55th IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
The Interaction between International Private Law and Space Law and its Impact on Commercial Space Activities (2)

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THE LAUNCHING STATE. AN ELEMENT OF PUBLIC INTERNATION AL LAW OR PRIVATE INTERNATIONAL LAW?

Abstract

The Outer Space Treaties have crafted a highly protective responsibility regime that does not only establish international State responsibility but it also extends State responsibility to damages caused by acts carried out by private and non-governmental actors. The Outer Space Treaties have created a complex responsibility regime that relies on national space legislation and contractual agreements to solve eventual conflicts caused by the malfunction of the space operations in question. The concept of the "launching State" lies at the centre of this responsibility regime as the main instrument to determine jurisdiction and, as a consequence, the applicable law. At the same time, instruments of private international law such as the Rome I and Rome II regulations apply to international conflict of laws without sector related distinctions. These instruments of private international law deal with issues such as insurance and employ concepts such as the "the country where the damage has occurred" or the "residence of the damaged person". In this context, the suitability of the outer space regime to rule on private activities has often been questioned by part of the legal doctrine and, with it, the applicability of the concept of the "launching State" to non-governmental space ventures. This paper aims at analysing the interaction between the responsibility regime laid down by the Outer Space Treaties and instruments of private international law such as the Rome I and Rome II regulations. With that purpose this paper will firstly analyse the concept of the "launching State" and the criteria under the Rome regulations in the light of the ongoing doctrinal discussions, to then draw conclusions on the interaction between the concept of the launching State and private international law.