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Author: Ms. Upasana Dasgupta
Institute of Air and Space Law, McGill University, Canada, upasana.dasgupta@mail.mcgill.ca

DO NATIONAL SPACE LAWS LOOK BEYOND LIABILITY FOR DAMAGE? – A CASE OF INDIA

Abstract

The Government of India issued the draft “Space Activities Bill, 2017” (“Draft Legislation”) on 21 November, 2017 for comments. The explanatory note to the Draft Legislation provides its aim is to “encourage enhanced participation of non-governmental/ private sector agencies in space activities in India, in compliance with international treaty obligations”. Yet a closer look at the Draft Legislation essentially provides for only the following: (a) authorisation and license for commercial space activities and prohibition of unauthorised space activity; (b) liability and Indemnification to Central Government for damage arising out of commercial space activities; and (c) registration of space objects.

The Draft Legislation, which is based on the Model Law on National Space Legislation formulated by the International Law Association, is unreasonably focussed on liability for damage that may occur due to private space activities. For example Section 3(k) of the Draft Legislation provides that the Central Government may “supervise the conduct of every space activity in which India is the launching State for which a license has been granted...”. Article VI of the Outer Space Treaty provides that States shall be directly responsible for their “national activities in outer space” and “appropriate State” shall be responsible for monitoring and supervising its space activities. Article VII of the Outer Space Treaty, on the other hand, provides that the “launching States” shall be liable for damage caused by its space objects. The concept of “appropriate State” or “national activity” is accepted to be broader than launching State concept. However, Section 3(k) provides that India should supervise only space activities of launching States, though under international law it is responsible for all national space activities. Further, the Draft Legislation does not incorporate other international obligations of India under space law, such as (a) carrying out space activities “out for the benefit and in the interests of all countries”; (b) non-appropriation of outer space; (c) restriction on placing nuclear weapons or any other kind of weapon of mass destruction and (d) rescue and return of astronauts/ personnel in a spacecraft.

The Draft Legislation, thus, provides only for liability (and registration, which are interconnected) for damage due to space objects and does not deal with any other international space law obligation of India. It may be argued that the other obligations may be included as licensing conditions but it is doubtful whether such important obligations of India can be left to delegated legislation.