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Benefits of Becoming Party to the Treaties and Conducting Activities in Accordance
with the Principles

Panel Discussion

The Liability Convention

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The Convention on International Liability for Damage Caused by Space Objects (Liability Convention) was adopted by the General Assembly on 29 November 1971 by Resolution 2777 (XXVI), and opened for signature on 29 March 1972 in London, Moscow and Washington, D.C. It entered into force on 1 September 1972. Depositaries are the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America. As at 1 January 2005, 82 States are parties to it and two Intergovernmental Organizations made a declaration of acceptance of rights and obligations deriving from the Convention.

It is true indeed that the international community remains far from general acceptance of the Liability Convention, as well as of other UN space treaties, namely the 1975 Registration Convention. Many non-space faring States have not yet accepted the key treaties, including some members of COPUOS. This is the reason why one of the main functions of the LSC is broadening the universal acceptance of the core space law treaties, inviting States to consider the reasons why their ratification and implementation should be considered highly beneficial. At the same time, the LSC should also encourage States that have accepted these conventions to look at the sufficiency of their national laws to implement them.

The benefits to, and rights and obligations of, parties to the United Nations treaties on outer space are multiple. The first and foremost benefit is that space activities must be carried out freely but, at the same time, within a well established legal framework, generally accepted by the large majority of States, in order to avoid any temptation of unilateral practices from space faring Nations.

We all know that this general legal frame was set out by the 1967 Outer Space Treaty (OST), which establishes several fundamental and peremptory principles: the exploration and use of outer space shall carried out for the benefit and in the interests of all mankind; outer space and celestial bodies are free for exploration and use by all States on the basis of equality and in accordance with international law; in the exploration and use of outer space, States shall be guided by the principle of cooperation and mutual assistance and conduct all their activities in outer space with due regard for the corresponding interests of other States. The legal frame was complemented and substantially detailed by the subsequent Conventions, among which stick out the 1972 Liability Convention.

From this point of view, adherence of a State to the United Nations treaties on outer space, especially to the Convention on Liability, will increase its attractiveness to potential foreign partners

seeking international cooperation in the exploration and use of outer space and increase its involvement in international cooperation mechanisms and, as a consequence, improve its access to scientific, meteorological and other space related data. It will also increase its confidence in the safety of space activities as the OST require States to bear international responsibility for national activities in outer space and to provide the necessary authorization and supervision of such activities in line with the principles set forth in the treaties.

In particular, adherence to the Liability Convention provides international rules and procedures for the peaceful settlement of disputes and for claiming compensation. It guarantees the protection of the interests of States and their nationals who fall victim to damage caused by space objects. It is well known that the Liability Convention was adopted to give the maximum assurance that a launching State which has ratified the Convention will pay a just claim and to encourage space powers to deal equitably with justified damage claims from claimant States. In some way, Space States' responsibility and liability are a counterpart for the freedom of exploration and exploitation of outer space. Activities in outer space are in fact ultra hazardous activities, because they take place in a very special environment from a technical point of view.

The Convention depicts a victim-oriented discipline of absolute responsibility/strict liability for damages caused by space objects on the surface of the Earth or to aircraft in flight. Indeed the fundamental aim of the Liability Convention is mainly to regulate the liability for damage to "innocent" victims not taking part in space activities. This is why the Convention imposes, always in the interest of the victim, joint and several liability on the multiple launching States and each launching State may present claims for indemnity from other launching States or to appropriation their liability by agreement.

Another important benefit deriving from becoming party to the Convention is that only States parties to it can resort to the procedures and mechanisms for obtaining compensation in case of damage. Article VIII, para. 1, gives to a State which suffers damage, or whose national or juridical persons suffer damage, the possibility to present to the liable launching State a claim for compensation for such damage. The claim can be presented not only by the State of nationality of the victim, but also, as a further guarantee for the victim, by the State in whose territory the damage was sustained or by the State of which the victim is permanent resident.

Thus, only a State party to the Convention can present a claim for compensation for damage to a launching State through diplomatic channels. If no direct agreement is reached, only States parties to the Convention can recur to the Claims Commissions mechanism. Each State party to the Convention and party to the dispute concerning compensation can unilaterally request the establishment of such a third-party mechanism, composed of three members.

Adherence to the Liability Convention proves indeed to be highly beneficial, not only for States that are involved directly in space activities, but also for States that are not currently carrying out activities in outer space, because they can be victim of damage caused by space objects to the surface of the Earth or to aircrafts in flight. In the case of the re-entry of the Italian satellite Bebbosax, in 2003, the Italian government informed several equatorial States of the potential risk of damage, in order to prepare all possible counter measures in their territories. Luckily no damage was caused by the fragments of the satellite, which splashed down into the Pacific Ocean the April 29 2003. But, have a damage occurred, only States parties to the Liability Convention could have pretended the compensation according to the rules and procedures set out by the Convention itself.

Another benefit deriving from adherence to the Liability Convention, is that it push the parties to enact national legislation implementing it, in relation to claims for damage suffered by nationals and

covered by the 1972 Convention, paving the way for the progressive development of national space law.

Finally, only States parties to the Convention can participate in further law-making to develop the existing regime and to authoritatively interpret it.

In conclusion, a generally accepted legal regime for Liability for damage caused by space objects is a main tool for increasing international cooperation among space faring and non space faring nations in the exploration and use of outer space, in a spirit of reciprocal trustiness. A common rule of law is always the better way for increasing mutual confidence and for carrying out space activities for the benefit of all humankind.