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REGISTRATION IN THE 21ST CENTURY - ENSURING ADEQUATE REGISTRATION UNDER THE
EXISTING LEGAL REGIME

Abstract

The Outer Space Treaty (OST) and the Registration Convention (REG) were drafted during a time when commercial space activities were a vision of the future. Today, it is a reality – and the majority of space activities are conducted by commercial entities for their customers, which are not necessarily governmental entities. Nevertheless, States are responsible for space activities and obliged to authorize and continuously supervise non-governmental activities (Art. VI OST) and are liable for damages caused by space objects, if they qualify as a launching State (Art. VII OST, Liability Convention). Right after allocating responsibility and liability, also for non-governmental entities, immediately to the State, the OST allocates jurisdiction and control over a single space object to the "State of registry" (Art. VIII OST). Art. VIII OST can be regarded as the quid pro quo for the burden imposed by Art. VI and VII OST.

This established system has been challenged in recent years by a changing space economy. Companies are getting more and more international as well as mobile, moving operations from one State to another. Space objects are being delivered or sold on orbit and ownership and operation are passed on over terrestrial borders. While responsibility resonates with the nationality of an activity, liability as well as jurisdiction and control rest with a launching State, a concept introduced in Art. VII OST. The Registration Convention, deviating from the more open language of the OST, expressively limits the registration of space objects to launching states. Therefore, while responsibility for an activity can easily be passed on from one State to another, liability and registration rely on a criterion which is not dynamic. Consequently, a situation could occur in which a State can be held responsible for activities conducted by an object it cannot enforce regulation on.

Under the premise that Art. VI, VII and VIII OST constitute a comprehensive system to allocate rights and obligations with regard to specific space activities and the objects that are used in these activities, this poses a problem. It bears the potential to desynchronize responsibility, liability and jurisdiction and control. This paper intends to analyse this problem and propose solutions how to adequately register space objects in a dynamic space environment to synchronize especially responsibility and jurisdiction without reinventing the wheel and drafting new treaties.