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Space law Developments in Asia-Pacific: Diverging national space legislation with regard to the applicability of space law to suborbital flights (4)

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LIABILITY ISSUES IN SUBORBITAL FLIGHT WITH REFERENCE TO NATIONAL LEGISLATION

Abstract

In case of damage occurred in suborbital flight, liability rules in international space conventions definitely apply but are not the only rules to be relied upon, because the conventions have limited scope of application, leaving the rest issues to national legislation, such as claim presented by personnel on board, crew, passengers (which is not mentioned in the convention); and claim presented by victims on the surface of the earth including nationals of launching state and visitors (which is excluded from application of the convention). However, when looking into national space legislation, we can hardly find any specific regulation concerning liability in suborbital flight. Thus, this paper will study on national legislation to find out whether there exist applicable liability rules or whether a new set of rules is needed.

After briefly reviewing the existing law as for the first section, the second section of this paper will be divided into three parts, respectively dealing with contract law, tort law, and conflict-of-law rules, invoking rules other than space law as a comparative study. In the first part, contractual liability will be discussed, with special reference to waivers by partners and informed consent by passengers as defense of liability. In the second part, tort liability, especially the establishment of tort liability, determination of compensation and preclusion of liability will be examined. The third part focuses on point-to-point international flights where conflict-of-law rules may apply, especially when not both/all concerning states are parties to the Liability Convention or differ with each other in liability regulations. Lastly, the third section of this paper will propose different approaches to regulate liability issues concerning both substantive rules and conflict-of-law rules.