Chapter 7

Conclusion: Shaping the Future of International Dispute Settlement

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.

Stability and security in outer space must be based on more than brute military, political or economic power. Currently, the most apposite foundation is the normative standard of law. Law provides the groundwork for such stability only if it attains the critical procedural capacity that is regarded as viable, just and legitimate. The applicable legal régime must comprise adequate procedures for settling any disagreements that may arise. Participating actors in the particular field must accept the authority of the law and the mandate endowed upon its dispute settlement institutions.

Without sufficient and viable procedures, the integrity of the legal system cannot be maintained. The pluriformity of disparate participants in activities in outer space underlies the plethora of potentially conflicting interests. Such conflicts are no longer confined to the proverbial academic ivory tower, as the vast political, economic, technical and scientific resources of outer space become more accessible. In order to inspire conviction in the peaceful and equitable use of outer space resources, it is imperative that the procedural legal framework is able to enunciate the delicate equilibrium between normative legal principles and the interests of participating actors.

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.

The evolution of international space law has drawn many lessons from recent developments in comparable fields of the law, most notably from the Antarctic régime. Any proposed dispute settlement mechanism would do well to borrow positive developments from successful experiences in transnational, international and domestic dispute settlement procedures. Without re-inventing the wheel, dispute settlement in space law must elaborate a critical analysis and comprehensive framework for the enunciation of legal norms in space activities.

The development of dispute settlement procedures in space law occurs in a time of great change and evolution. Beyond the rapid development of space commerce and activity, the international and transnational community is evolving at a remarkable velocity. A workable, legitimate dispute settlement mechanism will be of great importance in clarifying and developing legal standards applicable to this novel field.

Additionally, the establishment of a dispute settlement procedure advances the possibility of the peaceful resolution of disputes without resort to the use of force. When viewed from the perspective of the vast potential of outer space as a theater for destabilizing military purposes, the reasons for the establishment of such a dispute settlement mechanism become ever more self-evident.

The establishment of a workable sector-specific dispute settlement mechanism for outer space not only builds on recent successful examples in international environmental law and the law of the sea. It also provides an opportunity for space law to contribute to the progressive advancement of the law in general, and dispute settlement in particular.

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.