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Disputes in Satellite Communications: Settlement Mechanisms Available for Breach of Coordination Agreements

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Abstract

Among the numerous space activities, satellite communications remain the most widespread, essential, and advanced. To perform a communication function, satellites need to be placed in orbit and use the radio-frequency spectrum. Such limited natural resources, which require rational, equitable, efficient, and economical use in an interference-free environment, are managed by the International Telecommunication Union (ITU).

Before a new satellite or a satellite network is brought into use, the relevant operator carries out coordination with other operators which utilize satellite networks in the adjacent orbital locations. The results of the coordination procedure are then reflected in coordination agreements. Though coordination may last for years, the difficulty is not so much the conclusion of an agreement as its due performance and enforcement.

Coordination agreements generally contain mutually acceptable technical parameters for the operation of certain frequencies and their breach may cause harmful interference toward communications satellites. At the request of administrations, the ITU carries out investigations of harmful interference and formulates recommendations. Although such a process has a few drawbacks, complete disregard for the content of coordination agreements makes it totally meaningless.

If the ITU's recommendations cannot satisfy the parties or are not duly followed, or if damage was caused by harmful interference and requires compensation, a judicial recourse seems inevitable. As disputes may involve parties around the globe, to which court should they apply? Commonly drafted by technical experts,

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coordination agreements hardly provide for a dispute resolution mechanism or governing law, while the application of general rules may bring parties to an exotic jurisdiction equally irrelevant to both. Whatever court is chosen, the question of specific knowledge arises. However, the ITU's practice has always been not to get involved in disputes.
Therefore, disputes related to coordination agreements pose legal challenges. Where to adjudicate the case and what law to apply are just the tip of the iceberg, while the major question of whether there is a need for a specialized court remains significant. This field of space activities apparently requires legal advice.

1. Introduction

Since the beginning of the space era, numerous space applications have become an integral part of people's everyday life. Among them, the most widespread and advanced are satellite communications that provide telephony, television, and the Internet, thereby connecting countries and continents.

According to the Satellite Industry Association, in 2018, the global space economy amounted to 360 billion US dollars. 77% of revenues worldwide were generated by the satellite industry. Almost half of them were satellite services, including communications.[1] That is, satellite communications are a significant part of the global space economy today.

To perform a communication function, i.e. transmit and receive signals carrying different types of information, satellites need to be placed in certain orbits in space and use radio frequencies, which are limited natural resources. Such resources are managed by the International Telecommunication Union (ITU) – the United Nations specialized agency for information and communication technologies.

One of the ITU's missions is to ensure that radio-frequency spectrum and associated satellite orbits are used in an interference free environment.[2] Interference can be caused if two satellites are closely located and use similar frequencies. Harmful interference seriously degrades, obstructs, or repeatedly interrupts a communication service,[3] thereby preventing both satellites from operating normally. To avoid that, the ITU regime provides for the so-called international frequency coordination.

1 2018 State of the Satellite Industry Report, Satellite Industry Association. Available for a fee at https://www.sia.org/ssir_preview/.
2 Para. 1, Art. 12, Constitution of the International Telecommunication Union.
3 No. 1.169, Radio Regulations of the International Telecommunication Union.

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2. International Frequency Coordination

Before a new satellite or a new satellite system can be deployed in orbit, an operator submits to the ITU Radiocommunication Bureau a general description of the planned satellite network which contains, among other things, requested frequencies and satellite orbits.[4] Then, such operator has to coordinate its new network with operators of the existing or earlier planned satellite networks if they may be affected by the new one.[5]

Here, it is important to note that the communication environment of outer space is rapidly changing. When a new satellite network is deployed, newer frequency filings are made, which, in turn, are required to be coordinated with those that have been filed earlier. Hence, international frequency coordination is an ongoing process, which aims at constantly meeting relevant requirements and constitutes a permanent part of the space activities of each satellite operator.

International frequency coordination is generally conducted by and between national administrations of the ITU Member States.[6] At the same time, operators of the relevant satellites and satellite systems, which can be public or private companies or international intergovernmental organizations, are also entitled to take part in the coordination process on an equal footing with administrations.[7]

The results of the coordination procedure are reflected in coordination agreements to be executed by the corresponding administrations or signed or otherwise formally approved by them, if initially concluded between operators. In this regard, depending on parties to a coordination agreement, there exist the so-called administration-to-administration, administration-to-operator, and operator-to-operator agreements. In any case, the ITU must be notified by the corresponding national administrations of the outcomes of the coordination.

