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Third party liability issues in commercial space activities (3)

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FACING UP TO THIRD PARTY LIABILITY FOR SPACE ACTIVTIES: SOME REFLECTIONS

Abstract

This paper looks at third party liability (TPL) in space law from a systematic perspective. It analyses the various rules governing compensation for damage to third parties resulting from space activities under the international law of space and select national liability regimes. While the liability mechanism under the Liability Convention is designed to cover TPL, the author argues that it is a less attractive mechanism of recourse for victims, who are more likely to pursue damage actions before national courts, especially in the case of commercial space operations where rights of indemnification between joint tortfeasors may be more predictable than under Art V Liability Convention.

As the recent Russian Cosmos collision with the commercial Iridium satellite in early February 2009 shows, the low occurrence of third party claims for damage resulting from space operations by no means detracts from their significance. Damage, irrespective of where it occurs, is generally likely to include third party loss. Whether this be the result of direct collision, collision debris, ground control interference with nearby satellites, or another scenario, TPL stands to increase in the near future, given the greater amount of debris and number of satellites operating alone in LEO.

After demonstrating the patterns of TPL at national and international level, the paper discusses possible future trends for commercial operations in a field where liability disclaimers, cross-waivers of liability and government liability guarantees are the order of the day. It discusses whether licensing or voluntary codes of conduct alongside compliance with safety rules should be taken into account in damage mitigation, particularly where damage occurs in orbit where fault must be substantiated.

Finally, using the example of the Galileo commercial GNSS system, the author examines the complexities of commercial space applications that could lead to third party damage and discusses whether TPL should be subject to particular, sector-specific rules, particularly where supra-governmental commercial activities are involved.

The author concludes by examining whether the competing international and national levels of damage regulation bear well for space stakeholders or whether TPL remains an issue that turns solely on the nature and availability of insurance coverage.