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SPACE 4.0: CREATING INCENTIVES FOR STATES TO CLARIFY AND COORDINATE
INTERPRETATIONS OF WHAT ACTIVITIES CONSTITUTES RESPONSIBILITY AND LIABILITY
UNDER INTERNATIONAL SPACE LAW

Abstract

A growing number of states are developing national space legislation to handle the responsibility and liability risks associated with their nationals' space activities, as set forth by the space treaties. However, which exact actions and activities trigger responsibility and liability under the space treaties remains contested and is subject to interpretation. This paper will investigate if the developments characterising Space 4.0 are creating incentives for states to pursue coordination in order to promote clarification of their obligations and liability risks under international space law.

A comparative analysis of a few national space laws in Europe indicates that states have already developed divergent interpretations of what they are obligated to regulate and what they are liable for. For instance, under national laws it varies what is defined as a space activity, who is the subject of the law and what qualifies a state as a launching state. The latter being particularly contested when a launch is procured by a private entity or through a launch broker.

The question is of growing importance as the organisational chain for modern space missions are typically becoming more complex, involving actors operating under different jurisdiction and performing different roles. For example, private companies are offering services such as package solutions; launch brokering and operating satellites on behalf of others. This complicates the matter of identifying what exactly constitutes as a space activity, which state should regulate what part of the activity, or when the procurement of a launch has taken place. As more states develop legislation to handle such missions, coordination is necessary. Divergent interpretations can lead to regulatory loopholes, unclear or duplication of licencing requirements, and generate further uncertainties as to the exact nature of the international obligations and liability risks.

The paper will break down the different roles in a typical organisational chain for owning, launching and operating a space craft. Then, analyse how various states may regulate these roles, identify related legal issues and explain why they have become more pressing. The aim is to raise awareness of how the changes in the space sector is creating an environment where it is both beneficial and necessary for states to coordinate their interpretations in order to promote clarity of which activities triggers liability and responsibility for states under international space law.