

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Virtual Presentations - IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (VP)

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RIDDLE IN THE SKY: ISSUES WITH THE DAMAGES CLAIMS MECHANISM IN DOMESTIC
SPACE LEGISLATIONS.

Abstract

The Magna Carta of international space law, the Outer Space Treaty (OST), sets the spirit of liability for space activities as a victim oriented legal regime. The space law legal framework encompasses the activity of non-governmental entities within the ambit of space liability and includes also provisions of absolute liability for damages. Unfortunately, the international liability regime is undermined by archaic provisions. Such as the definition of damage in the Liability Convention, which does not include future or incorporeal damage. Although states have addressed liability requirements of Article VII of the OST, in the form of license and third party insurance, they were reluctant to expand upon the international treaties in their domestic legislations. Thus, the victim oriented nature of space liability remains imprecise.

Various national legislations contain differing mechanisms of claim for damages, leading to potential defragmentation of liability regime in the international arena. Although all states mandate insurance based liability regime, the degree of insurance varies and implies a liability cap. For example, when compensation from insurance is insufficient, the Russian national space legislation exclusively mandates for asset based liability regime, while the US, UK, Australian and South Korean national space legislations implement risk sharing liability regime. The insurance cap and liability coverage by states can create a situation where the compensation is inadequate. Furthermore, insurance is not necessary in certain situations under US and Australian legislations, and certain states like the US and UK, even allow cross waiver liability provisions, which directly prevents claims for compensation.

Taking all of this into account, this paper will offer a comparative analysis of US and Russian legislations due to their status as space faring states and Australian, UK and South Korean legislations due to their recent enactments and amendments. The aforementioned inconsistencies may result in issues of 'flags of convenience' and 'forum shopping' if private entities start selecting states where the liability burden for a launching state is reduced. With the risk of accident increasing with more state and private space activities, steps should be taken to avoid another Kosmos 954 situation. The analysis will show how states can improve upon the victim oriented nature of space law regime. In the concluding part, this paper will recommend measures which may be taken by states currently without space legislations, such as Brazil, India and the Middle Eastern countries to avoid aforementioned liability issues present in the current domestic legislations.