United Nations/Islamic Republic of Iran Workshop on Space Law
"Role of International Space Law in the Development and Strengthening of International and Regional Cooperation in the Peaceful Exploration and Use of Outer Space"
Tehran, Islamic Republic of Iran
8-11 November 2009

Current and future development of International Space Law.

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Introduction

Presenting the future is quite difficult.
I have little capacity to predict future.

I will make a distinction between

- short term (part 1)
- and long term (part 2) prospect
- and will have a look to ways to create the necessary legal framework (part 3).

Part I
Looking to short or medium term future.

Taking into consideration the evolution of space activities

Easing the application of current space law.

Sharing the burden of the risk among Launching States.

One of the main difficulties to implement the Liability Convention is caused by plurality of Launching States.

It makes many States potentially liable in case of damage caused by a Space Object.

For the time being the agreements passed according to article 5 of the Liability Convention are rare.

This may be very detrimental in case of privately launched or procured launches of Space Objects.

Launching States have to be in a position to control the activities of their private companies when they make them liable Launching States.

Without agreement between Launching States, the situation may become quite difficult.

Let me take an example: The French telecommunication company Eutelsat wishes to have one of its satellites launched from Baïkonour by ILS.

As the State procuring the launch, France is one of the Launching States for this satellite

As a consequence, according to the 2008 French Space activity Act this launch has to be controlled and accepted by the French authorisation authority (French Ministry of Research under the advise of CNES the French Space Agency).

The necessity of such a control is quite obvious because France may be held liable for this launch without limitation even for the launching phase itself for which France has no control.

But this control is impossible. Would the Russian accept a real and efficient control of their launching facilities especially if this is conducted by CNES which has its own launching facilities directly competing with Russians?

No!

The control is impossible but is still required in a very new law.

The solution is in agreements between potential launching States.

In this case, by agreement, potential Launching States should share the burden of the risk (not the liability) between Launching States (cf. article 5 of the Liability Convention)

The basis of this agreement may be at least to make a distinction between two phases: the launching phase as such, for which the burden of the risk should be brought by the State which launches (here Russia) and the in orbit phase for which the procuring Launching State (here France) should pay. Reciprocal guaranties may be accepted in case of a claim to the other Launching State.

Article 5 of the Liability Convention should be respected, this agreement have of course no effect to the rights of potential victims and do not change the liability of every Launching States and its join and several character.

According to article V of the Liability Convention, the States involved in space activities should enter into discussion.

Model agreements may be proposed by IISL or ILA or even by the legal sub-committee and UN GA itself

Registration and transfer of ownership of space objects in orbit.

The second question is more complex as it comes from a difficulty which derives from a problem in the treaties.

As we know, there are three links between a space activity and States.

- This activity is a "national activity in Outer Space" for which the State is "responsible" (OST article VI)
- This activity make one or several States liable "Launching States" (OST article VII and Liab. Conv.)
- This activity will require a satellite to be registered by one of the Launching States (article 1 of the Registration Convention)

Case one: Current situation: no change of ownership

Example: State A, B and C are Launching States for a satellite

Situation at time 1 (launch)

State A is the State of nationality of the company owning the satellite, according to UN resolution 2007 it registers it.

State A is the State responsible for this "national activity", it is one of the liable Launching State (Liab Conv) it is the State of registry and thus have jurisdiciton and control over the satellite.

Everything is OK.

Situation at time 2: the satellite is sold during its stay in orbit.

Legally speaking there are two different situations:

- **Either the satellite is sold to one of the Launching States (or to one of its companies)**
- **Or the satellite is sold to a State or one of its companies which is not one of the original Launching States**

Case two: Change of ownership to a State which was one of the original Launching States.

If this satellite is sold to a State or a company under the jurisdiction of a State which was a Launching State of the object.

- **According to the Registration Convention and to current practice , the registration of the satellite may be transferred from A to B. (cf. Asiasat from UK to China)**
- **State B is then the State of "National Activity", it is still a Launching State (as remains A), it register the satellite and thus enjoy jurisdiction and control over the satellite.**

The situation is OK the satellite is now clearly under responsibility, jurisdiction and control of State B.

Case three: Change of ownership to a State which was not one of the original Launching States.

If this satellite is sold from State A to State X which is not one of the original Launching States, the situation is quite different.

According to article 1 of the Registration Convention, only one of the Launching States can register the object and have jurisdiction and control over it (OST article VIII).

The second State (here State X) cannot register the object.

The situation become rather uneasy:

States A,B,C are for ever "Launching States" of the object.

