

Legal analysis of the convention on International liability for damage caused by space objects (March 29, 1972)

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Abstract. The article considers the main definitions and legal provisions of Convention on International Liability for Damage Caused by Space Objects, and the main problems of its effective application detected in theoretical discussions with wide participation of legal scholars and other sciences representatives. International law focuses on rules allowing for the payment of damages for harm caused by space objects and their component parts. Principal attention is given in this analysis to the claims for compensation for damage which are presented and considered as international claims, or civil claims in the courts of the launching State.

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Introduction

On November 29, 1971, in resolution 2777 (XXVI), the General Assembly approved the Convention on International Liability for Damage Caused by Space Objects, which was a project since 1964. Provisions of Convention designed to regulate compensation issues for damages as a result of space launches and thereby prevent occurrence of conflicts between states according to these activities.[1]

The Convention included a provision, according to which in the case of damage caused by space objects, representing a large scale threat to human life or seriously affect the living conditions of the population or activity of vital centers, member states, in particular the launching state, examine the possibility of immediate provide adequate assistance to the state to which the damage is caused. Similar situation had no precedent in the history of international law.

On March 29, 1972 Liability Convention was opened for signature in Moscow, London and Washington (in the capitals of the Depositaries) and entered into force on September,1 1972. The Soviet Union and the United States ratified the Convention on the October 9, 1973. [2, p.302]

Since the second half of 1971 in the Legal Subcommittee of the UN Committee on Space issue on Registration of Objects Launched into Outer Space considered as a priority issue, first discussed in the UN on 1959. On November 12, 1974, in resolution 3235 (XXIX) General Assembly adopted the text of the Convention on Registration of Objects Launched into Outer Space. The Convention was opened for signature and ratification of the January 14, 1975. It's provisions provided a system of compulsory registration of space objects in the

appropriate register, then followed by presentation to the UN Secretary General the certain minimum information about these objects at the earliest term. This information, in turn, is entered in the register of the Secretary-General, to which full and open access is provided [3, p.441].

Convention on International Liability for Damage Caused by Space Objects of 1972 establishes that the launching state shall be absolutely liable to pay compensation for damage caused by its space object on the surface of the Earth or to aircraft in flight.

If in any place other than the surface of the Earth to a space object of one launching State or to persons or property on such board damage is caused by a space object of another launching State, the latter shall be liable only if the damage is due to its fault or the fault of persons, for which it is responsible.

The term "damage" means loss of life, personal injury or other impairment of health or loss or damage to property of States or of physical or legal persons or property of international intergovernmental organizations [2, p.168] . In some scientists opinion, one of the main problem related to the Liability Convention from the perspective of space debris concerns the definition of "damage"[4]. The general consensus is that the term "damage" as defined by Article I(a) of the Convention, is confined to "physical damage to property and, in the case of humans themselves, mental damage." [5]

In accordance with the 1972 Convention launching State shall be absolutely liable (i.e. regardless of fault) to pay compensation for damage caused by its space object to persons or property on the surface of the Earth or to aircraft in flight. If out

of the ground surface damage caused by a space object of another State, to persons or property on board, the launching State shall be liable only in the event of fault or fault of persons for whom it is responsible.

If the launching of an object is held by two or more States, they are severally liable for any damage caused. In this situation state that has paid compensation for damages, has the right of recourse requirements to other participants of the joint launching.

Compensation for damage caused to citizens of launching State, as well as foreign nationals participating in operations related to the launch, has to be paid according to the rules of the law of the launching State.

Claim for compensation for damage shall be presented by the state that either physical or legal persons suffer damage, launching State through diplomatic channels or, if diplomatic relations between these states are not supported by the UN Secretary General or a third country.

Therefore natural and legal persons who have suffered harm, don't have the right to file an "international claims" to launching State, however, it is not an obstacle for bringing a civil claim in the courts of the launching State [3, p.34].

For filing an "international claims" does not require that the claimant State or its physical and legal persons have exhausted all local remedies of legal protection. Deadline to claim is - no more than one year from the date of caused damage or identification of the launching State.

Compensation, according to Article 12 of the Convention on International Liability for Damage Caused by Space Objects of November, 29 1972, which is paid for damages is determined in accordance with international law and the principles of justice in order to ensure full reparation and restore the situation that existed before its occurrence. If the states did not come to an agreement on compensation, within a year from the date of the claim, a commission of the Claims is made, whose decision is final.

If damage is caused by an intergovernmental organization conducting space activities, member states take all measures to ensuring compensation of damage with this organization.

The term "space object" includes component parts of a space object, their means of delivery, as well as its parts [6, p.276]. The problem relates to the definition of "space object" or "component parts" thereof, as it triggers the application of the Convention's liability rules, has been discussed extensively at the theoretical level[7]. The question arises here to what extent space debris falls, or could

fall within that definition. Usually, the debate turned around the (potential) functioning or functionality perceived by many to be inherent in the definition of "space object", which would thus exclude 'useless' space debris[8].

Registration of space objects gains very essential value. Taking it into account the Convention on Registration of Objects Launched into Outer Space, was developed and signed, The convention 1974 establishes:

a) the term "launching State" means: the state which carries out or will organize the launch of space object, and the state, from which territory or from which installations launch of space object is carried out;

b) the term "space object" includes components of space object, and also a delivery system and its parts;

c) the term "registration state" means launching state in which register the space object according to the Art. II of the Convention is entered [9].

According to this article, when "space object is launched into Earth orbit or beyond space", launching State shall register the space object by writing to their corresponding register and inform the UN Secretary-General on the conduct of such a register.

UN Secretary-General, in turn, maintain a register in which information provided by the launching State is wrote.

The foregoing provisions shall also apply to any intergovernmental organization which conducts space activities in accordance with relevant provisions of the Convention, as reflected in its Art. VII [10, p.202].

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