UDC 347.826:343.211.3(045)
DOI: 10.18372/2306-1472.77.13494

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# A HUMAN RIGHTS APPROACH TO LIABILITY FOR SPACE DAMAGE

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**Abstract**

***The purpose of the research:*** *to identify the areas of optimization of legal regulation of liability for space damage on the basis of a comprehensive analysis of international acts and legislation of foreign countries.* ***Methods of research:*** *To achieve the purpose of the study were used general and specific scientific (special). Among the latter, particular attention is paid to the use of the system approach and the comparative method.* ***Results:*** *At present, there are no studies in the Ukrainian legislation and legal science aimed at the comprehensive study of the issues of space law in the context of human rights. That is, the problem of the relationship between space law and human rights in the Ukrainian context is still not sufficiently investigated. However, for Ukraine, which is a "launching state" in the sense of international law, this issue is relevant. The study is one of the first attempts to study the issues of space law in the context of human rights, especially environmental ones. Therefore, the article focuses on the international legal aspects of liability for damage to human ecological rights, which can be caused by space objects.* ***Discussion:*** *The authors offer ways to optimize the legal regulation of liability for damage to human ecological rights, which can be caused by space objects and emphasize the peculiarities of responsibility "launching countries" in the context of protecting environmental human rights.*

**Keywords:** environmental safety; human rights; legal liability; space law

## 1. Introduction

Human rights principles are most readily identified as those established at international law. However these international principles are increasingly being imported into domestic law as countries attempt to reconcile the need for human rights compliance with the challenges of modern space law. As one of the three former Soviet republics engaged in space activities, the Ukraine has had to formulate new national space legislation.

For a complex analysis it is necessary to investigate the relation between what constitutes liability for space damage and what is a human rights approach in modern conditions.

## 2. Analysis of recent research

This issue is being studied mainly outside of Ukraine. Among the main studies in this area can be called a book “The Frontiers of Human Rights” by Nehal Bhuta [1] and article “Ukrainian National Space Law from an International Perspective” by Frans G. von der Dunk and Sergei A. Negoda [2].

## 3. Formulation of the problem

The purpose of the article is to study the categories of " liability for space damage" and "Human Rights" in their unity and interconnection.

## 4. Presentation of the main research material

Practical space activities started in Ukraine in 1951 when a plant for ballistic missile production was established in Dniepropetrovsk (nowadays called the Production Association “Yuzhmash”). The first orders to the plant concerned the serial production of the missiles p-1 (SS-1), p-2 (SS-2) and p-5M (SS-3). During the 1960s and 1970s a number of further plants, enterprises and research institutes was established in the Ukraine, which took part in the space programs of the U.S.S.R. The Ukrainian segment of the space industry of the U.S.S.R. was one of its most important components [2].

The law-making process in the Ukraine was influenced by two main needs: (1) the urgent necessity to establish the basis for Ukraine’s own national legislation; and (2) the need to implement international treaties and to harmonize national legislation with the legislative systems of the European Union, the U.S.A. and other states which are political and economic partners of the Ukraine [2].

In Part IV, Article 92, of the Ukrainian Constitution it is established that development of outer space, international affairs and external economic links are to be regulated by the laws of the

Ukraine. The Ukrainian Constitution also provides that international treaties become part of Ukrainian national legislation after the Parliament approves them. Those provisions of the Constitution are strictly related to the international space agreements of Ukraine.

From the perspective of a particular state implementing international space law through national space legislation, the long and the short of this is that one should at least deal with both space activities undertaken by one's nationals and space activities undertaken from one's territory in order not to be held responsible at the international level without any legal means to cover such responsibilities [2].

Ukrainian scientists have made a significant contribution to the development of world space science. Unmanned aeronautics is developed in our state. Now Ukraine is engaged in broad cooperation with foreign partners. Ukraine has its own design and construction of spacecraft but does not have its own spaceport. Therefore, space activities of Ukraine are associated with international interaction with organizations that have cosmodroms. At the same time, Ukraine has a set of responsibilities in the space sector.

The Outer Space Treaty, formally the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, is a treaty that forms the basis of international space law.

According to art. 7 of this treaty "Each State Party to the Treaty that launches or procures the launching of an object into outer space, including the Moon and other celestial bodies, and each State Party from whose territory or facility an object is launched, is internationally liable for damage to another State Party to the Treaty or to its natural or juridical persons by such object or its component parts on the Earth, in air space or in outer space, including the Moon and other celestial bodies".

