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Safety Zones on Celestial Bodies and in Outer Space (5)

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SAFETY ZONES AS A MEANS TO ENSURE A BALANCED LIABILITY REGIME IN SPACE

Abstract

Humanity has never been so close to the exploitation of celestial bodies as it is today. They attract us as the key to unravelling the mysteries of the universe and a stopover on the way to deep space. Commercial entities are inspired by the wealth of celestial bodies with mineral resources and a unique opportunity to test advanced technologies that can change people's lives on Earth. All these space missions require significant investments and guarantees of their safety. If safety of extraterrestrial assets cannot be ensured, adequate and prompt compensation is needed.

A well-known legal issue in this context can be found in the liability regime for damage caused by space objects. The Liability Convention, to which the vast majority of spacefaring States are parties, provides for the fault as a prerequisite for compensation for accidents in space. In the absence of the "rules of the road" or at least a common understanding of the institution of due diligence and prior consultations, as well as due to the lack of a unified trusted source of information about situations in space, proving fault can become a challenge on the way to obtaining compensation for damage.

In this sense, observance of the declared safety zones can become one of the indicators of the presence or absence of any degree of fault. For example, if damage is caused to a space object as a result of passing through someone else's safety zone, it may be more difficult to identify the degree of fault of the "owner" of the zone than that of the actor that deliberately mapped out its vehicle's route through the safety zone of another.

Obviously, a lively discussion about whether the establishment of safety zones is legitimate in the context of the principle of non-appropriation of space and free access to all parts of celestial bodies will continue. In the heat of this struggle, we must not forget that regulation should not interfere with the development of space activities. Ideally, regulation should help it develop. Hence, the practical needs of space actors may sideline legal discussions, while the practice itself will go the way of recognizing the need for safety zones to protect the interests of all stakeholders.

This paper will analyze the current liability regime applicable to incidents on celestial bodies and show how controversial safety zones can close legal gaps and contribute to the development of space activities.