

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Dispute Settlement (2)

Author: Ms. Vivasvat (Viva) Dadwal
United States, vdadwal@kslaw.com

Mr. Carson Bennett
United States, cbennett@kslaw.com

Mr. Charles (Chip) Rosenberg
United States, CRosenberg@KSLAW.com

INTERNATIONAL INVESTMENT LAW AS A FRAMEWORK TO PROTECT PRIVATE ACTORS IN
OUTER SPACE

Abstract

A fast-growing global space economy requires a clear, consistent, and transparent regime of rights and remedies that can balance the needs and interests of private and state actors. The opposite – politicization of rights and an absence of rule of law – breeds uncertainty, hinders the peaceful and effective settlement of disputes, and impedes private investment flows in outer space. Within the context of state responsibility, the scope and nature of private rights and remedies are guided by three main questions. First, should states protect private actors and their investments in outer space? Second, which rights should constitute protections in outer space? Finally, how might private actors exercise such rights to seek redress for harm committed by states in outer space? Insights and lessons from the international investment law regime are well-suited to assist in the strengthening of an international rules-based space order.

This article proceeds in three parts, each of which has been developed in consultation with state and industry representatives and officials. The first part discusses why the existing space law regime is substantively and procedurally deficient for private actors that have suffered state-inflicted harm in outer space, particularly under the 1967 Outer Space Treaty and the 1972 Liability Convention. Next, it explains how certain international protections commonly found in international investment treaties (such as the fair and equitable treatment and full protection and security protections) are well-suited to address the substantive needs and realities of traditional and NewSpace actors, as well as those of space faring and non-space faring states. Finally, it offers suggestions on how private actors might draw upon the existing contributions of international investment law, such as the PCA Outer Space Rules, to directly enforce their rights against states.