As we can understand, there are many features here. Outer space, extraordinary in many respects, is, in addition, unique from the legal point of view. It is only recently that human activities and international interaction in outer space have become realities and that beginnings have been made in the formulation of international rules to facilitate international relations in outer space. As is appropriate to an environment whose nature is so extraordinary, the extension of international law to outer space has been gradual and evolutionary – commencing with the study of questions relating to legal aspects, proceeding to the formulation of principles of a legal nature and, then, incorporating such principles in general multilateral treaties [3].

The USA is the strategic partner in this area for Ukraine. The assessment of the US role in the evolution of international outer space law involves an analysis of the US policy formulation process.

The Air Force's reactive posture to proposed international conventions was typified by its involvement in the internal US government negotiations leading to the passage of the 1972 Convention on International Liability for Damages Caused by Space Objects. Because of this approach, the Air Force is not perceived as having the legal expertise or reputation in outer space law that it has developed, for example, in the area of aerospace medicine [4].

Convention on International Liability for Damage Caused by Space Objects in Art. 1 Convention on International Liability for Damage Caused by Space Objects. The term "damage" means loss of life, personal injury or other impairment of health; or loss of or damage to property of States or of persons, natural or juridical, or property of international intergovernmental organizations.

The term "launching State" means: (i) A State which launches or procures the launching of a space object; (ii) A State from whose territory or facility a space object is launched; (d) The term "space object" includes component parts of a space object as well as its launch vehicle and parts thereof. According to this treat, a launching State shall be absolutely liable to pay compensation for damage caused by its space object on the surface of the earth or to aircraft flight.

In the meaning of this convention, Ukraine is the launching state. Therefore, the study of the issue of liability for space damage is important for Ukraine.

The Cambridge Business English Dictionary indicates that "legal liability is responsibility that someone has for their actions, for example the responsibility to pay another person for harm or damage that is a result of these actions [5].

Legal liability concerns both civil law and criminal law and can arise from various areas of law, such as contracts, torts, taxes, or fines given by government agencies.

As the UN Guiding Principles make clear, the lack of accountability mechanisms for companies at international level does not mean that corporate entities involved in gross human rights abuses enjoy impunity for their actions.

Globalisation and the dramatic growth of transnational economic activity over the past few decades have been accompanied by calls for businesses to do more to address their adverse human rights impacts, and to be more accountable to those who are affected by them.

By 2000, the references to "gross violations of human rights" in the draft Basic Principles had been replaced by references to "violations of international human rights and humanitarian law norms that constitute crimes under international law" for the reason that the former term was "insufficiently precise". However, the preamble of the version adopted by the Commission on Human Rights in April 2005, 24 and also the version adopted by the UNGA in December 2005, 25 affirms that the Basic Principles are indeed directed at "gross violations of human rights law and serious violations of international humanitarian law, which, by their very grave nature, constitute an affront to human dignity", though without further definition [6].

A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyze inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress [7].

Among the damage that may be caused by the cosmic sphere, in the first place is the damage to nature.

A Human Rights Approach to Extraterritorial Environmental Protection explored in the book "The Frontiers of Human Rights" [1].

The normative space in which the analysis of human rights approach to exterritorial environmental protection must be conduct is provided by general international law. The question of exterritorial jurisdiction in this broader context has been approached in two main ways, which basically differ on whether exterritorial jurisdiction is seen as the principle or the exception [1]. On 7 February 2017, the Inter-American Court of Human Rights (the "IACtHR") published a landmark advisory opinion (OC-23/17 of 17 November 2017) recognizing for the first time that environmental degradation affects the effective enjoyment of human rights. The advisory opinion was rendered in response to a request made by Colombia. It examined two main issues (1) the application of extraterritorial jurisdiction to environmental obligations and (2) the relationship between human rights and environmental harm [8].

There is no single definition of the human rights-based approach (alternatively called rights-based approach, or RBA). However, the core elements, common across nearly all frameworks, include: accountability; equality and nondiscrimination; participation and empowerment (see UN Development Group, 2003). None of the elements are in themselves revolutionary concepts but if implemented together, meaningfully, the potential for more sustained and sustainable change is increased [9].

The relationship between human rights and environmental protection in international law is far from simple or straightforward. A new attempt to codify and develop international law on this subject was initiated by the UNHRC in 2011 [10].

