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UNAUTHORISED PRIVATE SPACE ACTIVITIES:
ISSUES OF RESPONSIBILITY AND LIABILITY FOR LAUNCHING STATES

Abstract

In recent years, the role of launching authorities has been defied by private actors in more than one occasion. Space companies such as Swarm Technologies, SpaceIL and DISH Network have shown how the system of authorization and supervision envisaged by the Outer Space Treaty (OST) can be frustrated by the choice to pursue private interests even if in contrast with domestic regulations.

Every year, more non-governmental actors get involved in launching objects in outer space. Thus, the occasions for unruly behaviours are only destined to increase.

In view of that, the role of States becomes crucial.

Their power to authorize and supervise private space activities can be effective only if they ensure the conformity of such activities with the obligations stemming from the OST.

What happens if they cannot? What are the legal consequences for States of activities conducted without or beyond their authorization?

The present paper delves into these questions from the perspective of international law, looking at the application of the regimes of responsibility and liability in front of unauthorized national activities.

Firstly, it depicts how the three companies mentioned above eluded their authorizing authority. It then moves to analyse the legal repercussions of their behaviour.

It is found that, from the perspective of international responsibility, there is a limited possibility to hold a State accountable for unauthorized private operations. Despite a common misconception, in fact, the responsibility regime of Article VI, OST does not create a direct responsibility for private actions, but it only establishes an obligation to prevent, which simply requires States to adopt regulatory or administrative measures and to enforce them diligently.

The discourse then moves to the consequences of unauthorised space operations under the liability regime.

Launching an object in space without authorisation does not eliminate the presence of at least one State that can be held liable for potential damages, usually the State of territory. However, liability may fall on the least involved State. Moreover, the right of recourse may be undermined when the launch is procured by a foreign private actor, frustrating the rationale of the liability regime.

In light of these issues, the paper concludes with some suggestions on how to improve the efficiency of the regimes of responsibility and liability in front of unruly private actors. The solutions offered are focused on the implementation of space law at the domestic level and on the coordination mechanisms between launching States.