

Transcending Societal Issues for Space Exploration (12)
Transcending Societal Issues for Space Exploration (2) (2)

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INSURING THE UNINSURABLE. HOW SPACE LAWS SHIFT THE BOUNDARIES OF INSURANCE–
THE CASE OF EMERGING NATIONAL SPACE LAWS

Abstract

In recent years we have been witnessing the emergence of an increasing number of national space laws. The concept of the ‘building blocks’ of national space legislation is already common knowledge, where one important aspect is insuring liability for damage. Though nothing is mentioned in the space treaties, most recent national laws include an obligation to insure the risk of third party liability. Compulsory means not only obligation to obtain coverage by the space operator, but, depending on the jurisdiction an obligatory trigger, limited exclusions, etc. The obligatory elements of coverage may work perfectly for terrestrial liability insurance, but not necessarily for space risks in terms of risk assessment and solvency requirements on insurers. This made imposing the duty of insurance of relevance not only to space entrepreneurs, but also to insurers. Despite being the only affordable risk management tool for emerging space actors, is it also affordable for insurers and does it secure the liability in sufficiently coherent way? The study analyses the tendencies of regulating space liability insurance as compulsory, and the numerous implications of that fact for both space law and insurance law. As a compulsory insurance contract, it should comply with the space industry needs and law as well as with insurance regulations, which are now even stricter than space laws in terms of risk management. The author aimed to find an optimal solution of regulating compulsory space liability insurance in emerging national space laws. One that would be acceptable for the space and insurance industries and providing a real and not only formal security. Insuring space liability risks today means insuring the uninsurable (which contradicts the insurance law regime). The study encompasses such aspects as the circle of entities holding an insurable interest, coverage triggers, obligations, limitations of liability and finally the classification of space liability insurance under the insurance law regime. The idea presented in the study includes the need to harmonize space liability insurance terms in a way reflecting the needs both the insurance and space industries and the result is a proposal of a more comprehensible draft provisions concerning compulsory space liability insurance.