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Launching into Outer Space (4)

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LAUNCHING INTO OUTER SPACE FROM THE LUNAR SURFACE: INTERNATIONAL LEGAL ASPECTS

Abstract

The process of a Moon habitation and lunar activities are expected to be started soon. In the announced lunar programs States declared that transits between the Moon and other celestial bodies may take place. Launches from the lunar surface to the lunar orbits and back will increase when the Artemis Accords Program and the International Lunar Research Station will be started. Considering vigorous lunar activities, it is assumed that there could be cases of damage caused both in cis-lunar space and on the lunar surface. To regulate specific cases dealing with occurrence of liability there is no detailed international agreement, where many States are States-Parties. 1979 Moon Agreement, which stipulates that States may launch from the Moon space objects (Art. 8), especially emphasizes that “States Parties recognize that detailed arrangements concerning liability for damage caused on the Moon, in addition to the provisions of the 1967 Outer Space Treaty and 1972 Liability Convention, may become necessary as a result of more extensive activities on the Moon”(Art. 14). 1967 Outer Space Treaty enshrines the principle of liability on the Earth, in air space or in outer space, including the Moon and other celestial bodies (Art. VII). 1972 Liability Convention includes absolute liability for damage which occurs on the surface of the Earth or to aircraft flight (Art. II), and a fault-based liability for damage caused elsewhere than on the surface of the earth (Art. III). Therefore, if damage occurs on the Moon, either 1967 Outer Space Treaty (Art. VII), or 1972 Liability Convention (Art. III) will be applied as the Moon and other celestial bodies are part of outer space. Nevertheless, both international treaties do not provide specific provisions on the damage that occurred on the lunar surface. Moreover, 1972 Liability Convention as *lex specialis* to 1967 Outer Space Treaty will be applied in the part of Art. III. In that case, it will be necessary to prove fault. In the proposed article, it is proposed to think about changing the current international liability regime. Considering the lunar surface is a territory similar in context to the earth's surface, it is suggested to apply international legal regime, that is based on the absolute liability. Different aspects of the proposed international regime will be analyzed in the article. Moreover, it will be proved that this regime will be preferable in a view of the increase the number of different of lunar stakeholders.