

Space Law for New Space Actors
Technical Advisory Mission
San Jose, Costa Rica
6-8 November 2023

State Responsibility and Liability

31 October 2023

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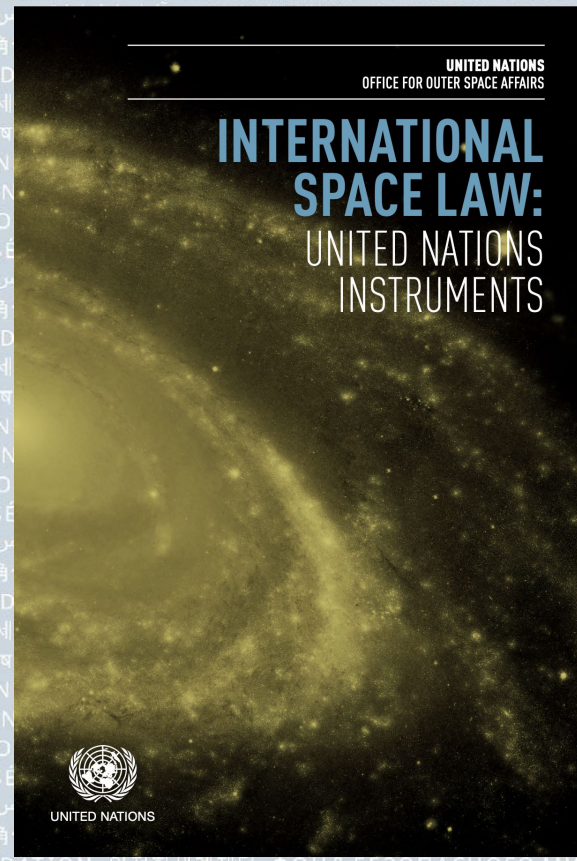
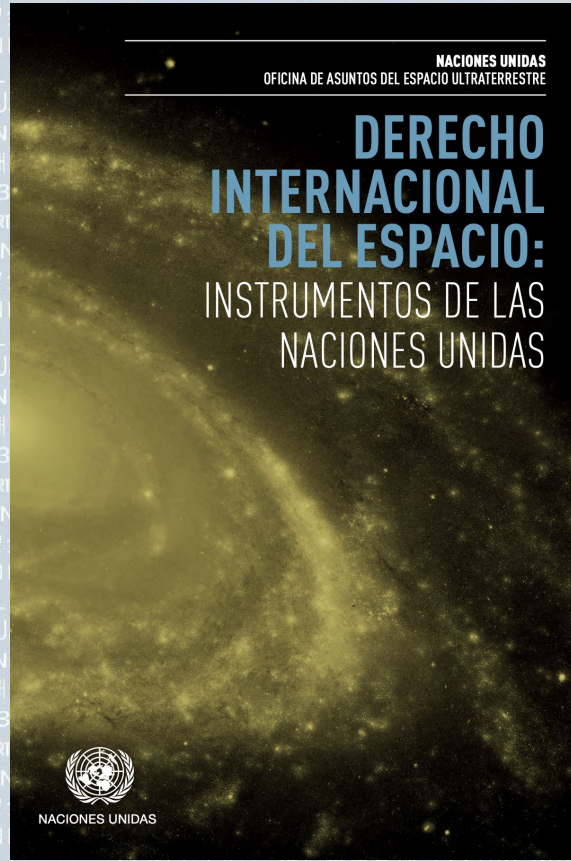


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Part 1

International Responsibility for National Space Activities





1967 Outer Space Treaty

Article VI

Sentence 1

Los Estados Partes en el Tratado serán responsables internacionalmente de las actividades nacionales que realicen en el espacio ultraterrestre, incluso la Luna y otros cuerpos celestes, los organismos gubernamentales o las entidades no gubernamentales, y deberán asegurar que dichas actividades se efectúen en conformidad con las disposiciones del presente Tratado.

States Parties to the Treaty shall bear international responsibility for national activities in outer space, including the Moon and other celestial bodies, whether such activities are carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried out in conformity with the provisions set forth in the present Treaty.



1967 Outer Space Treaty Article VI Sentence 1

International responsibility means internationally “answerable for”

Non-governmental entities means private entities, including private commercial entities, companies, even universities

Conclusion: both governmental and non-governmental activities are all national space activities.

States Parties to the Treaty shall bear **international responsibility** for **national activities** in outer space, including the Moon and other celestial bodies, whether such activities are carried on by governmental agencies or **by non-governmental entities**, and for **assuring that national activities are carried out in conformity** with the provisions set forth in the present Treaty.



1967 Outer Space Treaty

Article VI

Sentence 2

Las actividades de las entidades no gubernamentales en el espacio ultraterrestre, incluso la Luna y otros cuerpos celestes, deberán ser autorizadas y fiscalizadas constantemente por el pertinente Estado Parte en el Tratado.

The activities of non-governmental entities in outer space, including the Moon and other celestial bodies, shall require authorization and continuing supervision by the appropriate State Party to the Treaty.



1967 Outer Space Treaty Article VI Sentence 2

Authorization and continuing supervision:

Governments have a job to do before launch, at launch, and during operations. Likely a job even after the mission has ended.

Appropriate State Party to the Treaty

- Is this non-governmental activity a “national activity”?
- Does it involve your nationals?
- Begin in, or be directed from within your territory?
- Do you want it subject to your laws?
- Would you be internationally responsible / liable for it?

