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NATIONAL SPACE LEGISLATIONS CHALLENGED BY ON-ORBIT SERVICES IN THE CONTEXT
OF NEW SPACE. LIMITS, CURRENT SOLUTIONS AND INTERNATIONAL PERSPECTIVES

Abstract

Following the worldwide movement of privatization in the telecommunications and space operations sectors from the 90's, space faring nations enacted specific domestic legislations to license and monitor such businesses in accordance with United Nation Space Treaties 'provisions on responsibility, liability and registration. All these national space law have established similar criteria governing license application based on safety technical requirement for a given system or procedure and legal restrictions based on foreign policy and international treaties. These laws taken together succeeded to support a sustainable development of market in launcher services, satellite manufacturing and operations for telecommunication, Earth observation, navigation and associated value-added applications. However, this framework based on several national laws appears unsuited to promote the setting up of On-Orbit Services providers. Indeed, current legislations basically consider space launch services and after the operations made with the satellite itself up to its end of life manoeuvres, but not physical interaction between several space objects affecting their respective features or function such as refueling, replenishment, maintenance, repairing, manufacturing, re-orbitation, transport of goods and humans, disposal in graveyard orbit. In this context, the present paper firstly recalls the main shortcomings of current national legislation regarding development of On-orbit service market, secondly it describes some positive legal solutions such as the one proposed by the 2008 French Space Operation Act allowing in both ways reversible transfers of command on a Space object between national and foreign operators irrespective of the object registration. Then, thirdly the paper considers international or multilateral solutions for the future based on two-tier agreement or organization between the interested governments and national private stakeholders. The first ones as States regulating standard license conditions, RD support, procurement technology exchanges rules, launching state liability apportionment, or acting as anchor customer; the latter ones investing in the design, development, manufacturing of space systems for on-orbit services. The author of this paper have been amply involved in the law making process of the 2008 French Space Operation Act. He published in 2018 a reference book on the genesis and functioning of this national legislation within its European and International context.