IAC-07-E6.5.11

THE MULTI-DOOR COURTHOUSE: A PROPOSED MECHANISM FOR DISPUTE SETTLEMENT IN INTERNATIONAL SPACE LAW

Dr. Gérardine Meishan Goh, LL.M.
Senior Research Fellow, Institute of Air and Space Law, University of Cologne, Germany

Gerardine.Goh@uni-koeln.de

ABSTRACT

The rights, rules and regulations of international space law are futile without an effective enforcement mechanism that provides a sufficient and adequate remedy. International space law is particularly significant in the evolution of international dispute settlement because it involves a consideration of issues from an international and interdisciplinary perspective. These issues range from global governance to juridical philosophies, fiscal transparency to scientific and technological advances. In this context, this paper looks at an international and interdisciplinary approach in dealing with dispute resolution in space activities. It proposes the concept of the Multi-Door Courthouse as a workable dispute settlement mechanism, together with a framework for enforcement and verification.

INTRODUCTION*

International law is inextricably connected to dispute settlement. The law provides the rules and justification for dispute settlement where prophylactic propositions flounder. The settlement of the dispute through peaceful, legal means aims to reconcile the relations and interests of the parties involved, while serving the ends of justice and fairness.[1] The settlement of space law disputes is a relatively new discussion in international law. Space law itself is still an embryonic domain of international law, and much energy has been directed to the substantive, as opposed to the procedural, part of the law. However, the significance of the settlement of space law disputes is evident especially in light of recent ambient developments.

International space law is particularly significant in the evolution of international dispute settlement due to its consideration of issues from an international and interdisciplinary perspective. These issues range from public international law and policies of regional and international organizations; to juridical dispute settlement and global governance; to fiscal entrepreneurship and business efficacy; and to scientific breakthroughs and technological advances. The legal framework concerning activities in outer space also transcends the usual focus of international law on States. The burgeoning importance of commercialization, together with the involvement of non-governmental and international organizations in space activities, calls for the re-consideration of the status of non-State actors on the international plane.

This paper aims to show that there is an urgent need for a compulsory, permanent and sectorialised dispute settlement mechanism for space activities. It proposes the concept of the Multi-Door Courthouse as a possible workable mechanism. To locate the issue in the broader context of international space law and public international law, this paper will first look at the existing dispute settlement procedures in international space law and in comparable fields of international law.

DISPUTE SETTLEMENT IN INTERNATIONAL SPACE LAW[2]

1967 Outer Space Treaty and 1945 UN Charter

Procedures for dispute settlement in international space law are few and far in between. The 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies,[3] due partly to the political climate of the day, does not contain any specific provisions for or references to the settlement of disputes.[4] Article III incorporates principles of general international law, including those in the Charter of the United Nations.[5]

Through the incorporation of the provisions of the UN Charter, international space law also benefits from the Charter's Chapter VI, devoted to the pacific settlement of disputes. Article 33 provides that a party to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall first of all seek a solution by various means, listed as: "negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."[6] Although not specifically mentioned in Article 33, the practices of consultation and good offices are also valuable means to settle disputes and resolve a conflict situation in international relations. However, by subjecting the available means above to the special condition that the dispute be one that is "likely to endanger the maintenance of international peace and security", and also due to the non-committal nature of the obligation,[7] Article 33 does

not appear to provide for an adequate means for the effective settlement of disputes in general.

The power and competence of the Security Council under Chapter VII of the UN Charter provides another avenue for dispute settlement. However, such involvement and any subsequent Security Council action are preconditioned by the likelihood of endangering the maintenance of international peace and security.[8] Another route for the peaceful settlement of disputes is through adjudication by the International Court of Justice (ICJ), the principal judicial organ of the UN. The potential of the ICJ for the settlement of disputes relating to outer space cannot be understated. This is in particular because all members of the UN are *ipso facto* parties to the Statute of the ICJ.[9] Moreover, a State which is not a Member of the United Nations may become a party to the Statute "on conditions to be determined in each case by the General Assembly upon recommendation of the Security Council".[10]

Reverting to the Outer Space Treaty, it is instructive to note that two Articles provide for the responsibility of States Parties in the case damage caused by their activities in outer space. Both Articles VI and VII stipulate on the scope of responsibility of States Parties, which is then expanded by the 1972 Liability Convention. However, neither provision gives an indication of how such responsibility would be enforced, or how disputes arising in regard to any potential damage caused by space activities would be settled. There is no provision for any dispute settlement mechanism in either of these cases. While dealing with the substantive part of the law involving liability, these two provisions do not give a clue as to the procedural law that might be invoked to enforce liability. However, these provisions are more as a means of conflict avoidance rather than as a means for dispute settlement.[11]

1972 Liability Convention

The foremost breakthrough in providing for a specific, workable mechanism for dispute settlement relating to space activities was achieved in the 1972 Convention on International Liability for Damage Caused by Space Objects.[12] The Liability Convention contains the most extensive regulation of dispute settlement available in the framework of international space law. A claim for compensation for damage can be presented by the claimant State to the launching State through diplomatic channels. It also provides for procedures in the event that there happens to be no diplomatic relations between the States concerned. The Convention contains a system under Article IX to settle claims through diplomatic channels.

Articles XII to XX of the Convention specify the means for settling a dispute, including the basis for assessing damage, the form of compensation, and the negotiation and arbitration of claims in case of disagreement. Article XII also provides that compensation should be sufficient to restore the situation "to the condition which would have existed if the damages had not occurred". This provision is the most complete definition of damage that has been offered in international law. If no settlement of a claim can be reached through diplomatic negotiations within one year of notification, procedures will continue via the establishment of a Claims Commission under Article XIV. The Convention subsequently provides the constitution of the Commission in Articles XV to XX. All decisions and awards shall be based on a majority vote.[13] The Claims Commission is obliged to give its decisions or award not later than one year from the date of its establishment. An extension of this period may be decided only where necessary.[14] An analysis inspired by the intent to carry out the obligation with good faith and due diligence clarifies that the extension should be for the purpose of reaching a settlement acceptable to the parties.

