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Dispute Settlement in Space Law: Are We Ready for the Commercial Challenge? (2)

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HARMONISATION OF LIABILITY LITIGATION- LESSONS TO BE LEARNT FROM THE WARSAW CONVENTION

Abstract

Under the Liability Convention, Member States are subject to unlimited joint and several liability for damage caused on terrestrial Earth by a space object if a State can be tied to an incident as a "launching state". Upon such a link being established, the Liability Convention then provides two methods of making a damage claim. Firstly, an inter-state diplomatic arrangement and secondly, that of a claim through the national court system. Under the latter, the issue of forum shopping inevitably arises as injured parties attempt to seek out the best jurisdiction in which a claim can be brought. This adds to both the cost and complexity of submitting a claim and is ill-suited in dealing with multi-state and multi-party claims arising from a single incident. With the soon-to-be realised implementation of mega constellations, a flood of multi-state and -party claims will likely be the norm. For instance, because one or more satellite(s) from the same constellation disintegrates on their return journey to earth and showers an area with debris, causing a mixture of damage to individuals from different States.

To address this issue, this paper advocates for an independent international substantive tort regime for space affairs to be applied by national courts akin to that of the Warsaw Convention and Montreal Convention for air carriage incidents and provides recommendations on the transposability of these Conventions. Firstly, it looks at the Travaux Preparatoires of the two Conventions and the Liability Convention to determine common areas of intention that justify such a transposition. Secondly, it focuses on the substantive clauses of these Conventions that meet this common intention and makes recommendations on required modifications.Thirdly, the paper argues that to improve procedural expediency, an arrangement to allow for class action suits should be included and that claimants from different countries should be allowed to join such litigation. Finally, the paper concludes that an abolishment of exequatur proceedings akin to the regime under the New York Convention for arbitration or the Brussels-I-a Regulation (Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters) should be enacted by Member States