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BALTIC JOURNAL OF LAW & POLITICS

A Journal of Vytautas Magnus University
VOLUME 15, NUMBER 2 (2022)
ISSN 2029-0454

Cite: *Baltic Journal of Law & Politics* 15:2 (2022): 2191-2205
DOI: 10.2478/bjlp-2022-001139

Application of Due Diligence Principles in Space Exploration

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Received: July 10, 2022; reviews: 2; accepted: October 29, 2022.

Abstract

In general, the Due Diligence Principle is a precautionary standard that must be applied to assess a state's compliance with international obligations. The Due Diligence Principle can be one of the foundations for the state in carrying out its various international activities. One of the international activities that can be carried out by the state is space exploration as regulated in the Outer Space Treaty 1967. In its development, space exploration can also have a negative impact on other states, both in the economic, social, political, and security fields. Although the application of this principle is still limited to various fields of international law, the Due Diligence Principle can basically also be applied in space exploration, considering the large impact that can be used by space exploration activities. For this reason, the application of the Due Diligence Principle in space exploration is very important, because through this principle space exploration can be carried out in accordance with the international obligations of a state and not cause harm to other states.

Keywords

Application, Due Diligence Principle, Space Exploration.

1. Introduction

The development of technology has brought humans to a new chapter in

various aspects of life, both in the economic, social, political, as well as defense and security fields. One form of technological development achieved is the human ability to explore space through the use of man-made satellites. Since the success of the Soviet Union with the Sputnik mission in 1956, which was then followed by the success of the United States with the Apollo mission and a series of other successes, people have begun to realize that this does not only mean expanding horizons, but also has implications in the political, ideological, cultural, and social fields. and law. States began to make satellites, space stations and space vehicles to explore space, where they have been used to improve the quality and standard of human life in space exploration.

To provide regulation regarding the use of outer space, the General Assembly of the United Nations (UN) approved a resolution that in principle states that international law in the United Nations Charter applies to space, the moon and other celestial bodies. In 1958, the United Nations formed the Committee on the Peaceful Uses of Outer Space which was an additional committee and later became a permanent committee in 1959 under the name United Nations Committee on The Peaceful Uses of Outer Space (UNCOPUOS). Based on the work of this committee, the Treaty on the Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including Moon and Other Celestial Bodies 1967 (Outer Space Treaty 1967) was born. This agreement basically regulates the use and utilization of outer space for peaceful purposes only and includes the obligations of the state for exploration activities in outer space which emphasizes the interests of maintaining international peace and security as well as to promote international cooperation and mutual understanding.

One of the important provisions related to this is contained in Article 1 Paragraph (2) of the Outer Space Treaty which was then known as the principle of free access which is based on the idea of a common heritage which ensures that all human beings have an equal share of the benefits that will come from outer space. On the basis of the principle of free access, states are increasingly competing to conduct space exploration to support the improvement of human living standards, as well as to support state policies in various fields.

Although it can provide various conveniences for human life and activities, the negative impact generated by the use of space technology cannot be ignored. The biggest concern of applying the principle of free access is that free space is not used for peaceful purposes and even for military purposes. According to the Stockholm International Peace Research Institute, more than 70 percent of the satellites that have been launched in space are intended for military purposes. The United States Space Command, for example, has also presented the Long-Range Plan program, which consists of a comprehensive military strategy for space until 2020, which among other things provides for the deployment of weapons in space. This condition clearly raises concerns about an arms race and armed conflict in space. Of course, space exploration for military purposes can have an impact on international peace and security.

2. Methodology

This type of research is normative law which is a process to find a rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. Normative legal research is carried out by examining library materials which are secondary data as primary data. In this case, normative legal research examines legal norms in the form of international legal regulations and concepts related to space exploration and the principle of due diligence. To support this type of normative legal research, a statute approach will be used, by examining legal instruments related to the material to be studied. In addition, this research also uses a conceptual approach, which departs from several views and doctrines that develop in international law. By studying the views and doctrines in legal science, researchers will find ideas that give birth to legal notions, legal concepts, and legal principles that are relevant to the issues at hand. An understanding of these views and doctrines will become the basis of thinking for researchers in building a legal argument in solving the issues at hand.

3. Space Terms and Definitions

Space has become the object of various state activities and activities in various interests, both the interests of human life, commercial interests, to the interests of increasing the defense and security of a state. International jurists and scientists were initially faced with the problem of the boundary between airspace and outer space. This happened because the Paris Convention 1919 and the Chicago Convention 1944 which regulate state sovereignty in air space do not regulate the limits of air space and its altitude.

