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THE DOMESTIC SPACE LEGISLATIONS RACE AND THE ATTEMPTS FOR THEIR
HARMONISATION

Abstract

With the advent of privatisation of space activities and with the existing body of international space law lacking a mechanism to govern these activities, several states have taken it upon themselves to enact national space legislations to administer their space activities. Since states are responsible for space activities conducted by their national private entities, states have an incentive to regulate these activities; conversely, existing regulations provide an incentive for private companies to better calculate their business risk ab initio.

Along these lines, the first part of the paper discusses motivations of states to enact national space laws and the relation between international space law and national space laws. The second part of the paper compares national space laws of USA, Luxembourg, Russia, China, India, Australia and UAE to ascertain the ways in which these states are encouraging companies to set up bases within their borders. Focus is kept on different incentives offered by states to promote themselves as an attractive destination for private entities. Since space activities are heavily supervised by the government and involve huge risks, most of the incentives granted encompass reduction in the level of authorisation and most importantly relaxation with regard to liability and insurance requirements. Through historic models the paper explores how these actions could lead to a ‘races to the bottom’ scenario where each state provides more incentives to attract private enterprises. The paper also addresses how reduction in level of authorisation is already leading to security risks in downstream activities especially remote-sensing operations. To protect their space assets and to promote their national interests, states are militarising space. Whilst studying the military activities of the states mentioned above, the paper also addresses challenges posed by countries like Iran and North Korea as both of them have demonstrated launch and jamming capabilities. In this regard, the last part of the paper provides a brief analysis of the initiatives of various organizations to harmonize national legislations such as the Model Law on National Space Legislation produced by the International Law Association and the opposite trend of avoiding finding a common regulatory basis of some international organizations such as the European Union. The final aim of the paper is to identify ambiguous or problematic approaches taken by national space legislations, which might create uncertainty about, or leave gaps in, the adherence to international obligations and which can lead to an array of security issues in future.