

52nd COLLOQUIUM ON THE LAW OF OUTER SPACE (E8)

Third party liability issues in commercial space activities (3)

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THE PROBLEM OF ABSOLUTE LIABILITY ON THE MOON.

Abstract

Rules outpacing the scientific and technical progress of space activity is a characteristic peculiarity of international space law. Today, up to 130 countries take part in space activity. A number of states are already preparing for settlements on the Moon. The process of Moon habitation will very likely begin in the near future.

The satellite collision on February 10, 2009 testifies to the absence of an effective security control and/or settlement mechanism for damage caused in outer space. This case proves also the complexity of liability problems in outer space.

The Outer Space Treaty of 1967 has established the principle of liability for launching of objects into Outer Space. For the first time in the history, in a manner different from international maritime, air, and nuclear laws, space law has put the liability for extra dangerous activity on a divided level. The Convention on International Liability for Damage Caused by Space Objects of 1972 establishes a differentiation between absolute liability for damage which occurs on the surface of the earth or to aircraft flight, and a fault-based liability for damage caused elsewhere than on the surface of the earth or in the airspace to other objects, as for example in outer space. This is just such a case as that of the recent satellite collision.

By treaty definition, the Moon and other celestial bodies are part of outer space. For this reason, the damage caused by a space object of one state to a space installation of another state will be treated in the same way as in other parts of outer space, i.e., fault-based liability.

So if a very expensive manmade station on the surface of the Moon were damaged by some space object from another nation, including by identifiable debris, the damage would be only recoverable under fault-based liability. The author of this paper proposes to defend interests of the future owners of a facility on the Moon's surface. This paper presents discussion of the problem of establishing absolute liability for damage to facilities on the Moon. It is recommended that this question be taken up in and be studied by the UNCOPUOS. Implications of the possibility of formation of a similar rule by international legal custom are also considered.