According to Ruman Sudrajat, space refers to a space consisting of two spaces, namely air space and outer space or outer space. Based on this understanding, aerospace or space refers to a relatively empty and empty part of the universe or universe outside the atmosphere of celestial bodies or a space or region that is located starting from the air space on the earth's surface towards the infinite sky. According to Cooper, the difference between air space and outer space is seen from the division of space into three parts of legal jurisdiction, namely: First, the troposphere layer which is the layer contained in the national air space of a state. Second, the stratosphere, mesosphere and thermosphere, in which there is contiguous airspace. Third, the ecosphere layer where in this layer there is free air space. According to Cooper, this free air space is the space environment.

Various views by states in the UNCOPUOS session regarding air space delimitation resulted in several proposals on how to determine air space delimitation, namely determination based on natural conditions and determination based on vehicle characteristics. From the various developments of the UNCOPUOS forum, there are two views in determining the delimitation of air space, as in determining the definition of space, namely delimitation based on a spatial approach, and delimitation based on a functional approach.

Delimitation based on a spatial approach is sufficient to provide legal, scientific and technical answers based on various theories and concepts. Meanwhile, delimitation based on the functional approach emphasizes the role and the function of its activities by distinguishing between aeronautical and astronautical activities, considering that both activities are subject to different legal regimes. In current practice, the approach used by states in determining the delimitation of air space is adjusted to various aspects of the interests of the state.

4. Outer Space Treaty 1967

The Outer Space Treaty 1967 was formed in the midst of a situation where the Cold War was raging in the hemisphere, where there was a war on ideological expansion between the Western Bloc represented by the United States and the Eastern Bloc represented by the Soviet Union. The contestation between the two superpowers occurred in various sectors, ranging from the economic, social, political, to military sectors. Not only that, the battle between the two is not only in the land and sea areas, but also in space. At that time, it was a sign that the world was entering the space age and conducting space exploration.

The United Nations pays serious attention to technological developments in the export and use of outer space by establishing an ad hoc agency as a first step to regulate the new territory. It is undeniable that the United States and the Soviet Union had a very large involvement in the process of establishing international legal provisions in space. Various negotiations were carried out by the two states by including proposals on matters to be regulated in the new provisions and the proper use of space. Through discussion in the UN General Assembly session, the principles contained in resolutions and agreements that are universal are formulated. On December 20, 1961, the United Nations General Assembly adopted its first substantive resolution proclaiming the principle of freedom of space. The principles that serve as guidelines that can be used by states in conducting exploration and exploitation of outer space are:

- a. international law, including the Charter of the United Nations, applies to outer space and celestial bodies.
- b. Outer Space and celestial bodies are free for exploration and use by all states in conformity with international law and are not subject to national appropriation.

Through negotiations and the work of UNCOPUOS, the UN General Assembly accepted the International Agreement on the principles governing state activities in the field of exploration and use of outer space, including the moon and other natural celestial bodies or the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, hereinafter abbreviated as Outer Space Treaty 1967. This treaty was opened simultaneously for signature in London, Moscow and Washington on January 27, 1967, and entered into force on 10 October 1967. This treaty can be considered as a master legal document for activities in space which contains basic

principles regarding the use of outer space and regulates the status of outer space including the moon and other celestial bodies. The Outer Space Treaty of 1967 was the first step towards development in the field of space law, which initially set a balance between the strategic interests of superpowers during the Cold War in space.

This treaty recognizes the common interest of all mankind in the advancement of exploration for peaceful purposes. Outer Space Treaty 1967 which contains various things, such as the use, utilization, activities in space, and so on. The main purpose of the treaty is basically to block the claim of sovereignty by certain states in space and other celestial bodies. The Outer Space Treaty 1967 began with the recognition of the common interest of every person or state in the peaceful exploration and use of outer space, in which every state should benefit, regardless of economic or scientific development. This recognition of mutual interest is in line with the statement of the United States Delegation after the draft agreement was made that:

"The spirit of compromise shown by the space Powers and the other Powers had produced a treaty which established a fair balance between the interests and obligations of all concerned, including the countries which had as yet undertaken no space activities... Article I para. 1 like the provision prohibiting national appropriation by claim of sovereignty, was a strong safeguard for those States which at present had no space programme of their own

Likewise with the Soviet Union delegation who stated:

Article I (1) was not a mere statement of the rights of States", but was designed "to guarantee that the interests, not only of individual States, but of all countries and of the international community as a whole, would be protected.

