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THE NOTION OF ‘DAMAGE’ CAUSED BY A SPACE OBJECT UNDER THE 1972 LIABILITY
CONVENTION: OLD AND NEW ISSUES

Abstract

According to Article I of the 1972 Liability Convention, the term ‘damage’ has to be read as ‘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’.

Such a general definition leaves open the question of which damages are effectively covered by the regime set by the Liability Convention. Indeed, already at the time this Convention was drafted, there was general awareness among delegations that this definition did not clearly indicate whether indirect or moral damages were to give rise to compensation. The question of the inclusion of nuclear damages in the definition of Article I also led to lengthy discussion.

Forty years have now passed and, due to new and rapid technological developments, the massive dependence on space applications and the growing risk of accidents, there is an increasing need to question whether the Liability Convention does sufficiently provide effective legal protection.

Are environmental damages on earth and in space covered by the Liability Convention? Does the notion of ‘other impairment to health’ include also moral damages? What the solution should be in case of damage to peoples’ personality or privacy caused by the use of direct broadcasting and earth observation or damages determined by the lack of disclosure of information obtained through the use of space technologies? The answer to these questions is often complicated by the fact that the Liability Convention only deals with damages caused by a ‘space object’, whose definition is similarly unclear.

The UARS and ROSAT re-entries in October 2011, the increasing warnings on the risks connected to the proliferation of space debris, as well as the coming into operation of GALILEO and GMES, bring the ‘liability question’ and the notion of ‘damage caused by a space object’ under the spotlight once again. In addition, it is likely that more challenging questions will follow in the future. In this respect, for instance, space tourism and the need to protect ‘cultural sites’ in space could represent new frontiers for legal discussion.

In the light of the above, the present paper will focus on old and new issues concerning the notion of damage caused by a space object, aiming at defining current loopholes and present and future needs for legal protection.