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The legal concept of the "launching State"

The UNGA Resolution 59/115 of 10 December 2004 and its impact

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Definition of the „launching State" (Art. Ic Liability Convention and Art. Ia Registration Convention):

„The term ‚launching State' means:

i) A State which launches or procures the launching of a space object;

ii) A State from whose territory or facility a space object is launched;"

Problems of applying the „launching State" concept with regard to the then upcoming „SeaLaunch" venture:

State: private company registered in the Cayman Islands
consortium of companies from various countries

Territory: platform on the high seas

Facility: platform registered in Liberia

Is the concept of the „launching State" still adequate and does it still cover all forms of space activities, including the new private ventures?

A quick reaction to tackle the problems emerging from SeaLaunch (quite unusual!):

1997	Initiation of discussions in academic circles (Kerrest in IISL)
1998	Part of a European proposal in UNCOPUOS to improve the Registration Convention
1998	Informal intersessional consultations in Bonn
1999	Decision to set up a Working Group in UNCOPUOS
2000-2002	Conduct of the Working Group „Review of the concept of the ‚launching State'"

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Output of the Working Group:

→ Compilation of delegation's presentations (AUS, CHN, GER, F, IND, J, RUS, SWE, UK, US, ESA, ILA)
→ Compilation of relevant national regulations and international agreements
→ Two analyses by the Secretariat (on national space legislation and on the concept of the „launching State")
→ „Conclusions"

These are reference material for legal analysis and on the application of the concept containing also proposals for further actions

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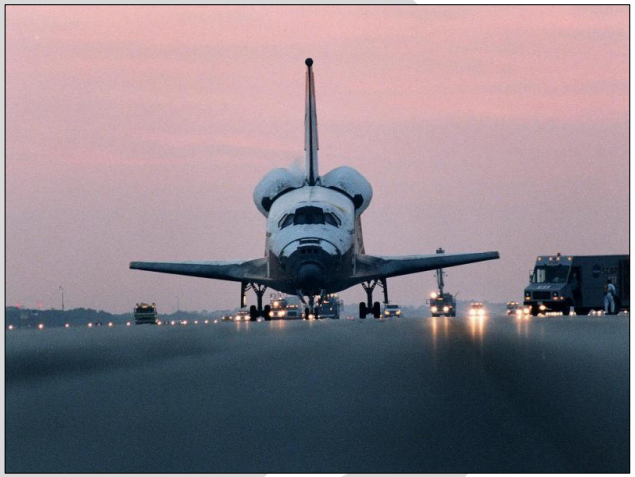
Questions discussed in the Working Group relating to the application of the concept of the „launching State":

a) Issues relating to territories and facilities
b) „Procuring" the launch
c) Reusable launch vehicles
d) Jurisdiction and control
e) International organizations



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a) Issues relating to territories and facilities

→ a State „only" provides its territory for launch activities
→ launches from international territory (high seas)
→ launches from aircraft
→ questions related to property of „facilities"

b) „Procuring" the launch

→ different versions in Englisch (meaning „buying") and Russian (meaning „organizing")
→ delivery-in-orbit

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c) Reusable launch vehicles

→multiple use of one vehicle to be regarded as different launches? US is practising this

d) Jurisdiction and control

→ specific application in NPS Principle 2,1 („... a State which exercises jursidiction and control over a space object with NPS on board at a given point in time relevant to the principle concerned.")
→ does the „launching State" usually has „control"?
→ transfer of property in orbit

e) International organizations

→ if IOs have not declaraed their acceptance of the treaties and if less than half of their members are parties to the treaties: who is the „launching State"?
→ privatization of IOs

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The „Conclusions" of the Working Group contain:

→ description of the work and output of the Working Group
→ list of questions related to the interpretation of the concept of the „launching State"
→ the Building Blocks for national space laws from „Project 2001"
→ three Recommendations

The reports of the Working Group of 2000, 2001 and 2002 also contain:

→ specific views of member States (without naming them) and approaches for interpretation (e.g. transfer of property in orbit)
→ expression of national interests (e.g. with regard to different „launching States" for different phases of space activities)
→ depiction of differing views (e.g. licensing of companies of one country operating from outside its territory)

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The three Recommendations of the Working Group
contained in the „Conclusions":

First Recommendation (para.10): „The Working Group recommended that States conducting space activities consider steps to implement national laws to authorize and provide continuing supervision to activities of their nationals in outer space and implement their international obligations under the Liability and Registration Conventions and other international agreements. (...)"

Second Recommendation (para. 14): „ The Working Group recommended, following common practice, that States consider the conclusion of agreements according to Article V, paragraph 2 of the Liability Convention for each stage of a mission with respect to joint launches of cooperation programmes."

Third Recommendation (para. 18): "The Working Group recommended the consideration of harmonizing voluntary practices that would provide useful guidance in a practical context to national bodies implementing the United Nations treaties on outer space."

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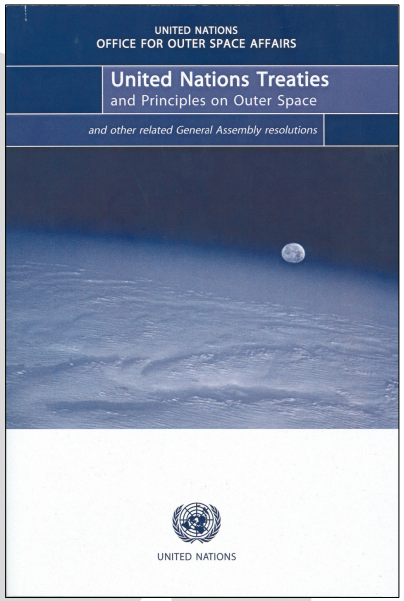
The follow-up:

2003-2004 work on the transformation of the working group conclusions into a UN General Assembly Resolution

- higher visibility
- higher level of status
- better chance for further follow-up



The operative part of the Resolution:

The General Assembly

„1. Recommends that States conducting space activities, in fulfilling their international obligations under the UN treaties on outer space, in particular the Outer Space Treaty, the Liability Convention and the Registration Convention, as well as other relevant international agreements, consider enacting and implementing national laws authorizing and providing for continuing supervision of the activities in outer space of non-governmental entities under their jurisdiction;"

„2. Also recommends that States consider the conclusion of agreements in accordance with the Liability Convention with respect to joint launches or cooperation programmes;"

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„3. Further recommends that the COPUOS should invite Member States to submit information on a voluntary basis on their current practices regarding on-orbit transfer of ownership of space objects;"

„4. Recommends that States consider, on the basis of that information, the possibility of harmonizing such practices as appropriate with a view to increasing the consistency of national space legislation with international law;"

„5. Requests the COPUOS, in making full use of the functions and resources of the Secretariat, to continue to provide States, at their request, with relevant information and assistance in developing national space laws based on the relevant treaties."

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Impact of the Resolution:

→ Member States have to implement the Resolution (but no binding obligation to do so); the follow-up can be national, regional (e.g. ESA) or global (UN)

→ Could lead to safer space activities and make the liability system more reliable and stable

→ Could avoid „flags of convenience" and provide a level playing field for private space activities

Further follow-up:

→ Establishment of a new agenda item in the LSC related to the working group's discussions: „Practice of States and international organizations in registering space objects", which finalized its work in 2007 with a UN General Assembly Resolution

→ Each Recommendation could become an agenda item of its own in UNCOPUOS with e.g. the task to draft model agreements or texts in order to achieve a harmonized legal environment; already new agenda item on national space legislation 2008-2011

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