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RISK MANAGEMENT FOR FUTURE (COMMERCIAL) MISSIONS IN LIGHT OF RIGHTS &
OBLIGATIONS UNDER INTERNATIONAL SPACE LAW

Abstract

Disclaimer: The research leading up to this paper has no nexus with the authors' role and work at the European Space Policy Institute (ESPI) and in no way reflects positions or opinions held by ESPI.

This paper aims to analyse risks stemming from rights obligations under international law and the effects these risks might have for the viability of different commercial operations.

With a number of planned commercial missions, the future of multiple (semi)permanent facilities in outer space accessible to flocks of space dwellers seems to be more likely than ever. Furthermore, NASA recently announced it someday wishes to transition control of the International Space Station and activities in low Earth orbit, to the private sector. However the Outer Space Treaty ("OST") stipulates that state parties to the OST bear international responsibility for activities of non-governmental entities within the relevant state party while other state parties in turn also benefit from certain rights in relation to the aforementioned activities.

Rights of other states (irrelevant of how justified they are) can however also be seen as risks to commercial operations as they can burden day-to-day operations of a commercial outpost. For instance, under Article XII of the OST "All stations, installations, equipment and space vehicles on . . . celestial bodies shall be open to representatives of other States Parties to the Treaty on a basis of reciprocity".

Moreover Article 3 of the Rescue and Return agreement obliges state parties (and a maiore ad minus, any entity undertaking space activities based on authorization of that state party) to extend assistance in search and rescue operations for spacecraft personnel in distress.

And it's not only in the operational part of activities that rights and obligations can amount to risk; activities might already be burdened in the phase of planning and setting up commercial outposts, as any state party believing these plans might potentially amount to harmful interference may request consultation concerning the activity under Article IX of the OST. The very same article might also make planned space activities more prone to risk due to its environmental aspect, especially in light of investors scrutinizing environmental sustainability of their portfolio.

It remains to be seen whether the identified risks will be translated into stricter insurance demands by states and increased premiums as theoretically increased activities within a limited geographical scope in the short term also increase the risk for invoking the described rights.