



## The Future of the Courts of Space: UAE's Ambitions Amidst the Rising Popularity of Arbitration for Commercial Space Dispute Resolution

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### Abstract:

The rapid expansion of commercial space activities and the increasing involvement of private entities in the space sector have led to a growing number of complex space-related disputes. Traditional legal frameworks, largely designed for state-centric activities, are inadequate to address the unique challenges posed by the modern space economy. This paper examines the role of arbitration as a preferred mechanism for resolving space disputes, focusing on the United Arab Emirates' initiatives to establish itself as a leading hub for space-related arbitrations through the Courts of Space of the Dubai International Financial Centre (DIFC). Through a comparative analysis between the DIFC and the most established arbitration seat for space disputes, the DIFC's potential to emerge as the new dominant seat is explored. If successful, this strategy could position the Emirates as a pioneer in space disputes, aligning legal innovation with its ambitions to lead in the global space industry.

**Keywords:** Space law, Commercial space dispute resolution, international arbitration seat, United Arab Emirates, Dubai International Financial Centre.

## 1. Introduction

Since the birth of the space industry, its nature has evolved significantly. Recent decades have witnessed, alongside the diversification of space activities, an exponential rise in the number of players, who are no longer limited to the public sector. Concurrently, the space economy is projected to grow from US\$630 billion in 2023 to US\$1.8 trillion by 2035, reflecting an average annual growth rate of 9% since 2010 [1]. As in any rapidly expanding sector, the increase in participants and investments naturally leads to a rise in the number of legal disputes [2].

The political and economic power that can come from managing these disputes is attracting the interest of many, fuelling the competition for a centre for space dispute resolution [2]. This competition is particularly evident in the field of arbitration, which, as will be discussed below, appears especially well suited to addressing disputes arising from space activities. Among the most active contenders is the United Arab Emirates (UAE), which seeks to advance its judicial systems by specializing in space-related commercial disputes. This paper examines whether the UAE can establish a dominant position in this emerging market through the Courts of Space, a new initiative of the Dubai International Financial Centre (DIFC) [3]. In particular, it investigates whether the Courts of Space can succeed in their ambition to function as a specialised seat of arbitration for space-related commercial disputes (a legal designation determining the supervisory jurisdiction and procedural framework of arbitration<sup>1</sup>), rather than a traditional court of adjudication.

<sup>1</sup> The seat of arbitration is a legal concept that do not necessarily refer to the physical location where arbitration hearings take place. A comprehensive treatment of this concept will be offered in following Sections.

To adequately address this complex question, it is first necessary to define the boundaries of the conceptual framework. In *Section 2*, this paper attempts a comprehensive examination of the evolution of space activities over the past decades. Then, *Section 3* examines the emergence of arbitration as a dispute resolution mechanism that is specifically tailored to the present characteristics of space disputes. *Section 4* presents the currently prevailing dispute resolution seat for space disputes and the DIFC's proposal. Understanding the history of space dispute resolution is essential for predicting its future. *Section 5* provides a comparative analysis of these two regimes, offering insights into the future of space disputes and the potential role of the Emirates in this context. *Section 6* draws conclusions from the insights gained throughout the paper.

## 2. From Government Dominance to Private Ventures: The Evolution of Space Activities

To provide a straightforward account of the evolution of space activities, this paper adopts the distinction between “Old Space” and “New Space”. “Old Space” refers to the early era of space exploration, roughly from the 1950s to the 2000s, dominated largely, if not entirely, by state actors, particularly the USA and USSR during the Cold War. Humanity and its technology had suddenly reached a previously unimaginable destination, a place so remote and uncontaminated that no existing legal framework could apply, at least without certain modifications. Yet regulation was necessary: it was neither feasible to leave such a valuable and potentially dangerous area<sup>2</sup> unregulated nor possible to apply Earth-based laws directly by analogy, given the unique operational environment of space<sup>3</sup>. Therefore, between 1967 and 1979, the United Nations adopted five treaties on outer space<sup>4</sup>, which still serve as the basis for space relations today.