Besides the conventional form of a bilateral or a multilateral written agreement embodied in a single paper instrument, the outcome of a coordination process can also be reflected in the minutes of meetings, through the exchange of letters, or otherwise as the parties consider

4 No. 9.1, Radio Regulations of the International Telecommunication Union.

5 Nos. 9.6 and 9.7, Radio Regulations of the International Telecommunication Union.

6 According to the Annex to the ITU Constitution, 'Administration' means any governmental department or service responsible for discharging the obligations undertaken in the Constitution of the International Telecommunication Union, in the Convention of the International Telecommunication Union and in the Administrative Regulations. Administrations of the ITU Member States represent both governmental agencies and non-governmental (private) entities. In some cases, administrations also act on behalf of a group of administrations meaning that they represent an international intergovernmental organization before ITU.

7 Views of the Radio Regulations Board on Resolution 18 (Kyoto, 1994), 1996.

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appropriate. Sometimes, coordination agreements are even entered into as a result of a peaceful settlement of a dispute. For instance, in September 2019, British operator Avanti Communications Group and the Arab Satellite Communications Organization (Arabsat) reached a coordination agreement which settled their dispute amicably and allowed both companies to operate their satellites – Avanti's HYLAS 2 and HYLAS 3 located at 31 degrees East and Arabsat 6A located at 30.5 degrees East – without causing interference to each other.[8] The respective communications authorities, Ofcom of the United Kingdom, and the Communications and Information Technology Commission of the Kingdom of Saudi Arabia, have notified the ITU of the agreement.

All the above documents, which aim at specifying the results of international frequency coordination, are referred to as 'coordination agreements'.

3. Content of Coordination Agreements

Coordination agreements are largely complex technical documents. They contain mutually acceptable parameters for the operation of certain frequencies, which are utilized by adjacent satellites and satellite systems, including frequency bands segmentation schemes and sharing conditions, satellites' coverage zones, geographical separation and compatible use of beams, types of uplinks and downlinks, transponders' polarization and saturation flux density, signal bandwidth, maximum equivalent isotropically radiated power, etc. Violations of such technical parameters are generally constituted in causing harmful interference.

However, not only the technical parameters agreed to avoid harmful interference can be contained in coordination agreements, but other terms and conditions, which are identified by the participants of international frequency coordination, including those that are based on purely commercial reasons. A breach of such terms and conditions may result in quite significant financially assessable damage. To illustrate this, the following example can be considered.

As a result of frequency coordination, operator A agrees to maintain only those of its frequencies that are actually used by its satellite and refrain from resuming the use of other recorded frequencies. In turn, operator B undertakes not to bring into use part of its filed frequencies, which leads to their cancellation, and adjust its satellite's coverage zone in such a manner as to exclude a certain area, which is the core market for operator A. The agreement remains in full force and effect for a couple years. Later, the situation on the satellite market changes, and for operator A it becomes

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8 Avanti and Arabsat Agree Spectrum Resolution, 10 September 2019. Available on the website of the Avanti Communications Group at https://www.avantiplc.com/news/avanti-and-arabsat-agree-spectrum-resolution/.

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economically impractical to comply with the coordination agreement. Hence, in breach of the agreement, operator A resumes utilizing those frequencies which have been suspended. That causes interference to the satellite services of operator B, some of whose customers complain and terminate contracts. As a result, operator B suffers damage caused by its voluntary abandonment of some of its frequencies and loses profits. The question is, what legal steps can be taken by operator B in this situation in order to protect its rights and be compensated for damage?

4. Lack of Legal Provisions

The first thing operator B should do, is check the content of the coordination agreement and proceed accordingly. However, the problem is that, being the realm of technical experts, coordination agreements are rarely drafted by lawyers and, therefore, do not often contain any legal provisions, such as consequences of a breach and compensation for damage. Neither they usually contain any provisions on applicable law and settlement of disputes. The scale of such legal imperfection can be supported by some statistics.

The Intersputnik International Organization of Space Communications[9] has been filing geostationary and non-geostationary satellite networks since the 1990s and currently has over 100 valid coordination agreements. They are in place with more than 30 national administrations and with more than 10 satellite operators, including the world's largest. It means that it is not only a specific example of Intersputnik, rather it is very much a part of the satellite world today.

