

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Alternative Space Rules Setting (5)

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STATE RESPONSIBILITY STRUCTURE FOR SUPERVISING COMMERCIAL SPACE ACTIVITIES

Abstract

Space law is an outstanding area that international non-binding instruments so called “soft law” is playing significant role in complementing the UN Space Treaties. However, the development of commercial space activities in this decade pulled over the revisited role of the treaties. Article 6 of the Outer Space Treaty (OST) requires to the states to bear international responsibility by “authorization and continuing supervision” to their commercial activities. Article 7, together with the Liability Convention, stipulates that the launching state will be liable for damage occurred by its space object. International responsibility of the state in those Articles can be characterized as “post control” function over space activities. Namely, the Article 6 stipulates international responsibility based on breach of international law obligations, and the Article 7 stipulates liability for compensation in the event of damage even if the breach of international obligations do not exist. On the other hand, the second sentence of the Article 6 subjecting non-governmental space activities under the prior control of state authorization and continuous supervision. This can be seen as the function of “pre-control” over space activities. Although the content of authorization and continuous supervision, the national licensing systems, is left to the discretion of each state, inappropriate implementation of these functions may lead to a violation of the obligations of the Article 6, which trigger international responsibility of state under the general international law. This situation can be seen as the result of the pressure of “post control” function motivating states to be prepared by developing “pre-control” functions domestically. In other words, OST requires to the states to supervise their non-governmental space activities through the effect of state responsibility both dimensions of “post-control” and “pre control” functions. The aim of this paper is to describe the structure of state responsibility embodied in the Article 6 of OST in order to leverage its function for supervising emerging commercial space activities. By doing so, it will become possible to enlighten the incentives of the states of legislating national space law as “pre-control” function.