The essence of the two statements is the existence of state ownership with claims of sovereignty through a fair balance for all countries, both countries that have and do not have space technology. The existence of a fair balance between the interests and obligations of all parties is a fundamental prerequisite, not only for the success of the Outer Space Treaty 1967, but also for the global spatial order. Along with the development of space and time, this principle is indispensable for the advancement of activities in space. This international agreement also establishes the belief that cooperation in space will contribute to the development of mutual understanding and strengthening of relations between states. The Outer Space Treaty 1967 serves as a guide and provides direction for every human activity related to the use of outer space and becomes the basis for all legal documents, both at the international and national levels relating to space issues.

In line with the formation of space law, there are nine basic principles in the use of space, namely:

- a. Freedom of exploration and use of Outer Space and Celestial Bodies.
- b. Non-appropriation of Outer Space or Celestial Bodies.
- c. Exploration and use of Outer Space, Celestial Bodies in accordance with the fundamental principles of International Law, including the Charter of

- United Nations.
- d. Partial Demilitarization of Outer Space.
 - e. Retention by States of Sovereign Rights over Space Objects Launched into Outer Space.
 - f. international responsibility of States for national activities in Space, including liability for damage caused by Space Objects.
 - g. Prevention of potentially harmful consequences of experiments in Outer Space and on Celestial Bodies.
 - h. Assistance to personnel of spacecraft in the event of accident, distress or emergency landing.
 - i. international cooperation in the peaceful exploration and use of Outer Space and Celestial Bodies.

It is clear that the purpose of applying the basic principles of international law to space law is to create peaceful relations between countries, which is specifically regulated in the United Nations Charter. Such a goal is to be achieved in relation to the exploration and exploitation of outer space, because it has been clearly established that all activities of these countries must be carried out not only to achieve international peace and security, but also to enhance cooperation and mutual understanding.

5. Due Diligence Principle

Etymologically, Diligence comes from Latin, namely *diligentia* which is a form of prudence, where this is a behavioral modality with positive connotations. In the legal context, Due Diligence is no different from other legal concepts such as lawful conduct and public order. Due Diligence is a bridge between law and other normative fields. In the Black Law Dictionary, Due Diligence is defined as the diligence that is reasonably expected of and usually exercised by a person attempting to comply with legal requirements or to fulfill obligations.

In international law, due diligence is described as a concept, idea, standard, and principle that has been studied primarily in relation to state responsibility, although only technically because compliance and diligence are not components of state responsibility. Philosophically, this idea assigns the authority to the authorities to prevent harm to citizens. Thus, in the historical notion of Due Diligence there is an element of timelessness, namely, to prevent future losses and to remedy losses. Due Diligence was originally developed in the jurisprudence of a sovereign state to protect within its jurisdiction, especially with regard to foreign nationals in a country. This principle is often formulated in the context of a situation where a foreign national suffers loss or damage on the territory of a country. For example, in the case of *Baldwin* in 1841 where the idea of Due Diligence determined whether the Mexican government had used all available means to prevent harm to foreigners. In this case, it is seen that the fulfillment of obligations is related to the extent to which the available facilities and the effective use of all available means, where the use of all available facilities is one of the main requirements.

The principle of Due Diligences was first applied in the late 19th century. The application occurred in an arbitration case known as the Alabama Claim between the United States and the United Kingdom. In international arbitration held in Washington on May 8, 1871, Britain as a neutral country was found to have violated its obligations by allowing the construction, equipment, and weaponry of ships, including the cruiser *Alabama*, in their Port. The ship was deployed as a Confederate States Navy battleship in the American civil war. The United States through its diplomatic agencies asked the British authorities to immediately stop construction work. The British side as a neutral country should act proportionally to the risks posed by the construction of warships. In the arbitration, although the arbitrators acknowledged that the United Kingdom had taken some action, it would still qualify as inadequate in the circumstances. As it is deemed inadequate, it cannot absolve the UK of responsibility.

