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**Effectiveness of legal regime for
responsibility and liability of national
space activities.
Assessment of gaps**

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Introduction

According to article VI of the Outer Space Treaty (OST) a State is responsible for its **“National Activities in Outer Space”**

According to article VII OST and to the 1972 Liability Convention the Launching State(s) of a space object is (are) **liable for damage caused by this space object.**

The gaps

- **I The time to consider**
 - Article VII and the Liability Convention
 - Article VI: « National Activity in Outer Space »
 - Article VIII: Registration of space objects
- **II Plurality of the Launching States**
- **III Liability of States for private operators**
- **IV Sharing of the burden of the risk among Launching States**
- **V Transfer of ownership of or control on a space object**

Point I

- **The time to consider (1)**

- Article VII and the Liability Convention

- The time of the Launch “Once a Launching State always a Launching State” . This moment does not change
- The Launching State(s) is (are) liable for ever without consideration to its role in the launch . The State of the territory of launch of a satellite will be a Launching State until the time of the return of the satellite on Earth.
- If the satellite is sold or transferred one way or an other to an other State or to an other company the original Launching State is still liable for any “damage caused by the space object”

- **Time to consider (2)**

- Article VI: « National Activity in Outer Space »

- This link is connected to the activity and may change all over the life in orbit of the satellite.
- The notion is factual, practical. It may change.
- If the satellite is transferred to an other operator or an other State. The responsibility of the “national activity in Outer Space” follows.

Time to consider (3)

Registration of a space object

- Article VIII: Registration of space objects
 - not with the “national activity” but with the Launching State
 - Because of the second aim of the registration : to indicate a Launching State for implementation of the Liability Convention

Point II

Plurality of the launching States

- Plurality of launching States
 - In order to be sure that a liable Launching State is always present for every space object, more than one State may qualify as a launching State. (4 criteria)
- But only one State of registration.
 - (because of the first purpose of registration: to establish a legal link between the object and the jurisdiction of a State)(cf. flags for ships)
- But only one State of the “National Activity”

Which launching State should register ?

- It is an important issue
 - The State of registration has jurisdiction and control
 - The State of registration is a launching State

Which launching State should register? (2)

- **Agreements between launching States are needed to determine which one will register**
 - *Article 2/2 :2. Where there are two or more launching States in respect of any such space object, they shall jointly determine which one of them shall register the object ...*

Which launching State should register? (3)

- **Resolution 62 / 101 of 17 Dec 2007**
 - **The special role of the State of territory or facility**
 - *(b) The State from whose territory or facility a space object has been launched should, in the absence of prior agreement, contact States or international intergovernmental organizations that could qualify as “launching States” to jointly determine which State or entity should register the space object;*

Which launching State should register? (4)

- **Resolution 62 / 101 of 17 Dec 2007**
- **The special reference to the State of the “national activity” according to article VI**
 - *(c) In cases of joint launches of space objects, each space object should be registered separately and, without prejudice to the rights and obligations of States, space objects should be included, in accordance with international law, including the relevant United Nations treaties on outer space, in the appropriate registry of the State responsible for the operation of the space object under article VI of the Outer Space Treaty;*

Part III

Liability of Launching States for private activities

Situation

States are liable when their companies launch, procure the launch or the facility or launch from their territory.

Difficulties

States may be reluctant or feel unfair to pay for damage caused in such cases, especially when they are not heavily involved in the activity.

Between States and their national companies domestic law may /should / organise the sharing of the burden of the risk.

- Transfer to the company of the obligation to pay
- Creation of a ceiling
- Obligation of insurance

Point IV

Sharing of the burden of the risk among Launching States (1)

- Definition of the “Launching State”
 - 4 criteria
 - A State which launches or procures the launching
 - A State from whose territory or facility a space object is launched

Sharing the burden of the risk (2)

- Who will decide
 - The practice –
 - the State of the victim when it chooses the launching State to which it asks for compensation. Not the potential launching State itself.
 - Then the international judge (Claims Commission or other)

Sharing the burden of the risk (3)

Agreements between launching States are greatly needed .

- Every launching State is liable for the whole launch and for the whole life in orbit of the space object from the launch to the return on earth.
- The utility to share burden of the risk – not the liability – for instance between the phase of the launch and the in orbit phase
- Or to protect the State of the territory when its role is reduced etc....

Sharing the burden of the risk (4)

Liability Convention article V

... The participants in a joint launching may conclude agreements regarding the apportioning among themselves of the financial obligation in respect of which they are jointly and severally liable. Such agreements shall be without prejudice to the right of a State sustaining damage to seek the entire compensation due under this Convention from any or all of the launching States which are jointly and severally liable.

Sharing the burden of the risk (5)

- Resolution 59/115 2004
- (Definition of the “Launching State”)
 - (2)
 - *Also recommends that States consider the conclusion of agreements in accordance with the Liability Convention with respect to joint launches or cooperation programmes.*

Point V

Transfer of ownership of a space object in orbit

- The launching State is responsible for all the life in orbit of a space object
- In case of a transfer of ownership of a space object in orbit the control may change, the link to “national activity” may change
- The liability of the launching State does not
- The registration does not for a State which is not an “original launching State”

Transfer of ownership of a space object in orbit (2)

- Many States prevent the transfer of ownership or control over the space object without an authorization because they are still liable even if they have not any control over it.

Transfer of ownership of a space object in orbit (3)

This may be very detrimental for satellite operators.

- The “second hand satellite” cannot be freely sold. (value)
- In the case of the application of the UNIDROIT protocol ...
- It is not possible to change the registration
- Consequences on jurisdiction and control over the satellite.

Transfer of ownership of a space object in orbit (4)

- Resolution 59/115 2004
 - (3)
 - *Further recommends that the States consider ... the possibility of harmonising ... practices (regarding on-orbit transfer of ownership of space objects) as appropriate with a view to increasing the consistency of national space legislation with international law.*

Transfer of ownership of a space object in orbit (5)

What could we do ?

The result to obtain :

- to ease the transfer of the burden of the risk
- and to authorise the transfer of registration thus the transfer of jurisdiction and control.

Transfer of ownership of a space object in orbit (6)

How could we do ?

Not by a modification of the registration Convention
Resolution of the UN GA on the proposal of UN
COPUOS

Resolution addressed to the UN Secretary General to have to accept the transfer of registration as far as certain conditions are fulfilled.

- Agreement between launching States of the object
- Acceptation of the “new State” of the obligations and liability of a launching State
- No effect on the rights of third party

Conclusions

It is possible to improve the current system and to fill most of the mentioned gaps.

By good will of the States leaving aside every political and theoretical perspective to try to concentrate on practical solutions.

Conclusions

Soft law

Resolutions of the UN GA proposed by COPUOS

Resolution of the UN GA to the SG

Agreements between States

Possibility for COPUOS especially Legal

Subcommittee to propose some “standard models of agreements”

- Agreements between launching States for registration
- Agreements between launching States for apportionment of the burden of the risk



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