Satellite Ownership Transfers and the Liability of the Launching States

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1 What is the issue from the perspective of the UN treaties on outer space?

Transfer of ownership of a satellite does not affect the liability regime.

Responsibility: national activities
Liability: launching State(s) “jointly and severely liable”
Ownership: irrelevant
Transfer of Ownership of a Satellite

3 cases

Launching States
A: territory
B: facility
C: procuring State

Case 1 C to A
C to B, etc.

Case 2 D to A, B or C, etc.

Case 3 D to E
**Case 1: between launching States**

<table>
<thead>
<tr>
<th>Former owner</th>
<th>Present owner</th>
<th>Launching States</th>
</tr>
</thead>
<tbody>
<tr>
<td>C</td>
<td>C (no transfer)</td>
<td>A B C</td>
</tr>
<tr>
<td>C</td>
<td>A</td>
<td>A B C</td>
</tr>
<tr>
<td>C</td>
<td>B</td>
<td>A B C</td>
</tr>
<tr>
<td>C → A</td>
<td>B</td>
<td>A B C</td>
</tr>
<tr>
<td>C → B</td>
<td>A</td>
<td>A B C</td>
</tr>
<tr>
<td>A</td>
<td>B</td>
<td>A B</td>
</tr>
<tr>
<td>B</td>
<td>A</td>
<td>A B</td>
</tr>
</tbody>
</table>

- **Active and substantial participation in the launching**
- **Jointly and severely liable**
- **Forever a LS**
Case 2: between launching States or not unclear

<table>
<thead>
<tr>
<th>Former owner</th>
<th>Present owner</th>
<th>Launching States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Co. X of State D</td>
<td>X (no transfer)</td>
<td>A B D?</td>
</tr>
<tr>
<td>X</td>
<td>State A</td>
<td>A B D?</td>
</tr>
<tr>
<td>X</td>
<td>State B</td>
<td>A B D?</td>
</tr>
<tr>
<td>X → A</td>
<td>B</td>
<td>A B D?</td>
</tr>
<tr>
<td>X → B</td>
<td>A</td>
<td>A B D?</td>
</tr>
</tbody>
</table>

State whose national procured the foreign launch shall be regarded as a LS?
Case 3: pure commercial transaction (between companies)

<table>
<thead>
<tr>
<th>Former owner</th>
<th>Present owner</th>
<th>LS</th>
<th>State of Registry</th>
</tr>
</thead>
<tbody>
<tr>
<td>Co. X of D</td>
<td>X (no transfer)</td>
<td>A B D?</td>
<td>D</td>
</tr>
<tr>
<td>Co. X of D</td>
<td>Co. Y of E</td>
<td>A B D?</td>
<td>D</td>
</tr>
<tr>
<td>Co. X of D</td>
<td>Co. Y of E</td>
<td>A B D?</td>
<td>D to E</td>
</tr>
</tbody>
</table>

State of registry shall be regarded as a LS?
Critical factor on the determination of the liability of launching States in case of the ownership transfers of satellites

* Scholars’ doctrines

* State practice

A State of registry not concerned with the physical launching shall be regarded as a LS? (case 3)

An internationally established rule has not been recognized that a state whose national owns a satellite launched from outside its territory be regarded as a LS.

Registration may be a test for finding a LS by procuring?
2 Some cases (case 3)
(1) On-orbit purchase of a satellite followed by the transfer of registration

<table>
<thead>
<tr>
<th>UK</th>
<th>Sweden</th>
</tr>
</thead>
<tbody>
<tr>
<td>BSB-1 (Marcopolo-1)</td>
<td>Sirius-1 (1989-67A)</td>
</tr>
<tr>
<td>Launched in 1989 (USA)</td>
<td>*bought in orbit in 1996</td>
</tr>
<tr>
<td>Owner/operator British Satellite Broadcasting Ltd.</td>
<td></td>
</tr>
</tbody>
</table>
State of registry is changed

USA, UK and Sweden
Are LSs? Or only USA and UK remain LSs?

Agreements Between UK and Sweden would address Liability issues on a Future state-to-state negotiation under the LC.

Florida, USA
launched in 1989
(2) On-orbit purchase of a satellite not followed by the change of control ①

Koreasat-2 of KT Corporation, Korea
Manufactured by Lockheed Martin and launched in Jan. 1996 from Florida, USA.
KT Corporation provides TT&C to ABS-1A.

ABS-1A
2 July 2009 Asia Broadcast Satellite (ABS) (China) announced the sale of Koreasat and to be renamed as ABS-1A pending the approval of the USA.
Ownership: a company of China jurisdiction and control by Korea
(2) On-orbit purchase of a satellite not followed by the change of control ②

Koreasat-3 of KT Corporation, Korea
Manufactured by Lockheed Martin and launched in Sept. 1999 from Guiana Space Center, France.
No UN registration.
KT Corporation provides TT&C to ABS-7.

ABS-7
24 May 2010 ABS (China) announced the sale of Koreasat-3 and to be renamed as ABS-7 pending the approval of the USA.

Ownership: a company of China Control by Korea
Launching States

Koreasat-2 → ABS-1A
Territory: USA
Its national’s procurement and registration: Korea

Koreasat-3 → ABS-7
Territory: France
Its national’s procurement, but not registered: Korea??