Article XIX(2) plainly specifies that the ultimate effect of the Claims Commission procedure depends on the parties' will. They can agree voluntarily to consider the final decision as legally binding or they can accept it as a recommendatory opinion. However, in the latter case its effect is again dependent on the free will of the States involved. All things considered, whether the final decision of the Claims Commission will have the significance of an arbitral award or be only a non-binding recommendation depends on the will of the disputing Parties.

The Liability Convention also gives consequence to the standing of international intergovernmental organizations. Article XXII(1) places international intergovernmental organizations on approximately the same level as States Parties if certain preconditions are fulfilled. These organizations are deemed to bear responsibilities similar to those of States Parties'.[15] In the event of joint and several liability with States, international intergovernmental organizations are deemed to bear a preferential responsibility during a period of six months. When an international intergovernmental organization acts as claimant, Article XXII(4) stipulates that its claim is to be represented by a State Member of the organization that is also a State Party to the Liability Convention.[16] This is markedly different from the traditional attitude of space law to other natural and juridical persons engaged in space activities that are not intergovernmental organizations.

The major deficiency of the Liability Convention however, lies in the fact that its decision shall only be final and binding if the parties have so agreed, which diminishes the decision to the status of an advisory award in all other cases.[17] Moreover, only States, being party to the Liability Convention, can act on behalf of natural or juridical persons who have suffered damage. This leaves

the initiation of any such action to the discretion of the relevant States. However, this condition is alleviated by Article VIII, entitling more than one State to present such a claim in the alternative, depending on its relationship with the juridical person who has suffered damage. The flexibility of the rule of nationality of claims is a significant step towards protecting the interests of private parties through international law. Nevertheless, private parties are still wholly reliant on States to initiate action in order to materialize their claims under the Liability Convention.

There are also lacunae relating to other issues. The Liability Convention does not mention if the third State presenting the claim on behalf of the claimant State must also be a Party to the Liability Convention. It does act in accordance with a provision of the Liability Convention, and therefore it seems that it shall also be bound by it.[18] Another issue concerns the presentation of claims against international organizations. Reservations may be raised as to the competence of the UN Secretary-General to present such claims, because these international legal entities are not Members of the United Nations.[19] Further, a similar doubt arises as to whether such an organization may present its claim by using the Secretary-General. Both questions may however, remain theoretical. States Members of such organizations that participate in space activities will usually be parties to the Liability Convention, and can always act as claimant States according to Article XXII(4).[20]

1979 Moon Agreement

The dispute settlement procedure provided by the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies[21] is uncomplicated. It does not contain any obligation for the compulsory submission of disputes to settlement procedures. Fundamentally, it is restricted to negotiation and mediation by the UN Secretary-General. However, this does not imply any binding obligation on States Parties to accept the settlement proposals of the highest administrative authority of the United Nations.

The Moon Agreement offers in Article 8(3), by referring to the procedures elaborated in Articles 15(2) and 15(3), the means of consultations when activities of State Parties described in Articles 8(1) and 8(2) interfere with the activities of other States Parties on the Moon. As a result, consultation can be used to minimize conflicts over equipment and facilities on the Moon. Further, it allows States Parties that form their own system of checks-and-balances, but giving States Parties the right to request consultations with a Party who is derogating from, and possibly breaching, its obligations under the Moon Agreement.[22] Other States Parties also have a right to take part in these consultations upon request. These consultations should resolve the situation, as well as consider relevant third party interests. Other States Parties will be notified as to the outcome of the consultations. Article 15 presents again a form of conflict avoidance for Member States. Article 15(3) read with Article 2, invokes again all the traditional processes of international dispute settlement where a mutually acceptable settlement with due regard to the interests of third party States cannot be reached. In particular, Article 15(3) invokes the use of the good offices of the UN Secretary-General. Reference to the UN Secretary-General can be made without the consent of the other Party or both sides may convene to use any other procedure for resolving the dispute peacefully. It is submitted that this is a positive step in the right direction for the better enforcement of the rights and obligations under the Moon Agreement.

Thus, the Moon Agreement goes perhaps one step further than the provisions of the Outer Space Treaty. Its procedures may also potentially be more effective, especially when considering the use of the good offices of the UN Secretary General. However, it should be noted that as a matter of fact, the provisions of the Moon Agreement only apply to activities on the Moon and other celestial bodies, leaving activities elsewhere in outer space beyond its scope of application. Hence, while broader in the stipulated methods of dispute settlement available, the Moon Agreement is restrictive in terms of the territorial jurisdiction it covers.

UN General Assembly Resolutions

There are three UN General Assembly resolutions that contain provisions relevant to the assessment in this dissertation. These are

1. 1982 Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting,[23]
2. 1986 Principles Relating to Remote Sensing of the Earth from Outer Space,[24]
3. 1992 Principles Relevant to the Use of Nuclear Power Sources in Outer Space.[25]

Principles stated in these resolutions indicate that parties should resolve differences through established procedures for the peaceful settlement of disputes,[26] including consultations.[27]

It is submitted that these UN General Assembly resolutions have been particularly useful in one regard: they have crystallized the obligation in customary international law to ensure the peaceful settlement of disputes in matters concerning outer space.[28] This is significant since customary international law binds all actors on the international plane, which includes States not members of the United Nations. Further, it can also be applied to non-State actors. Aside from this however, the General Assembly resolutions do no more than reiterate the basic methods of international dispute

settlement already imported from general international law.