Among these agreements, only a couple, all with a single satellite operator which went through litigation with respect to frequency coordination, do contain legal provisions, though quite modest – they specify the applicable law and the dispute settlement mechanism. This does not solve, or give any guidelines on, other legal issues that may arise, however, at least establishes what body and in accordance with what rules will settle possible disputes. All the other coordination agreements of Intersputnik, that is around a hundred, do not contain any legal provisions.

In this regard, it is worth noting that most of the ITU recommendations related to the conclusion and content of coordination agreements only

9 The Intersputnik International Organization of Space Communications is an international intergovernmental organization established in accordance with the Agreement of 15 November 1971 on the Establishment of the Intersputnik International System and Organization of Space Communications with the aim to develop and operate an international communications system via satellites. Currently, Intesputnik unites 26 Member States. More information is available on the Intersputnik website at http://intersputnik.com/.

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mention technical aspects that should be agreed upon by the parties.[10] However, given that the ITU's competence extends exclusively to technical matters, it is reasonable that the ITU does not provide any recommendations related to the legal content of coordination agreements. The latter is completely within the scope of the parties to agreements.
Therefore, if a dispute arises, a satellite operator will first have to determine which one of the existing judicial authorities will be competent to hear such a dispute.

5. Competent Forum – International Bodies

5.1. International Court of Justice

Taking into account that coordination agreements are usually entered into by governmental authorities of different states and relate to the use of outer space having specific international status, one can think that the examination of disputes arising out of these agreements can be within the competence of the International Court of Justice. However, one should also consider that the International Court of Justice only deals with disputes between states. Moreover, the jurisdiction of the Court extends exclusively to cases which are either specially provided for in international treaties or expressly referred to the Court by states.[11] Bearing in mind that in most cases disputes arising out of coordination agreements relate to the operation of commercial satellites or their systems, it is doubtful that states might decide to refer such disputes for the consideration of the Court. Furthermore, no international treaty empowers the Court to hear cases related to the use of the radio-frequency spectrum. In this regard, it appears that the International Court of Justice is not a competent forum for the settlement of disputes arising out of coordination agreements.

5.2. International Telecommunication Union

In considering possible legal steps in relation to a coordination agreement, one can think of addressing the ITU, since a breach of such agreement usually causes harmful interference. Indeed, as making environment for satellite communications free from interference is the core goal of the ITU, it renders assistance to administrations in the coordination process. In particular, the ITU makes efforts to help participants prevent coordination from being blocked and reach agreements. However, it can neither give instructions identifying technical measures to be taken by the parties to a coordination, nor draft coordination agreements. For instance, if coordination negotiations are inconclusive, the matter can be discussed under the auspices of the ITU

10 A Method of Spectrum Management to Be Used for Aiding Frequency Assignment for Terrestrial Services in Border Areas, International Telecommunication Union, 1995.
11 Arts. 34 – 38, Statute of the International Court of Justice, 26 June 1945.

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Radiocommunication Bureau. Upon request, the Bureau carries out investigations of harmful interference and submits reports to the ITU Radio Regulations Board[12] which formulates recommendations on how to resolve a case. Indeed, the Board has been recently involved in resolving quite a few disputes related to harmful interference and has become perceived as a quasi-judicial body. For instance, in September 2019, the administration of China submitted to the Board an 'appeal' to revert the previously taken decision concerning the suppression of the frequency assignments to several Chinese satellite networks.[13] Hence, disputes arising out of coordination agreements, if they involve harmful interference, can be referred to the Board for consideration. The process has, however, a few drawbacks.

In the first place, it has to be noted that by virtue of its specific nature the Board only treats disputes administratively, i.e. it adjudicates them in the absence of the parties concerned. As a result, it may happen that the relevant circumstances of a dispute are not fully examined. Furthermore, the inability of the parties to personally take part in the adjudication makes a dispute non-adversary, while the adversary character is an important principle of justice. Secondly, decisions of the Board can be revised by World Radiocommunication Conferences (WRCs) making them non-final. The fact that WRCs are convened every three to four years may put a final decision in a case in limbo for a long period of time. Thirdly, decisions of the Board are not binding. Consequently, their fulfillment fully depends on the good faith of the parties involved.

