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FAULT LIABILITY FOR 3RD PARTY DAMAGE IN SPACE: IS ARTICLE IV (1)(B) OF THE LIABILITY CONVENTION USEFUL TODAY?

Abstract

Space debris now populates the LEO environment. Collisions between spacecraft have occurred. It will be only a matter of time before active satellites under the control of parties uninvolved in such a collision will be the targets of uncontrolled debris. Both the environmental conditions in outer space as well as the technology available to track debris are very different from what existed in the 1960s when the Outer Space Treaty and the Liability Convention were drafted. We need to take a new approach to 3rd party liability for in-space accidents for the following reasons. First, the legal conditions for defining fault are undefined in the Treaties. The test of a duty of a nation and a standard of care are unclear. Technology to determine the origin of the debris is improving but without physical evidence, proving the origin is still not a perfect science and there is no defined legal test as to what would determine ownership, responsibility, and therefore liability. Since Article IV requires a finding of fault; the injured party could not collect for the damage, a clearly inequitable result and one that could encourage current owners of space assets to engage in risky and hazardous activities. What this article suggests is a new look at Article IV towards a revision that would establish strict liability for 3rd party in-space injury. This would make States absolutely liable for damage from debris, which consequently will: 1) encourage national legislation for financial responsibility for damage similar to rules that are already an industry standard for launch activities, 2) encourage other safety and financial regulation of in-orbit activities, and 3) encourage more sharing of situational awareness data among nations in order to minimize accidents involving debris. In effect, this change in Article IV would provide a legal stimulus for responsible State action for in-orbit activities.