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INTERSTELLAR INVESTMENTS: A LEGAL ODYSSEY OF SPACE LAW AND INTERNATIONAL
INVESTMENT LAW

Abstract

The rapid proliferation of commercial activities in Outer Space and the subsequent expansion of private investments poses a significant challenge to the traditional international space law framework. The current regime needs to adapt to the modern commercial reality and regulate the legal issues that arise from the increasing involvement of the private space sector. This paper examines the intersection between international investment law and space law to address these challenges and evaluate avenues for more robust protection to space investors.

This paper firstly analyzes whether investments in space activities - particularly in the satellite industry - could fall within the purview of Bilateral Investment Treaties (BITs) and Article 25 of the International Centre for Settlement of Investment Disputes (ICSID) Convention. If so, investors may enjoy broader substantial protection by benefiting inter alia from the requirements of Most-Favoured Nation (MFN), Fair and Equitable Treatment (FET), and Full Protection and Security (FPS).

Further, the current state of space law does not provide self-exercisable remedies to private actors who rather depend on their home state to obtain compensation for damage suffered, based on the concept of diplomatic protection. In this context, the authors examine how the investor-state dispute resolution (ISDS) regime could address the specificities of space-related disputes and provide further incentives for space investments. Private operators can resort to arbitration under investment treaties, which can offer more efficient and effective dispute resolution mechanisms than national courts. Indicatively, investors can benefit from awards that grant compensation for losses suffered due to state actions, such as the denial or revocation of licenses. To this end, we discuss significant cases, such as *Devas*, which exemplify the benefits of the potential of ISDS, if used for space disputes.

In conclusion, this paper highlights the relevance of international investment law in addressing some of the practical challenges that arise from the growing involvement of the private space sector in space activities and in strengthening the global rule of law. To that end, the authors examine how the use of international investment law standards could contribute towards mitigating space debris, ensuring space safety and sustainability, and promoting the peaceful use of Outer Space. Based on the findings, this paper calls for more comprehensive and coherent policies and regulations that could accommodate the evolving nature of the space industry and encourage more investments in Outer Space.