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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 SPACE PROTOCOL TO THE CAPE TOWN CONVENTION AND THE UN SPACE LAW TREATIES

Abstract

The paper will describe points of intersection and identify problem areas between the Space Protocol to the Cape Town Convention and the space law treaties; specifically, under the space protocol:

1. What is the responsibility and jurisdiction of the creditor state under Outer Space Treaty (OST) after default? The OST governs satellite operations in outer space. Art. VI establishes responsibility of treaty parties to authorize the activities of their commercial satellites and exercise continuing supervision for compliance with the OST. States are liable for damages caused by their satellites (Art. VI). States retain jurisdiction and control over satellites on their registry and state laws govern ownership and transfer of ownership to satellites (Art. VIII). Furthermore, states are responsible for harmful environmental effects (Art IX).

2. What is the responsibility and jurisdiction of the creditor state under the Rescue and Return Agreement (RA) after default? The OST, Art 8, and the RA Art 5, provide for return of lost space objects to the launching state. Furthermore, the RA requires launching States to eliminate harmful substances such as NPS and other dangerous fuels deposited by their satellites in other states.

3. What is the responsibility and jurisdiction of the creditor state under the Liability Convention (LC) after default? The LC assigns liability to launching states for damages caused by space objects to the Earth and to space objects in outer space. The Space Protocol arranges for transfer of possession to satellites upon default thereby raising the question of transfer of that liability obligation to the transferee State.

4. What is the responsibility and jurisdiction of the creditor state under the Registration Convention (REG) after default? The REG requires the launching state to register space objects launched into outer space. The paper will discuss the registration responsibility of the creditor state after default and the consequence of failure to undertake that responsibility.

5. What is the responsibility and jurisdiction of the creditor state under the UNGA debris mitigation and other international guidelines after default? Several satellite operating rules have been established by COPUOS. The paper will discuss compliance with those rules.

6. What is the responsibility and jurisdiction of the creditor state after default? Draft Art. XXXIV establishes precedence of public law space law treaties and ITU instruments over the private law provisions of the protocol.