After 1945, the idea of Due Diligence was most commonly used in the international environment, where this idea was an important component of the obligation to prevent hazards that arise across borders. This obligation requires states to take steps to protect people or activities outside their respective territories and prevent harmful occurrences and outcomes. Since 1972 many environmental conventions have required parties to take appropriate action regarding the idea of Due Diligence. The modern concept of Due Diligence can be found in various areas of law including international human rights law, international environmental law, international investment law, as well as corporate law and domestic lawsuits.

The wide application of the modern principle of Due Diligence in all these fields shows the emergence of Due Diligence as a general principle of international law. The application of the Due Diligence principle then appeared in various arbitral awards and state practice in the late 19th and early 20th centuries, and today the principle has become a common understanding used in international law. This is understandable because so many cross-border activities are carried out by countries and have the potential to cause violations and losses for other countries. The principle of Due Diligence is a general obligation that applies under customary international law. According to Schmitt, Due Diligence principle as a general principle can be applied in certain contexts without the need for further recognition of its application.

In general, the idea of Due Diligence contains several important things, namely:

- a. Due Diligence is a normative indication of the protection needed, not just a descriptive tool that concludes facts.
- b. Due Diligence is a precautionary standard in general and not a specific rule, which requires an assessment of what can and should be done fairly. This concept is often associated with the concept of fairness.
- c. Due Diligence is basically related to negligence.
- d. Due Diligence is relative, because it considers all circumstances in each case that occurs.
- e. Due Diligence is usually contained in the main norms that require

perseverance

From this, there are at least two controlling elements in Due Diligence. First, it relates to the minimum needs of the right state, so that it is able to face its various duties and obligations under international law. A state cannot deny its international responsibilities by referring to its national laws. Thus, the state is bound to create and maintain an appropriate security system, providing the necessary means, finances, and other technical matters to enable the proper functioning of state security. Every national law needs to adapt to the needs of protection under international law, create such a system and open up international cooperation.

Second, the state must show a certain prudence in its affairs. In this case, states need to consider various potential threats that exist and set standards for prevention and treatment of these types of threats. Due Diligence is usually translated into the language of international treaty law with the term due diligence. However, the term refers only to a restriction on behavior. The principle of Due Diligence gains the normative power that states are not only responsible for maintaining law and order in their own territory but must also be responsible for the external consequences of internal regulations. This is the basis why states must be careful with every decision and take responsibility for each other.

The International Law Commission uses the principle of Due Diligence in its report on state responsibility and international responsibility for adverse consequences arising from actions that are not prohibited by international law. Related to this, according to the African Commission on Human and Community Rights, the principle of Due Diligence is a way to describe the threshold of actions and efforts that must be shown by a country to fulfill its responsibilities under certain norms.

The International Court of Justice in the decision of Corfu Channel emphasized that every country is obliged not to let its territory be used consciously for actions that are contrary to the rights of other countries. This decision can be a well-articulated basis that the principle of Due Diligence is an established and recognized principle of international law derived from the principle of sovereignty in international law. States have the sovereign right to explore their own resources in accordance with the Charter of the United Nations and the principles of international law. On the other hand, states have a responsibility to ensure that activities within their jurisdiction do not cause harm to other states. States can enjoy sovereignty over their territories, but on the other hand states are obliged to protect the rights of other countries and use their best efforts to do so. Due Diligence is a concept in international law to mediate relations between countries when drastic changes occur.

6. Due Diligence Principle as the Foundation in Space Exploration

6.1. Impact of Space Exploration

As already mentioned, space exploration has made a huge contribution to

the development and has been able to improve human living standards. For this reason, countries are increasingly motivated to improve their space technology. The application of the principle of free access can also be said to have a dual function, namely, to obtain various benefits and also for social benefits. The freedom to conduct space exploration, whether past, present, or in the future, is very complex and directly affects the interaction trend of social change, the need for political change, government budgets, and the international trade system. So, close the relationship between various fields of state life, it can be said that space utilization activities are an integral part of various social, economic, political, defense and security activities. In fact, some argue that space is the center of gravity because of its central role in modern society. Some of the things that can be achieved from the use and exploration of space, are:

- a. The ability to see the earth as a whole
- b. The ability to broadcast signals from one satellite to various points on the earth.
- c. Ability to use the microgravity environment for research and production.
- d. Ability to monitor human activities over a wide range of areas.
- e. Ability to monitor natural and physical activity globally.
- f. Ability to enhance various forms of defense and security efforts.
- g. Ability to transport people and cargo to and from the space environment.
- h. Ability to explore the universe in order to expand scientific knowledge.

