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PRIVATE HUMAN ACCESS TO SPACE: LEGAL CHALLENGES AND POSSIBILITIES

Abstract

The realisation of affordable and safe commercial private human access to outer space may be as significant to mankind as the Wright brothers' flight, Gagarin's first space flight and the Saturn V 'Moon Rocket' that put Aldrin and Armstrong on the moon. The successful launch of the SpaceShipOne from its mother plane White Knight in October 2004, followed by its second return journey in seven days to an altitude of hundred kilometres, demonstrated that technology for short term human suborbital flights has arrived. Probably the single most important element in the on-going evolution of humankind's activities in space is the development of technology capable of transporting large numbers of passengers into outer space on a commercial basis. Within the foreseeable future, space will no longer be the sole domain of professionally trained astronauts or the exceptionally wealthy. The prospects for both suborbital and orbital private human access to space give rise to some interesting and difficult legal questions. It gives rise to a need for the development of an adequate system of legal regulation to deal with these activities. The existing international legal regimes covering air and space activities are not well suited to large-scale commercial access to space, largely because they were developed at a time when such activities were not a principal consideration in the minds of the drafters. The lack of legal clarity represents a major challenge and must be addressed as soon as possible, to provide for appropriate standards and further encourage such activities. This paper will examine some of the more pressing legal issues associated with the regulation of space transportation of passengers on a commercial basis, seen in the light of Article I of the Outer Space Treaty of 1967, which states that the 'exploration and use of outer space shall be carried out for the benefit and in the interest of all countries and shall be the province of all mankind'. An appropriate balance must be found between the commercial and technological opportunities that will arise and the principles upon which the development of international space law have thus far been based.