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Author: Ms. Akiko Watanabe
Japan, akiko.watanabe109@gmail.com

THE POSSIBLE LIABILITY OF THE STATE WHICH DOES NOT FALL WITHIN THE CONCEPT
OF THE LAUNCHING STATE

Abstract

This paper studies as to whether the third-party liability of the State arises from the “control” of the satellite. As space activities are becoming more and more diverse, some parts of international space law seem not to provide the reasonable outcome. One of the examples is an identification rule of the liable State when on orbit sales of satellites are carried out. Under the Outer Space Treaty and the Liability Convention, the launching State shall be absolutely liable to pay compensation for damage caused by its space object. When the satellite is sold from State A to State B on orbit and such satellite causes damage to another State, State A, as the launching State, shall be liable for such damage. On the other hand, whereas State B actually controls the satellite, it is not liable for State B did not get involved in the physical launching activity of such satellite, thus avoiding the liability as a launching State. The United Nations Committee on Peaceful Uses of Outer Space (UNCOPUOS) has discussed the issue concerning the on-orbit sales of satellites under the agenda items “Review of the concept of the ‘launching State’” and “the Practice of States and International Organizations in Registering Space Objects” from 2000 to 2004 and from 2004 to 2007 respectively. Various points were raised and discussed in the working group, however, the outcome seems to show that there was no agreement on the revision of the international space law or the concept of the “launching State”. Thus, the continuous State liability as the launching State remains the same. Nevertheless, this rule may not provide the equitable risk allocation for the State, especially, which sells the satellite on orbit. When we see the State liability from another perspective, we could find that in other field of international law, the State liability tends to arise based on the “control” of the State concerned. Thus, it is examined if, under general international law, there is any change to the basis of State liability, we could apply the same rule to space activities. The tentative answer of this study will be given as the following: State liability arises from the “control” of the satellite. Reasons for that include that in other fields of international law, such as environmental law, State liability tends to arise from the acts, things or persons which the State controls.