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Liability issues in Current Space Activities. Evolution or Revolution?

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Introduction

Main elements of the Liability mechanism in Space Law.

- The Liability Convention
 - Damage on Earth (absolute liability of the Launching State)
 - Damage in orbit (fault liability of the Launching State)
 - Liability without any ceiling either in amount or in time
 - No exoneration (only gross negligence or wilful misconduct of the victim)
 - If more than one Launching State : Joint and several liability
 - Settlement of dispute State to State negotiation / Claims Commission

The victim may choose other ways to obtain compensation

- Against the private operator before a domestic judge under domestic law
- Under General international Law according to liability principles if the Liability Convention is not applicable.

Given the adoption by UN COPUOS of the Guidelines on Sustainable Development. I will try to answer the question using two parts.

- In the first one, I would like to try to see how the current legal framework for liability may ease a Sustainable Development in Outer Space.
- In the second, I will consider how the Guidelines on Sustainable Development, those already adopted by COPUOS and those to adopt may help the liability system as it is in the Liability Convention.

Part 1

Supporting the objective of Sustainable Development through an efficient liability regime.

- Liability has not only for purpose to indemnify potential victims
- It has also a preventive effect. If somebody may be liable, he/she will have a strong intensive to avoid accident

- The evolution of space activities may pose difficulties to apply a mechanism of liability established a rather long time ago in an other context.
- We don't need a revolution but we may have an evolution.

- Current practice increases the cases where many Launching States may be involved
 - Launch of many space objects on the same rocket
 - Launch of many satellites to built a constellation
- One way to avoid most difficulties is to use the agreements referred to in article 5 Liability Convention
- Without having any effect on the rights of potential victims Launching States may share the burden of the risk among them

In the case of private activities, States should use the licensing process to transfer to these private companies the burden of the risk as Launching States.

They may ask for insurance

In order to avoid the obligation for the companies to play “Russian roulette” they may put a ceiling to their financial obligations taking for them the obligations above the ceiling.

- When they authorise and supervise space activities, States should integrate in their requirements the fulfilment of international compulsory rules but also the provisions of the codes of conduct.
- (Space debris, space traffic management etc..)

Part II

Guidelines on Sustainable Development, on space debris and on space traffic management may ease the mechanism of Liability in the Liability Convention and in domestic law.

In case of damage in orbit a fault must be proven.

What is a “fault” as referred to in article III of the Liability Convention

- It is not the usual violation of International Law as it is usually the case in international Law.
- It is the fault as we know it in private law
- This means that some rules should exist.
- The judge need to refer to what is the “normal” behaviour, the behaviour of a “good Launching State”

When codes of conduct are elaborated and proposed to States by the COPUOS and endorsed by UN General Assembly

- They are not compulsory, they don't create any legal obligation
- But, if an accident occurs, the judge or arbitrator would have to determine if a fault had been committed.
- The codes of conduct may be used to show the “recommended”, “good” behaviour which does not constitute a fault and a behaviour which constitutes a fault.

- If a State or an operator applies the recommendations of the codes of conduct, they behave the right way, they do not commit a fault.
- In the contrary if they refuse to apply it, they may be considered as in fault and thus as liable.

● Conclusion

- Instead of a revolution we need an evolution of the legal framework of liability for damage caused by space objects.
- This may help an evolution in the way open by the Guidelines on Sustainable Development
- These guidelines may help the international or domestic judges to see if a fault had been committed.



Thank you for your attention
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