

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Dispute Settlement in Space Law: Are We Ready for the Commercial Challenge? (2)

Author: Dr. Maria Elena De Maestri
Università degli Studi di Genova, Italy

IMMUNITY, EXCLUSIVE COMPETENCE CLAUSES AND TORTS: DOES THE EU LEGAL
FRAMEWORK ALLOW THE EFFECTIVE ENFORCEMENT OF LAW IN THE COMMERCIAL ERA
OF SPACE ACTIVITIES?

Abstract

European intervention in the space sector is pushed and characterised by the commercial attitude of space-based activities and by the economic revenue connected to them. Despite the attempt to build a private-public partnership for the management of the two European programmes, both are currently managed and owned by the EU, where the European Commission is indicated as the responsible party together with ESA for the technical maintenance (upon contractual agreements). Nowadays space-based applications are widely used by private and public operators and individuals in every day life. If we envisage a malfunction or a break of the system that will entail damages to European and third countries' citizens, the need to point out the competent judge to solve the dispute is a key issue in relation to the identification of responsible party. To this purpose, being the European Commission (or ESA, if the malfunction is connected to its tasks) the responsible party, we must take into account exclusive jurisdiction of the ECJ (see article 268 TFEU) facing Member States' legal proceedings as well as the relevance of immunity of international organisations (ESA and EU towards third States' courts). More widely, the issue relates to all space programmes and systems managed by public authorities and agencies and providing for commercial services together with public and security services. The topic at stake will strongly influence the effectiveness of law in the field of torts, since the principle of damage's restoration can be overcome by immunity or by other privileges connected to jurisdiction. Therefore the evolution of the principle of immunity of international organizations, taking into account the applications (commercial or not) derived from the space-based system has to be studied. Moreover, immunity and the exclusive jurisdiction of the ECJ when the liability of EU institutions is involved can challenge fundamental rights of individuals to get proper compensation and to act before national independent courts (see artt. 41.3 and 47 of the EU Charter of fundamental rights as well as art. 6 ECHR). The paper will particularly focus on i) immunity of international organisations managing space infrastructures which provide also civil and commercial services; and ii) the compliance of the exclusive jurisdiction clause of international courts created by international organisations with the right of a due process.