China is not a LS.
(3) Transfer of ownership by the acquisition of a company ①

<table>
<thead>
<tr>
<th>LMI-1</th>
<th>ABS-1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Launched in 1996 from Baikonur by Proton rocket</td>
<td>Announcement of the acquisition in Sept. 2006</td>
</tr>
<tr>
<td>Russia furnished information (ST/SG/SER.E/367) “the US tel sat LMI-1 was placed into orbit”</td>
<td>ABS (China) acquisition of LMSCV and LMI from Lockheed Martin Global Telecommunications (MLGT).</td>
</tr>
<tr>
<td>No State of Registry found</td>
<td>LMSCV → Asia Broadcast Satellite Holdings</td>
</tr>
<tr>
<td>Owner/operator Lockheed Martin Space and Communications Venture (LMSCV)</td>
<td>LMI → Asia Broadcast Satellite Ltd.</td>
</tr>
<tr>
<td>* LMI exclusive right to market LMI-1</td>
<td>Which are LSs? Russia, Kazakhstan only, or--?</td>
</tr>
</tbody>
</table>
(3) Transfer of ownership by the acquisition of a company ②

Nov. 2009
Mabhay Satellite Corporation (MSC, Philippines)
Agila-2, made by Space Systems/Loral, launched in 1997 from China.
Registered by Philippines (A/AC.105/INF.405) (2 May 2003)
Control from MSC Subic space center?

ABS (China) upon the necessary regulatory US governmental approvals
renamed ABS-5

Ownership China Jurisdiction and Control Philippines

no transfer of registration in accordance with the UN registry.
(4) Transfer of ownership by the change of the legal status of an entity

2002 UK furnished the information to the UNSG (ST/SG/SER.E/Rev.1, 3 Dec. 2002) in accordance with Art. XI of the OST and Art. IV of the RC on the change of the status of 8 of the Inmarsat satellites (I2-F2, I2-F3, I2-F4, I3-F1, I3-F2, I3-F3, I3-F4, and I3-F5)

“The UK is not the “launching State”, “State of registry” or “launching authority” for the purposes of the Liability Convention, the Registration Convention, the Rescue and Return Agreement.”
(5) On-orbit ownership transfer or procuring a launch?  The Netherlands

Both NSS-6 and NSS-7 were made by the Lockheed Martin and launched in France.

Information to the UNSG (A/AC.105/806, 22 Aug, 2003)
The Netherlands not a “launching State” or “State of registry” because those satellites were “delivered in orbit to New Skies Satellites after they were launched and positioned in orbit by persons not subject to the jurisdiction or control of the Netherlands. Following the transfer in orbit of ownership of the space objects to New Skies Satellites, the Kingdom of the Netherlands is of the opinion that it bears international responsibility for their operation in accordance with article VI and has jurisdiction and control over them in accordance with article VIII of the Outer Space Treaty.
(6) Owned and operated by its national, but not a launching State (a variation)

GE SATCOM-1A
Launched in 2000 from Baikonur
1 Registered by the UK ST/SG/SER.E/378 (6 Nov. 2000).
2 UK withdrew the registration by ST/SG/SER.E/389 (28 Mar. 2001) as “GE Capital Satellite (Gibraltar) Ltd. did not procure the launch of the space object and thus the UK is not the ‘State of registry’.” UK only furnished information to the UNSG.

Sirius 4
Launched in 2007 from Baikonur
1 Owner: SES Isle of Man
2 supplementary registry of the UK wrote: UK authorized launch only. Sweden has registered in-orbit operation.
(7) Not a transfer of ownership, but a State succession

UK registration

1 Asiasat-1  (ST/SG/SER.E/222, 29 Aug. 1990)


3 APSTAR-1A  (ST/SG/SER.E/316, 21 Oct. 1996)

owned and operated by a Hong Kong Company

launched from China

“ceased to be carried on the Register of Space Objects of the UK”  (ST/SG/SER.E/333, 3 Apr. 1998)

“from that date China has been the State of registry of these space objects  (ST/SG/SER.E/334, 3 Apr. 1998)
3 Possible Solutions (1): prerequisite

The identification of the launching States is the key to solve the questions of liability in respect of the on-orbit transfer of ownership of a satellite. However, scope of the launching States is not clear.

Reasons: no internationally established rule:
(1) If a state whose national owns a satellite launched from outside its territory shall be regarded as a launching State;
(2) If a state of registry not concerned with the actual launching shall be regarded as a launching State.
(2)

(1) While registration is irrelevant to the liability, it is useful to find a launching State especially when the procuring State specifies its name as that of a launching State.

(2) However, considering State practice, making a formula of finding a launching State based on the registration would not be a solution.

Then, it has to be noted that it is the assured protection of potential victims, not the identification of a launching State itself that counts. Taking note of that prerequisite, it has to be underlined that furnishing information to the UNSG is as useful as registration as far as the identifying the situation concerning a satellite is concerned as shown by the Supplementary Registry or National Subregistry of Space Objects of the UK and the Netherlands.

practice of both States can be one type of model
(3)
Helped by the various kinds of information provided, Governments can ensure that its national will assume third party liability through national legislation in line with the UN Treaties on Outer Space as well as the 2004 Application of the concept of the “launching State” and the 2007 Recommendation on enhancing registering space objects. Information provision concerning the multilateral transaction and national legislation will be the solution with respect to the on-orbit transfer of a satellite.

present task how better to gather information on private space activity.