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INTERNATIONAL LIABILITY REGIME FOR DAMAGE IN COMMERCIAL HUMAN
SPACEFLIGHT: DILEMMAS AND RESPONSES

Abstract

The commercialization of human spaceflight is a pioneering endeavor in space industry development. Under the existing space law regime, the international liability of damage caused by commercial human spaceflight is ambiguous. The Outer Space Treaty and the Liability Convention establish the space liability system, which focuses on damage caused by space objects; however, a liability regime that fits the characteristics of commercial human spaceflight is absent. Although the relevant national space legislation of major space-faring nations, the 1998 IGA, and the supporting legal documents of commercial space companies' space tourism projects stipulate different provisions on liability issues, they have not resulted in an international damage liability regime for commercial human spaceflight. The absence of a predictable specific legal system on liability would possibly discourage investment in the commercial human spaceflight industry. Based on examining the existing legal system and the development of commercial manned space, the dilemma faced by the establishment of an international damage liability regime mainly includes several scenarios: 1) treating the fault element as a prerequisite for assuming liability may be contrary to the humanism orientation; 2) the subject of liability for damages is controversial, and the allocation regime needs to be improved; and 3) the standards of the liability insurance system, including rates, exclusion provisions and impact factors, need specific and detailed negotiation and design. In response, the commercialization of human spaceflight requires a supporting liability regime that is transparent, fair, and motivating. Specifically, 1) fault is, in principle, not treated as a constituent element of liability for damages, but exceptions are provided; 2) when it comes to the subject of liability, a dual liability system is adopted, requiring the State and the operator to share the liability for damages; 3) constructing a unified minimum standard for international damage liability insurance, and allowing each State to increase rates according to their actual economic situation. To sum up, the reassurance of a foreseeable and stable international liability regime for damage could directly contribute to the active participation of multiple parties in commercial space activities, and achieving more significant economic and social benefits, thus encouraging the long-term sustainable development of commercial human spaceflight.