The Work of the ILA: The 1998 Taipei Final Draft

The International Law Association (ILA) embarked on the study of the settlement of space law disputes as early as 1978.[29] Subsequently in the 1982 Montreal ILA Conference[30] a Resolution was passed recommending that the Space Law Committee begin work on preparing a Draft Convention on the Settlement of Space Law Disputes. This Draft Convention was to incorporate these basic principles:

1. The Convention should permit States to choose for its application between:
   a. all space law disputes with other States Parties;
   b. application to specific areas of space law as may be dealt with in specific bilateral or multilateral treaties;
   c. certain categories of disputes or certain sections of the Convention, subject to such exceptions that the State may wish to claim.
2. The Convention should in one section provide for non-binding settlement methods, including advisory awards, but should in another section provide for binding methods of settlement upon application by one of the parties, if the other party does not agree with the consequences of such non-binding methods;
3. The Convention should provide States with a choice from among different settlement methods which, in the case of a binding settlement, should include adjudication by the International Court of Justice as well as administrated and *ad hoc* arbitration;
4. The Convention should provide that States Parties must select one method for binding settlement within the choices given;
5. The Convention should stress that States Parties have an obligation to satisfy the decisions of the tribunal chosen;
6. In the Convention or as an annex thereto a 'disputes settlement clause' should be drafted which could serve as a model to be included in future bilateral or multilateral treaties on space law.

The ILA Space Law Committee duly prepared to formulate a Draft Convention on the Settlement of Space Law Disputes. This was discussed and adopted at the 1984 Paris ILA Conference.[31] The 1984 Draft Convention followed the dispute settlement procedure in the 1982 UN Law of the Sea Convention[32] and its Annexes, since "it represents the most recent indication of what is acceptable in present state practice". However it was clear that the law of the sea dispute settlement procedure had to be adapted to correspond with the different field of application.[33] After further consideration at the ILA Conferences of 1990, 1994 and 1996,[34] the 1998 ILA Taipei Conference adopted the "Final Draft of the Revised Convention on the Settlement of Disputes related to Space Activities".[35]

The 1998 ILA Taipei Draft Convention reflected the affirmative features of these constructive deliberations. Within the framework of judicial settlement of disputes, it was proposed to create a new Chamber of the International Court of Justice to deal with disputes of commercial or privatized outer space activities and to establish a new International Tribunal for Space Law. In the form of extra-juridical settlement of disputes, the Draft postulated that conciliation and arbitration procedures should be accepted.

The idea was to start dispute settlement at a low level of compulsion so as to garner wider support. This meant establishing an obligation to settle the dispute, coupled with a free choice of means and shorter time limitation periods to prevent disputes from dragging on indefinitely. As a nod to international cooperation and the geometric growth of commercial space activities, both intergovernmental organizations and private entities should be allowed standing before the proposed dispute settlement mechanisms. All this should be achieved in as simple a manner as possible so as to avoid losing precious time and party support for the proposal in a maze of legal intricacies. The number of judges and quorum required should also be brought down to improve tribunal agility and reduce costs. Any decision taken by the dispute settlement body should be final and binding on the parties concerned.

The Taipei Final Draft Convention under Article 1 applies to all activities in outer space and all activities with effects in outer space, if States and international organizations carry out such activities.[36] It also refers to the international obligations as laid out by the Outer Space Treaty on Member State. As such, it is also applicable to private and non-governmental entities via the States' continuing supervisory obligations.[37] The wide scope of application of the Convention can however, be constrained in various ways, while certain sections or articles of the Convention itself can be excluded.[38] This facilitates to a high degree the acceptability of at least a part of the Convention by the greatest possible number of States. It however does not override agreements in which parties have already agreed to submit to another procedure of peaceful settlement, if that procedure entails a binding decision.[39] This gives priority to antecedent dispute settlement procedures that have binding effect, and it is submitted, is significant in advancing the case for binding dispute settlement.

The Convention provides successively non-binding[40] and binding[41] settlement procedures. The non-binding settlement procedures deal with the obligation to exchange views,[42] focusing on negotiation or any other peaceful means of dispute settlement, or conciliation.[43]

The conciliation procedure is extensively elaborated in a separate section of the Convention.[44]

The binding settlement procedures[45] are to be initiated at the request of any party to the dispute when no settlement has been reached following recourse to the non-binding procedures.[46] They offer a choice of means without any hierarchical structure, namely:[47]

1. the International Tribunal for Space Law, if and when such a Tribunal has been established;
2. The International Court of Justice; or
3. An arbitral tribunal, constituted in accordance with the provisions of the Convention.

The Convention contains extensively elaborated provisions in subsequent sections on the procedures of an arbitral tribunal and the International Tribunal for Space Law.[48]

The choice of procedure can be made when parties sign, ratify or accede to the Final Draft Convention by means of a declaration.[49] A Party, which is party to a dispute not covered by a declaration in force, shall be deemed to have accepted arbitration as a means of dispute settlement.[50] Where parties have accepted the same procedure, the dispute will be submitted only to that procedure. However, if the parties to the dispute have not accepted the same procedure for the settlement of the dispute between them, it may be submitted only to arbitration, unless the parties otherwise agree.[51] In respect of scientific or technical matters, a provision of the Convention offers a court or tribunal the assistance of two technical experts, who would, however, have no voting right.[52]

Further the Final Draft Convention contains the possibility that all dispute settlement procedures specified in the Final Draft Convention shall be open to entities other than the parties, unless the matter is submitted to the International Court of Justice.[53] This increases accessibility of the mechanism beyond the traditional boundaries set by international law.

The Final Draft Convention stipulates that the applicable law includes its own provisions as well as other rules of international law that are not incompatible with it.[54] Any decision rendered by a court or tribunal having jurisdiction under the Convention shall be considered as final and binding for all parties to the dispute.[55]

It is submitted that the Taipei Final Draft Convention is a definite progression in the development of the law relating to peaceful settlement of disputes in outer space. It is clear, succinct, and creative in its use of existing dispute settlement techniques. It also exhibits grave pragmatism in aiming for the widest possible party support, while acknowledging and adapting to the realities of current and future space activities. It is an important model for development of further innovations in the area of peaceful settlement of space-related disputes. However, it is submitted that the Taipei Final Draft Convention could go further in establishing a workable dispute settlement framework for outer space activities. It should give more weight to issues of accessibility and standing for individuals and small commercial enterprises engaged in space activities. It should also provide some means of universal applicability instead of resorting to the traditional State and intergovernmental organization dichotomy. Further, it should take into account the need for the inclusion of both law and non-law experts in the resolution of space disputes. Therefore, it is submitted that while the Taipei Final Draft Convention is a step in the correct direction, it should build upon the pragmatic creativity of the drafters and take a much bolder step in the development of a comprehensive dispute settlement framework for space activities.

