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Author: Mr. Mohamed Amara
UAE Space Agency, United Arab Emirates

Mr. Bosko Vojkic
Serbia

LIABILITY FOR THE CYBER OPERATIONS IN OUTER SPACE- A MYTH OR A MATTER OF
FACT

Abstract

With rapid and progressive development of technology and with new innovative solutions being implemented daily, space law and cyberspace law are making clear interconnections and intersections. The legal regulation of cyber operations with regard to space activities is unclear and mainly unexplored. In general, the question of liability in space law is governed by the Outer Space Treaty and the Liability Convention, two core treaties providing the most guidance with regard to cyber activities against space systems and assets. Even though these treaties are not mentioning cyber operations per se, both treaties have established general rules of liability and responsibility that would/could apply equally in cyber realm. Responsible States have the clear obligations in dealing with all own national activities in outer space, including an authorization and continuous supervision of non-state entities. This article elaborates on matter of whether the notion of national activities and responsibility for authorization and supervision could be legally extended to intentional malicious cyber operations of which a specific State has no knowledge and additionally, no capacity and ability to control. Under the established principles of international law no State has the right to use or permit the use of its territory in order to cause damage to others, but the simple fact of the control exercised by a State over its sovereign territory should not imply directly that State necessarily knew, or ought to have known, of any unlawful and illegal act being done. This article will address several gaps in the legal framework governing outer space related activities and uncertainties as to how particular rules will apply in cyber context. Main aim is to elaborate applicability of different liability regimes being possibly invoked in case of damage resulted from cyber operation in outer space. In addition, questions on how actually can ascertain that a State is responsible for a cyber-operation, evidentiary issues in relation to State Responsibility and issue of State's due diligence will be in details elaborated.