

53rd COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
The Current Status of the Rule of Law with Regard to Space Activities (4)

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THE EXPANSION OF PRIVATE ACTIVITY IN SPACE AND ITS IMPACT ON THE
DEVELOPMENT OF THE INTERNATIONAL LAW OF OUTER SPACE

Abstract

Private companies are playing an ever-larger role in the use of outer space and their presence in space will continue to expand in the coming years. For example, increased private activity in space will be greatly encouraged by the new U.S. space policy proposed by the Obama administration which would require the U.S. government to rely on private companies for the delivery of crew, cargo, and satellites into space. My paper examines the effect that this increased private activity will have on the future development of the international law of outer space.

One clear question that emerges from increased private activity in space is whether (and to what extent) existing space law applies to private activity. For example, whether the existing duty to rescue and return spacecraft applies to such activities. A second question that presents itself is what effect private activities will have on the shape of future space law treaties – and whether international treaties, as opposed to domestic regulation, is the appropriate method of regulating such activities. A third question concerns the effect of private activities on the evolution of customary international law. As the likelihood of successfully creating additional space treaties is questionable (given the failure of the Moon Treaty and the difficulty of concluding the Space Assets Protocol to the UNIDROIT Convention on International Interests in Mobile Equipment), customary international law appears to be the only viable alternative for the creation of new binding international law regarding the use of space. However, the increased private activity in space will also likely mean a reduction of state activity. And since customary international law relies on state action for its development, increased private activity may threaten the development of this form of international law.