INTERNATIONAL DISPUTE SETTLEMENT[56]

The evolution of international dispute settlement appears to have occurred in five phases. [57] In the first phase, there was the concept of a "just" war. This concept allowed the enforcement of rights and obligations between States through a legally-acceptable use of armed force. The second phase began with the acknowledgement of the importance of the peaceful settlement of disputes. International disputes were adjudicated solely between States and before *ad hoc* bodies set up to handle that specific dispute. The 1899 establishment of the PCA[58] denoted the advent of the third phase, with the awareness of the urgency to establish a standing body.[59] The fourth phase took place in the aftermath of the Second World War and led up to the early 1980s. It saw the establishment of the International Court of Justice (ICJ), regional bodies such as the European Court of Justice (ECJ), the European Court of Human Rights (ECHR) and the International Center for the Settlement of Investment Disputes (ICSID). The fifth phase was critically set in motion by five determinants: the establishment of various human rights commissions and tribunals;[60] the World Trade Organization's (WTO) Dispute Settlement Understanding; the UN Convention on the Law of the Sea (UNCLOS), establishing the International Tribunal for the Law of the Sea (ITLOS); the compliance mechanisms established by the international environmental regime; and the evolution of the good offices of the UN Secretary-General as a direct alternative to the use of force.[61]

The first four phases in the evolution of international dispute settlement evinces three developments. First, there is the clear inclination away from the use of force as a dispute settlement mechanism. Secondly, there is also an evident trend away from the *ad hoc* constructions that had been predominant until 1907.[62] Thirdly, there is a palpable drift towards recourse to third party dispute settlement mechanisms. While limited in jurisdiction, these mechanisms nonetheless provided fora for international

dispute settlement at the regional and global levels. The extensive network revealed an emergent readiness of States to affirm the role of third party dispute settlement in international political relations.

The fifth phase emerged with the advent of the 1980s and the creation of several new international dispute settlement bodies. These have a number of characteristics that suggest that international dispute settlement has entered a new phase. First, recent events indicate a trend towards the establishment of dispute settlement mechanisms under specific treaty regimes, which have compulsory mandatory jurisdiction and binding decision-making powers. Examples include the mechanisms established under the 1982 UNCLOS and the 1994 WTO Dispute Settlement Understanding; the non-compliance mechanisms created in the ozone regime;[63] the inspection panels established by the World Bank; and the International Criminal Court. Second, the issue of compliance with legal obligations within specific treaty regimes has been increasingly tied to dispute settlement procedures. The topic of non-compliance with environmental obligations has received increased scrutiny, which has resulted in novel compliance regimes using non-contentious, non-judicial mechanisms. The non-compliance mechanism established under the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer[64] set the stage for further use in the context of other environmental agreements.[65] A third factor is that States are no longer the only players on the international plane. More international courts, tribunals and other dispute settlement bodies are accessible to individuals, corporations, non-governmental organizations, intergovernmental organizations and other associations. A particularly successful example of this is the establishment of the European Court of Human Rights and the adoption of Protocol 11[66] to the European Convention on Human Rights.[67] This is not without controversy. The traditional view of international law was that only States had *locus standi* on the international plane, and consequently, in international dispute settlement. With many dispute settlement tribunals now granting non-State actors standing, the image of the State as the only actor on the international plane is slowly changing.[68]

These developments support the argument that effective mechanisms for international dispute settlement need to be economic, non-coercive, open to all interested parties, and fair. It must be readily accessible to all and parties should deal at arm's length. International dispute settlement must balance three competing interests. Firstly, the result must be acceptable to all parties and must serve their interests.[69] Secondly, it should not offend third parties' interests and must uphold international law and community values.[70] Thirdly, it must achieve congruity in both process and outcome, ensuring a progressive and productive development of international law.[71]

NEED FOR A SPACE LAW DISPUTE SETTLEMENT MECHANISM[72]

Unique Paradigm of Space Activities

The tight balance on international peace and security that is held in check by international space law is a delicate one. As international society evolves and matures with space activities and technology, varied and conflicting interests will inevitably arise. To fully appreciate and enhance the role of international space law, it is first necessary to understand the environment in which it operates and over which it governs. This is especially the case in terms of any dispute settlement and enforcement mechanism for international space law. Factors to consider in this context include:

1. Military use of outer space and dual-use technology;
2. International cooperation;
3. Space science and technology;
4. Commercialization of outer space; and
5. Proliferation of actors involved in space activities.

Need for a Compulsory, Permanent and Sectorialised Mechanism

The reasons for a compulsory and permanent institution are four-fold:

1. A compulsory, permanent institution will ensure the certainty that disputes will be settled and the rule of law enforced within a flexible framework.
2. Given the high risks and unequal bargaining positions in space activities, disputing parties should not be allowed to opt out of peacefully settling their disputes.
3. A compulsory, permanent institution ensures the certainty of the law and prevents against the fragmentation of international space law.
4. A compulsory, permanent institution will be allowed to build up its legitimacy and jurisprudence, which is essential for confidence building.

Special Criteria for a Dispute Settlement Mechanism for Space Activities

It is submitted that for any dispute settlement mechanism to be effective and workable in relation to disputes arising from space activities, it has to take into account several factors that may not be present in other more generalized forms of dispute settlement machinery. These factors include

1. The need for the declaration and creation of the law;
2. An overarching and universal jurisdiction to consider any and all factors potentially involved in the dispute;

3. The special requirements of *locus standi* necessary for the myriad actors involved in space activities;
4. A heightened requirement of flexibility to deal with rapidly evolving political, economic, technical and other contexts;
5. The capacity to include technical and economic competencies into the dispute settlement procedure;
6. The need for efficiency in the settlement of disputes and the possibility of requests for rapid provisional measures to be ordered and enforced; and
7. The assurance that any settlement achieved is practically applicable and enforceable.

