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THE SPACE LIABILITY CONVENTION: SCRAP IT?

FIX IT? OR WORK AROUND IT?

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Siebert:

“Although Canada has had a number of relatively precise space policies and approaches specific to relevant federal departments and agencies, an overall framework that connects them has not been established.”

Gillon:

“The Canadian example is illustrative in how national law can incorporate international commitments and standards.”

John et al:

“...responsible space-faring nations have taken it upon themselves to transform most rules, norms and standards into customary international law by prescribing them in their various national space legislations. ...Examples of these countries are Nigeria and South Africa.”

South African *Space Affairs Act*, section 11

- (1) No person shall perform the following activities, except in terms of a licence issued by the Council, namely –
- (a) Any launching from the territory of the Republic;
 - (b) Any launching from the territory of any other State by or on behalf of a juristic person incorporated or registered in the Republic;
 - (c) The operation of a launch facility;
 - (d) The participation by any juristic person incorporated or registered in the Republic, in space activities –
 - (i) Entailing obligations to the State in terms of international conventions, treaties or agreements entered into or ratified by the Government of the Republic; or
 - (ii) Which may affect national interests;
 - (e) Any other space-related activities prescribed by the Minister.

Canadian *Remote Sensing Space Systems Act*, sections 5 & 6

5. No person shall operate a remote sensing space system in any manner, directly or indirectly, except under the authority of a licence.

6. Section 5 applies also to the following persons with respect to their activities outside Canada:

- (a) Canadian citizens;
- (b) permanent residents;
- (c) corporations that are incorporated or continued under the laws of Canada or a province; and
- (d) members of any prescribed class of persons having a substantial connection to Canada related to remote sensing space systems.

Mayence:

It would be a mistake to consider that the provisions of the five United Nations treaties constitute the only sources of national space legislation. ... [Such legislation] is largely based on other instruments, such as national space policies, administrative law and what is commonly referred to as “non-binding norms”.

Examples:

UN Resolution on Principles relating to Remote Sensing of the Earth from Outer Space (Sensed states rights).

UNCOPUOS Space Debris Mitigation Guidelines. ... They ensure a certain level of harmonization among space operators at global level.

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Liability Convention - Belgian legislation deals with the issue of Government liability based on the actions of its nationals, and the right of such nationals to be heard in the adjudication process.

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OR WORK



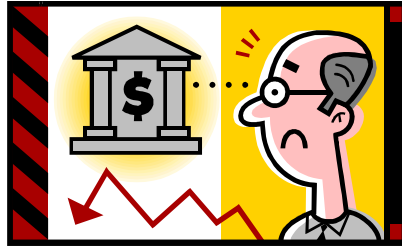
AROUND IT?

Commercial operators (including states that operate spacecraft and receive compensation in money or a *quid-pro-quo*), don't worry much about ...

- The Outer Space Act
- Agreement on the Rescue of Astronauts and the Return of Objects
- Convention on Registration of Objects Launched into Space
- Principles Related to Remote Sensing
- etc.



What gets their attention?



Q. What gets their attention?

A. **THE LIABILITY CONVENTION!**

Article I The term “damage“ means ...

Article II ...launching state shall be absolutely liable to pay compensation ...

Article III ... damage caused elsewhere ... the latter shall be liable ...

Article IV ...the first two states shall be jointly and severally liable ...

Article V ... the right to present a claim for indemnification ...



The Liability Convention A product of the 60s



Absolute liability for damage on Earth
At Fault liability for damage in space

Proportionate liability to a third state

Launching state }
Procuring state } All jointly liable
State launched from }
State's facility used }

Joint launching states negotiate
indemnification agreements in advance.



Problems today

“Launching state” concept

- No need for launch territory and launch facility to remain “on the hook” for decades after the launch.

Example: Soviet satellites launched from Baikonur facility in Kazakhstan

- There is no capacity to add new states to the roster of “launching states”

Example: Canadian company Blackbridge acquired the German owned Rapid-Eye satellites. Canada is not a “launching state” under Liability Convention.

Kessler syndrome – debris fragments unidentifiable

- Millions of debris fragments out there. Impossible to positively identify the launching state. Some pieces of debris may be the result of earlier “at fault” collisions, but others may be “innocent” third party victims of collisions.



“Component parts” are space objects, each with a launch history

- Example: International Space Station is made up of component parts, each with its own launch history. Injured party must identify the component part that caused the injury.

Note: The 14 Partner states of ISS have executed cross-waiver of liability. They do not want Liability Convention to apply to them.

Under *Liability Convention*, Claims Commission cannot proceed without identification of the launching state



- Commission does not have the investigatory authority of a civil law juge d'instruction

Recovery of *Liability Convention* payouts triggered by one of a state's nationals

- Not as easy as it sounds. Must have domestic law in place.
- National may object to a settlement by state without chance to defend itself
- State may not agree to let national have carriage of action
- Insurer may challenge liability
- Decades later, national or insurer may be insolvent, non-existent

Limited coverage of damages

- Liability Convention does not appear to cover injury other than collisions.
- Not things like eclipsing, radio interference

Remedies?

- *Clausula rebus sic stantibus*
- Re-draft
- Continue with the work-arounds



Thank You
