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Up, up and away: Future legal regimes for long-term presence in space (2)

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PRIVATE INTERNATIONAL LAW (CONFLICT OF LAW RULES) FOR THE HUMAN PRESENCE OF LONG TERM IN THE SPACE

Abstract

When the human activities reach the level of "long term presence" in the outer space, it will be inevitable that private law issues arise. Personal activities, if not fully engaged by the governments, will be based on contracts. If the person is a consumer, such as in the case of space tourism, consumer law will also come into play. Torts, including the liability caused by space debris, could occur from various types of activities. Further, the emergence of commercial ventures will give rise to financing and secured transactions. These private law issues require the choice of governing law, whether the issue is to be solved before the court or arbitral tribunal. However, the choice of law rules for space activities have not been explored sufficiently in legal literature. Under the Inter-governmental agreement (IGA) for the International Space Station, the minimum rules were introduced in the form of rules on the jurisdiction, leaving the general rules for private international law as the future agenda. The most recent Space Protocol to the Cape Town Convention (CTC) includes special rules to the private international law, though applicable only so far as the secured transactions registered under the Protocol is concerned. Because the outer space has the unique status as the territory not subject to any state, the comparison with the High Seas, which shares the same uniqueness and has produced the body of ample rules and cases, can be the starting point. Drawing further to the precedents of IGA and Space Protocol to the CTC, this paper will develop some thoughts on the conflict of law rules, in particular, for the torts, contracts (including the consumer contracts) and secured transactions in the outer space.