Chapter Six

Liability

6.1. Introduction

Whilst Part I clearly illustrated that satellite remote sensing is a powerful tool to support critical decision-making – from disaster management to environmental applications – it also highlighted the uncertain liability regime that creates barriers to the full utilization of remote sensing data. Chapter 2 addressing space law identified ambiguities in applying the general legal responsibility and liability associated with space activities to satellite remote sensing.

Although the issues surrounding the need for a new regime have been raised,\(^1\) such as the Brazilian proposal calling for an international convention on remote sensing,\(^2\) the liability aspects of satellite remote sensing are still relatively unexplored with no concrete outcome to improve the current regime. Discussions of the Indian Ocean Tsunami lawsuit, and of the liability of volunteers introduced in Chapter 4, have particularly highlighted the need for a clarification of liability associated with disaster management. There is an urgent need for an unambiguous and comprehensive regime.

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2. UN Doc. A/AC.105/C.2/L.244(2003), Why is an international convention on remote sensing of the Earth from outer space necessary?, Proposals to the Committee on the Peaceful Uses of Outer Space for new items to be considered by the Legal Subcommittee at its forty-third session. In the proposal, it emphasized that potential harm does not lie in the actual operations involving collection, storage, processing, and distribution of the processed data, but in the use of analysed information.
The purpose of a comprehensive liability regime is two-fold: first, to compensate victims of damage; second, to strengthen data use by clearly defining liabilities. An ideal regime would not only provide a clear regulatory framework, but also a set of rules and guidelines to address potential claims effectively. In considering an improved regime for remote sensing, a thorough study is required. The aim of this Chapter is to conduct an interdisciplinary review of liabilities that will highlight the essence of liability, and to propose effective recommendations for an improved regime that will regulate and stimulate remote sensing activities.3

This Chapter undertakes a detailed examination of liabilities from different standpoints in both national and international contexts, including: 1) the current legal uncertainties dealing with consequential damage arising from remote sensing; 2) the issue of liability from different branches of law; and 3) the analysis of different bases of liability – specifically, absolute/strict liability, fault-based liability, and liability for products and services.

6.2. CURRENT LEGAL UNCERTAINTIES WITH LIABILITY ARISING FROM REMOTE SENSING

Chapter 2 examined the issues of responsibility, liability and registration, and showed that the application of these to remote sensing from space is ambiguous, and thus does not address anticipated legal challenges today. Chapter 2 demonstrated that neither the current remote sensing legal regime nor the relevant corpus juris spatialis – the Outer Space Treaty, the Liability Convention, and the UN Remote Sensing Principles – addresses consequential damage arising from the supply and use of data. This section revisits the Outer Space Treaty, the Liability Convention and the UN Remote Sensing Principles with close attention to the relevant provisions in each, and then examines the specific problems raised by the inadequate regime.

6.2.1. The Examination of Liability from the Outer Space Treaty and the Liability Convention

As noted previously, Article VII of the Outer Space Treaty, together with the Liability Convention, establishes the international liability of a launching state for the damage caused by a space object or component part incurred on the Earth; however they do not provide an adequate answer to the question of

\[\text{For a condensed version of this Chapter, see A. Ito, Improvements to the Legal Regime for the Effective Use of Satellite Remote Sensing Data for Disaster Management and Protection of the Environment, 34-1 Journal of Space Law (2008), 45–65.}\]