Among these, only Article XIV of the Liability Convention [\[4\]](#) offers specific dispute resolution mechanisms, though limited to certain areas of space activities (e.g., damage by space objects) [\[5, p. 30\]](#). Notably, the Liability Convention has been invoked only once, following the crash of radioactive debris from a Soviet surveillance satellite, Cosmos 954, in Canada in January 1978. Even then, the dispute was ultimately resolved through diplomatic negotiations [\[6\]](#). To date, all inter-state space disagreements have been settled using traditional methods, such as diplomacy and negotiation. Consequently, the International Court of Justice, despite its potential jurisdiction over space-related issues, has never been called upon to adjudicate such disputes. This consistent reliance on traditional mechanisms has led some to suggest that the absence of robust dispute settlement provisions in the UN space treaties might have been intentional [\[7, p. 34\]](#).

In the early 2000s, the rise of non-state actors in space began to reshape the industry, marking the start of the “New Space” era. Technological advances, reductions in public spending in space sector, and economic opportunities made the exponential involvement of private actors inevitable [\[8\]](#). What was once dominated by government agencies is now increasingly led by private companies, shifting the industry toward a stronger commercial focus [\[9, p. 128\]](#). This evolution is already producing complex cross-border commercial disputes, with numbers expected to rise significantly [\[10\]](#).

However, the “state-centric” nature of the UN space treaties manifests itself in a general lack of direct standing for non-governmental entities, since Article VI of the Outer Space Treaty places international responsibility on states for all national space activities, whether conducted by governmental or non-governmental actors [\[11\]](#). As a result, when disputes arise (ranging from issues of harmful interference and orbital congestion to regulatory conflicts) there is no general mechanism allowing private actors to bring claims directly under international law. Instead, dispute resolution typically relies on inter-state processes like diplomatic negotiations or, in limited cases, specialized forums such as the Claims Commission under the Liability Convention [\[4\]](#). However, these mechanisms are accessible only to states and often lack binding authority or enforceability. This leaves private actors reliant on their governments to espouse claims on their behalf, a process that is discretionary, politically influenced, and often ineffective in addressing the growing complexity of commercial space activity. Alternatively, for certain issues, such as disputes arising from liability, claimants may seek redress in the courts of the launching state, under domestic compensation laws, if available. Nevertheless, domestic litigation for cross-border space disputes often proves inadequate. This is due to issues such as loss of confidentiality, uncertainty in the recognition and enforcement of national judgments across jurisdictions, and vulnerability to political influence and sovereign immunity claims by defendant states [\[7, p. 34\]](#). These limitations collectively contribute to a significant regulatory vacuum<sup>5</sup>.

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<sup>2</sup> E.g., collision risks (debris), re-entry hazards or operational dangers.

<sup>3</sup> E.g., absence of territorial sovereignty or the harsh physical environment.

<sup>4</sup> Informally known as: ‘Outer Space Treaty’; ‘Rescue Agreement’; ‘Liability Convention’; ‘Registration Convention’; ‘Moon Agreement’.

<sup>5</sup> One attempt to fill this void has been the extension of the successful principles of the Cape Town Convention to the space sector through the adoption of the Space Protocol (2012). It represents the first international treaty to address matters of private law in space, specifically the

### 3. The Rise of Arbitration in Space Conflicts

In contrast to the limits of domestic dispute resolution, arbitration has traditionally provided a robust and effective extra-judicial alternative across numerous sectors [\[9, pp. 130-132\]](#). As a private process, it submits disputes to an ‘arbitral tribunal’, who issues a binding decision, the ‘award’. Arbitration may be initiated in two ways: either through pre-dispute arbitration clauses embedded in commercial contracts and investment treaties<sup>6</sup>, or through ad hoc agreements concluded after a dispute has arisen, when the parties mutually agree to submit the new dispute to arbitration.<sup>7</sup>