The **activities of non-governmental entities** in outer space, including the Moon and other celestial bodies, shall require **authorization and continuing supervision** by the **appropriate State Party** to the Treaty.



1967 Outer Space Treaty

Article VI

Sentence 3

Cuando se trate de actividades que realiza en el espacio ultraterrestre, incluso la Luna y otros cuerpos celestes, **una organización internacional**, la responsable en cuanto al presente Tratado corresponderá a esa **organización internacional y a los Estados Partes en el Tratado** que pertenecen a ella.

When activities are carried on in outer space, including the Moon and other celestial bodies, **by an international organization**, responsibility for compliance with this Treaty shall be borne both **by the international organization and by the States Parties to the Treaty** participating in such organization.



National Space Legislation

Many States already have national space legislation.

Some States with space activities still do not have space legislation (but they should!)

According to UNOOSA, 43 States have some form of national space legislation

Argentina, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Brazil, Canada, **Chile**, China, Colombia, Costa Rica, Denmark, Ecuador, Finland, France, Germany, Indonesia, Italy, Japan, Kazakhstan, Kenya, Luxembourg, Netherlands, New Zealand, Nigeria, Norway, Peru, Philippines, Poland, Portugal, Republic of Korea, Russian Federation, South Africa, Slovenia, Spain, Sweden, Tunisia, Türkiye, Ukraine, United Kingdom of Great Britain and Northern Ireland, and United States of America

<https://www.unoosa.org/oosa/en/ourwork/spacelaw/nationalspacelaw/index.html>

+ Perhaps a few States not listed on the UNOOSA website: UAE, others?



Part 2

Liability, a Type/Subset of Responsibility



1697 Outer Space Treaty Article VII

Todo Estado Parte en el Tratado que lance o promueva el lanzamiento de un objeto al espacio ultraterrestre, incluso la Luna y otros cuerpos celestes, y todo Estado Parte en el Tratado, desde cuyo territorio o cuyas instalaciones se lance un objeto, será responsable internacionalmente de los daños causados a otro Estado Parte en el Tratado o a sus personas naturales o jurídicas por dicho objeto o sus partes componentes en la Tierra, en el espacio aéreo o en el espacio ultraterrestre, incluso la Luna y otros cuerpos celestes.

Each State Party to the Treaty that launches or procures the launching of an object into outer space, including the Moon and other celestial bodies, and each State Party from whose territory or facility an object is launched, is internationally liable for damage to another State Party to the Treaty or to its natural or juridical persons by such object or its component parts on the Earth, in air space or in outer space, including the Moon and other celestial bodies.



1967 Outer Space Treaty

Article VII

Four categories of “Launching State”:

1. launches
2. procures launch

Or a space object is launched from their their

3. territory or
4. facility

Internationally liable for **damage**.

What is damage? What is NOT damage?

Victim-oriented approach to this article.

Each State Party to the Treaty that **launches** or **procures the launching of** an object into outer space, including the Moon and other celestial bodies, and each State Party from whose **territory** or **facility** an object is launched, is **internationally liable for damage** to **another State Party to the Treaty** or to its natural or juridical persons by such object or its component parts on the Earth, in air space or in outer space, including the Moon and other celestial bodies.



1972 Liability Convention

Article I

a) Se entenderá por “daño” la pérdida de vidas humanas, las lesiones corporales u otros perjuicios a la salud, así como la pérdida de bienes o los perjuicios causados a bienes de Estados o de personas físicas o morales, o de organizaciones internacionales intergubernamentales;

(a) The term “damage” means loss of life, personal injury or other impairment of health; or loss of or damage to property of States or of persons, natural or juridical, or property of international intergovernmental organizations;



1972 Liability Convention

Article I

Definition of damage is clarified in the Liability Convention

(a) The term “damage” means **loss of life, personal injury or other impairment of health**; or **loss of or damage to property** of States or of persons, natural or juridical, or **property** of international intergovernmental organizations;



Part 3

Enforcement



1972 Liability Convention Articles II and III

Absolute liability on Earth Fault-based liability in Space

Article II

A 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.**

Fault-based liability regime in space. But **what is fault?** Some standard of care is required. Look at intention, but also knowledge, level of expertise and knowhow.

Article III

In the event of damage being caused **elsewhere than on the surface of the Earth** to a space object of one launching State or to persons or property on board such a space object 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 whom it is responsible.



1972 Liability Convention

Compensation for Damage

Reparation? Restitution? Restoration?
Compensation?

“As will restore the person to the condition which would have existed if the damage had not occurred”

Financial payment to victim to “make whole” and restore them.

Article XII

The compensation which the launching State shall be **liable to pay for damage** under this Convention shall be determined in accordance with international law and the principles of justice and equity, **in order to provide such reparation in respect of the damage** as will **restore the person**, natural or juridical, State or international organization on whose behalf the claim is presented **to the condition which would have existed if the damage had not occurred.**



Enforcement of space law

UN International Law Commission's Articles on State Responsibility

Article 29 Continued duty of performance

The legal consequences of an internationally wrongful act under this Part do not affect the **continued duty** of the responsible State **to perform the obligation** breached.

Article 30 Cessation and non-repetition

The State responsible for the internationally wrongful act is under an obligation:

- (a) to **cease that act**, if it is continuing;
- (b) to offer appropriate assurances and guarantees of **non-repetition**, if circumstances so require.

Article 31 Reparation

1. The responsible State is under an obligation to make **full reparation** for the injury caused by the internationally wrongful act.
2. Injury includes any **damage**, whether **material or moral**, caused by the internationally wrongful act of a State.

Thank You

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