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IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Space Traffic Management: From Space Situational Awareness and Space Surveillance and Tracking to developing Rules of the Road (4)

Author: Mr. Yu Takeuchi
Japan Aerospace Exploration Agency (JAXA), Japan

IGNITIONS FOR GLOBAL STM RULE-MAKING PROCESS – LEGAL PERSPECTIVES WHY OPERATORS HAVE TO TAKE INITIATIVES

Abstract

The discussion regarding Space Traffic Management (STM) is rapidly emerging from this couple of years but policy decisions or concrete actions are yet to be ignited to date. From the beginning discussions of the Draft International Code of Conduct for Space Activities (ICOC), it is said that a combination of a top down approach of engaging political commitments of States and a bottom up approach of technically affordable solutions are essential for realizing sustainable space activities at global level. Those approaches are logical conclusions from the needs of establishing common standards and regulations for safety operation to the entire operation of the outer space. However, after experiencing multiple disappointment of top-down approaches, one of them was started as a bottom-up but ended up as top down, such as the Draft Best Practice Guidelines for Long-term Sustainability of Space Activities at COPUOS, ICOC or the Report of the Group of Governmental Expert for Transparency and Confidence Building Measures of Space Activities, one should be admitted that the order of consideration or the way of engaging actors will also be carefully designed. At this point, with a second thought of actors' incentives among safety space operations, it should be enlightened that the bottom up approach, especially the approach from the civil operators, have to be the initial one for global STM rule-making. This paper will describe the main reason why the operators have to be the main player at this stage, based on the reluctant nature of States as regulator of traffic in the outer space. States are, unlikely to the other traffic areas, apart from their incentives to maintain the order of the area as they do not retain sovereignty to any part of the area. The operators, on the other hand, implicated to be liable for damage of on-orbit accident in near future. The current evaluation standard of fault liability for on-orbit damage will change, in near future, because of the accumulation of cases indicating the practical standards of operations. In that circumstances, it will be the operators which did not match to that standards will be deemed liable for damage. Therefore, at this stage, operators retain incentives to take an important role into the de facto rule-making process by producing practical standards and guidelines. Those activities will link to secure the future space activities as forming the standards of fault liability as affordable ones.