What is even more important, is that, when considering disputes arising out of coordination agreements, the Board finds itself not in a position to examine the content of these agreements. Such agreements contain confidential information of the administrations and operators concerned and, therefore, cannot be published, disclosed, or otherwise made public. At the same time, the Board must make its activities fully transparent, which is now entirely in the public domain. Agendas of meetings, submissions made by administrations, other contributions, including reports prepared by the Bureau, as well as summaries of the Board's decisions and the minutes of its meetings are available on the official website of the ITU. In other words, the Board can only work and make decisions on the basis of open documents and open sources of information, while all the materials containing confidential

12 The ITU Radio Regulations Board is a collegiate body that consists of twelve skilled experts thoroughly qualified in the field of radiocommunication and possessing practical experience in the assignment and utilization of frequencies.

13 Submission by the Administration of China requesting an appeal to the decision of the ITU Radio Regulations Board concerning the frequency assignments to the Asiasat-AK, Asiasat-AK1 and Asiasat-AKX satellite networks in the MIFR, ITU Document RRB19-3/4-E, 23 September 2019.

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information are not accepted by the Board and, if for whatever reason received, are returned to the relevant parties.
Finally, the Board does not, and has no right to, review compensational claims. However, disputes involving harmful interference can undoubtedly result in damage.
All these drawbacks can discourage satellite operators from submitting their disputes to the Board and make a judicial recourse inevitable.

6. Competent Forum – Arbitrations and Courts

As disputes arising out of coordination agreements may involve parties around the globe, to what forum should they apply to resolve disputes?

6.1. International Arbitrations

There are many highly professional and well-established international arbitrations, including, for instance, the Permanent Court of Arbitration (PCA) applying the Optional Rules for Arbitration of Disputes Relating to Outer Space Activities,[14] however, it is only with the agreement of the parties that a dispute can be referred to an arbitration. If a coordination agreement does not contain an arbitration clause, the parties are still able to agree to refer a dispute to arbitration at a later stage, including when such a dispute has already arisen. Examples where international arbitrations consider disputes arising out of coordination agreements already exist.
In 2012, the arbitral tribunal established under the rules of the International Chamber of Commerce (ICC) reviewed the case of two satellite operators – Eutelsat S.A. and SES S.A. – related to the 1999 Intersystem Coordination Agreement. This agreement coordinated the use of frequencies over Europe, in particular, at the 28.2 degrees East geostationary orbital position utilized by SES and the 28.5 degrees East geostationary orbital position utilized by Eutelsat. Both parties undertook to respect each other's operation in these positions.
Eutelsat acquired frequency rights at 28.5 East in 1999 from their original holder, Deutsche Telekom AG, which terminated its business in 2002 and transferred the frequency rights, as well as the agreement with Eutelsat, to its successor named Media Broadcast.[15] Three years later, Media Broadcast and SES came to an agreement on the future lease of the frequencies which were

14 Optional Rules for Arbitration of Disputes Relating to Outer Space Activities, 2011. Available on the website of the Permanent Court of Arbitration at https://pca-cpa.org/wp-content/uploads/sites/6/2016/01/Permanent-Court-of-Arbitration-Optional-Rules-for-Arbitration-of-Disputes-Relating-to-Outer-Space-Activities.pdf.

15 SES Rejects Eutelsat Assertions of Agreement Breach in 28.5 Degrees East Row, Joseph O'Halloran, 17 October 2012. Available at https://www.rapidtvnews.com/2012101724555/ses-rejects-eutelsat-assertions-of-agreement-breach-in-28-5-degrees east-row.html#axzz5xgwtdQyg.

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utilized by Eutelsat. SES was going to start operating these frequencies in October 2013, while Media Broadcast had to terminate its agreement with Eutelsat beforehand.

The existence of the 2005 Media Broadcast – SES agreement was kept confidential, and Eutelsat became aware of the deal only in October 2012, when SES announced its plans to launch the Astra 2F satellite.[16] Eutelsat thought that it was a violation by SES of the 1999 Intersystem Coordination Agreement, specifically, the commitment to respect Eutelsat's operations at 28.5 degrees East.[17] In response, SES stated that it had been lawfully granted rights to use frequencies at the 28.5 degrees East orbital position from October 2013 onwards pursuant to the agreement with Media Broadcast, which held a license for these frequencies issued by the Bundesnetzagentur – the German national regulator – on the basis of the filings that had priority under the ITU rules.[18] Besides that, Eutelsat argued that Media Broadcast had no right of termination of the 28.5 degrees East agreement of 1999, however, the German tribunal decided that actually it had such a right.

