisit in light of the evolving space industry. However, since most private/commercial space disputes arise from business activities on Earth, traditional international arbitration is the preferred dispute resolution method. Korea's Space Compensation Act of 2007 addresses liabilities for space accidents but has yet to be tested in courts.

1. Introduction

The final frontier. Once thought beyond the reach of mankind, space is now open to private corporations for telecommunications, satellite management, and even tourism. On April 24, 2024, amidst the ever-evolving landscape of space exploration, the Republic of Korea ("**Korea**") launched its first nanosatellite, NEONSAT-1, aiming to enhance surveillance and disaster monitoring. Meanwhile, private companies like SpaceX and Boeing are expanding space tourism. With more players in space, governance and coordination challenges grow, underscoring the need for a more robust framework for responsible behavior.

2. Existing International Agreements for State Actors: Key Provisions and Limitations

A. Outer Space Treaty and Moon Agreement

Existing space related treaties, notably the **Outer Space Treaty**[1] since 1967 with 114 signatory countries, including Korea, serve as foundational frameworks for space disputes. The Treaty designates outer space for peaceful use[2] and holds States accountable for space activities, mandating the signatory State's authorization and supervision for space activities by non-governmental entities.[3] Signatory States are further liable for any damage caused by objects they launch into space, even to other signatory States or natural/juridical persons.[4]

The Moon Agreement, separate from the Outer Space Treaty, has only had 18 signatories since 1979. Saudi Arabia's recent and unprecedented withdrawal on January 5, 2023, prior to their signing of the Artemis Accords, raises doubts about the Agreement's future viability. While the Agreement aimed to prevent lunar conflict and promote resource sharing, it clashes with emerging norms of the Artemis Accords – a non-binding framework for lunar exploration and resource extraction activities on a bilateral basis. Saudi Arabia's withdrawal from the Moon Agreement underscores challenges in space governance, potentially impacting the future prospects of similar space-related treaties.

B. Liability Convention

Expanding on the principles of the Outer Space Treaty, the **Liability Convention**,[5] which entered into force in 1972 with 98 ratified countries (excluding Korea), establishes absolute liability for damage[6] caused by space *objects* on Earth's surface or to aircraft.[7] Regardless of the initiator, if a launch occurs from a state's territory or at its instigation, that state assumes complete liability for resulting damages.

However, the practicality of the Convention to modern space activities raises questions. Its language assigns responsibility to states, leaving ambiguity about the accountability of multinational corporations. Further, there is a notable absence of an effective dispute resolution mechanism. The Convention stipulates that if diplomatic channels fail to resolve claims for compensation for damage within one (1) year of submission (which may already seem quite extended)[8], a Claims Commission is established to determine the matter. However, its non-binding recommendations[9] hinder enforceability, challenging the practicality of resolving disputes conclusively through this process.

1 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies. Available here.

2 Id.

3 Id. Art. VI.

4 Id. Art. VII.

5 Convention on International Liability for Damage Caused by Space Objects. Available here.

6 Id. Art. III.

7 Id. Art. II.

8 Id. Arts. IX, XIV.

9 Id. Art. XIX.

The recent collision of space debris – currently under debate between NASA of the U.S. and JAXA of Japan – with a private house in Florida last April once again highlights the challenge of applying the Convention. Once again, much will depend on whether the actual dispute is resolved through insurance or diplomatic channels to compensate for damages before the Convention's dispute resolution process is fully triggered.

3. Private/Commercial Space Disputes: Search for the Proper Venue

A. Traditional Consideration v Space-Specific Dispute Resolution Tools

The term "disputes in space" may sound unfamiliar, but many of these conflicts have significant ties to Earth-bound activities. For instance, in the *Devas Multimedia Private Ltd. v Antrix Corporation Ltd*, case, a dispute over the wrongful termination of a satellite lease agreement escalated to ICC arbitration and later saw the Indian Supreme Court's intervention due to findings of frauds in the contract.[10] Similarly, in a June 2022 decision, the Hong Kong Court of Appeal upheld a binding award issued by HKIAC in a satellite dispute between a Hong Kong company and a Thai company, pursuant to the New York Convention, despite the complexities and the extraterrestrial activities at the heart of the case. [11]

These cases highlight that despite the novelty of the industry, disputes often center on familiar contractual issues. Given the global nature of these disputes, private parties would prefer neutral arbitration tribunals for quicker resolutions compared to domestic courts and confidentiality protection. This preference makes existing traditional institutions such as ICC, LCIA, and SIAC the preferred choice for resolving space-related commercial disputes. Additionally, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") would apply to parties involved in international arbitration, including their activities beyond Earth, as long as they are based on Earth.

Some institutions have developed space-specific dispute resolution tools, but their effectiveness remains to be seen. For instance, in 2011, the Permanent Court of Arbitration (PCA) introduced the Optional Rules for Arbitration of *Disputes Relating to Outer Space Activities*,[12] modeled after the UNCITRAL Arbitration Rules of 2010, which apply to all space-related entities, with outcomes being binding.[13] Adopting the PCA Rules entails waiving immunity rights,[14] pertinent to government and quasi-governmental bodies, and permits the tribunal to request summary of case-related and pertinent scientific, technical, or other specialized information from the parties.[15]

In 2021, as part of the Courts of the Future Initiative, the Dubai International Finance Centre launched the Courts of Space project to bolster the UAE's judicial systems for commercial space disputes. It focuses on three main objectives: convening an international working group to explore

10 Devas Multimedia Private Ltd v Antrix Corporation Ltd (ICC Case No 18051/CYK).

11 *Judgment of the Court of Appeal of the High Court of Hong Kong* [2022] HKCA 729.

12 Available here.

13 The PCA Space Rules, Art. 34(2).

14 Id., Art. 1(2).

15 Id., Art. 27(4).

legal innovations, developing a Space Dispute Guide, and training judges in space regulations. Two editions of the Space Dispute Guide have been published to this date and are available online, covering court procedures and jurisdiction frameworks within the Courts of Space. [16]

B. Legislations on Space Disputes in Korea

The enactment of the Space Compensation Act in 2007 in Korea addressed concerns about applying traditional tort law to space technology. It offers a distinct compensation system for space accidents, particularly satellite launches and operations.

The Act distinguishes itself from the Liability Convention as it applies reciprocity principles and covers cases outside the Convention's scope.[17] It establishes liability parameters for damages in space, sets a maximum compensation amount at 200 billion won,[18] and mandates liability insurance for launches.[19] The Act outlines government measures for assistance,[20] provides a one-year window for compensation rights, and a three-year limit for filing claims.[21]

There are no known cases in Korean courts involving the Act. The draft amendment of the Act only proposes designating the Korea AeroSpace Administration as the new administering authority. Therefore, its practical impact and effectiveness in resolving disputes in Korea remain untested.

Yoon&Yang's International Arbitration & Litigation Team has successfully handled a wide array of disputes in multiple jurisdictions. It also handles effective enforcement strategies in conjunction with the dispute resolution process.

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16 Available here.

17 *Act on Compensation for Damage Caused by Space Objects*, Art. 3 (Relations, etc. with International Treaty).

18 Id., Art. 5 (Maximum Amount of Compensation for Damage).

19 Id., Art. 6 (Purchase of Damage Compensation Liability Insurance Policy).

20 Id., Art. 7 (Measures to be Taken by the Government).

21 Id., Art. 8 (Period for Exercise of Rights).