

International Cooperation for Space Exploration (1)
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Author: Mr. Yashaswi Pande
Maharashtra National Law University, India

Ms. Anushka Rungta
India

PROXIMATE CAUSE – THE MAGNUM OPUS FOR DETERMINING LIABILITY IN THE NEW AGE
SPACE RACE

Abstract

The last decade saw private entities sow the seed of a new Space Race – this time aimed at conquering the commercial aspects of this infinite expanse. This ‘New Age Space Race’ has in turn resulted in an exponential increase in the number of space objects which now traverse the once sparsely populated common heritage of mankind. While space exploration has been adequately governed for the better half of a century by a regime of composite treaties, this space race has exposed a major loophole in the way liability of a State is determined in case of an accident.

The Liability Convention was enacted with an aim to ensure “prompt payment” of compensation to the victims of damage caused by space objects on the surface of the earth or elsewhere than on the surface of the earth. The Convention hinges on the concept of launching state, i.e., imposing the liability on a state which launches or procures the launching of a space object. However, by placing reliance solely on the criterion of a launching state, this legal scheme fails to consider such instances where the damage is caused due to the actions of a “non-launching” state – thereby failing to account for third party liability by analyzing the proximate cause.

Where the space object of State A causes damage on the surface of the Earth due to the interference of State B, the former would still be liable to pay the entire compensation for the said damage. Further, where the damage is caused by the space object of a State A, in space, due to the interference of State B, the underlying investigation would only scrutinize the fault of State A in the accident. In this scenario, the victim state would not receive any compensation, thereby defeating the core aim of the Convention.

With privatization and the increased role of non-state actors in space exploration, there is now a higher probability of damage being caused by and to space objects. This, in turn, increases the need for a strict imposition of liability on the actual wrongdoer so as to promote co-operation among the spacefaring entities and safeguard the victims of any mis-happenings.

This paper aims to examine the lacunas present in the Liability Convention and resolve the same by borrowing from the principles of the law of the sea and examining state liability under public international law.