PROPOSAL: THE MULTI-DOOR COURTHOUSE FOR OUTER SPACE[73]

Origins of the Multi-Door Courthouse

Alternative dispute resolution (ADR) has become popular in many domestic jurisdictions.[74] The multi-door courthouse concept grew out of the ADR movement. The multi-door courthouse has been tested in domestic jurisdictions in the United Kingdom and parts of the United States,[75] and has been implemented in Australia, Canada, New Zealand, Singapore and other parts for the Commonwealth.[76] Analogies should not be too freely framed between ADR in the domestic and international arenas. In domestic jurisdictions the purpose has been to seek informal alternatives to adjudication. These alternatives range from inter-party negotiation without third party intervention to binding third party arbitration. In international law the focus is on developing political will and other incentives to have recourse to permanent and mandatory dispute settlement methods.[77] It is submitted however, that there are lessons learnt in the domestic context that are applicable on the international and transnational plane of dispute settlement.

It is proposed that an adapted version of multi-door courthouse is perhaps the most fitting step in the evolution of dispute resolution in international space law. The multi-door courthouse is a multifaceted dispute settlement centre. It recognizes that particular cases, violations and disputants may be suited to particular dispute settlement methods. As options of advocacy and dispute resolution mechanisms proliferate, choosing the correct option becomes a problem in itself. The multi-door courthouse, in which these considerations are analyzed and diverted to the appropriate dispute resolution methods, has been an answer to this problem.[78] In this approach, disputants are channelled by intake screening to the correct "door" in the courthouse. The courthouse would make all dispute resolution services available under one roof, including the initial intake screening. The aims of the multi-door courthouse are to inform the parties of the available alternatives, to assist them in choosing the appropriate mechanism for their particular dispute, and to provide the mechanism to settle the dispute. Compliance with the intake official's referrals could be voluntary or compulsory.

Proposed Structure of the Multi-Door Courthouse for Outer Space Disputes

Figure 1 describes the proposed structure of the Multi-Door Courthouse for Outer Space Disputes. Parties may avail themselves of the system by

1. depositing instruments of accession to the multi-door courthouse system,
2. including clauses in bilateral or multilateral agreements agreeing to resort to the system in the case of a dispute arising, or
3. submitting a dispute to it on an *ad hoc* basis as and when such disputes may arise.

At the point of accession or submission of disputes, parties will independently indicate their preferred means of dispute settlement. Upon the submission of a dispute, parties are required to submit a confidential *compromis* together with their separate preliminary submissions on the case. Additionally, they are to submit a confidential statement of any political, economic, technical or other interests they may conceive from their perspective of the dispute. These documents will be passed through an interdisciplinary expert panel consisting of an odd number between three and five members for initial screening.

Based on these documents and their assessment of the dispute in its entirety, the expert panel will recommend a method of dispute settlement from a gradated scale. If the parties did not initially decide upon the same method of dispute settlement upon submission, the dispute is submitted to this recommended mechanism for settlement. This is done with the understanding that should this fail to resolve the dispute satisfactorily within a stipulated timeframe; the dispute will be re-submitted to the panel's next choice of dispute settlement method. This next choice will be further along the gradated scale towards binding third party dispute settlement. Experience in international law has shown that the possibility of submitting the dispute to binding third party dispute settlement plays a significant role in motivating parties to come to an early resolution of the dispute. If this second recommended method fails again, then the dispute would be compulsorily submitted to binding third party settlement such as arbitration. Of course the initial screening process will also consider factors such as the impact of the decision on third parties and the development of international law. Should the outcome of the dispute potentially have less minor repercussions on these issues, then a public, binding method may be recommended from the start instead.

