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LEGAL AND POLITICAL ISSUES OF DATA PROVIDING ON CONJUNCTION
ASSESSMENTS-THE RATIONALE OF CHINESE PROPOSAL: LTS GUIDELINE 14.5

Abstract

Conjunction Assessment (CA) is vital for the safety and security of spacecraft. However, CA network has its limits on the other hand. The first is the high rate of false alarm. The second is capability limits. Most of the space operators/owners of satellites are unable to perform conjunction assessments. In this case, data providing about the result of conjunction assessments may bring legal and political concerns, in particular when the data provider is a third party to the satellite owner/operator State (data user) and the State who launches the satellite. The legal concern is a matter of liability. Supposing the space owner/operation conduct maneuver based on the result of conjunction assessments from a data provider, and it happened cause damage to a space object of another State, then who shall be liable for the damage? Whether the data provider State shall jointly and severally be liable with the State who launches the space object and the owner/operator State? Whether there's a causal link between the damage and the data providing, supposing it's a false alarm? In this case, should the loss of fuel be taken as a "damage" under the Liability Convention? Shall the data provider State be responsible for the data providing activity? In other words, could data providing be deemed as national activity under Art.VI of the OST? The political concern refers to political or diplomatic challenges brought by a warning data providing on conjunction assessments from a third party (entities/State) to an owner/operator State, without informing or consulting with the State who launches the space object, let alone in the case of a false alarm due to technical limits about the accuracy of conjunction assessments or any other reasons. On this account, China proposed an additional paragraph in LTS Guideline 14: "14.5 States and international intergovernmental organizations should encourage conjunction assessment service providers under their jurisdiction and control to consult on screening criteria and notification thresholds with spacecraft operators and pertinent parties (i.e., State which provides launching service, as practicable), before providing conjunction assessment services, as practicable." Although the consensus has been reached on about this Chinese proposal, however it was not well accepted and understood by some delegations since it was proposed in 2017. Besides, the paper establishes two mechanisms to solve the legal and political issues brought by data of conjunction assessments providing, i.e. the contractual mechanism, and the consultative and cooperative mechanisms.