Due to its capacity to address all the problems of domestic litigation for cross-border space disputes (mentioned in the previous *Section*), arbitration is a suitable alternative. First, well-drafted clauses preserve confidentiality, unlike most public court proceedings. Second, with 172 signatory states, the New York Convention [\[14\]](#) requires domestic courts of most states to honour arbitration agreements and enforce arbitral awards issued in other contracting states, offering greater international enforceability of arbitral awards than national court judgments<sup>8</sup>. Third, arbitration provides an impartial tribunal in a neutral venue, a guarantee not always available in national courts, especially when a government is involved. Fourthly, it also allows parties to appoint arbitrators with specific expertise in space matters, along with the conventional benefits of reducing the time and financial expenditure typically associated with such proceedings.

Therefore, in the search for a method of resolving space-related disputes, it is unsurprising that arbitration has emerged as an option for states<sup>9</sup>, and, more importantly, the primary choice for private parties. Empirical data [\[7, p. 39\]](#) show an impressive increase in space disputes awarded through arbitration: only 3.5% were concluded in each of the 1980s and 1990s, compared to 28.9% between 2000-2009 and 39.4% between 2010-2020. This trend is particularly strong between private commercial parties or in disputes between commercial and state actors<sup>10</sup>. In essence, while New Space is becoming increasingly populated by private entities, their disagreements are progressively resolved through private dispute resolution methods, especially arbitration.

### 4. DIFC and France: Competing for Space Arbitration Leadership

To assess the Emirates’ potential to assume a leading role through the establishment of the DIFC Courts of Space, this paper will first examine the history and role of the DIFC as a “seat of arbitration” (*Subsection 4.1*). It will then identify the current most influential arbitration seat in the space sector (*Subsection 4.2*).<sup>11</sup> Finally, a comparative analysis will evaluate whether DIFC’s characteristics are compelling enough to challenge its competitors in the near future (*Section 5*).

#### 4.1. DIFC Courts of Space

As the Emirates do not seem to prioritise increasing the number of space-related arbitrations through the Dubai International Arbitration Centre (DIAC), an arbitration institution, but instead emphasise promoting the DIFC as an arbitration seat, it is crucial to understand the differences between the two institutions in order to determine whether this approach can be successful.

In 1994, the Dubai Chamber of Commerce and Industry established the Dubai Centre of Commercial Conciliation and Arbitration, later renamed DIAC [\[16\]](#). Since then, the Centre has administered nearly 5,000 cases with a combined amount in disputes reaching more than US\$21.8 billion [\[17\]](#). In contrast, in 2004, the DIFC was established as a financial free zone in Dubai

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rights and obligations of parties engaged in commercial transactions. However, despite its significance, the Space Protocol has not yet entered into force due to the lack of a sufficient number of ratifications [\[12\]](#).

<sup>6</sup> The potential of international bilateral treaties (BITs) as a model for a comprehensive legal regime protecting private space investment, offering “direct recourse” against host states, warrants separate consideration. However, as this paper focuses on the future of arbitration, BITs will be considered solely as a legal basis for arbitration. For further details, refer to [\[13, p. 55\]](#).

<sup>7</sup> Although acknowledging existing distinctions, this paper will not differentiate based on the source of individual arbitration proceedings. Arbitration arising from commercial contracts, identified as the most common form [\[7, p. 34\]](#), will be adopted as the representative model.

<sup>8</sup> While the widespread adoption of the New York Convention facilitates cross-border enforcement, the Convention itself imposes a key limitation: Article V(2)(b) allows courts to refuse enforcement on public policy grounds. As demonstrated in *Antrix v. Devas*, this provision can constitute a significant barrier in practice. *Section 5* will further explain how this constraint may influence the choice of the seat of arbitration.

<sup>9</sup> Despite Article 33 of the *UN Charter*’s inclusion of arbitration as a primary dispute resolution method between states, there are no instances of pure intra-state or intra-intergovernmental organization disputes resolved through this means [\[7, p. 38\]](#). This absence, potentially due to arbitration’s confidential nature or the availability of other mechanisms, leads this paper to focus on arbitration between private parties.