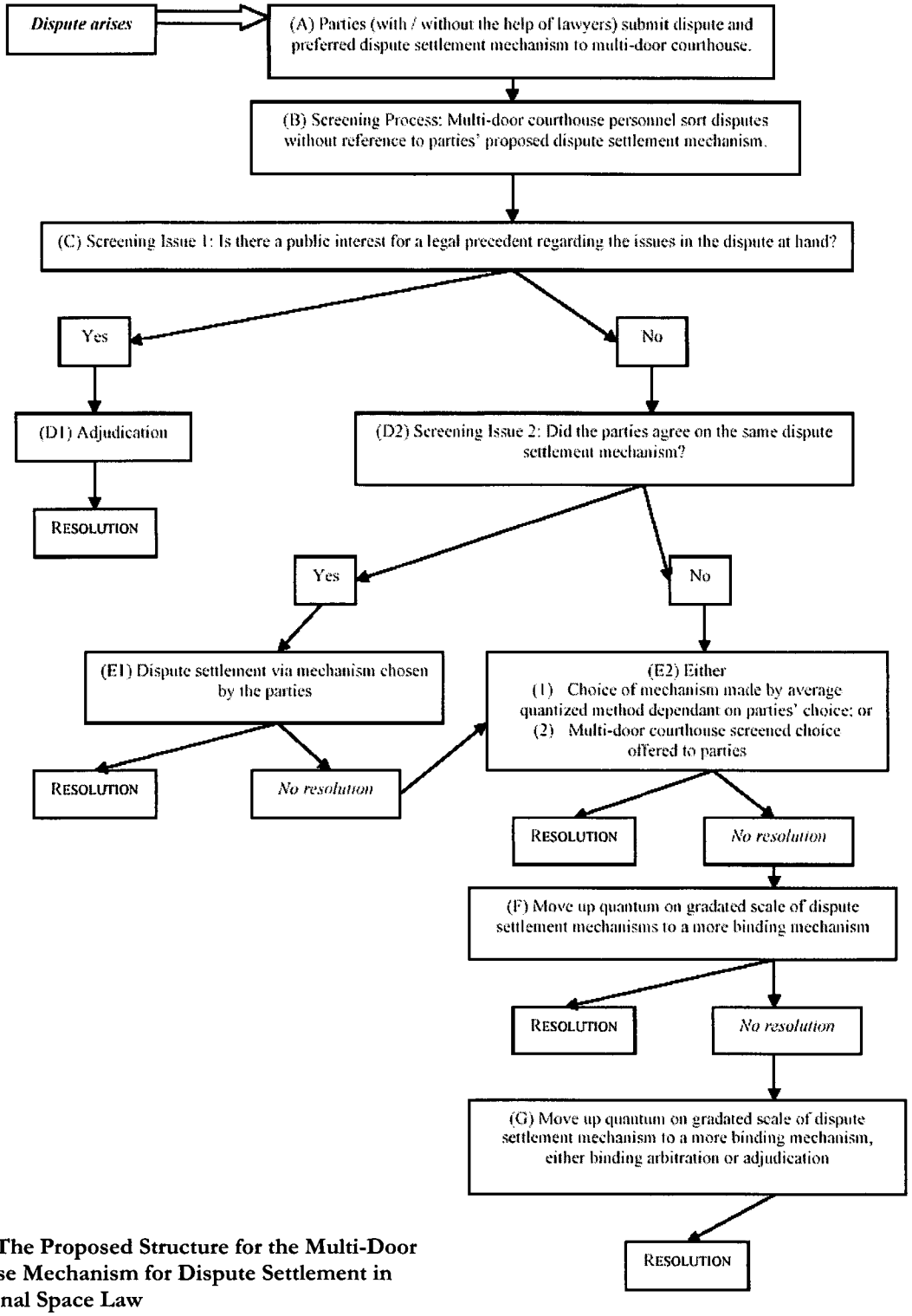

Figure 1: The Proposed Structure for the Multi-Door Courthouse Mechanism for Dispute Settlement in International Space Law

The parties must undertake in good faith to give effect to the settlement of the dispute. The multi-door courthouse also comprises a three-prong approach to enforcement, as well as procedures for interim measures if necessary. In summary these enforcement mechanisms are

1. Verification; consisting of
   a. Treaty compliance regimes;
   b. Inspection panels and party reports;
2. Supervision; consisting of
   a. Good offices of the UN Secretary-General;
   b. Compensation Commissions; and in the last resort
   c. Referral of the dispute via the UN Secretary-General to the UN Security Council.
3. Procedural issues in settlement enforcement.

The multi-door courthouse should also provide facilities for confidence-building measures such as conflict avoidance mechanisms and a reasoned ongoing review of its own operations.

The Case for the Multi-Door Courthouse for Outer Space Disputes

The following is a summary of the case for the multi-door courthouse system as the most viable permanent dispute settlement mechanism for disputes relating to outer space:

1. The Multi-door Courthouse system allows for the progressive evolution of the law relating to activities in outer space.
   a. The Multi-door Courthouse system protects the special character of space law as a unique hybrid of public and private laws both at the international and domestic level.
   b. It ensures the continued and relevant advancement of space law with ambient developments in its operational field.
   c. It prevents the fragmentation of the field of space law and ensures a coherent, relevant legal framework for space activities.
2. The Multi-door Courthouse system is suited to the rapidly evolving and multi-faceted factual matrix of activities in outer space.
   a. The Multi-door Courthouse system provides the technical, economic and scientific competence necessary in the multi-disciplinary environment of space activities.
   b. It ensures the possibility of *locus standi* for the disparate parties that may become involved in disputes concerning activities in outer space.
   c. It allows the prospect of "suiting the forum to the fuss" and tailoring the dispute settlement process to the distinctive characteristics of the particular dispute.
3. The Multi-door Courthouse system allows for greater efficiency and party satisfaction in the resolution of disputes, which in turn ensures a greater compliance and enforcement rate of settlements rendered.
   a. The Multi-door Courthouse system grants greater party access and involvement with the dispute settlement process, thus increasing the likelihood of party satisfaction with the process and its outcome.
   b. It ensures a guaranteed resolution of the dispute through the most non-coercive means possible whilst safeguarding any public interest issues involved.
   c. It provides one of the best means to keep the peace in outer space.

CONCLUSION

The new global scenario facing space activities demands effective means of maintaining the peace. Securing stability, predictability and equality is necessary for the equitable use and exploration of outer space for the benefit of Humanity. The formulation of solutions to current global challenges promotes the role of law in the maintenance of transnational and international peace and security. Substantive law presents the appropriate riposte only through the creative and effective use of procedural legal devices.

In order to establish adequate and meaningful dispute settlement procedures, law-making and enforcement processes are of great importance. Law-making must be legitimate and acceptable to the parties concerned. Further, it has to occur in a timely and efficient fashion. This allows the evolution of the law to pace ambient developments in the related field, a consideration of particular significance in the rapidly evolving field of space activities. Enforcement mechanisms render legal principles and settlements tangible. Adequate supervisory, verification and non-compliance mechanisms must be put in place to ensure that the practical applicability of dispute settlement is not lost due to actors' potential frippery and malapropism.

Of particular interest is the standing and role of non-State actors in the international community and the outer space arena. In the context of the protection of communal interests and basic legal principles in outer space, these non-State actors are an important basic element. Aside from the increasingly active and interventionist role of non-State actors in outer space, this group of actors illustrate that a truly transnational system of dispute settlement and decision-making must be developed for the legal framework to remain relevant.

With its lack of an established dispute settlement mechanism, space law provides the opportunity for legal creativity and courage to work on a clean slate. The task at hand is to fashion a viable device for dispute settlement that represents a definite progression in the evolutionary ladder of international dispute settlement. One small step for space law could well be a giant leap for international law. Within the realities of the current global matrix, a common effort taken with equal doses of idealism and pragmatism can realize a more secure world built on the twin-tree principles of peace and cooperation. A novel yet

workable dispute settlement mechanism will provide the Calacirian – "*passage*" – for Humanity's peaceful use and exploration of the brilliant, delicate infinity of outer space.