The symbiotic nature of the relationship between enjoyment of human rights and environmental quality is now well established (e.g. ICHRP 2008 and Council of Europe 2012). Although until recently the human rights and environmental movements operated largely in isolation from each other, relationships of cooperation and consultation are growing. There is now a strong current within international human rights organisations, institutions and mechanisms to incorporate environmental issues within their work.1 In terms of the foci of activism and praxis, this trend can be divided into three different types of approach, each premised on a somewhat different understanding of the relationship between human rights and the environment: − Lobbying for the adoption and institutionalisation of new environmental human rights. − Using existing human rights mechanisms to tackle environmental harms. − Taking a human rights-based approach to environmental practice [9].

Many human rights practitioners and environmental activists are now involved in advocating for the institutionalization of substantive environmental human rights (EHR), and/or use the language of EHR.

The concept of EHR has been emerging for some time, at least since the 1972 Stockholm Declaration, which was the first authoritative statement to formulate international obligations to protect the environment in the language of human rights. It declared that: "Man has the fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of

dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations" [9].

Draft Principles On Human Rights And The Environment proclaims, that "human rights, an ecologically sound environment, sustainable development and peace are interdependent and indivisible"; and postulated "the right to a secure, healthy, and ecologically sound environment" (Principle 2) and "the right to an environment adequate to meet equitably the needs of present generations and that does not impair the rights of future generations to meet equitably their needs" (Principle 4).

## 5. Conclusions

From the following, we can draw the following conclusions:

1.Ukraine belongs to launching States in mind of Convention on International Liability for Damage Caused by Space Objects. Therefore, the study of the issue of liability for space damage is important for Ukraine.

2.Harming by space objects most often causes damage to the environment

3. Therefore, from the point of view of respect for human rights damage caused by space objects should be considered through interconnection between human rights and environmental protection.

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**Мета дослідження:** Виявити напрямки оптимізації правового регулювання відповідальності за космічну шкоду на основі комплексного аналізу міжнародних актів та законодавства зарубіжних країн. **Методи дослідження:** Для досягнення мети дослідження були використані загально- та конкретно-наукові (спеціальні). Серед останніх особливу увагу приділено використанню системного підходу та компаративного методу. **Результати:** На даний момент в українському законодавстві та юридичній науці відсутні дослідження, спрямовані на комплексне вивчення питань космічного права в контексті прав людини. Тобто проблема взаємозв'язку між космічним правом та правами людини в українському контексті ще недостатньо досліджена. Проте для України, яка є "запускаючою державою" в розумінні міжнародного права, це питання актуальне. Дослідження є однією з перших спроб вивчення питань космічного права в контексті прав людини, особливо екологічних. Тому в статті основну увагу приділено міжнародно-правовим аспектам відповідальності за шкоду екологічним правам людини, яку можуть нанести космічні об'єкти. **Обговорення:** Автори пропонують шляхи оптимізації правового регулювання відповідальності за шкоду екологічним

правам людини, яку можуть нанести космічні об'єкти та наголошують на особливостях відповідальності «запускаючи країн» в контексті захисту екологічних прав людини.

**Ключові слова:** екологічна безпека; космічне право; права людини; юридична відповідальність

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**Цель исследования:** Выявить направления оптимизации правового регулирования ответственности за космический ущерб на основании комплексного анализа международных актов и законодательства зарубежных стран. **Методы исследования:** Для достижения цели исследования были использованы обще и конкретно научные (специальные). Среди последних особое внимание уделено использованию системного подхода и сравнительного метода. **Результаты**: На данный момент в украинском законодательстве и юридической науке отсутствуют исследования, направленные на комплексное изучение вопросов космического права в контексте прав человека. То есть проблема взаимосвязи между космическим правом и правами человека в украинском контексте еще недостаточно исследована. Для Украины, которая является "запускающим государством" в понимании международного права, этот вопрос актуален. Исследование является одной из первых попыток изучения вопросов космического права в контексте прав человека, особенно экологических. Поэтому в статье основное внимание уделено международно-правовым аспектам ответственности за ущерб экологическим правам человека, который могут нанести космические объекты. **Обсуждение:** Авторы предлагают пути оптимизации правового регулирования ответственности за ущерб экологическим правам человека, которую могут нанести космические объекты и отмечают особенностях ответственности «запуская стран» в контексте защиты экологических прав человека.

**Ключевые слова:** экологическая безопасность; космическое право; права человека; юридическая ответственность

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