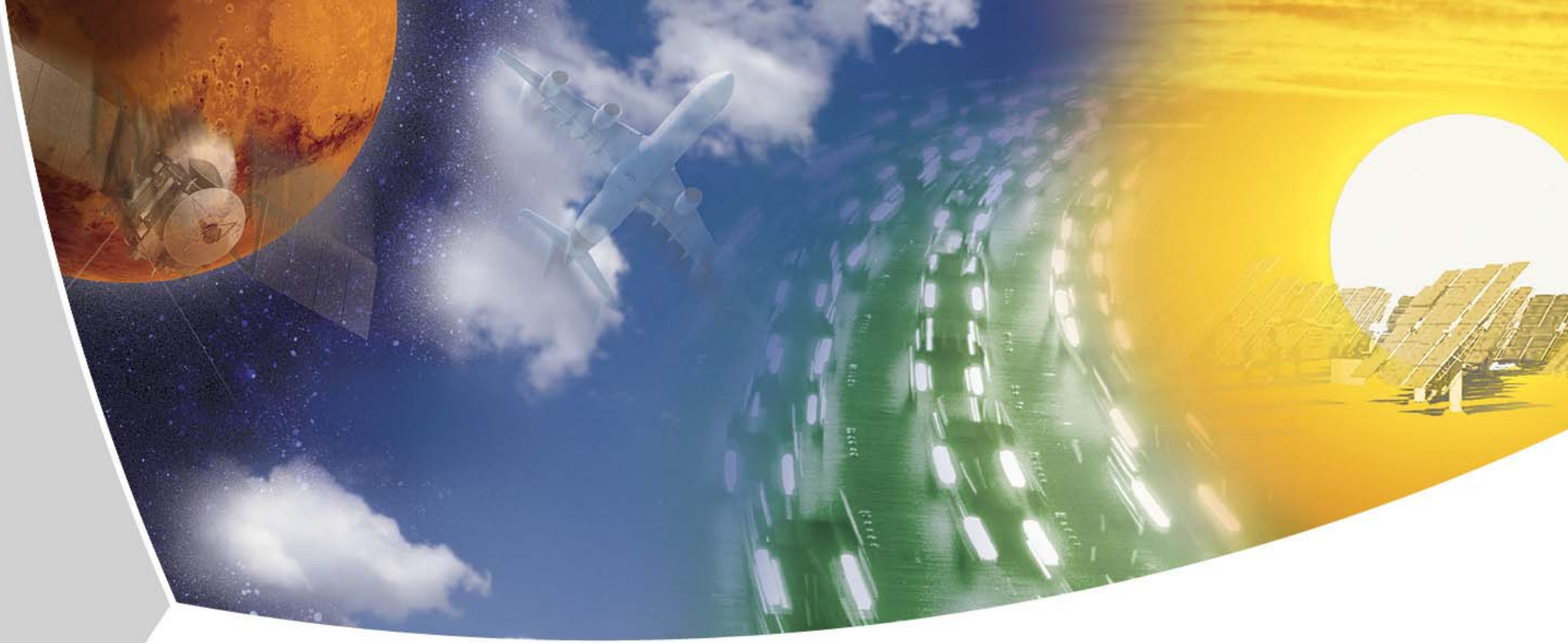

A coherent approach in interpreting the Outer Space Treaties
Challenging a restrictive implementation of National Space Legislation

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A. Introduction

- domestic legal norms dealing with outer space matters
  - agency competences, industry support, etc.
  - National Space Legislation (Art. VI OST)

- Why National Space Legislation?
  - international obligations + non-governmental activities and
  - giving private activities a reliable framework
  - ensuring safety of space activities
  - ensuring jurisdiction over the space object
  - shifting liability to private actors

B. International Obligations

Art. VI (2) OST

The activities of non-governmental entities in outer space (…) shall require authorization and continuing supervision by the appropriate State Party to the Treaty.

1st aspect: AUTHORIZATION of activities in outer space

- activities of non-governmental entities
- if the entity has the nationality of the that State (incorporation or location of its administration)
- or if the entity is undertaking the activity from within the territory of that State
- by a (state) licence, as part of other administrative regulation, within a (public-private-partnership) treaty
- contents: assuring that activity is carried out in conformity with OST and ensuring safety of the activity

B. International Obligations

Art. VI (2) OST

The activities of non-governmental entities in outer space (…) shall require authorization and continuing supervision by the appropriate State Party to the Treaty.

2nd aspect: <u>SUPERVISION</u> of activities in outer space

- by requiring information by the licensee (on a periodical basis or in case of irregularities)
- by withdrawal, variation or suspension of the licence in case of non-observance of its terms and conditions
- by fines and imprisonment in case of non-observance of the regulation or of the terms and conditions of the licence

B. International Obligations

Art. II REG

(1) When a space object is launched into Earth orbit or beyond, the launching State shall register the space object by means of an entry in an appropriate registry which it shall maintain. (…)

(3) The contents of each registry and the conditions under which it is maintained shall be determined by the State of registry concerned.

3rd aspect: <u>REGISTRATION</u> of space objects

- objects for which the State is a launching State
- contents: national discretion
- but: Art. IV REG Each State shall inform the UN SG of the following information … (i.e. national registry might be an entry point, open for additional information)

C. Recommended to Implement

Art. VII OST

Each State Party to the Treaty that launches or procures the launching of an object into outer space (…) and each State Party from whose territory or facility an object is launched, is internationally liable for damage to another State Party to the Treaty or to its natural or juridical persons by such object or its component parts (…).

4th aspect: <u>STATE INDEMNIFICATION</u>

- States are liable for non-governmental launch activities
- States are liable for non-governmental payloads (irrespective when the damage occurs)
- both in addition to national tort law (claim against the person who damaged)
- liable launching State might be interested in taking recourse (legal basis needed) – recourse might be limited

D. Interpretative Issues

trend towards limitation of national responsibility (and liability) by a narrow interpretation of “appropriate State”, “procuring the launch” etc.

- national or international interpretation of the terms of an international treaty?
- creating lacunae – space activities under no authorisation of any State
- neglecting the basic concept to provide a debtor State for third parties damaged by a space object
- endangering the well balanced concept of Artt. VI, VII, VIII OST

D. Interpretative Issues

being responsible for a space activity or being liable for a damage caused by a space object is not disadvantageous

- as the appropriate (responsible) State, the State can control the activity and ensure safety, gets relevant information on the activity
- as a launching State, the State might also become the State of Registry and thus, its jurisdiction applies to the space object
- as a launching State, the State may conclude agreements with the other launching States on the internal apportioning of financial obligations
- as a liable launching State, a State might take recourse against the non-governmental entity under its jurisdiction causing the damage

CONCLUSIONS

- the building blocks and the core contents of National Space Legislation are known and well discussed in recent years
- more and more States become responsible because of growing non-governmental activities in outer space
- some of them have implemented National Space Legislation, other are drafting or started legislative processes
- giving private space activities a reliable framework
- States drafting National Space Legislation are called to remember basic concepts of the Outer Space Treaties, especially by not trying to avoid responsibility and liability by narrow interpretation of some terms within the treaties