In 2013, the arbitral tribunal concluded that the coordination agreement did not bar SES from using the disputed frequencies if and when Eutelsat did not hold the regulatory right to operate the same.[19] Almost concurrently, the German Regional Court in Bonn, at the request of Media Broadcast, prohibited Eutelsat from utilizing the disputed frequencies after their scheduled operation by SES.[20] The arbitral tribunal was also to decide whether SES could execute the 2005 frequency agreement with Media Broadcast without breaching its obligations under the coordination agreement with Eutelsat. However, the parties to the dispute did not wait for the decision and signed, in January 2014, a series of instruments to finally settle the case. It was agreed that SES would continue operating its satellites at 28.5 degrees East, while Eutelsat was granted the right to independently commercialize part of the disputed frequencies.[21]

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16 SES / Eutelsat Orbital Slot Battle Escalates, Doug Lung, 18 October 2012. Available at https://www.tvtechnology.com/miscellaneous/seseutelsat-orbital-slot-battle-escalates.

17 Eutelsat Statement on Operation at 28.5 Degrees East, 16 October 2012. Available on the Eutelsat website at https://de.eutelsat.com/de/sites/eutelsatv2/home/news/press-releases/Archives/2012/press-list-container/eutelsat-statement-on-operations.html.

18 The Satellite War Intensify, Chris Forrester, November 2012. Available at http://www.satmagazine.com/story.php?number=1578836976.

19 Prospectus of Eutelsat. Available on the Eutelsat website at https://www.eutelsat.com/files/PDF/investors/eutelsat_sa/Prospectus_2020.pdf.

20 SES Claims Full Rights at 28 East, Julian Clover, 16 September 2013. Available at https://www.broadbandtvnews.com/2013/09/16/ses-claims-full-rights-at-28-east/.

21 SES and Eutelsat Settle Their Dispute and Conclude a Series of Agreements Concerning the 28.5 Degrees East Orbital Position, 30 January 2014. Available on the SES website at https://www.ses.com/press-release/ses-and-eutelsat-settle-their-dispute-and-conclude-series-agreements-concerning-285.

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It is not clear whether the 1999 Intersystem Coordination Agreement contained a forum selection clause, but, one way or another, the parties managed to agree on submitting their dispute to the arbitral tribunal established under the ICC rules.

6.2. National Courts

If an arbitration agreement cannot be reached, the parties can only apply to national courts. The national court that will be competent to consider disputes arising out of a coordination agreement can be chosen by the parties. But what court will have such competence, if there is no forum selection clause in the coordination agreement?

Generally, the exclusive competence of national courts extends to disputes related to state ownership, intellectual property, and real estate and does not cover disputes arising out of coordination agreements. Also, national courts usually consider disputes if a defendant has residence in their country. In this regard, there is little doubt that one of the parties to a coordination agreement can file a lawsuit in the national court of the other party. However, this option appears to be the least preferable to plaintiffs, because it means that the dispute will be considered in a foreign country, in a foreign language, and by a judge, who, due to their nationality, may be sympathetic with the defendant.

There are other rules that, for example, allow a national court to consider a dispute if damage is caused in that country, if a contract is to be performed in that country, or in other cases when a contentious relationship is closely connected with that country. The possibility of applying these and other conflict of laws principles to coordination agreements largely depends on the circumstances and has to be determined on a case by case basis.

For example, in one actual case, a party to a coordination agreement invoked the principle which suggests having recourse to the court of the place where the contract has been made. It was the case of Eutelsat S.A. and Fransat S.A. versus ABS US Corp. which was heard at the Commercial Tribunal of Paris.[22] The case related to the alleged violation by ABS of the coordination agreement which had been executed in Paris and dealt with the operations of the EUTELSAT 5 West A satellite at 5 degrees West and the ABS 3A satellite at 3 degrees West. The plaintiffs demanded that ABS 3A's transmissions at an excessive power level be found to breach the agreement and that the defendant be obliged to respect it. They also wanted a fine of 100,000.00 Euros for every case of breach and a compensation of their court costs. ABS,

22 Decision in the case No. 2017045737 between Eutelsat S.A. and Fransat S.A. against ABS US Corp., 29 September 2017.
Available for a fee on the website of the Commercial Tribunal of Paris at https://commandes.greffe-tc-paris.fr/fr/espace-judiciaire/affaire/2017045737-sa-eutelsat-s-a-abs-us-corp-societe-de-droit-americain.html.