<sup>10</sup> Indeed, many intergovernmental organisations in the space sector already consider arbitration their preferred dispute resolution mechanism and include it in agreements with private parties [\[15\]](#).

<sup>11</sup> Only selected aspects of the arbitration legislation of the two jurisdictions are highlighted. This selective approach, adopted for reasons of brevity, is sufficient to illustrate the general differences in how each jurisdiction approaches arbitration.

[18], possessing its own common law legal system that operate independently of the Emirates' civil law system. Established with English as its official language, the DIFC aimed to become a leading centre for regional dispute resolution.

In 2008, a DIFC-LCIA joint venture established the DIFC-LCIA Arbitration Centre to provide efficient arbitration services in the Gulf, Middle East, and North Africa, with arbitrations conducted under the DIFC-LCIA Rules [19] and administered with the assistance of the LCIA [20, p. 4]. At that time, Dubai had “two arbitration centers” [21, p. 4]: the DIFC-LCIA and the DIAC. However, in September 2021, Dubai Decree No. 34 [22] consolidated all local arbitration centres into single centre, namely a “new” DIAC, abolishing the DIFC-LCIA Arbitration Centre (Article 4, Dubai Decree No. 34) and transferring its assets, staff, and cases to DIAC (Article 5, Dubai Decree No. 34). DIAC now performs former DIFC-LCIA administrative functions and oversees proceedings, aiming to reinforce Dubai's global arbitration hub position<sup>12</sup>. Article 20(1) of the new DIAC Rules designate the DIFC as the default seat for DIAC-administered cases [24]. Consequently, unless parties agree otherwise, DIFC law and jurisdiction will govern the arbitration, while DIAC administers the award, thus reinforcing DIFC's role as a relevant potential seat.

For the UAE, a country heavily focused on both space industry development and arbitration, combining them was a natural progression. In 2021, the DIFC and the Dubai Future Foundation activated the Courts of Space as part of their Courts of the Future initiative. This initiative has three main objectives: forming an international working group; creating a Space Disputes Guide, a set of guidelines to resolve space disputes; and training judges as space dispute experts [3].

Preliminarily, any ambiguity regarding the nature of the Courts of Space must be dispelled, given the disagreement on their role as an arbitral seat and their occasional comparison to arbitral institutions<sup>13</sup>. Lacking arbitration cases involving these courts to clarify their operational framework<sup>14</sup>, the argument for their role as an arbitral seat relies on the language of the Space Disputes Guide issued by the DIFC Courts of Space [25, p. 7].

Firstly, the Guide explicitly states that it supports “the parties who elect the Courts' *jurisdiction*”. The term “jurisdiction” is typically associated with the concept of ‘seat of arbitration’, rather than that of ‘arbitration institution’. It also mentions using the Courts “as a *neutral forum*”, a key feature of a seat ensuring impartial judicial support and enforcement. In contrast, arbitration institutions offer administrative services, not a judicial venue. The Guide further states that “[t]he Courts provide both parties with specialised *judges*” and “unlike other dispute resolution courts, the DIFC Courts issue binding *judgments*”. With regards to arbitration, however, regular judges of the chosen jurisdiction are involved only to review the form and validity of the arbitration award (determined by the arbitrators, not the judges), and its finality, including challenges before the seat's courts [26]. These characteristics suggest the Courts of Space would function similarly to other DIFC Courts. Thus, if parties designate the Courts of Space as the seat, they must choose an arbitral institution to administer proceedings or opt for *ad hoc* arbitration.

