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CanadaON-ORBIT TRANSFER OF SATELLITES BETWEEN STATES: STATE LIABILITY UNDER SPACE
LAW**Abstract**

As space sector has become highly commercialized, satellites are treated as transferable goods and not symbols of pride and prestige for a nation like before. Inter-State transfer of satellites, especially communication satellites has become common reality in light of the vast business opportunities.

However, when space law treaties were drafted, States were the main players in space and the drafters could not contemplate a market for transfer of satellites. The Outer Space Treaty and the Liability Convention thus confer liability for damage by space objects on the launching state. The 'launching State' in the Space Treaties is defined in such a way that 'once a launching State, always a launching State'. Thus, a State that takes part in launching activity of satellite is always liable for any damage caused by the satellite. In addition, only 'launching state' can register the satellite in its name.

There can be three kinds of on-orbit transfer of satellites- between entities within a State, between two launching States and between a launching State and non-launching State. The first case would be dealt with national laws. In transfer between launching States, there is no change in liability as it is related to the time of launch of satellite. However, the current regime of international space law poses difficulties in cases of transfer of ownership of satellites between States, when transferee State is a non-launching State of the satellite. Plain reading of Space law treaties indicate that whereas the new transferee, being non-launching State, will have no liability, the transferor being a launching State, continues to be liable even after the transfer. This seems to be in direct conflict with the concept of ownership under common law and civil where owner is liable for the property he owns. Some jurists indicate that the transferee State should execute an agreement of indemnification with the transferor for any damage consequent to the transfer. In my opinion, though this solves the immediate problem, the effectiveness of contractual solution in long term is doubtful, especially when inter-State satellite transfer will become frequent. Further, the small and developing nations who do not have legal expertise to deal with such satellite contracts would be in the losing end. This violates the basic principle that outer space should be used and explored for the 'benefit of all countries'. The best solution is to solve the problem multilaterally, under the aegis of UN.