

## Is the legal concept of "launching State" still adequate?

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My introductory statement at this panel discussion will deal with the most recent discussions on the adequacy of the legal concept of "launching State" as it is contained in the Liability as well as the Registration Convention. This subject provides an interesting case for the emergence of a legal problem, its identification by academia and in practice and how ESA became the forum for the development of a policy-initiative to solve, or at least to approach the problem in a structured way in UNCOPUOS, the UN Committee on the Peaceful Uses of Outer Space. In addition to that, the discussion on "launching State", while conducted primarily in the framework of international organizations, will have decisive impact on States themselves in that the prospective result of the debate will produce strong pressure on States to draft national space legislation.

### 1. The problem

The legal concept of "launching State" is contained in Article I of the 1975 Registration Convention, which reads as follows:

"For the purpose of this Convention:

(a) 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;(..."

This concept rests on the assumption that, first, in any launch activity a State is involved or at least properly exercises his responsibility for activities of non-governmental entities of his country stemming from Article VI of the 1967 Outer Space Treaty and/or, secondly, that a State can be linked to the spot from where a space object is launched. These assumptions have been valid so far, but today we are facing two major challenges. First we have a growing number of commercial space activities, while we can not be sure that they are either properly licensed by States or that they can be traced to a State if they are - just for example - companies registered in some tax-havens. Secondly we have two cases of satellite launches from the high Sea - the one is Sea Launch, the other one are the submarine-based launches by Russia - where the territorial principle can be, but must not necessarily be blurred, if we have a clear indication of the flag of such installations. So far, such concrete ventures are quite under "legal control" - but the cases, where we will have one or more legal gaps in tracing the responsible and consequently unlimited liable State in cases of accidents, will certainly materialize.

## **2. The European initiative to improve the Registration Convention of March 1998**

Having realized that problem, which has first been brought up and analyzed by academia - particularly thoroughly by our colleague Armel Kerrest - the Member States of ESA deemed it necessary to approach it with a policy-initiative. It is a very promising sign that Member States almost naturally agreed that such a subject should not be pushed by single States but that a coordinated approach should be applied. This led to consultations and coordination in ESA's International Relations Committee, which produced to a joint European working paper for the UNCOPUOS Legal Subcommittee in 1998. The co-sponsorship of this paper, presented by Germany in the name of the ESA Member States, also comprised the Southern and Middle Eastern European countries having signed cooperation agreements with ESA - I particularly want to stress this fact, because it does not only constitute an important political signal but it can also be regarded as a concrete result of the 1997 ECSL Colloquium of Prague.

The European proposal (UN Doc. A/AC.105/C.2/L.211) contained a number of suggestions how to improve the Registration Convention. After having a first round of discussion in the Legal Subcommittee in March 1998, the UNCOPUOS Main Committee in June 1998 singled out the question, whether the legal concept of the "launching State" should be discussed further. Agreement was reached that intersessional consultations should be held before the 1999 session of the Legal Subcommittee to coordinate the views and expectations of interested States.

## **3. The "intersessional consultations" on the concept of "launching State" in Bonn in December 1998**

These intersessional consultations took place in December 1998 in Bonn and were attended by more than twenty States as well as ESA. An agreement was reached to propose the introduction of a new agenda item "Review of the concept of 'launching State'" in the Legal Subcommittee under a three-year work plan in a working group beginning in the year 2000 with the following structure:

2000: Special presentations on launch systems and ventures in both Subcommittees.

2001: Review of the concept of the "launching State" as contained in the Liability Convention and the Registration Convention as applied by States and international organizations.

2002: Review of measures to increase adherence to the Conventions and to promote their full application."

These results were presented to the 1999 Session of the Legal Subcommittee a few weeks ago (UN Doc. A/AC.105/C.2/1999/CRP.3). A full debate will take place at the meeting of the UNCOPUOS Main Committee in July preceding UNISPACE III. We, the co-sponsors of this initiative are very optimistic that we will succeed in putting this subject on the agenda of the Legal Subcommittee (which will constitute the first addition of a legal subject on this agenda for more than a decade! - deliberately categorizing "Space Benefits" as a more political than legal subject). This is the precondition for a structured debate expected to lead to concrete results, meaning a clarification of the concept of "launching State" possibly through an additional protocol or an explanatory General Assembly Resolution.

#### 4. The consequences for international and national space law

We do not yet have a precise picture of the outcome of the deliberations on the concept of "launching State" in UNCOPUOS. Much will depend on the presentations and the initial analysis of the legal problem. What can already be regarded as a success is the fact that we are still able to invigorate the work in the UNCOPUOS Legal Subcommittee - which is a particularly positive sign in view of the discussions to be held on the future development of space law at UNISPACE III.

Another highlight resulting from the just described process is that ESA establishes itself as a driving force for the development of space law. One additional aspect, however, concerns the single member States. Whatever the result of the deliberations in the field of international law will be, one thing will be made perfectly clear: that States have to develop their national space legislation, which would implement practices of licensing space activities of non-governmental entities in order to fulfill their obligation to properly authorize and supervise such activities. While there does already exist a national space law in the UK and in Sweden, the other European States have to tackle that problem rather soon. In order to harmonize their approaches, nothing seems more reasonable than to coordinate inside the ESA framework (possibly in an interplay with the European Union, which could prepare some kind of recommendation, framework regulation or directive for the development of national space legislation). ESA could in that way not only contribute to the development of international but also of national space law.

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