The decision to establish the DIFC as the first seat of arbitration specialized in space-related disputes also reflects a desire to pursue a different path from the one taken by the Permanent Court of Arbitration (PCA) in 2011, when it published its *Optional Rules for Arbitration of Disputes Relating to Outer Space Activities* (PCA Rules) [27]. Those rules, based on the 2010 UNCITRAL Model Law, provide a voluntary and binding dispute resolution procedure specifically tailored to the space industry. To date, however, they have never been invoked, leading some to believe that “there is no indication that a centralized institution nor a more specialized legal regime is warranted at this time” [7, p. 40]. The DIFC's decision to focus on establishing itself as a dedicated and credible seat for space arbitration rather than developing new procedural rules may have been made precisely to avoid such criticism.

#### 4.1.1 Framework for Arbitration in the DIFC

Since the seat of arbitration establishes the *Lex Arbitri*<sup>15</sup>, it is important to recognize that the DIFC operates as a separate jurisdiction from the UAE. Consequently, the DIFC does not apply the UAE's arbitration law framework, which is based on

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<sup>12</sup> Consequently, the DIFC-LCIA Rules no longer apply to new cases, which are now administered by DIAC under its own rules. However, cases registered before 20 March 2022 may still follow the DIFC-LCIA Rules and are administered by the LCIA in London [23].

<sup>13</sup> “Is it possible that, in the future, this Court of Space could be what the ICC, the LCIA, and the many other well-renowned arbitral institutions represent for international trade today?” in [2].

<sup>14</sup> The DIFC database shows no arbitral awards utilizing the Courts of Space. However, this may be due to the confidential nature of some awards.

<sup>15</sup> This includes the courts that have jurisdictional oversight and the enforceability of the award and or the procedural law of arbitration [7, p. 922].

the Federal Arbitration Law [28]<sup>16</sup> and the UAE Civil Procedural Code [29]<sup>17</sup>. Instead, the DIFC has its own set of arbitration rules.

The most important applicable law is the DIFC Arbitration Law [30], which is based on the UNCITRAL Model Law [31] and reflects a modern, internationally aligned approach to arbitration. The first aspect worth analysing is its Article 14, which guarantees confidentiality (unless the parties agree otherwise or disclosure is required by law). Even during enforcement or annulment, the DIFC courts restrict public access to arbitration-related materials, including submissions, evidence, and awards<sup>18</sup>. This particular attention to confidentiality is typical of the common law cultural approach.

Second, Article 12 outlines the types of disputes that are arbitrable under DIFC law. While it does not list specific categories, it aligns with the UNCITRAL Model Law, by generally excluding matters of public policy or criminal issues. What is considered a question of public policy must be determined under DIFC law pursuant to Article 41(2)(b)(i), and under UAE law pursuant to Article 44(1)(b)(vii). The result is a wide range of arbitrable disputes based on the UNCITRAL Model Law, with an emphasis on commercial disputes.

As for enforcement, Article 42(1) requires the DIFC Court to act in accordance with any treaty the UAE has ratified concerning the mutual recognition and enforcement of judgments, orders, or awards. As the UAE is a party to the New York Convention, the DIFC Court must, therefore, enforce foreign arbitral awards in line with the Convention's framework, provided that its stipulated conditions are met.

#### **4.2 Identifying the Global Standard: Paris as a Benchmark**

Establishing the dominant arbitration seat in the realm of space conflicts presents a considerable challenge. Although arbitration institutions typically release aggregate data on administered cases, the confidential nature of proceedings often impedes the determination of individual dispute subject matter. Consequently, statistical inferences regarding the volume of space-related cases handled by particular institutions may be of limited reliability [10, p. 174]. That said, according to the available statistical data, New York, Paris, and London are consistently ranked as the most common seats of arbitration [10]. Although the variance in overall case volume among these leading jurisdictions is relatively marginal, this study selects France as its benchmark due to its prevalence as a seat within the International Chamber of Commerce (ICC)<sup>19</sup>, the arbitral institution most frequently used to resolve legal issues in outer space<sup>20</sup>. Thus, France's particular prominence in ICC-seated arbitrations makes it the most pertinent comparator for evaluating the DIFC's potential in the space arbitration niche.<sup>21</sup>

##### **4.2.1 Framework for Arbitration in France**

Once chosen France as the seat, the most relevant French legislation pertaining to arbitration is the *Code de Procédure Civile* (Articles 1442 - 1527), which covers both arbitration and enforcement proceedings<sup>22</sup>. The Code was significantly revised in 2011<sup>23</sup> with the intention of aligning it with modern international standards, in particular the UNCITRAL Model Law on International Commercial Arbitration [31].