Various efforts to utilize space are a form of technological progress that has a positive impact on improving the quality and standard of human life, the creation of various research in various fields of science, and the search for new natural resources using various types of celestial bodies. In addition, other countries have ample opportunity to advance their country's capabilities in the field of space science and technology. Through these various activities in space, various benefits can be obtained, such as increasing mutual understanding and friendship between nations, improving welfare, health and education, increasing food production, developing science and technology, and accelerating the national development process of a nation.

The dependence of the state on the use of space is in line with Howell Estes's statement that:

Space provides us with so many services that we are now reliant on it. Simply put, space is becoming a vital national interest-in the information age we are entering, no less important than oil is to our world today. And just as availability of oil was used against this country during the oil embargo of the 70's, this new source of national strength also could be become a vulnerability.

This statement shows how much benefit can be obtained from the utilization and exploration of space. Freedom in conducting space exploration has become a vital national interest of a country in the midst of today's modern era.

However, the difference between developed and developing countries has an impact on an imbalance in the use of space. Countries that have resources with

advanced and modern technology in the field of space have a greater ability to carry out exploration and exploitation in space than developing countries. In the end, their activities and activities in the use of space are only in the context of fulfilling the interests of the countries concerned, not for the benefit of all mankind. The fact is that there are only a few countries in the world that can carry out missions in space, and the competition for space utilization only involves the developed countries to demonstrate their ability to explore space, starting from launching rockets, satellites, and finally happening. accumulation of man-made celestial bodies.

The biggest concern regarding the negative impact of implementing free access is the use of space for non-peaceful purposes, such as in the case of militarization of space. This condition clearly raises concerns about an arms race and armed conflict in space. This is basically the impact of different interpretations of the word peaceful purpose, where there are countries that interpret it as non-aggressive, while there are also countries that interpret it as non-military.

A space historian, John Logsdon even revealed that military activities have been involved in space activities since space activities existed, and militarization also took part in the formation of activities in space. In the 2020 vision, the United States really wants a strong domination which is reflected through two themes, namely: First, to dominate the space dimension in military operations to protect the interests of the United States and its investments; Second, integrating the power of space into combat capabilities that can cross the spectrum of conflict. In the modern era, military interests in space are not only played by the two space power countries, but also by several other countries, such as China which in 2021 launched two secret military satellites from its space center using the Long March 2C rocket which is a remote sensing satellite.

6.2. Application of the Due Diligence Principle to Minimize the Negative Impact of Space Exploration

Due Diligence Principle can be interpreted as a form of prudence applied to a country to assess the country's compliance with its international obligations. From a philosophical point of view, the idea of Due Diligence was created to prevent the harm that can be caused by an act of the state and also to repair the harm caused. Due Diligence can be a general precautionary standard that requires an assessment of what states can and should reasonably do. If it is related to the use of space by the state, this principle can be used as a reference for the state before taking steps to utilize space. This is quite reasonable, considering the potential and threat of conflict that can arise from the use of space.

Due Diligence Principle is very useful and can be used as a whole in any context, where the state must monitor every action, both its own government and the private sector within its jurisdiction to avoid adverse effects that violate the rights of other countries. This principle is a flexible principle to accommodate various specific fields based on developing situations and needs. Its flexibility can

be seen from the general basis of Due Diligence, which is the old principle that states are not allowed to consciously allow their territory to be used for actions that are contrary to the rights of other countries. One form is control measures.

Due Diligence principle has not been applied in space law. However, the reality of the advancement of space technology and the consequences that can arise from the use of space can be the reason for the application of this principle in every space exploration activity. There are two basic elements in the Due Diligence principle that can be used as a reference in the use of space, as well as a limitation on the principle of free access. First, it relates to the minimum needs of the right state, so that it is able to face its various duties and obligations under international law. A state cannot override its international obligation to maintain international peace under the pretext of national interests. Every national regulation needs to adapt to the needs of peacemaking according to international law and create such a system to be able to open up international cooperation. Thus, although every country has the right to be able to use space for various national interests based on the principle of free access, this must not override the international obligations of a country to prevent potential threats to international peace that may arise from the use of outer space.

The second basic element is that the state must show a certain prudence in each of its national affairs. Countries must consider various potential threats that can arise from the use of space as well as prepare prevention standards against these potential threats. The use of space for military purposes, for example, in the positive law of a country can be justified for reasons of defense and security of a country. However, this can pose a potential as well as a threat to international peace. This means that states are not only responsible for maintaining law and order in their own territory, but also for the external consequences of their national policies. This is where the urgency of applying the Due Diligence principle to assess whether state policy in conducting space exploration is reasonable or not.

