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Domestic space legislation
The French law on space operations

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Introduction

The aims and purposes of domestic legislation

- Implement the obligations of authorisation and control of article VI
- Share the burden of the risk when private companies are involved and may create obligations to a launching State

Introduction 2

Drafting a domestic legislation

The extend of the purposes

Organising the national space agency

Authorising and controlling space activities

The necessity to take into consideration the specificities of every State

Introduction 3

Part 1

The licensing/authorisation process

Part 2

Liability issues

Part 1

The authorisation process

Part 1 /1

**The extend of the obligation to have a
licence**

Article VI OST: Responsibility for national activities

**Article VII and liability Convention : Liability of the
Launching State**

Part 1 /2

Article VI

Activities of “nationals” in outer space .

Article VII

State which launches

State which procures the launch

State whose territory is used

State whose facilities are used (whether on its
territory or elsewhere)

Part 1 /3

Definition of “nationals”.

French solution

Any person who has French nationality and any juridical entity whose head office is registered in France

US extension of the definition

(1) “citizen of the United States” means—

- (A) an individual who is a citizen of the United States;
- (B) an entity organized or existing under the laws of the United States or a State; or
- (C) an entity organized or existing under the laws of a foreign country if the controlling interest (as defined by the Secretary of Transportation) is held by an individual or entity described in subclause (A) or (B) of this clause.

Part 1 /4

The procedure in the French Law

Authorisation and licence .

Authorisation given to every operation

Licence as a qualification of the operator

Part 1 /5

Who is going to control ?

The minister

The important role of CNES as an adviser

What kind of control ?

Administrative

Financial

Technical

Part 1 /6

“Continuous supervision” (OST VI)

**Control of the implementation of the obligations of
the authorisation**

The authorisation may be withdrawn or suspended
(article 9) (decree article 15)

In case of false declaration

If the activity would jeopardise the national security or
obligations according to international law

If the conditions of the authorisation do not exist any more.

Part 1 /7

Transfer of control of the space object (article 3)

(decree art. 13 and 14)

Authorisation required in case of transfer of control of a space object authorised under the law

Authorisation required in case of transfer of a space object which has not been authorised under the law (a foreign space craft) to a French citizen.

Part 2

Liability issues

Part 2

Domestic law and liability for damage caused by space activities

One major aim of a domestic legislation is to prevent a potential launching State to bear all the burden of the risk of space activities as it is in the Liability Convention.

Some States including France and the US use also this law to support their activities in Outer Space, especially the launching .

Part 2/1

**General remarks on the liability for
damage caused by a space object / space
activities.**

Part 2/1

What will happen in case of accident?

No exclusivity of the liability convention

Possibility to use domestic judge and domestic law (forum shopping)

Part 2/1/2

Advantages and disadvantages of an action under the liability convention

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An unlimited liability either in time or in amount

A State which can pay (capacity to pay large amount of indemnification and time of the occurrence)

Absolute liability in case of damage on earth

Join and several liability (possibility to choose the "best Launching State")

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A State to State procedure with the risk of political issues

The victim has little or no control on the action

The State of nationality may refuse to support or weakly support its national.

Part 2/1/3

Advantages and disadvantages of an action before a domestic judge

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- The victim will be the direct and only beneficiary
- The amount of the compensation may be more important (a domestic judge may be more generous)
 - No or little influence of politics

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- The liability convention does not apply
 - Risk to have a limited liability
- Risk to ask compensation to an insolvent operator
- Difficulty to get exequatur of the domestic judgement

Part 2/1/4

Conclusion on this introductory issue :

The liability convention and the liability of the launching State will certainly not be the best way for the victim to obtain satisfaction . He/she would have better using an action before a domestic judge. The liability convention stays much like a safety net to be used if the usual action against the operator may fail.

Part 2/2

Domestic space law and liability

The example of the French Law

Sharing the burden of the risk

Supporting national activities

Part 2/2/1

- Sharing the burden of the risk

Sharing the burden of the risk Sharing the burden of the risk between the launching State and a private person for which the State is responsible/liable

Sharing the burden of the risk between Launching States may be considered when authorising a launch including other launching States or in case of transfer of ownership.

Part 2/2/2

•Sharing the burden of the risk

The obligation of insurance or financial capacity.
Canalisation on the operator of the activity (the bolt
maker issue)

Validation of waivers of liability among
companies taking part to the activity

Part 2/2/3

Reimbursement of the cost of indemnification

If a launching State has to pay because of a private activity it usually asks for reimbursement from the operator.

Part 2/2/4

Supporting national activities

By limiting by a ceiling the amount of the reimbursement to the Launching State

By giving the State's guarantee over a ceiling.

Part 2/2/5

Supporting national activities

By giving the State's guarantee over a ceiling. (USA and France)

This ceiling will apply to every procedure chosen by the victim.

Part 2/2/6

US Commercial space launch act

- Obligation of insurance or financial capacities
- Establishment of a Maximum Probable Loss (MPL)
 - The State will pay the amount over the ceiling

French Law on space operations

- Obligation of insurance or financial capacities
 - Establishment of a ceiling to 60 M€
- The State will pay the amount over the ceiling

Part 2/2/7

Important practical consequences of these provisions .

- The ceiling and guarantee applies not only when the liability convention is used by the victim.
- But also if the victim decides to act before a domestic judge (even a foreign judge)

Part 2/2/8

Limitations in the US Commercial space launch act

- Exclusion in case of gross negligence or wilful misconduct
- Ceiling of the guarantee 1,5 Billion \$ (1988)
 - Limited Duration of the guarantee
- Necessity of a decision of the US Congress

Part 2/2/9

Limitations in the French Law

- Not applicable in case of wilful misconduct
 - Distinction between two phases

The launch phase : guarantee for damage on earth and damage in orbit

The in-orbit phase : guarantee only for damage on earth

Part 2/2/10

Liability after the operation phase in the French Law. (Space debris)

During the discussions in the French parliament the situation of the operator was improved for liability caused by space debris.

After the time of the authorisation, the French government takes over the liability of the operator

Article 13

*Except in the event of deliberate fault, the liability set out in 1 and 2 above shall cease when all obligations set by the authorisation or licence have been met, or at the latest one year after the date when these obligations should have been met. **The Government replaces the operator in the event of any damage caused after this date.***

Conclusion

A space legislation must be in accordance of the policy of a State.

The problems are not always the same.

States having launching capacities must not only protect the taxpayer money but also support their space activities.

The establishment of an efficient ceiling mechanism to the risk of damage to third parties seems a quite efficient way to do it without limiting the rights and interest of potential victims.



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