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Dispute settlement in international space law : a multi-door courthouse for outer space

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Appendices

Appendix A

Proposed Protocol for the Multi-Door Courthouse for Outer Space to the 1967 Outer Space Treaty

The Contracting Parties to this present Protocol

Reaffirming the aims and principles of the Charter of the United Nations, the principles of international law and the prohibition on the use or threat of use of force,

Remembering that Humanity has always looked to the sky for inspiration and peace,

Recognizing the common interest of all Humanity in furthering the exploration and use of outer space for peaceful purposes,

Recognizing that the pursuit of peace based upon justice is vital for the preservation of human society and civilization,

Reiterating that outer space should be the province of all humankind, to be utilized in the interests of international peace and security, in accordance with the Charter of the United Nations, and as proclaimed in the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies,

Resolved therefore to settle by peaceful means any disputes which may arise between them with regard to outer space,

Have agreed as follows:

Section I. Applicability of the Protocol

Article 1 - Scope of Disputes Settled under this Protocol

1. This Protocol applies to all activities in outer space and all activities with effects in outer space. These two categories of activities are hereinafter designated “space activities”.

2. Any Contracting Party, on depositing its instrument of ratification, may declare

- (a) That it excludes from the applicability of the Protocol space activities of a specific kind described in such declaration.
- (b) That it limits the applicability of this Protocol to certain space activities or to specific areas of space law as may be dealt with in specific bilateral or multilateral treaties described in such declaration.
- (c) That it will not be bound by certain sections or articles of this convention described in such declaration.

3. A Contracting Party may only benefit from this Protocol in so far as it is itself bound.

4. A Contracting Party which is bound by only part of this Protocol, or which has made reservations, may at any time, by a simple declaration, either extend the scope of its obligations or abandon all or part of its reservations.

5. The Protocol shall not apply to disputes which the Parties have agreed to submit to another procedure of peaceful settlement, if that agreement provides for a procedure entailing binding decisions.

Article 2 - Definitions

This Article will be completed, insofar as considered necessary or useful, at a later stage when states or international organizations negotiate the final text of this Protocol.

Section II. Settlement Procedures

Article 3 - Obligation to Exchange Views

1. When a dispute arises between Contracting Parties concerning a matter described in Art. 1, paragraph 1, the parties to the dispute shall proceed

expeditiously to an exchange of views regarding its settlement by negotiations of other peaceful means.

2. The parties shall also proceed expeditiously to an exchange of views when a procedure for the settlement of such a dispute has been terminated without a settlement or where a settlement has been reached and the circumstances require consultation regarding the manner of implementing the settlement.

Article 4 - Submission of the Dispute to the Multi-Door Courthouse for Outer Space

Any dispute concerning a matter described in Article 1, paragraph 1 shall, where no settlement has been reached by recourse to Article 3, be submitted at the request of any party to the Multi-Door Courthouse for Outer Space.

Article 5 - Choice of Procedure

1. When signing, ratifying or acceding to this Protocol or at any time thereafter, a Party shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of the Protocol:

- (a) The International Tribunal for Space Law, if and when such a Tribunal has been established in accordance with Section IV,
- (b) the International Court of Justice,
- (c) an arbitral tribunal constituted in accordance with Section V.

2. A Contracting Party, which is party to a dispute not covered by a declaration in force, shall be deemed to have accepted the classification of its dispute by the Multi-Door Courthouse for Outer Space, and to have accepted to undertake the recommended procedure therefrom.

3. If the parties to a dispute have accepted the same procedure for the settlement of the dispute, it may be submitted only to that procedure, unless the parties otherwise agree.

4. If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to the Multi-Door Courthouse for Outer Space, unless the parties otherwise agree.

5. A declaration made under paragraph 1 shall remain in force until three months after notice of revocation has been deposited with the Secretary-General of the United Nations.

6. A new declaration, a notice of revocation, or the expiry of a declaration

does not in any way affect proceedings pending before a court or tribunal having jurisdiction under this article, unless the parties otherwise agree.

7. Declarations and notices referred to in this Article shall be deposited Secretary-General of the United Nations who shall transmit copies thereof to the Contracting Parties.