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in turn, challenged all the above claims as well as the competence of the Commercial Tribunal of Paris to adjudicate this case.
The opinion of the Commercial Tribunal of Paris regarding its competence to adjudicate this dispute unfortunately remains unknown as the case was closed for formal reasons. The Tribunal found that the plaintiffs had indicated the improper defendant – instead of ABS Global Ltd. which would have been the proper defendant since it was the company that had operated the ABS 3A satellite and held the right to use frequencies at 3 degrees West, another company within the ABS group, namely ABS US Corp., had been specified.
If the dispute had been adjudicated by this French court, this would have probably been quite a good turn of events. However, the world is big, and the application of some conflict of laws principles may bring parties to an exotic jurisdiction equally irrelevant to both.

7. Necessity of Special Knowledge

Whatever forum is chosen, the question of specific knowledge arises. Disputes related to coordination agreements can be extremely complicated from the technical point of view. To adjudicate such disputes, one not only needs to be properly qualified in the field of law but also in the area of information and communication technologies, including satellite communications. For instance, the source of harmful interference is technically difficult to determine and legally challenging to attribute. It is also difficult to estimate how reasonable a compensational claim is and if the claimed damages are commensurate with a given breach.
In this regard, it might be advisable that the ITU designate an expert to take part in legal proceedings in national courts or international arbitrations. There are no provisions in the ITU basic texts that would prevent the ITU from doing so,[23] while actions which are not expressly prohibited are allowed.[24] Therefore, the ITU can formally use such practice, which would significantly increase the effectiveness of the settlement of disputes related to the use of the orbital and frequency resource. Yet, the ITU's practice has always been not to get involved in conflicts between Member States or between operators from Member States in order to remain neutral.[25] At the same time, the ITU could, at least, consider responding to an official judicial request from a national court, if it is not willing to respond to requests from parties to a conflict. Such a request might be sent through diplomatic channels directly to the ITU Secretary-General and should only relate to the

23 *Ibid.*, Para 2.85.
24 *Ibid.*, Para 2.94.
25 Para. 2.84, Minutes of the 75th Meeting of the Radio Regulations Board, ITU Document RRB17-2/8-E, 21 July 2017.

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regulatory or technical issues.[26] Provided that the questions posed by such a request do not jeopardize the ITU's neutrality or immunity and are within its mandate and competence,[27] the ITU Secretary-General might decide to instruct the Bureau to respond. In this case, a response by the ITU might relate to legal or technical questions within the framework of the conflict, but not to the subject of the dispute.[28]

8. Applicable Law

Another legal challenge of adjudicating a dispute related to a coordination agreement would be to determine governing law to be applied to each aspect of the dispute.

On the regional level, certain arrangements exist on what laws must be applied in different situations. For instance, on the territory of the European Union such issues are governed by the Regulation on the Law Applicable to Contractual Obligations (Rome I Regulation).[29] However, there are no legally binding documents on the conflict of laws principles at the international level, such as UNCITRAL, Unidroit, the Hague Conference on Private International law, etc. Consequently, the choice of law is mainly regulated by national rules, which are to be followed by the relevant national courts or international arbitrations.

According to the most widespread and generally accepted rule, it is suggested that a contract be governed by the law of the country where the party required to effect the characteristic performance of the contract has its habitual residence. For instance, this is the case of the abovementioned Rome I Regulation and some national rules such as the Civil Code of the Russian Federation.[30] For almost all of the known types of contracts these documents determine the party that effects the characteristic performance. For example, in a contract for the sale of goods it is the seller, in a contract for the provision of services it is the service provider. Predictably, there is no such provision with regard to a coordination agreement, because this type of contracts is hardly known to national legislations. Moreover, it is doubtful that there can even exist a party effecting the characteristic performance in a coordination agreement, taking into account that the rights and obligations of both parties are very similar and equally essential for the agreement's

26 *Ibid.*, Para 2.95.
27 *Ibid.*, Para 2.84.
28 *Ibid.*, Para 2.89.
29 Regulation (EC) No. 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations, 17 June 2008, Available at https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008R0593.
30 Art. 1211, Civil Code of the Russian Federation, 1 march 2002. Available at https://www.wto.org/english/thewto_e/acc_e/rus_e/WTACCRUS48A5_LEG_119.pdf.

