

59th IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Legal Challenges Represented by Large Satellite Infrastructures and Constellations (4)

Author: Mr. Edmond Boulle
Satellite Applications Catapult, United Kingdom

REIMAGINING NATIONAL REGULATORY APPROACHES TO THIRD PARTY LIABILITY
INSURANCE: TOWARDS A SINGLE AGGREGATED POLICY

Abstract

Launching States mitigate their unlimited liability risk exposure under international space law by making indemnity and insurance requirements a pre-condition to the grant of a licence under national regulatory frameworks. The effect is to reapportion the risk exposure initially to the licensee (or more precisely to the licensee's insurer/s) up to the insured amount. Thereafter the launching State remains liable for any amount of damages in excess of the cover under the policy.

The precise approach to third party liability (TPL) insurance varies across national regulatory frameworks, especially regarding the mechanism for determining the amount of cover required. However, the common feature is that in each regulatory system the licensee is the entity that must obtain TPL insurance in respect of each licensable activity.

This paper shall argue in favour of one variant approach to TPL insurance that could be adopted by national regulators. Under this suggested approach a State would procure a single aggregated insurance policy for all space objects for which it is potentially liable as a launching State. The concept mirrors the approach taken to insuring a fleet of vehicles or aircraft. The State could then recover the premiums on the policy from licensees based on an assessment of their proportionate contribution to the overall risk exposure. This inversion of the status quo has several advantages:

1. Reduces over-insurance: Launching States can select the amount of cover that is appropriate to their total risk portfolio. There is strong statistical evidence to support the argument that the current approach (multiple insurance policies) results in over-insurance.
2. Reduces inefficiencies: Issuing a single policy necessarily implies a reduction in overheads compared with issuing tens or even hundreds of individual policies to licensees.
3. Increased cover available for a single event: An aggregated 'fleet' policy would provide a much higher level of cover than an individual licensee's policy in the event of damage. This reduces the risk to the State that liability exceeds the amount covered in respect of a single event.

With the emergence of large satellite constellations, this proposed approach would more adequately meet the need of the State to protect itself against its international liability exposure. It also shields SMEs, universities and research organisations from the disproportionately high costs of insuring low-cost satellite missions and thereby supports entrepreneurial activity using these new categories of space technology.