Article 6 - Operation of the Multi-Door Courthouse for Outer Space

The institution and operation of the Multi-Door Courthouse for Outer Space will be as detailed in Annex I of this Protocol.¹

Article 7 - Jurisdiction

1. The Multi-Door Courthouse for Outer Space referred to in Article 5 shall have jurisdiction over any dispute concerning a matter described in Article 1, paragraph 1, which is submitted to it in accordance with this Protocol.

2. The Multi-Door Courthouse for Outer Space referred to in Article 5 shall also have jurisdiction over any dispute concerning the interpretation or application of an international agreement related to the purposes of this Protocol, which is submitted to it in accordance with this agreement.

3. In the event of a dispute as to whether the Multi-Door Courthouse for Outer Space, or a court or tribunal recommended by it, has jurisdiction, the matter shall be settled by decision of that court or tribunal.

Article 8 - Experts

In any dispute involving scientific or technical matters, the Multi-Door Courthouse for Outer Space may, at the request of a party or *proprio motu*, select in consultation with the parties no fewer than two scientific or technical experts to sit with the court or tribunal but without the right to vote.

Article 9 - Provisional Measures

1. If a dispute has been duly submitted to the Multi-Door Courthouse for Outer Space, it may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the

¹see *infra* note 2

parties to the dispute or to prevent serious harm to the space environment, pending the final decision.

2. Provisional measures may be modified or revoked as soon as the circumstances justifying them have changed or ceased to exist.

3. Provisional measures may be prescribed, modified or revoked under this Article only at the request of a party to the disputes and after the parties have been given an opportunity to be heard.

4. The court or tribunal shall forthwith give notice to the parties to the dispute, and to such other Contracting Parties as it considers appropriate, of the prescription, modification or revocation of provisional measures.

5. Pending the constitution of a tribunal to which a dispute is being submitted, any court or tribunal agreed upon by the parties or, failing such agreement, within two weeks from the date of the request for provisional measures, the International Tribunal for Space Law may prescribe, modify or revoke provisional measures in accordance with this Article. This may be done in the case the International Tribunal for Space Law considers that *prima facie* the tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires. As long as the International Tribunal for Space Law has not been established, the International Court of Justice may carry out this function. Once constituted, the tribunal to which the dispute has been submitted may modify, revoke or affirm these provisional measures prescribed under this article.

Article 10 - Access

1. All the dispute settlement procedures specified in this Protocol shall be open to Contracting Parties.

2. The dispute settlement procedures specified in this Protocol shall be open to entities other than States and international intergovernmental organizations, unless the matter is submitted to the International Court of Justice in accordance with Article 5.

Article 11 - Applicable Law

1. The Multi-Door Courthouse for Outer Space and any dispute settlement body it recommends shall apply this Protocol and other rules of international law not incompatible with this Protocol as well as any other rules of law that the parties to a dispute have agreed to be applicable or which the court or

tribunal finds o be applicable based on the nature of the dispute.

2. Paragraph 1 does not prejudice the Multi-Door Courthouse for Outer Space and any dispute settlement body it recommends to decide a case *ex aequo et bono*, if the parties so agree.

Article 12 - Exhaustion of Local Remedies

Submission of a dispute concerning a matter described in Article 1, paragraph 1 to the procedures provided for under this Protocol shall not require the prior exhaustion of any local remedies which may be available to a claimant State or to natural or juridical persons it represents.

Article 13 - Individual Applications

The Multi-Door Courthouse for Outer Space may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the Parties to this Protocol and to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. The Parties to this Protocol undertake not to hinder in any way the effective exercise of this right.

Article 14 - Finality and Binding Force of Decisions

1. Any decision rendered by the final recommended procedure of the Multi-Door Courthouse for Outer Space under this Protocol shall be final and shall be complied with by all the parties to the dispute.

2. Any such decision shall have no binding force except between the parties and in respect to that particular dispute.

[. . .]²

²It is beyond the scope of the present thesis to elaborate upon the details of the operation of the Multi-Door Courthouse for Outer Space, or the detailed provisions relating to each model of dispute settlement that may be recommended. It is envisaged that should the Multi-Door Courthouse for Outer Space be adopted in the future, additional provisions or annexes detailing these issues will be appended.

