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Outer space needs a regulatory clean-up

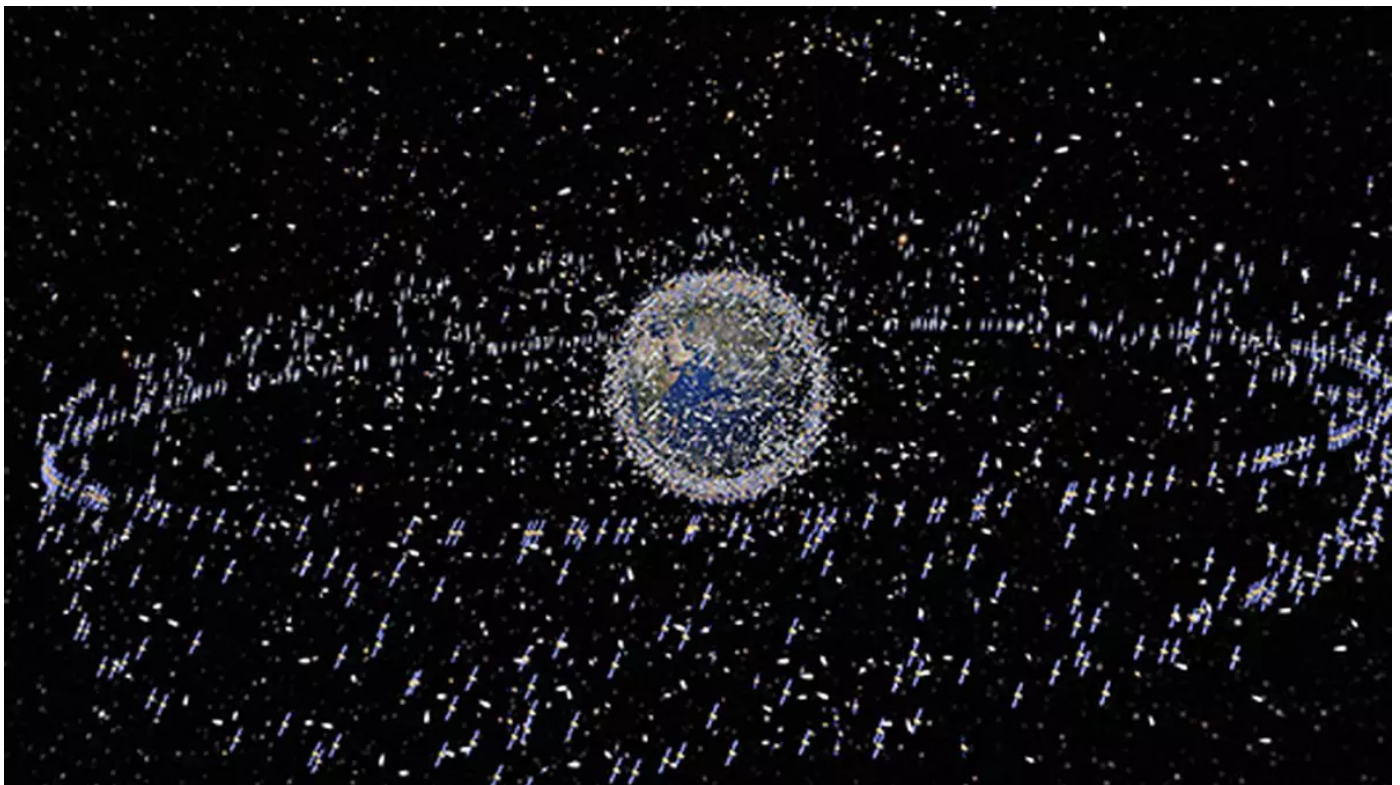
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As far as accidents in space go, there is lack of a binding framework for liability procedures

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Space debris issues are mired in a legal fog | Photo Credit: -

The recently announced Indian Space Policy, 2023 is bound to revolutionise the space sector. The policy redefines the role of primary government agency, ISRO, and opens the sector for private entities. These developments are signs of the global shift from solely government-directed space sector to one shared by privately funded space activities.

Given the extra-sovereign nature of space, international treaties largely provide the legal framework concerning space activities. Unfortunately, the five key multilateral international space treaties are still stuck in a time capsule from the Cold War era.

Higher the traffic flow and greater debris on the path, the bigger the likelihood of accidents. And where there is an accident, someone needs to be held responsible and pay compensation. Despite the global space sector increasingly getting privatised, the current international law solely governs and holds the signatory states liable for any mishap.

Kosmos-Iridium collision

Let's consider the example of the collision between a defunct Russian military satellite, Kosmos 2252, and an operational commercial American satellite, Iridium 33, in 2009. To claim compensation for the loss of the working Iridium 33 satellite, whom should the American company approach? Who is liable?

The relevant treaty here is the Convention on International Liability for Damage Caused by Space Objects, 1971. The Convention attaches liability on 'launching states' (and not the private sector) for the payment of compensation for damage to the earth or other space objects from space activities. It defines the launching state to be: (1) one which launches a space object; (2) which procures the launching of a space object; (3) whose territory has been used for a launch; and (4) from whose facility a space object is launched.

Incidentally, Iridium 33 was originally launched by Russia from a Russian-owned spaceport with the US government approval. Since only states can bring claims for compensation, the company could argue that the US government "procured" the launch and was thus the 'launching state'. So, the company would first need to enlist the US government to negotiate with Russia.

However, Russia could argue that since it was launched from a Russian facility, Russia was the 'launching state', and thus it was Russia's internal affair.

This demonstrates how the definition of a 'launching state' is incompatible with the realities of modern space operations. The fact that most commercial space

operators are multinational corporations further exacerbates the problem.

Secondly, the Convention lacks a binding framework for liability procedures, such as debris mitigation measures, pre-flight tests, monitoring own space debris, timely intimation to affected parties of possible collision, etc. If such frameworks are left to individual nations, the consequent variation in national space legislation could result in the growth of 'space-havens' akin to 'tax-havens.'



Third is the enforcement problem. Currently, a victim party would need its government to file a claim and negotiate with the government of the launching company. Then, the parties must go through a mandatory negotiation period of one year. If a settlement is not arrived by then, the parties must establish a Claims Commission to adjudicate a claim. Even then, the Commission's decision may not get enforced, because it is binding only if both parties agree.

Complex overhaul

While nations are increasingly commercialising the space sector, the current international space regime is incompatible and needs an overhaul. Yes, overhauling a global regime is more complex than passing a national legislation. But countries have in the past come together and agreed to a common solution.

Here, India has a huge opportunity to "pursue international relations" as defined in the Vision of the Policy. By bringing together other spacefaring nations to work towards safe and sustainable space activities, India can be a global leader in the sector.

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