"...through the Calacirian
to hidden land forlorn he went."[79]

---

* This paper is based on a summary of research work that has been published in full: Goh, G.M., *Dispute Settlement in International Space Law: A Multi-Door Courthouse for Outer Space*, (2007), Studies in Space Law Vol. 2, (Martinus Nijhoff Publishers: Leiden / Boston), ISSN: 1871 – 7659; ISBN 13: 978 90 04 15545 9; ISBN 10: 90 04 15545 7

[1] Jasentuliyana, N., *International Space Law and the United Nations, A publication on the occasion of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE-III)*, July 1999, Vienna, Austria (1999), in particular Chapter 8: Conflict Resolution in Outer Space at 215 – 223

[2] For a more in-depth analysis of existing and nascent dispute settlement mechanisms in international space law, please refer to Goh, G.M., *Dispute Settlement in International Space Law*, (2007), in particular Chapter 1.

[3] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies, (1967), adopted on 19 December 1966, opened for signature on 27 January 1967, entered into force on 10 October 1967, 610 UNTS 205, 18 UST 2410, TIAS 6347 [hereinafter "Outer Space Treaty"]; see Lachs, M., "The Treaty on Principles of Law of Outer Space, 1967 – 92", (1992) 39 Netherlands International Law Review 291

[4] Lachs, M., *The Law of Outer Space – An Experience in Contemporary Law-Making*, (1972) at 121

[5] Charter of the United Nations, (1945) 59 Stat. 1031, UNTS No. 993 [hereinafter "UN Charter"]

[6] Article 33(1), UN Charter, *ibidem.*

[7] Parties are required only to "seek" a solution.

[8] Article 39, UN Charter, see *supra* note 5. On the topic of the power and competence of the UN Security Council and its use and delegations of its Chapter VII powers, see generally Sarooshi, D., *The United Nations and The Development of Collective Security: The Delegation by the UN Security Council of its Chapter VII Powers*, (1999)

[9] Article 93, UN Charter, see *supra* note 5

[10] Article 94, UN Charter, see *supra* note 5

[11] See Cocca, A.A., Conference Statement made at *Solución de Controversias en Derecho Espacial* (Settlement of Space Law Disputes), Córdoba, Argentina, Council of Advanced International Studies, (1981) at 73

[12] Convention on Liability for Damage Caused by Objects Launched into Outer Space (1972), adopted on 29 November 1971, opened for signature on 29 March 1972, entered into force on 1 September 1972, (1972) 961 UNTS 187, 24 UST 2389, TIAS 7762, [hereinafter "Liability Convention"]

[13] Article XVI(5), Liability Convention, see *supra* note 12

[14] Article XIX(3), Liability Convention, see *supra* note 12

[15] Article XXII(3), Liability Convention, see *supra* note 12

[16] Article XXII, Liability Convention, see *supra* note 12

[17] Article XIX, Liability Convention, see *supra* note 12

[18] Cheng, B., "International Liability for Damage Caused by Space Objects', in Jasentuliyana, N. and Lee, R.S.K, (eds.), *Manual on Space Law*, (1979) Volume I at 133

[19] *ibidem* at 136

[20] See generally Diederiks-Verschoor, I.H.Ph., *An Introduction to Space Law* (2nd ed., 1997), in particular for the historical context and impact of the Liability Convention.

[21] Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, (1979), UN Doc. A/34/664 (1979) [hereinafter "Moon Agreement"]

[22] Article 15(2), Moon Agreement, *ibidem.*

[23] (10 December 1982), UN GA Resolution 37/92, [hereinafter "DBS Principles"]

[24] (3 December 1986), UN GA Resolution 41/65, [hereinafter "RS Principles"]

[25] (14 December 1992), UN GA Resolution 51/122, [hereinafter "NPS Principles"]

[26] Principle 7, DBS Principles; Principle XV RS Principles and Principle 10, NPS Principles.

[27] Principles 10, 13 and 15, DBS Principles; Principle XIII RS Principles and Principle 6, NPS Principles.

[28] This is argued in full in Goh, G.M., *Dispute Settlement in International Space Law*, (2007) at 42 – 46, as according to the rulings in the *Asylum* case, (1950) ICJ Rep. 276 at 277 and *North Sea Continental Shelf* cases, (1969) ICJ Rep. 3. See also Valkov, C., "Problems and Results from Resolution 41/65 of the United Nations about Developing Countries", (1988) 31 Proc. Coll. Law of Outer Space 157, Schwebel S.M., "The Legal Effect of Resolutions and Codes of Conduct of the United Nations" in *Justice in International law: Selected Writings of Judge Stephen M. Schwebel*, (1994) 499 at 502, Gaggero, E.D., "Remote Sensing, in the United Nations: Reforming to the Way of Consensus" (1987) 30 Proc. Coll. Law of Outer Space 312, Suy E., "Rôle et signification du consensus dans l'élaboration du droit international", Yearbook, (1997) Institute of International Law, Pedone, Paris, Session of Strasbourg 1997, at 33, Sloan, "General Assembly Resolutions Revisited", (1987) BYIL 39 and Terekhov, A.D., "UN General Assembly Resolutions and Outer Space Law", (1997) 40 Proc. Coll. Law of Outer Space 97 at 102.