Section VII. Final Provisions

Article 69 - Signature

1. This Protocol shall be open for signature by:

- (a) States, including partly self-governing states which have internal and external competence in the matter
- (b) Any other entity as approved by the Secretary-General of the United Nations.

2. A declaration of the acceptance of the rights and obligations of this Protocol may be made by:

- (a) International intergovernmental organizations which conduct space activities if the organization declares its acceptance of the rights and obligations provided for in this Protocol and if a majority of the States members of the organization are States Parties to this Protocol and to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.
- (b) Industrial entities, including corporations, multi-national corporations, financial institutions and other which are involved in commercial activities as described in Art. 1, paragraph 1, if the entity declares its acceptance of the rights and obligations provided for in this Protocol and if it is registered in a State member party to this Protocol and to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.
- (c) Any other entity as approved by the Secretary-General of the United Nations.

3. In accordance with paragraph 1 of this Article, this Protocol shall be open for signature and ratification by all States at the United Nations Office of Outer Space Affairs. Any State that does not sign this Protocol before its entry into force in accordance with paragraph 4 of this article may accede to and ratify it at any time.

4. This Protocol shall be subject to ratification by signatory States. Instruments of ratification and accession shall be deposited with the United Nations Office of Outer Space Affairs.

5. Non-State entities as specified in paragraph 2 of this article may enter a declaration of their acceptance of the rights and obligations of this Protocol.

Such declarations shall be deposited with the United Nations Office of Outer Space Affairs.

6. This Protocol shall enter into force among the States that have deposited instruments of ratification on the deposit of the fifth such instrument with the United Nations Office of Outer Space Affairs.

7. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Convention, it shall enter into force on the date of deposit of their instruments of ratification or accession.

8. The United Nations Office of Outer Space Affairs shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification of and accession to this Protocol, the date of its entry into force and other notices.

Article 70 - Accession

This Protocol shall remain open for accession by States and the other entities referred to in Article 69, paragraph 1. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 71 - Entry into Force

1. This Protocol shall enter into force 90 days after the date of deposit of the 30th instrument of ratification or accession.

Article 72 - Amendments and Review

1. Any Contracting Party to this Protocol may propose amendments to the Protocol. Amendments shall enter into force for each Party to the Protocol accepting the amendments upon their acceptance by two-thirds of the Parties to the Protocol and thereafter for each remaining Party to the Protocol on the date of acceptance by it.

2. Two years after the entry into force of this Protocol, and at intervals of two years thereafter, a Conference of Contracting Parties to the Protocol shall be convened by the United Nations Office of Outer Space Affairs. The Conference shall review the operation of the Protocol, and shall in particular examine the effectiveness of the Multi-Door Courthouse for Outer Space in

maintaining international peace and security in outer space.

Article 73 - Authenticity

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the United Nations Office of Outer Space Affairs, Vienna, Austria, which shall send certified copies thereof to all signatory and acceding States.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Protocol, opened for signature at Vienna, Austria, on the – day of –, two thousand and –.

Appendix B

Proposed Model Clauses for the Submission of Disputes to the Multi-Door Courthouse for Outer Space

FOR USE IN CONNECTION WITH INITIATING THE SUBMISSION OF
THE DISPUTE TO THE MULTI-DOOR COURTHOUSE FOR OUTER
SPACE

Future Disputes

If any dispute arises between the parties as to the interpretation, application or performance of the [treaty] [agreement] [contract], including its existence, validity or termination, either party may invite the other to submit the dispute to the Multi-Door Courthouse for Outer Space as in effect in the date hereof.

Parties may wish to add:

In any such submission of the dispute to the Multi-Door Courthouse for Outer Space:

1. The number of experts involved in the classification of the dispute shall be . . . [insert 'one', 'two', or 'three'].
2. The language(s) to be used in the recommended dispute settlement procedure shall be . . . [insert choice of one or more languages].
3. The parties agree that . . . [insert 'the expert(s)' or 'the third party neutral'] shall be appointed by the Secretary-General of the Multi-Door Courthouse for Outer Space.

Existing Disputes

The parties agree to submit the following dispute to the procedures of the Multi-Door Courthouse for Outer Space as in effect on the date hereof: . . . [insert brief description of dispute].

Parties may wish to consider adding paragraphs 2(a)-2(c) of the Model Clause for settling future disputes as set forth above.

Appendix C

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