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The Interaction between International Private Law and Space Law and its Impact on Commercial Space Activities (2)

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THE CHOICE OF LAW IN PRIVATE SPACEFLIGHT CONTRACTS UNDER THE CHINESE CONFLICT RULES

Abstract

To date, China does not have a private commercial space transportation industry. However, it does have a potential consumer market. Assume that a Chinese space tourist suffers personal or property damage as a result of a private spaceflight and he/she or in the case of death, his/her estate will sue the space operator in mainland China., then the most recent conflict rules of China that entered into force on April 1, 2011 will apply. The present paper applies the Chinese conflict rules to a private spaceflight contract (PSC). On one hand the paper discusses how a Chinese court should apply the existing domestic conflict rules in this “frontier”. The paper also analyzes the difficulties which will arise in the choice of law process and provides the corresponding solutions. Specifically, this paper contains an analysis of the choice of law in the contracting capacity for a space operator. According to the Chinese conflict rules, the capacity for civil rights and civil conduct of a legal person shall be determined by the law of its registration country. If the place of registration and the main place of business of a legal person are different, the law of the main place of business can also apply. The questions are as follows: what kinds of laws in the related countries should be applied? Is it proper to decide the applicable law alternatively? According to the “directly applicable law” theory in Private International law, the administrative rules in a native space law should be applied. However, the Chinese conflict rules stipulate that only the mandatory rules of China could be directly applied. The paper points out that the directly applicable law should not be limited to the law of forum. A native court should admit the extraterritorial effect of the mandatory administrative rules in a foreign space law and should not apply the law alternatively, but should apply all the “directly applicable laws” simultaneously. Besides, the paper also contains an analysis of the jurisdiction over a PSC under Chinese procedure rules. The paper aims at establishing an international or regional conflict rules regime. The final goal of this paper is to serve as the starting point of the discussion on the national conflict rules with regard to private spaceflight.