Reflecting on the experience of applying the principle of Due Diligence in international environmental law, several ICJ judges are of the opinion that preventive measures are included as a legal obligation and become part of customary international law. The Corfu Channel case in 1946 between Albania and the UK also provides a clear example of the precautions that must be taken by every country in relation to the principle of Due Diligence. The ICJ states that it has become a generally recognized principle that every state has an obligation not to allow its territory to be used for acts that are contrary to the rights of other states.

One of the fields in international law whose scope is similar to space is related to cyberspace, which also applies the principle of Due Diligence in its implementation. In the 2013 Tallin Manual on the International Law of Cyber Warfare, the principle of Due Diligence is stated in the rule that states may not intentionally grant permits for the development of cyber infrastructure in their territory to be used for actions that can harm other countries. This obligation does not distinguish whether the infrastructure is owned by the government or privately

owned. If a country fails to fulfill these obligations, then the victim country can take legal remedies, such as self-defense or countermeasures

In the Outer Space Treaty 1967, preventive measures for space exploration that threaten international peace have been regulated, such as prohibiting the placement of nuclear weapons or other weapons of mass destruction, military installations, conducting weapons tests, and so on as stipulated in Article 4. Thus, the state can fulfill its obligation to prevent or minimize the risk of harm or threat that is basically predictable. Basically, the Outer Space Treaty 1967 itself is a form of prevention against potential threats to international peace that can arise from the use of outer space.

This principle can be stated in a policy that a state may not intentionally allow space infrastructure located in its territory or under the control of its exclusive government to be used for actions that are detrimental to other countries. In this case, the state has an obligation to conduct tests on space infrastructure and any space activities originating from its territory, whether carried out by the state government itself, or the use of space carried out by private parties. The state's obligations can also be applied to activities that cause serious damage or have the potential to cause such damage, both to people and objects protected by the territorial sovereignty of a country.

The Outer Space Treaty 1967 has provided a basic framework through one of its principles that states are responsible for national space activities, both those carried out by government and non-government entities. Each country must have an obligation to comply with the arrangements contained in Article 6 which emphasizes that the state must authorize and carry out continuous supervision of every activity in space, where the form of authorization can be freely established by the state, such as through national regulations.

If the state does not provide a mechanism and authorization in supervising the use of outer space, then this is a violation of the Outer Space Treaty 1967. The obligation of the state to prevent its territory from being used in the use of outer space that can harm or pose a threat to other countries has also been confirmed in Article 7, that:

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 or in outer space, including the moon and other celestial bodies

The principle of Due Diligence is also used by the International Law Commission for any losses arising from state actions which are not prohibited by international law. In terms of the losses caused, adopting the experience in the African Commission on Human and Community Rights, that the principle of Due Diligence is the basis for determining the threshold of action and the efforts that a country must take to fulfill its responsibilities under certain norms. The threshold

intended for the utilization and exploration of outer space related to the principle of Due Diligence is the establishment of a precautionary standard for each country in every activity of utilization and exploration of outer space.

Precautionary standards in space utilization and exploration can be applied through Registration Convention 1975. Diederiks-Verschoor considers that the registration of space objects is based on Registration Convention 1975 to identify two main functions, namely:

- a. Through a well-organized, complete and informative list, it will be possible to minimize the possibility and even suspicion of weapons of mass destruction secretly being put into orbit.
- b. It is impossible to identify the spacecraft that caused the damage without international system registration.

Through Registration Convention 1975, every state that will launch a celestial body is obliged to register. In Article 2 paragraph 1 of the Registration Convention 1975, it is stated that the launching country shall register a space object by placing it on the register which is held and maintained. Each launching State shall notify the Secretary-General of the United Nations for the preparation of a registration. Then, Article 4 stipulates that notification to the General Secretary of the United Nations must be made as soon as possible and as soon as possible. The information that must be included in this registration includes the name of the launching country or country, information on the sign of the space object or the registration number of the space object, the date and area or location of the launch, the basic orbit parameters, and the general function of the space object.

The information included in the registration of space activities is one form of prudential standards related to the principle of Due Diligence in the utilization and exploration of outer space. For example, information regarding the types and general functions of space objects must be clearly stated, considering that it is through this information that it can be known whether space activities have the potential to pose a threat to other countries and international peace or not.

