

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
National Space Legislation – Harmonisation and Enforcement (3)

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INVESTMENT PROTECTION PROVISIONS IN NATIONAL LEGISLATION AND THEIR
POTENTIAL TO ENSURE LONG-TERM COMPLIANCE OF NATIONAL SPACE LEGISLATION
WITH THE PRINCIPLES OF INTERNATIONAL LAW, PARTICULARLY INTERNATIONAL SPACE
LAW**Abstract**

In the recent course of time, many countries have adopted national legislation relating to space activities. Most of them aim at establishing a legal framework designed to facilitate the commercialization of space activities. Given the recent development, private actors are to play a major role in the exploration and use of outer space. In considerations of national space legislations, it is worthy to address issues identified by investors as essential. According to UNCTAD (United Nations Conference on Trade and Development), apart from the economic determinants, regulatory and political stability are the most important foreign direct investment determinants. In other words, a stable regulatory environment is a fundamental pre-requisite for an adequate flow of new investments.

Investment law has been recognized as a core policy tool to promote investment. Globally, there are more than 2300 bilateral investment treaties in force, according to UNCTAD. A key objective of investment law is to mitigate risks inherent in a future intervention of the host state. While most of the investment treaties contain a general phrase defining protected investment as “all assets”, there are some examples of sector-specific treaties such as the Energy Charter Treaty. Given the specific characteristics of space activities, investment protection of investment in the space sector can significantly spur private investment.

Against the background of a global backlash against investment arbitration and the ongoing debate on international investment agreement reform, it is hard to imagine an adoption of a space-specific investment agreement. However, international treaties are not the only source of investment protection. Many capital importing countries such as Egypt, South Africa, Jordan have adopted national laws including a similar level of protection accompanied by a consent to international arbitration.

In consideration of emerging national space legislation, the paper seeks to explore the inherent limitation of national legislation in relation to stability and predictability. In this context, the paper addresses the potential of investment protection provisions in national space legislation as well as the potential of space investment law to ensure long-term compliance of national space legislation with the principles of international law, particularly international space law.