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The International Legal Regulation of Outer Space within the Scope of Public International Law (3)

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THE STANDARD OF DUE DILIGENCE IN OPERATING A SPACE OBJECT

Abstract

This article studies the better benchmarks to identify the “fault” in an accident that would cause damage to another space object. An unprecedented satellite collision between the Russian defunct military satellite, Cosmos 2251 and the U.S. privately-owned operational satellite, Iridium 33, occurred in February 2009, seems to have demonstrated the difficulty to identify the liable launching State under the current UN treaties on outer space. Three elements have to be identified to apply treaties to address the damage by the collision: “launching State” of the two satellites; “damage” for the purposes of the Liability Convention; and the fault. At least two elements, “launching State” and the fault are not easily identified since reaching a consensus would be most difficult if a state whose national procuring a launch shall be regarded as a launching State. So would be the identification of the existence of the fault. Taking an example of a Cosmos-Iridium case, it was not an easy task to prove the fault of Russia and/or Iridium LLC and the U.S. Uncontrollable Cosmos was most likely to have entered into the Iridium orbit, but it may also be said that it was the fault of the U.S. , provided that the US being a Launching State, considering the successful avoidance records after the collision thanks to its “Space Situational Awareness (SSA) Sharing Program.” Among the two elements, emphasis is placed in the identification of the fault in this article. Based on the precedent studies conducted by the comparative law method, the standard of the due diligence consisting of the fault will be considered. What degree and what kind of due diligence are required for a launching State and also an operator which operates a space object in outer space? A tentative list of actions to be required and also inaction to be pursued will be enumerated for the reference. (Needless to say, without the identification of a launching State or launching States, the identification of fault would not address the issue.) Exploring the traits of the fault in the exploration and use of outer space will lead to the conclusion that the future of the liability regime in this field would be assimilated into that of the activities in general which are of ultra-hazardous, but not prohibited by international law.