

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Dispute Settlement (2)

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ORBITAL CONGESTION? TAKE A CLAIMS COMMISSION FOR QUICK RELIEF!

Abstract

Mega-constellations of satellites are but one aspect of the growing concern over an increasingly congested orbital realm and the certainty for damaging incidents involving near misses or collisions in space or on earth. Amplifying the growing orbital congestion of both operating and inoperative space objects is the growing diversity of non-state commercial launching entities servicing an increasingly diverse marketplace of firms operating satellite networks for their governmental and non-governmental customers. As a consequence, orbital congestion, spectrum interference, and space debris-related incidents are already creating a widening range of disputes that are exposing the incompleteness of the dispute settlement legal regime established by the five foundational space treaties over five decades ago when space exploration was dominated by governmental entities. The 1972 Liability Convention most directly addresses the issues of liability and dispute settlement amongst governmental entities, offering as a “last resort” the “claims commission” option for disputes eluding settlement under conventional treaty provisions emphasizing diplomatic procedures and resort to national courts. This paper argues that the claims commission treaty provision deserves greater scrutiny given the growing diversity of governmental-civilian-commercial entities posing liability exposure whose standing under the 1972 Liability Convention may elude Convention-stipulated dispute settlement mechanisms. This paper poses a hypothetical scenario for a claims commission dispute settlement procedure as the starting point for a more focused discussion about formation of a hybrid “hard” and “soft” law regime for an increasingly commercialized, competitive, and congested orbital realm of the 21st Century.