[29] For a Manila Conference report, see (1979) 7 JSL 63

[30] See generally 1982 Report of the International Law Association of the Conference held in Montreal, 29th August - 4th September 1982

[31] The complete text of the Draft Convention is available in International Law Association, *Report of the 61st Conference* (Paris 1984), (1985) 325

[32] United Nations Convention on the Law of the Sea, December 10, 1982, UN Doc.A/Conf.62/122

[33] Kopal, V., "Evolution of the Main Principles of Space Law in the Institutional Framework of the United Nations", (1984) 12 JSL 12

[34] ILA Booklet, *Space Law Committee, Section B: Suggestions for the Future* (64th Conference, London, 1990), (1990) at 18

[35] Final Draft of the Revised Convention on the Settlement of Disputes related to Space Activities, ILA, *Report of the 68th Conference, Taipei, Taiwan, Republic of China*, (1998) 249 – 267, [hereinafter "Taipei Draft Convention"]

[36] Article 1(1), Taipei Draft Convention, *ibidem.*
[37] Article VI, Outer Space Treaty, see *supra* note 3
[38] Article 1(2), Taipei Draft Convention, see *supra* note 35
[39] Article 1(5), Taipei Draft Convention, see *supra* note 35
[40] Section II, Taipei Draft Convention, see *supra* note 35
[41] Section III, Taipei Draft Convention, see *supra* note 35
[42] Article 3, Taipei Draft Convention, see *supra* note 35
[43] Article 4, Taipei Draft Convention, see *supra* note 35
[44] Section IV, Taipei Draft Convention, see *supra* note 35
[45] Section III, Taipei Draft Convention, see *supra* note 35
[46] Article 5, Taipei Draft Convention, see *supra* note 35
[47] Article 6(1), Taipei Draft Convention, see *supra* note 35
[48] Section V relates to the arbitration procedure; Section VI relates to the International Tribunal for Space Law, Taipei Draft Convention, see *supra* note 35
[49] Article 6, Taipei Draft Convention, see *supra* note 35
[50] Article 6(2), Taipei Draft Convention, see *supra* note 35
[51] Articles 6(3) and 6(4), Taipei Draft Convention, see *supra* note 35
[52] Article 8, Taipei Draft Convention, see *supra* note 35
[53] Article 10(2), Taipei Draft Convention, see *supra* note 35
[54] Article 11(1), Taipei Draft Convention, see *supra* note 35
[55] Article 13(1), Taipei Draft Convention, see *supra* note 35
[56] For a detailed commentary on the applicability of international dispute settlement mechanisms to space activities and international space law, please refer to Goh, G.M., *Dispute Settlement in International Space Law*, (2007), in particular Chapter 2. Chapter 4 of the same book provides a comparative analysis with recent developments in other fields of international law.
[57] Article 33, UN Charter, see *supra* note 5
[58] International Convention for the Pacific Settlement of Disputes, The Hague, 29 July 1899, 32 Stat 1779; International Convention for the Pacific Settlement of Disputes, The Hague, 18 October 1907, 3 Martens (3rd) 360, 36 State 2199
[59] Lauterpacht, E., *Aspects of the Administration of International Justice* (1991) at 9
[60] Augenblick, M. and Ridgway, D.A., "Dispute Resolution in International Financial Institutions", (1993) 10 Journal of International Arbitration 73
[61] see Sands, P., Mackenzie, R. and Shany, Y. (eds.), *Manual on International Courts and Tribunals*, (1999) at xxviii. There the author (Sands) identifies four stages of development, focusing only in the peaceful settlement of disputes. This paper refers to five stages, acknowledging the possibly catastrophic results of non-peaceful disputes in outer space.
[62] Bowett, O., *Law of International Institutions*, (4th ed., 1982)
[63] See generally Szell, P., "The Development of Multilateral Mechanisms for Monitoring Compliance", in Lang, W. (ed.), *Sustainable Development and International Law*, (1995)
[64] 16 September 1987, (1987) 26 ILM 154
[65] For example, the 1992 UN Framework Convention on Climate Change (1992) 31 ILM 822; and the 1994 Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Further Reduction of Sulphur Emissions (1994) 33 ILM 1540
[66] Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, (May 11, 1994), 33 LLM 943
[67] European Convention for the Protection of Human Rights and Fundamental Freedoms, (November 4, 1950), 213 UNTS 221
[68] See generally Janis, M.W. (ed.), *International Courts for the Twenty-First Century* (1992); Merrills, J.G., *Internatio.* It is instructive to compare the approach of the US Supreme Court in *Breard v. Greene* (1998) [118 S Ct 1352, 140 L Ed. 2d 529] with that of the Privy Council of the House of Lords in *Hilaire and Thomas* [Privy Council Appeal No. 60 of 1998, *Thomas and Hilaire*, (27 January 1998)]
[69] Menkel-Meadow, C., "Towards Another View of Legal Negotiation: The Structure of Problem-Solving", (1983) 31 UCLA Law Review 754
[70] Chinkin, C. and Sadurska, R., "An Anatomy of International Dispute Resolution", (1991) 7 Ohio State Journal of Dispute Resolution 39
[71] See Abel, R., *The Politics of Informal Justice* (1982)
[72] For a more in-depth argumentation of the need for a mechanism for dispute settlement in international space law, please refer to Goh, G.M., *Dispute Settlement in International Space Law*, (2007), Chapters 3 and 5.
[73] For an elaborated description of the proposed multi-door courthouse for outer space, please refer to Goh, G.M., *Dispute Settlement in International Space Law*, (2007), in particular Chapter 5 at pp. 270 ff..
[74] Shore, M.A., Solleveld, T. and Molzan, D., *Dispute Resolution: A Directory of Methods, Projects and Resources*, (July 1990) Alberta Law Reform institute, Research Paper No. 19
[75] d'Ambrumenil, P.L., *What is Dispute Resolution?* (1998); Henderson, S., *The Dispute Resolution Manual: A Practical Handbook for Lawyers and Other Advisers, Version 1.0* (1993)
[76] Lim L.Y. and Liew T.L., *Court Mediation in Singapore* (1997) at 31 and 33
[77] Mnookin R. and Kornhauser, L., "Bargaining in the Shadow of the Law: the Case of Divorce", (1979) 88 Yale LJ 950
[78] Sander, F.E.A., "Varieties of Dispute Processing" (1979) 70 FRD 111; Cappelletti, M. and Garth B., "General Report", Vol. I Bk. 1, in *Access to Justice* (Italy, 1979) at 515; American Bar Association, Report on Alternate Dispute Resolution Projects (1987)
[79] Tolkien, J.R.R., "Bilbo's Song of Eärendil, Many Meetings", *The Lord of the Rings: The Fellowship of the Ring*, (1966, reprinted 1995) at 229