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Recent Developments in Space Law (5)

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MIND THE GAP: LEGISLATING FOR COMMERCIAL SPACE ACTIVITIES

Abstract

Regulatory tools are a necessary corollary to national and regional space programmes and policies and there has been a noticeable increase in the legislative moves by states interested in developing their commercial space sector. Some national statutes already serve as regulatory prototypes, providing an insight into issues such as risk regulation. Now, the surge in space technology appears to be lessening the traditional divide between old and new space faring nations. Emerging space countries can now focus on new space markets that are driven by technology itself. Choosing the appropriate regulatory form to cover the breadth of space-related activities, from human space flight through to earth observation and satellite-based navigation services, to name but a few, could become a challenge: technology will continue to push the limits of the application and interpretation of relevant space laws, and the international rules in particular. Building bridges between the law regulating space activities and other areas may then become necessary. Suborbital space flight and GNSS are examples of areas where legal certainty can be achieved through such bridge building between related regulatory environments.

This paper addresses the bifurcation that has been emerging over the past years within the law governing space activities. Whereas earlier domestic space laws often took on the form of general statutes as expressions of national legal and administrative culture, recent space activities and tools reflect the growing interaction between a broader spectrum that ranges from (international and domestic) space law through to legal rules of private and public law, including telecommunications. The paper addresses whether the growing division between terrestrially-based and outer space-related activities might impact on the future scope of space law. It also emphasises the importance of maintaining consistency between regulation at national and international level, and the need to maintain the concepts of international state responsibility and international state liability already anchored in international space law. These can be critical to the commercial space sector.