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performance. Therefore, it is unlikely that the law applicable to coordination agreements can be determined using the principle of characteristic performance.

In such cases, national legislations usually suggest to use another conflict of laws principle, which is considered one of the most universal that applies when no other is applicable. According to this principle, the contract is governed by the law of the country with which it is most closely connected. However, taking into account that coordination agreements govern the relations of the parties with respect to the use of frequencies and associated satellite orbits and the operation of communications satellites deployed in outer space, i.e. beyond the territory of any state, and can potentially affect territories of a number of states that are within the coverage area of such satellites, it is hardly possible to determine only one country with which a coordination agreement would have close connection.

In some jurisdictions, there exist other conflict of laws principles that can be used to determine the law applicable to a specific contract. Such connecting factors include, *inter alia*, the law of the place where contractual obligations are to be performed, damage has been caused, or an offence has been committed. These principles can be used in respect of coordination agreements. For instance, if as a result of a breach of a coordination agreement one party causes damage to terrestrial services or infrastructure of another party, the affected party might request to apply the law of the place where damage has been caused. Or, if the station that uplinks the signal causing interference to a satellite is known, the law of the place where the offence has been committed might be used. However, such rules can only be applied to very specific situations that may result from a breach of a coordination agreement and cannot generally determine what law must govern disputes arising out of coordination agreements.

At the same time, applicable law has a decisive effect on relations of the parties and can even determine the outcome of a dispute. It is applicable law that governs such aspects as the definition of the legal nature of an agreement and its interpretation, validity of an agreement or any of its provisions, rights and obligations of the parties, including the possibility to withdraw from the agreement, consequences of a breach or termination of an agreement, liability of the parties for non-performance or undue performance, and the assessment of damage. Furthermore, applicable law can also give answers to other questions associated with conclusion and performance of an agreement. For instance, whether the provisions of a coordination agreement correspond to the competition law or if such an agreement has a good, valuable, and proper consideration in the context of the common law system.

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9. Conclusions

Over the past decades, satellite communications have become an integral part of our everyday life. Cutting-edge satellite telecommunications methods ensure instant delivery of huge amounts of data, relay of real-time voice and video, broadcasting of radio and television, and broadband access worldwide. By transmitting signals over any distance, communications satellites connect locations everywhere on Earth. In this regard, sustainable operations of currently orbiting and planned satellites or their systems are of vital importance both to supporting government interests and the quality of life, health, and well-being of people. Apparently, disputes that can disrupt the operation of satellites and their systems have to be settled promptly and professionally in order to respond to the pressing needs of the industry. However, as it can be concluded from this article, this is not always the case when it comes to disputes arising out of coordination agreements. To date, neither international law, nor national legislations contain comprehensive rules governing the settlement of such disputes. Unless the parties to a coordination agreement negotiate an appropriate dispute settlement mechanism, it is unclear to what judicial body a dispute arising out of such an agreement can be referred and what law must be applied.

It appears that the first step that can be taken in order to fix this situation is to increase the industry awareness of the issue. It is advisable that satellite operators start considering coordination agreements as any other contracts that can be breached and, therefore, require appropriate measures of legal protection. As the next step it would be reasonable to promote lawyers' involvement into coordination agreements' drafting process. It is, however, not suggested that these agreements be fully drafted by lawyers. Rather it would suffice, at least, to consult lawyers and let them define, in the main text or as an annex thereto, some essential legal provisions which equally protect both parties.

If a dispute arises out of a coordination agreement with no legal provisions, it is advisable to encourage the parties to agree, at least, upon a neutral forum for dispute settlement, while agreeing on applicable law would be a more challenging task as it can determine the outcome of the dispute.

Finally, it is worth considering if there is already a need for a specialized arbitration that would be competent to consider disputes arising out of coordination agreements and how it can be established.[31]

31 Establishment of a Specialized Tribunal Under the International Telecommunication Union to Adjudicate Disputes as a Means to Improve the Efficiency of the Management of the Radio Frequency Spectrum, Victor Veshchunov, Elina Morozova, IAC-13-E7.2.4, 2013.