Despite being a cutting-edge legal framework there are still some peculiar aspects that have been raised as critical. For example, there is a presumption of confidentiality that applies only to domestic arbitrations (Article 1464, paragraph 4, *Code de Procédure Civile*), and not to international arbitrations, as confirmed by the Paris Court of Appeal in the 2004 *Nafimco* decision [34]. For international arbitrations seated in Paris, it is generally recommended that parties include a confidentiality clause in the arbitration agreement. Alternatively, they can agree to add such a provision in the Terms of Reference once the arbitral tribunal is established [35].

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<sup>16</sup> It replaced and repealed Articles 203 to 218 of the Civil Procedural Code of the UAE.

<sup>17</sup> It continues to govern the enforcement of foreign judgments and enforcement procedure: Chapter IV, Articles 235 - 238; Chapter V, Articles 239 - 243. Furthermore, with respect to enforceability, the UAE is a signatory state of the New York Convention.

<sup>18</sup> This was further clarified by *Practice Direction No. 2 of 2013* [32]. This practice direction provides guidelines on confidentiality during arbitration to DIFC Courts.

<sup>19</sup> According to available data, approximately 13.1% of arbitral awards were seated in Paris, making it the most frequently used seats for arbitration, alongside London [7, p. 37].

<sup>20</sup> According to the available data, the International Chamber of Commerce (ICC; 31.5% of the total) handled the largest number of space-related disputes, followed by the International Centre for Dispute Resolution (ICDR; 15.7% of the total) and the London Court of International Arbitration (LCIA; 10.5% of the total) [7, p. 39].

<sup>21</sup> Although it is important to acknowledge that France's well-developed private space sector may contribute marginally to its visibility as a potential seat of arbitration, this factor remains of limited relevance to the present analysis. The selection of a seat does not depend on the parties' territorial or economic connection with a jurisdiction, but primarily on the advantages offered by its legal and institutional features.

<sup>22</sup> Furthermore, with respect to enforceability, France is a signatory state of the New York Convention.

<sup>23</sup> More on the revision in [33, p. 399].

Another noteworthy aspect concerns the arbitrability of disputes under French law<sup>24</sup>. In accordance with Article 2060 of the *Code civil*, certain matters are deemed non-arbitrable, particularly those involving public policy considerations and the sovereign power of the state, such as tax disputes. Similarly, in the interest of public scrutiny, certain environmental issues are generally non-arbitrable, as stipulated by the French Environmental Code [36] and the Charter for the Environment [37]. Moreover, some disputes related to intellectual property law may require adjudication by a judicial court, as specified in the *Code de propriété intellectuelle*.

#### 4.3 Judicial specialization in the DIFC and France

Prior to undertaking a comparative analysis of two seats of arbitration, it is important to note that the choice between them may depend not only on the arbitral framework but also on the characteristics of the courts of the selected jurisdiction, which will ultimately decide any challenge to an award. This observation opens the possibility that the judicial profile of a seat (its expertise, organisation, and technical competence) may influence parties' preferences when structuring dispute-resolution clauses.

Interestingly, France (although recognized as one of the most advanced space regulators within the EU [38]) does not maintain a technical or judicial body exclusively tasked with resolving commercial space disputes. Indeed, space-related issues in France are typically addressed within the existing judicial framework, frequently through judges or courts with a background in pertinent domains such as administrative law or intellectual property [39]. This is not surprising: the establishment of specialized divisions within the judiciary to address specific categories of cases, permitted under Article L211-9-3 of the *Code de l'organisation judiciaire* [40], is driven by the rationale of streamlining the judicial system around matters that have broad and structural effects on society, such as labour, family, or major economic crimes. A dispute in the realm of space law, despite its technical sophistication, does not possess the critical mass or systemic impact that would justify the creation of a dedicated specialized division within the current French judicial architecture.

