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DETERMINING LIABILITY FOR DAMAGE CAUSED DUE TO DEBRIS IN OUTER SPACE: -
PORTAL TO A NEW REGIME

Abstract

Like other environments, space is damaged by human activity, primarily through the creation of space debris. But space is more fragile than any other environment. Contamination of outer space by debris and non-functional objects presents a significant challenge to scientists, mission planners and jurists. A continuation of present activities will result in a condition of orbital sprawl whereby certain orbits, notably the geostationary ring, will become saturated with such objects, forcing the location of spacecraft at a distance from the optimal slot and posing a growing risk of collision. Despite landmark guidelines adopted by the UN Committee on the Peaceful Uses of Outer Space (COPUOS), the creation of debilitating space debris threatens to outpace mitigation efforts. Legal consultations have identified inter alia, inadequacies in the current international legal framework governing activities in outer space that give rise to several issues including registration, liability and insurance, especially in the light of increasing commercially oriented space systems. The primary highlight of the article is to address the need for a multilateral, unified approach to liability for damage caused by space debris. The article also points out the failures of the largely illusory-current liability system and to provide for an adequate legal mechanism of recovery for damage caused due to space debris. International responsibility for national activities in outer space is a fundamental principle of international law. Yet a claim attributed to damage by space debris is difficult, if not impossible, to prove under the current liability system. A main concern is the factum of disparity in the abilities of developed and developing nations to counter the space-debris problem. It is a severely difficult proposition for developing countries to be held accountable on the same level or contribute in the same manner for the maintenance of the space milieu, as their developed space-faring counterparts. Most nations in the wake of the growing problem of space debris propose to increase the costs of their satellite services to include a 'Damage deposit' in lieu of possible unforeseen circumstances. However, costs like this would in all probability, make use of space services by developing countries, unaffordable. The article also analyzes and presents a number of solutions to overcome these obstacles to establishing a proper regime for regulation of space debris and the determination of the subsequent liability of the space-faring nations.