

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)

Launching into Outer Space (4)

Author: Mr. Stefan-Michael Wedenig
Institute of Air and Space Law, McGill University, Canada

Mr. Jack Wright Nelson
Institute of Air and Space Law, McGill University, Canada

READY FOR LAUNCH (OR NOT)? PROCUREMENT PROBLEMS AND THE LAUNCHING STATE

Abstract

The meaning of the word ‘procure’ in Article I(c) of the Liability Convention has long vexed space lawyers. Article I(c) relevantly defines the term ‘launching State’ as including a ‘State which launches or procures the launching of a space object.’ The potential liability attached to being a ‘launching State’ under the Liability Convention is both unlimited and permanent. Yet the term ‘procure’ introduces various ambiguities, first identified during the negotiation of the Liability Convention. The travaux préparatoires show that during these negotiations, State representatives acknowledged that the term might be open to various interpretations. Nonetheless, the representatives opted to retain the term, favoring consistency with Article VII of the Outer Space Treaty (OST). This decision has led to a broad spectrum of interpretations, particularly in today’s context where the modalities of launching objects into space have diversified far beyond the traditional paradigm of ‘one rocket, one object, one launching State.’ Today’s launches involve an array of public and private participants, scattered across the world. A satellite owned by a Dutch company might be built by a French company, financed by a Japanese bank, insured by a German firm, rely on Indian flight control technology, and launched from the United States (on a rocket designed in New Zealand). Can only the Dutch company be described as procuring this launch? Or are all involved entities procuring this launch? And if so, by extension in accordance with the unique attribution rules applicable in international space law, how can these entities’ respective States manage their resulting liability? There are no clear answers to these questions. In this paper, we aim to unravel the legal intricacies and implications of ‘procure’ in light of modern advancements in space launch technologies, with a particular focus on the role of launch financing parties, launch insurers, and software developers for critical launch technologies. We will examine three specific scenarios to assess when and how the involvement of these specific entities could render their home States as ‘launching States’ under Article I(c) of the Liability Convention, and Article VII OST. Through these three case studies, our paper will highlight the challenges and legal uncertainties faced by the international community. It will also offer insights into how these ambiguities might be resolved or clarified to reflect the realities of modern space exploration and utilization, ensuring a coherent and equitable framework for the attribution of liability and responsibility in outer space activities.