Conversely, while the DIFC lacks dedicated space legislation, it has established a specific judicial division focused on space-related matters (obviously, the Courts of Space). In doing so, the DIFC is effectively betting on the relevance of judicial specialisation as a factor of competitiveness: it seeks to differentiate itself from other arbitral seats by assuming that parties will value not only a robust arbitration law but also the technical expertise of the courts supporting it. The extent to which this institutional strategy enhances the DIFC's attractiveness will be examined in the following *Section*.

## 5. Comparative Analysis

A comparison between the DIFC and French arbitration regimes shows that, while both jurisdictions are arbitration friendly, they present some interesting differences. On confidentiality, both regimes permit customization either through specific agreements or by adopting the procedural rules of arbitration institutions, which often include confidentiality provisions. However, the DIFC offers stronger default statutory protections, while France provides less automatic coverage.

Furthermore, both restrict arbitrability on public policy matters, but France's restrictions are broader, reflecting its more cautious civil law tradition compared to the common law's expanding approach [41, p. 263 and p. 275]. This difference has practical implications for enforcement. Although, both jurisdictions adhere to the New York Convention, enforcement is not always straightforward in third countries, and the choice of seat can be relevant due to the differing public policy standards used to refuse enforcement. Indeed, France offers broader grounds for refusing enforcement due to its reliance on *ordre public international* (Article 1520(5) *Code de Procédure Civile*), particularly if a space dispute involves public safety, environmental issues, sovereignty, or criminal liability. In contrast, under DIFC law, public policy is interpreted more narrowly: unless the dispute concerns a public law matter, like UAE sovereignty or criminal offences, arbitration is permitted, leading to fewer grounds for refusal.

From the perspective of the arbitration framework, the DIFC appears to be a more attractive seat for arbitration. Despite these advantages, the DIFC has not overtaken France as the preferred venue for space-related disputes. This suggests that the quality of the arbitration framework alone is insufficient to reposition the DIFC within the niche of space disputes. The remaining

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<sup>24</sup> UNCITRAL Model Law applies to international commercial arbitration. However, it doesn't explicitly define what is *not* arbitrable. This leaves it to the domestic law of each adopting state to determine which subjects are against public policy or otherwise not capable of settlement by arbitration.

potential differentiator is judicial specialisation.

A comparison of the DIFC and French approaches reveals a clear divergence: the DIFC demonstrates a strong institutional focus on establishing *ad hoc* courts for space conflicts, yet lacks a dedicated space law, whereas France possesses a comprehensive legislative framework for space activities, but no specialized judicial bodies exclusively addressing such matters. This contrast underscores the need to assess whether judicial specialisation can genuinely enhance a seat's appeal for space-related disputes, which requires examining the actual role and influence of the Courts of Space.

Yet, the Courts of Space project does not distinguish itself with any novel characteristics beyond those already applicable to all DIFC Courts. Indeed, although the three initiatives of the Courts of Space reflect the UAE's broader ambition to lead in intellectual and research activity, a goal certainly worthy of praise, none of them can alter the legal framework in which they operate, as they carry no direct legal authority. Both the DIFC Space Disputes Guide and the International Working Group are projects without binding legal value. Their proposals provide guidance for handling space disputes in the DIFC Courts, but they remain soft power instruments. Furthermore, the examples proposed by the Space Disputes Guides are not specifically tailored to arbitration<sup>25</sup>.

