Arbitration in Space-Related Disputes:  
A Survey of Industry Practices and Future Needs  
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Outline  

1. Introduction  
2. Survey and results  
3. Discussion (including limitations)  
4. Conclusions and next steps
Introduction

- Global space economy to grow from $350 billion annually to $1 trillion by 2040
- Inevitable increase in space-related disputes
- 2011 Permanent Court of Arbitration Optional Rules + Specialized Panel of Arbitrators, Specialized Panel of Experts, and Model Clause
- Yet, no empirical research on the use of arbitration and industry preferences
- We designed & administered survey to provide empirical data

Goals & Design of Survey

Goals:
- Assess industry demand for arbitration;
- Evaluate the success of the existing arbitration infrastructure;
- Identify challenges hindering the use of arbitration; and
- Collect empirical data that will provide opportunities for future research papers and policy

Design:
- Target respondents: legal counsel and advisors for space companies
- 20 questions focusing on industry needs, inclusion of contract clauses, actual use and preferences for the future
Results: Participants & Needs

Participants:
- Primarily academics (24% of respondents), followed by external counsel (20%); consultants (16%); general counsel (16%); and in-house counsel (12%)
- Satellites hardware (15%), launch services (15%), launch/spacecraft hardware (11%)
- Principally practiced or were headquartered in Europe (37.5%) and North America (37.5%), followed by those in Latin America (12.5%)

Needs:
- Confidentiality (80%)
- Timeliness (72%)
- Technical expertise of decision-makers in the resolution of space-related disputes (76%)

Results: Contracts

In last 5 years
- Proportionally more with non-state actors than with state actors (40% of respondents)
- Arbitration clauses in space-related contracts:
  - With non-state actors (52% of respondents)
  - With state actors (32% of respondents)
- Limitation: a large number of respondents did not know/were not sure
Results: Use

• Baseline
  – Familiarity with negotiation (29.2% of respondents); international commercial arbitration (20.8%); expert determination (16.7%); and mediation (16.7%)
  – How often was a space-related dispute resolved through arbitration?
    • Never or rarely (30.4% of respondents)
    • Always or very often (17.3%)
  – Limitation: a large number of respondents did not know/were not sure

Results: Use

• Time to resolution: 1-2 years (17.4% of respondents), 2-4 years (7.4%) and "less than one year" (7.4%)
• Seat of arbitration: New York (15%); Paris (11%); and London (8%)
• Arbitration institutions: International Chamber of Commerce (ICC) (16%); London Court of International Arbitration (LCIA) (8%); International Centre for Dispute Resolution (ICDR) (8%)
• Arbitrator characteristics: Experience in arbitration (18%); technical expertise (16%); arbitrator availability, reliability (14%)
• Compliance: Always / very often (21.7%); rarely / never (17.3%); sometimes (4.3%)
• Limitation: a large number of respondents did not know/were not sure
Results: Preferences for Future

- Overwhelming agreement that the future use of arbitration is "more likely" (60% of respondents)
- Suggested improvements and innovations:
  - Establishment of a dedicated roster of arbitrators with specialist industry/sector experience (30% of respondents)
  - Greater industry-wide harmonization of standards and processes (e.g., for the assignment of liability and responsibility) (28%)
  - More efficiency, e.g., via technology (21%)

Discussion: General

- Preliminary results, survey continues to Dec. 11, 2019
- 25 respondents. Statistically valid but restricts reliable info
- Several high-level observations
- Several weak results re some questions as some respondents did not know the answer to them. More respondents critical
- More responses are needed, survey to continue
Discussion: Participants + Needs

Participants:
- Academics largest single category, but most practitioners – good
- Companies type breakdown – similar to space sector – good

Needs:
- Important: Confidentiality, timeliness, technical expertise – expected
- Costs – varies, according to company size? (add Q)

Discussion: Contracts + Use

Contracts:
- More participants will Most contracts – with non-State actors – weak results
- Most contracts include arbitration clauses – weak results

Use:
- Many respondents don’t know ⇒ need C-suite respondents (in-house counsels, CEO)
- Small companies prefer negotiations
- Seats (NYC, Paris, London) match companies’ distribution
- ICC flagged most useful
- Insufficient acknowledgment of PCA rules and panels

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Discussion: Future

- Respondents estimate growth in use of arbitration ⇒ repeat survey in 3-5 years
- Respondents want dedicated roster + industry-wide harmonization ⇒ Insufficient acknowledgment of PCA rules and panels ⇒ PCA needs PR
- Respondents call for more efficiency, including via technology ⇒ who will take mission?

Conclusion + Next Steps

- 1st empirical research on use of arbitration in space-related disputes
- Several valid and interesting results, on needs, inclusion in contracts and acknowledgment of PCA
- Some weak results, e.g. on invoking arbitration
- Need more respondents
- Final results may be used by you for research papers and policy recommendations
THANK YOU FOR YOUR ATTENTION!

QUESTIONS?

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