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PRIVATE ACTIVITY/PUBLIC RESPONSIBILITY:
LIABILITY FOR PRIVATE SPACE ACTIVITY IN THE CONTEXT OF STATE AUTHORISATION
AND SUPERVISION

Abstract

The 2016 United Nations, United Arab Emirates High-level Forum: Space as a Driver for Socioeconomic Sustainable Development, reported that private space activities are flourishing and impacting local, regional, continental and global markets. Additionally, this forum adopted the Dubai Declaration, a set of recommendations to position and shape space activities as drivers for key socioeconomic development. The declaration noted that the increased level of private space activities is generating a new demand for national regulatory certainty to meet the needs of new market entrants, space middle powers and emerging spacefaring nations.

Space exploration is no longer the exclusive domain of nation states instead it is evolving towards public, private/public partnerships and private industry investment models. International legal regimes including the 1967 Outer Space Treaty (OST) and the 1972 Liability Convention (LC) were drafted during the period when space was exclusively the public domain and reflects conflicting ideologies of the Soviet Union and United States of America (USA). The USA, always a champion of private enterprise, succeeded in preventing the Soviet Union from specifically excluding private enterprise from the OST.

Article VI of this instrument notes that while States bear international responsibility for national activities in outer space, provision is made for non-governmental entities carrying out space activities in conformity with authorization and ongoing supervision provisions of the treaty. International liability for launching states is allocated by Article VII of the OST and Article II of the LC and creates a number of domestic -level regulatory issues.

Given the global proliferation of commercial space activity, the exclusive public nature of Article VII liability within the context of Article VI authorization and supervision provisions of the OST is a key issue requiring improved articulation for future national/domestic legislation related to private space activities. As a result of increased private activities, nations have promulgated domestic legislative frameworks to establish space regulatory institutions with jurisdiction to implement international legal obligations.

The manner in which states implement domestic legislation for authorization and supervision regulates the extent to which risk can be shared between states and private entities and differs between nation states. Once defined as a 'Launching State', State liability is neither limited in amount nor time, this paper will discuss the current issues created by the International Regime at a domestic level for private actors. Potential evolution for future national legislation will be identified and discussed within the context of UNISPACE +50 thematic priorities.