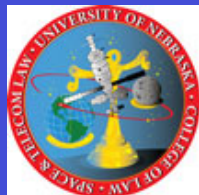


Responsibility and liability for national space activities

Prof. Dr. Frans G. von der Dunk
University of Nebraska-Lincoln, College of Law



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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 ...?



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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



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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



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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



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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



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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



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