In addition to preventing violations in the use of space, the registration of space objects can also facilitate the identification of the country responsible for the space activity, as confirmed in the Outer Space Treaty 1967 that states are internationally responsible for their national activities in space. Strengthening of the substance of the 1975 Registration Convention including international and national standardization of the mechanism for the registration of objects and activities of outer space. In this way, standardization will also be achieved, which will also serve as a threshold for state activities in space to prevent potential threats to international peace and security from arising.

7. Conclusion

Free access principle in the Outer Space Treaty 1967 has guaranteed every country to be able to freely explore space without. Of course, this freedom must be based on the goals to be achieved in space exploration in the Outer Space Treaty

1967, namely, to create international peace and security, and to encourage international cooperation. For this reason, although the state is given the freedom to explore space, the state also has an obligation to respect the existence of other countries. One of them is by establishing a precautionary standard which is a form of application of the Due Diligence principle. The United Nations has established the 1975 Registration Convention as one of the precautionary standards before conducting space exploration.

The precautionary standard in the 1975 Registration Convention can be seen from the obligation of each country to provide detailed information about the celestial body to be launched, as well as the purpose of the launch of the space object. At the international level, based on the 1975 Registration Convention, the United Nations can exercise control over the activities of countries wishing to conduct space exploration so that they are in line with the goals of peace-building and international cooperation. Meanwhile, at the national level, the state must establish a national regulation as a derivative of the 1975 Registration Convention. The national regulation must regulate the reasonable need of the state to explore outer space. This means that the Due Diligence Principle which has been translated into national regulations becomes a reference for the state before taking steps to utilize space. National regulations also need to regulate prevention standards in the form of early warnings to avoid potential threats that can arise from space exploration.

Problems that often arise related to space exploration are related to the absence of supervision from the international body authorized for the task. For this reason, the application of the Due Diligence Principle in space exploration is often neglected. For this reason, it is necessary to have supervision from the competent international body. In this case, the United Nations Committee on the Peaceful Uses of Outer Space (UNCOPUOS) as an agency under the United Nations can be given the authority to oversee the application of the Due Diligence Principle in the exploration and utilization of outer space. In addition to carrying out supervision, this institution can also determine whether or not a country's space exploration is feasible.

References

- Adam Botek, 2020, *The Application of the Due Diligence Principle in Cyberspace*, Master's Thesis, Faculty of Law Charles University
- Adam G. Quinn, 2008, *The New Age of Space Law: The Outer Space Treaty and the Weaponization of Space*, Minnesota Journal of International Law, Vol. 17, No. 2
- Alexia Solomou, 2013, *The Development of International Law Regarding the Peaceful Use of Outer Space*, Gray's Inn Student Law Journal, Vol. 5
- Anne Peters, Heike Krieger, Leonhard Kreuzer, 2020, *Due Diligence: The Risky Risk Management Tool in International Law*, Cambridge International Law Journal, Vol. 9, No. 2

- Annegret Bendiek, 2016, *Due Diligence in Cyberspace: Guidelines for International and European Cyber Policy and Cybersecurity Policy*, Stiftung Wissenschaft und Politik Research Paper, 7
- Daniel A. Porras, 2006, *The Common Heritage of Outer Space: Equal Benefits for Most of Mankind*, California Western International Law Journal, 37(1).
- Ellen Capmbell, dkk, 2018, *Due Diligence Obligationsof International Organizations Under International Law*, International Law and Politics, Vol. 50, hlm. 558
- Fabio Tronchetti, 2013, *Fundamentals of Space Law and Policy*, Springer, New York
- Marco Longobardo, 2020, *The Relevance of the Concept of Due Diligence for International Humanitarian Law*, Wis. Int'l L.J, Vol. 37 No. 1
- Michael N. Schmitt, 2015, *In Defence of Due Diligence in Cyberspace*, The Yale Law Journal Forum 68, June 22
- Ram S. Jakhu, 2017, *Evolution of the Outer Space Treaty*, dalam *Fifty Years of the Outer Space Treaty: Tracing the Journey*, ed. Ajey Lele, Institute for Defence Studies and Analyses, Pentagon Press, New Delhi
- Zuzana Zaludova, 2017, *The Outer Space Treaty in the Context of 21st Century*, Diploma Thesis Faculty of Law Charles University