

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

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ARTICLE VI OUTER SPACE TREATY AS A GATEWAY TO EXTENDING STATE IMMUNITY
BEFORE DOMESTIC COURTS TO NON-GOVERNMENTAL SPACE OPERATORS

Abstract

While the drafters of the Outer Space Treaty predicted the emergence of a non-governmental space sector, they chose an approach of classic public international law character to regulate these future developments. In international disputes between non-governmental entities or between a non-governmental entity and a state, the parties can sometimes rely on specialized dispute resolution procedures such as those set up by the ICSID Convention or the ECHR. The five UN space treaties, however, do not provide a *lex specialis* to the general methods of dispute resolution under public international law as outlined in Chapter VI of the UN Charter. The Outer Space treaty provides for an interstate approach, expecting and allowing non-governmental entities to conduct space activities, while imposing significant restrictions on them at the same time: states parties to the Outer Space Treaty are obliged to authorize and continuously supervise all their national space activities. To this effect, the rule on attribution of conduct by non-governmental entities to states found in the Outer Space Treaty goes far beyond the rules on attribution commonly believed to have reached a level of custom. Consequentially, dispute resolution involving private parties needs to be analyzed through the lens of public international law, which includes the role of national courts. Are national courts competent to adjudicate on space related disputes or does the principle of *pars in parem non habet imperium* prevail? The paper will examine if and to what extent the doctrine of state immunity may be applied to space related disputes involving non-governmental entities. It will elaborate the implications to dispute resolution proceedings when attributing non-governmental entities to states similarly to the attribution of state agents performing governmental duties. Of interest is therefore particularly whether state-internal dispute resolution procedures such as domestic court proceedings against foreign non-governmental space-faring entities are precluded and only the toolset of public international law can be utilized. The paper will further address how exceptions to the doctrine of state immunity, such as the tort exception, have to be applied to space related disputes. After analyzing and assessing the public international law *de lege lata*, the paper will give recommendations on measures *de lege ferenda* to ensure that space will indeed be the promise of the future.