

# 'Flags of convenience' & the issue of US leadership in lower cost access to space

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'Flags of convenience' & US leadership in access to space

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# Welcome to Lincoln



# 'Flags of convenience' ...?

## ■ Law of the sea

- 1958 High Seas & 1982 UNCLOS III
- Pertained to private operators commercial fleets
- Lack of 'genuine link' → lack of 'genuine' jurisdiction & control for safety a.o. purposes
- ➔ 'Cheap flags' & license shopping
- ➔ Both ecological & economic threats!



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# ...in outer space?

## ■ Private commercial – satellites/cargo

- Since 80s: Arianespace & a few US operators
- Then: former Soviet & Chinese entities
- ➔ Efforts to arrive at 'global level playing field'
- New US developments: Space-X & COTS

## ■ Private commercial – manned

- Virgin Galactic & XCOR (& perhaps others)
  - ◆ Prospectively 'launching' from US, Curacao, Sweden, potentially various other sites
  - ◆ Next step: sub-orbital transportation?



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**Whose junk is this?**

**Who can be held liable  
for it?**



# Legal regime...? (1)

## ■ Outer Space Treaty

- Responsibility & liability for private space activities → licensing required (incl. liability)

## ■ Liability Convention

- Unlimited liability at the international level

## ■ Registration Convention

- Limited scope, limited info, flawed practice
- No 'genuine link'; generic exercise jurisdiction & control required – hardly detailed standards



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# Legal regime...? (2)

## ■ US Commercial Space Launch Act

- 1984/1988 for satellite/cargo launches
- 2004 Amendments for manned
- Elaborated in 14 C.F.R.
- 3<sup>rd</sup> party liability: MPL & max max 500 M US\$
- Cross-waiver between parties involved in launch
- Does *not* include crew/spaceflight participants  
→ 'informed consent' → Six US states with their own statutes



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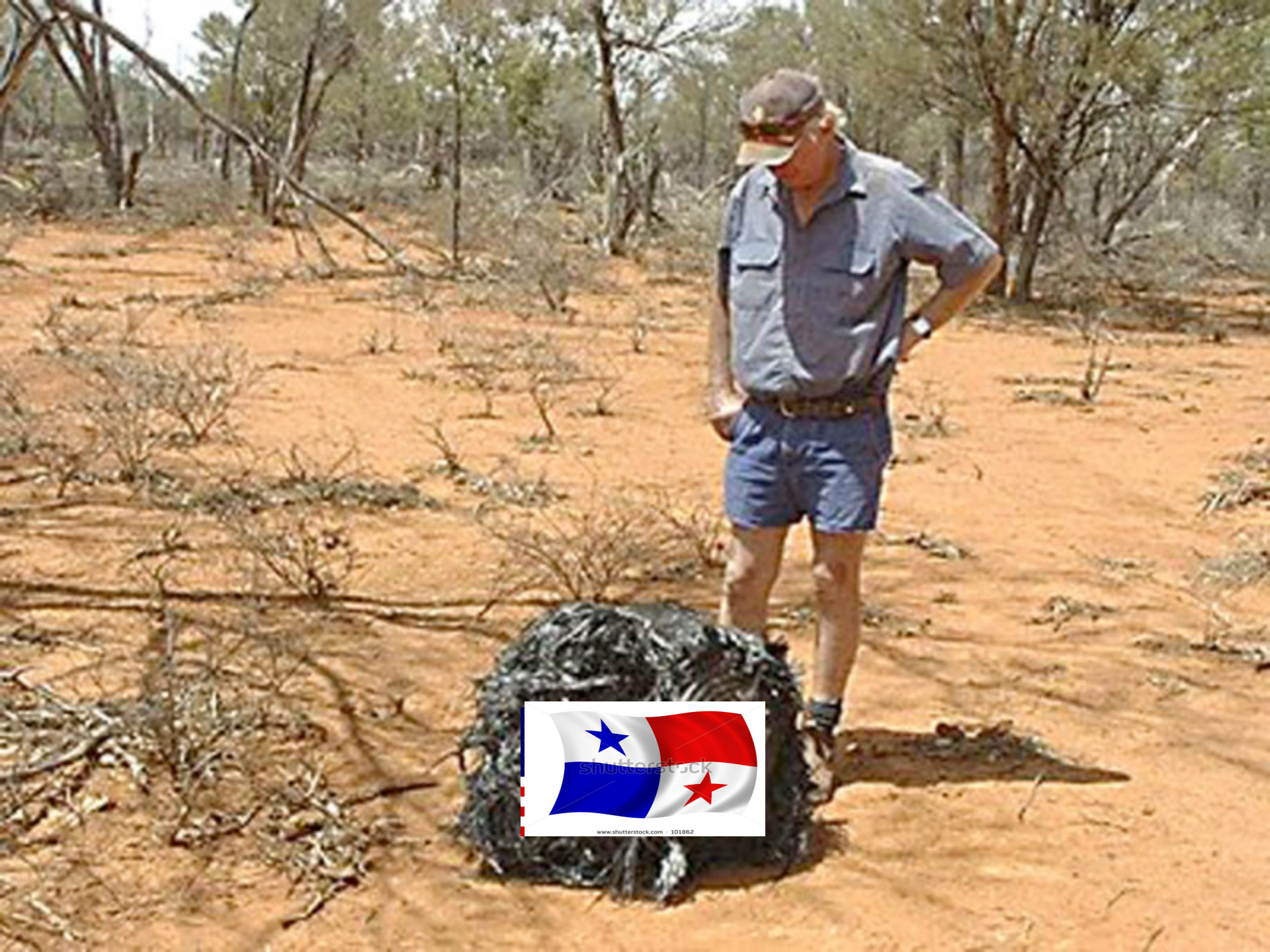
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# Legal regime...? (3)

- Other nations on 3<sup>rd</sup> party liability
  - Australia – MPL & max max ± 800 M US\$
  - France – max ± 65 M US\$ to ± 90 M US\$
  - Austria – max ± 80 M US\$
  - South Korea – max ± 175 M US\$
  - UK – in practice max ± 80 M US\$
  - Handful of others: no figures mentioned
  - Insurance (only) sometimes obligatory
  - Many more states: no licensing regime at all



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# US policy analysis

## ■ Recent GAO report to Congress

- “FAA Should Update How it Assesses Federal Liability Risk”
- Ref. Chinese (cap of  $\pm$  100 M US\$) & Russian (caps of  $\pm$  80 M resp. 300 M US\$) practice
- Claims US provides less liability coverage than others – as (anti-)competitive factor
- No 3<sup>rd</sup> party liability whatsoever so far (...)
- “Inaccurate MPL value could increase cost to launch companies” as more insurance needed



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# Questions

- Is 3<sup>rd</sup> party liability major (anti-) competitive factor for US industry?
- Does/could it rise to the level of 'cheap flags of convenience'?
- Would international agreement help addressing such concerns?
- Could there be a role for the WTO/ GATS in this context?



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