

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Launching into Outer Space (4)

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INVESTMENT PROTECTION OBLIGATIONS OF LAUNCHING STATES UNDER
INTERNATIONAL LAW

Abstract

International space law contains a liability regime under Article VII of the Outer Space Treaty and the Liability Convention, according to which, a State that launches or procures the launching of an object into outer space, and each State from whose territory or facility an object is launched, incurs liability (absolute or fault-based depending on where the damage occurs) for damage to another State or to its natural or juridical persons by such object or its component parts. While that rule is clear, its enforceability is less so.

The Liability Convention does contain a dispute settlement mechanism in the form of a Claims Commission, but it is limited to State-State claims, and its decisions are only recommendatory. Up to date, no formal proceedings have ever taken place invoking these liability provisions. In addition, an increasing number of States include mandatory insurance provisions into their domestic law to insulate themselves from potential liability arising out of their national space activities. States might thus feel relatively protected from claims arising from damage caused by space objects they launch. This impression might, however, be mistaken, as it fails to take into account their obligations under international investment law.

This paper addresses the applicability of international investment law to space activities, and analyzes how binding space law, as well as soft law in the form of principles and guidelines, shape a launching State's obligations under international investment protection treaties. In particular, it discusses how common substantive investment protection standards such as Full Protection and Security rely on the concept of due diligence, which might require a State to demonstrate that it undertook its best efforts to avoid any damage from occurring. Finally, it explains how, contrary to the liability regime under international space law, international investment law benefits from an efficient dispute settlement mechanism in the form of international arbitration.

Private space operators who will see their investments in outer space harmed will look for avenues to recover their losses. In the absence of an easily available forum under international space law, they are likely to look to international investment law for relief. Launching States should be aware of the risks this entails.