The main feature that remains to distinguish the Courts of Space from other DIFC Courts appears to be their sector-specific focus, enabling judges to develop expertise in space-related matters<sup>26</sup>. Yet, even this distinction may have limited impact in the context of arbitration, where the Court's influence could be less significant than it initially seems: the DIFC Court does not decide the case on its merits (a responsibility lies with the arbitral tribunal), since Articles 10 and 11 of the DIFC Arbitration Law restrict the Court's role to specific procedural functions<sup>27</sup>. For such functions, while familiarity with space matters is beneficial, the deep, substantive expertise required for deciding the merits is primarily needed by the arbitrators. Consequently, it could be argued that the Courts of Space may be more attractive as traditional courts of adjudication than as seats of arbitration, since in the former context, the judges' specialised expertise would directly inform the resolution of the dispute.

## 6. Conclusions

In conclusion, the paper remains guardedly optimistic of the DIFC proposal. Since the primary factor driving the selection of a seat is its reputation and recognition [43], any seat that seeks to present itself as a new player is disadvantaged. As evidence of this, empirical data indicates that Paris ranks among the top three preferred seats not only for space-related disputes but also for all other types of cases [43]. This suggests that its dominance merely reflects broader arbitration trends, rather than unique suitability for space matters. As such, the outlook for DIFC's emergence as a leading seat remains limited.

Thus, since a new seat cannot rely on an established reputation, it must be supported by a clear legal framework. At present, DIFC does not meet this requirement, which constitutes a major weakness for the Space Courts. This uncertainty, particularly within a common law system, may discourage parties from selecting these Courts as a seat. Although ambiguities could eventually be resolved through the issuance of the first awards, it would be preferable for the DIFC to address these issues proactively.

The conspicuous nature of this flaw raises the possibility that the project's primary objective may be promotional in nature. This supposition is further corroborated by the Space Disputes Guide's assertion that "[t]he launch of the project has signalled to the international space community the intent of the UAE to play a leading role" [42, p. 8]. Therefore, it seems prudent to view this project primarily as a means of publicizing the UAE, rather than as a structural endeavour, at least at this stage.

Nonetheless, the establishment of the Courts of Space constitutes a step in the right direction, even if they currently lack the structural rigor necessary to function as a credible forum for space dispute resolution. If the Emirates genuinely aspire to distinguish themselves in this domain, a more substantive legal framework is imperative. One possible approach would be for the DIFC to pursue the development of bespoke procedural rules tailored to the specific demands of space disputes, ideally through

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<sup>25</sup> This is also evident in the use of terms like "trial" instead of "proceeding" [42, pp. 12-13].

<sup>26</sup> While not legally binding, like the Space Guide and the international working group, this element is the only DIFC proposal with real potential to influence the outcome of an arbitration.

<sup>27</sup> More precisely, the Court is responsible for appointing arbitrators (Article 19(3)), handling challenges to arbitrators (Article 24(2)), determining the jurisdiction of the tribunal (Article 34), recognizing and enforcing awards (Article 41), refusing enforcement on specific grounds (Article 42), setting aside awards (Article 43) and addressing arbitration costs (Article 44).

enhanced collaboration with the DIAC. This would give the rules the full force and effect of law for the parties involved and address the unique challenges posed by the evolving field of space law.

This paper posits that the specialization of arbitration mechanisms is both feasible and essential. While the PCA Rules have drawn criticism, this paper aligns with those who believe they were ahead of their time [44]. As space activities grow increasingly complex and arbitration gains traction as a dispute resolution mechanism, the need for specialized legal tools becomes more evident. Other sectors demonstrate that specialization in arbitration can succeed. The SIAC Investment Arbitration Rules [45], for instance, are a set of procedural guidelines developed by the Singapore International Arbitration Centre (SIAC) to address investment-specific disputes. They are tailored to handle investment arbitration and diverge meaningfully from the institution's general rules [46]. This demonstrates that specialization in arbitration not only is possible, but it can also be successful [5].

It is only through this approach, and without fear of innovation and risk, that the UAE can truly achieve a position at the vanguard of the field, transcending the limitations of mere marketing interests. Such an initiative would solidify the UAE's role as a key player in the global arbitration landscape to enhance its credibility and attractiveness as a forum for disputes in the rapidly expanding space economy.

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