

55th IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Nandasiri Jasentuliyana Keynote Lecture on Space Law & 4th Young Scholars Session (1)

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COLLISIONS IN OUTER SPACE AND ARTICLE 3 OF THE LIABILITY CONVENTION, 1972

Abstract

This paper attempts to provide an interpretation of Article 3 of the Liability Convention. A recent event in outer space - the collision between the Cosmos 2251 and Iridium 33 satellites, has given rise to interesting issues of liability in *corpus juris spatialis*. The paper considers a similar collision in outer space between a non-functional and functional space object. Such a scenario has become highly probable with the increasing number of non-functional space objects. In fact, Cosmos 2251 was also non-functional. In this context, three independent questions relating to Article 3 of the Liability Convention are critically examined: *first*, whether debris qualifies as a 'space object' for the purpose of the article; *secondly*, the requirements of 'fault' as a pre-requisite to liability under Article 3 and; *thirdly*, which state is liable for the damage caused when private corporations are involved. *First*, the *travaux préparatoires* of the Liability Convention and State practice suggest that space debris qualifies as a 'space object'. Consequently, even though there is some scholarly opinion to the contrary, the damage caused by a non-functional space object is covered by the Liability Convention. Indeed, the exclusion of space debris from its ambit would run contrary to the object and purpose of the Convention. *Secondly*, it is submitted that 'fault', undefined in space law, can be understood as deviation from the standard conduct mandated by the treaty regime. This deviation can be seen from the failure to, adopt debris mitigation strategies; or undertake international consultations as required by Article IX of the Outer Space Treaty. *Lastly*, Article 3 establishes a state-oriented regime of liability. However, a state-centric approach has lost relevance with the increased involvement of private corporations. In fact, Iridium 33 was exclusively controlled by Iridium - a private company incorporated in the United States. In such a situation, the state which exercises 'effective control' over the private corporation, in control of the space object, may be held liable. Here, Article 3 has been interpreted in light of relevant rules of international law including Article VI of the Outer Space Treaty and customary international law standards of attribution.