

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
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COMPARATIVE ANALYSIS OF THE PRECAUTIONARY PRINCIPLE WITH THE PRINCIPLE OF
DUE DILIGENCE FOR COMMERCIAL SPACE ACTORS TOWARD SPACE DEBRIS
REMEDICATION.

Abstract

Commercial (private) space companies' jurisdiction in space remains somewhat ambiguous because our current international space laws, such as the Liability Convention, the Registration Convention, and the Outer Space Treaty, do not fundamentally recognize private companies as actors in space. This means that private entities may have difficulty enforcing their rights and recovering for property damage sustained in space. To ensure the continued commercial growth of the space industry, new and different judicial systems for the space debris mitigation purposes will be required in future. Due to the lack of a legal framework for commercial space actors, particularly large constellations, the application of the "due diligence" principle to space debris mitigation is at stake ahead of humanity. Contemporary large constellations provide numerous benefits to humanity, such as fast internet connections. Nonetheless, scientific evidence on how far these large constellations can be harmful to outer space is lacking. In this regard, the precautionary principle should be implemented through soft law norms in outer space activities. The duty of states should be examined in light of Articles VI and VII of the Outer Space Treaty (OST). In this case, the obligation of states to cooperate should be replaced by the obligation of private actors in international spheres. Thus, a precautionary principle should be part of corporate social responsibility, which requires investigating and implementing preventive measures even though scientific evidence concerning the perilous impacts of mega constellations currently falls short. According to certain experts, due diligence is a component of a "duty of care" to someone or something else, rather than a distinct obligation (including the duty to prevent and mitigate harm). Due diligence is required when a risk must be controlled or contained in order to safeguard against injury and damage to another actor or the public interest. As a result, the main objective of this presentation is to emphasize that a lack of scientific evidence should not be used to dismiss due diligence measures for private satellite operators. In addition, role of international customary law norms with regard to the application of the "due diligence" and "precautionary principle" through norms will be discussed interactively. The doctrine of "opinio juris" shall be focused on specifically.