Responsibility and liability for national space activities

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Introduction

- 1957 Sputnik I ➔ 1963 Declaration on Principles ➔ 1967 Outer Space Treaty
  - Entry into force within 9 months
  - 101 ratifications & 26 signatures
    - Including ≈ all space-faring nations
  - 'Law-making' nature
    - Focused on a 'geographical area'
    - Cf. also Antarctic Treaty-regime
  - ⇔ Applicability also to non-parties …?

Legal status outer space

- Art. II: no national appropriation

& Art. I: 'province of all mankind'

➔ Freedom exploration & use, as long as peaceful, & beneficial to all states (cf. also Artt. III & IV)

🡐➔ Contrast to sovereign airspace

➔ Need for a boundary (at least in theory)

➢ Gradual convergence on ± 100 km altitude

Art. VI: responsibility (1)

- "International responsibility" …
  - Includes responsibility IGOs

… "for (…) activities in outer space"

  - Ref. boundary airspace–outer space

Note: Equation non-governmental with governmental activities

← → General public international law

- (Direct) state responsibility *versus* 'due care' / 'due diligence' responsibility

Art. VI: responsibility (2)

… "in conformity with (…) the (…) Treaty"

- By inference: rest of space law as well
- ➔ Trigger: ***'internationally wrongful act'*** (ILC)

& Authorization & continuing supervision

- Over non-governmental activities
- By "appropriate State"

➔ ***Strong suggestion*** to establish national space law in that respect

Art. VI: responsibility (3)

- The main issue: "***National*** activities in outer space" …?
  - Three generic options:
    1. 'Activities by nationals'
    2. 'Activities for which state is also going to be held liable' (***more in a minute***)
    3. 'Activities from within jurisdiction' – i.e. by nationals and/or from national territory & quasi-territory
  - Various states have chosen various options in implementing

Art. VII: liability (1)

- ***State*** liability
  - ←→ Normal practices (inter)national law
  - ➢ Fourfold criterion ("launching State")
    1. State that launches object
    2. State that procures the launch thereof
    3. State whose territory is used for the launch thereof
    4. State whose facility is used for the launch thereof

→ ***Strong suggestion*** to establish ≈ national space law in that respect

Art. VII: liability (2)

- 1972 Liability Convention elaborates:
  - Absolute liability: damage on ground / in air
  - ←→ Fault liability: damage in space
  - Liability (compensation) in principle unlimited
  - Possibility of private claims not interfered with
  - State claims: for nationals, for damage on its territory, for permanent residents
  - Dispute settlement system: the Claims Commission – but not necessarily binding

Art. VII: liability (3)

- The main issues:
  - Damage caused to state or its persons
    - Generally environmental / indirect / commercial damage not considered included
  - Damage caused by object / component parts

    Note: So **not** *damage caused by* **activities**
  - Private involvement in launch, procurement & launch facilities offered
  - Again, various states have chosen various options in implementing

Concluding remarks

- Unique (& beneficial) system of state responsibility & state liability matches general freedom of space activities
- Interaction responsibility – liability problematic:
  - Both about 'accountability', but different mechanisms for allocation of ***private*** space activities