State X is responsible for the "national activity"

State A is still the State of registration of the satellite and have jurisdiction and control over it.

In order to avoid being liable without having any control over the satellite, many space legislation demand an authorisation for such a transfer of ownership (US, Belgian French etc..)

This may be difficult to obtain as State A will be liable without having any control over the activity and satellite.

This obligation may block transfer of ownership of satellites in orbit and of course limit the possibility of implementation of the proposed UNIDROIT protocol

Is there a solution?

If Member-States of the COPUOS understand the difficulty and agree on the necessity to have a solution without putting at risk the treaties there is perhaps a solution.

The problem lies on the registration of the object and on the impossibility for a State which is not one of the Launching States to register it and therefore have jurisdiction and control over it.

For the time being it is impossible to foresee an amendment to the Registration Convention, this would be inacceptable for most States.

With some good will there is perhaps a solution:

If the States so agree, the COPUOS may propose to the UN General Assembly to ask the UN Secretary General to accept a change of registration of a space object even for the benefice of a State which was not an original Launching State …

as far as

- **the former State of registration so agree and that**
- **the new one accept the obligations of a Launching State.**

I am quite aware of the fact that this solution is a "dynamic" interpretation and application of article 1 of the registration convention.

- **It is very much in conformity with the aims and purposes of the Registration , the Liability and Outer Space Treaties**
- **It strengthens the protection of potential victims of a damage as it makes a new liable (Launching) State much more able to control the object and avoid damage.**
- **It improves the situation of the State formerly registering the satellite which may pass an agreement with the newly registering State. By this agreement both States may agree to transfer the risk from the first registering to the next one. (agreement referred to at article V of the Liab. Conv)**
- **It enables the State of the new owner to have jurisdiction and control over the satellite for which activities it is responsible for, (OST article VI).**

If this solution were agreed upon:

- **State A,B,C, and X would be liable Launching States for this object**
- **State X would be the State of "national activities in Outer Space"**
- **State X would register it and have jurisdiction and control over it.**
- **State X would guarantee the former State of registration (and may be others) in case of an action by a victim in case of damage.**

We are back in the first and most efficient situation.

Part II
Long term Development of International Space Law

International management of space activities.

Orbits around the Earth

The Moon, Mars and other celestial bodies.

- **Space traffic management- Space debris mitigation**
  - **The necessity of real implementation of the code of conduct.**
  - **It may be sufficient but if not it will be necessary to have more strength rules**
- **Militarisation and Weaponisation of Outer Space**
- **The Moon, Mars and other celestial bodies.**
  - **Implementation of the principle of non appropriation**
  - **Mining the moon and other celestial bodies**

- **Space traffic management- Space debris mitigation**
  - **The necessity of real implementation of the code of conduct.**
  - **It may be sufficient but if not it will be necessary to have more strength rules**
  - **Necessity of Environmental Impact Assessments**

- **Militarisation and Weaponisation of Outer Space**
  - **Necessity to decide to limit arm race**
  - **Necessity to prohibit Weaponisation of Outer Space**
  - **Necessity to control efficiently the accepted rules (cf. Antarctica)**

The Moon, Mars and other celestial bodies.

- Protection of the environment (cf. Antarctica)
- Implementation of the principle of non appropriation
- International regime in case of mining or other potentially harmful activities.

Part III
The ways of this evolution

The ways of this cooperation:

- **Bilateral agreements**
- **Resolutions of UN GA**
- **Codes of conduct**
- **intergovernmental treaties**
- **Creation of an International Intergovernmental Organisation.**

- **Sharing the risk of space activities between Launching States:**

  A series of bilateral agreements (perhaps from some model proposed at the COPUOS level)

Changing the registration of a space object.

Resolution(s) of UN GA

- **Mitigating space debris**
- **Ruling traffic management**
  - **Codes of conduct which are not compulsory but create strong impetus to behave the right way.**
  - **Perhaps some accepted general principles as UN-GA resolution(s)**

- **Limiting arm race**

  In the case of non Weaponisation of Outer Space:

  - **intergovernmental treaties like NPT**
  - **with a strong international control mechanism. (cf. Antarctica)**
  - **Perhaps creation of an international body (Antarctica)**

- **In a long time perspective:**
  - **Creation of an International Intergovernmental Organisation**
  - **(ICAO – IMO)**

Conclusions

The need to cooperate in good faith.

Reasons of optimism:

The practical necessity

- **necessity to avoid pollution of Outer Space**
- **uselessness of weaponisation of Outer Space**
- **necessity to avoid arm race**

The general interests of Peoples and States

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