

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Space Law in a Networked World (7)

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COMMERCIAL OPERATORS AND ARTIFICIAL INTELLIGENCE IN SPACE: FOR AN
ALTERNATIVE JURISDICTION ATTRIBUTION MODEL AND REVISED LIABILITY REGIME IN
SPACE

Abstract

Determining clear jurisdictional bounds and liability rules in the context of the so-called New Space on the basis of the established legal regime governing outer space activities, transactions and services in orbit becomes an increasingly arduous exercise for both lawyers and legal scholars. The fact that international space law remains by and large a product of the Cold War, and particularly well-suited for that specific super-power-driven dynamic, is largely borne out today by the latest developments within the space industry. A key issue in leveling up the current legal regime to the pressures and demands of the space industry—as well as of the ICT sector—requires a more nuanced and flexible way of establishing state jurisdiction in space as well as defining clearer liability rules to tie space operators to the appropriate jurisdiction. This becomes a particularly pressing issue in the likely outcome where orbital platforms powered with AI capabilities will be able to self-govern, to analyze complex scenarios and to react spontaneously to changing conditions by supplying situation-appropriate responses and services, while operating in complete autonomy from terrestrial operational control—a case which clearly exceeds the regulatory scope and power of the Outer Space Treaty or the Liability Convention. This paper intends to provide an overview of the existing liability regime in space and identify the gaps where statutory provisions fail—or are likely to fail—their intended purpose in the current context of commercial space development. To address these issues, we posit a novel solution derived from information technology law that provides a possible basis to rethink the relationship between liability and state jurisdiction. Borrowing on the European Union Court of Justice’s landmark ruling in *Airbnb Ireland UC vs. Hotelière Turenne SAS* (EUCJ Aff. C-390/18), which isolates the concept of platform as a medium to supply ‘information society services’, this paper proposes an alternative basis for determining territoriality rules in space law by postulating the jurisdiction of the operator rather than the launching state’s as a more robust foundation for establishing operator liability in orbit.