



Liability for space law revisited

Session 1e: Space Law and Policy:
Transposing sustainability into effective legal solutions

Prof. Dr. Lesley Jane Smith, LL.M.
VP Strathclyde University, Glasgow Scotland
Leuphana Lüneburg University Germany
Weber-Steinhaus & Smith, Bremen

Incentives and solutions in law for space debris

1. Some solutions found, e.g. in national laws (France), some in contract practice, but:
2. Heritage of State to State international regime for space liability continues
3. *De lege lata* split between absolute and fault liability remains, to the detriment of outer space environmental considerations
4. **Look to** how technical codes and guidelines (IADC, ITU, EU etc) might interact with the fault liability regime for damage in orbit
5. Few states want to bear int. liability for private sector, especially for debris
 - Appropriate moment in time to look to law of sustainability for outer space?



Damage to space environment and liability



1. Dispute whether damage to 'space environment' falls under Art I(d) LIAB
 - Art I(a) LIAB: Loss of life, injury, health, loss of or damage to property

2. Significance of debris avoidance, mitigation and removal:
 - Recognised in national and agency practice
 - But not in State to State liability system
 - No standard of 'fault' for liability under Art III LIAB

3. Non-compliance with technical guidelines **not per se fault** (int.)
 - See delegate question to COPUOS
 - *Ex contrario*: compliance with guidelines = no (int. State) liability?
 - Guidelines to be accorded some form of legal status

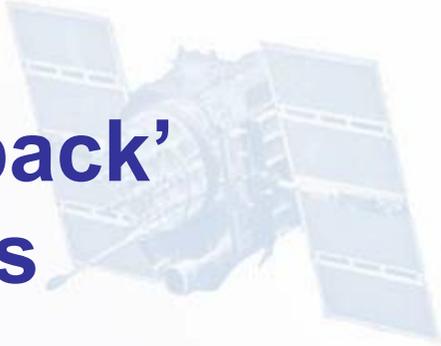
5. National law: enforcement of guidelines through *amende* (France)
 - Expert evidence on question of fault

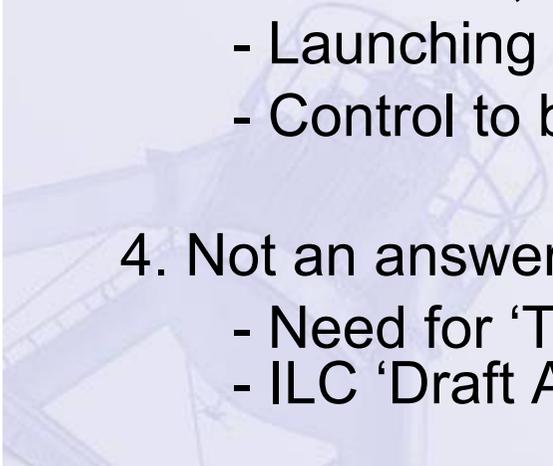
Sustainability v. ultrahazardous risks



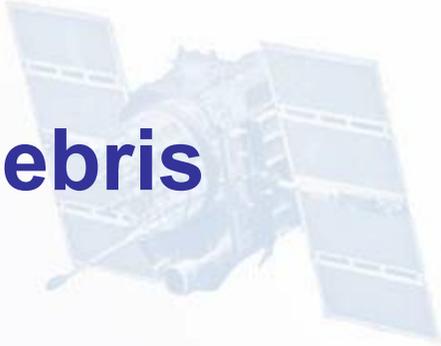
1. Focus of int. system not on sustainability, but liability
 - No precautionary principle, no polluter pays principle
 - Art IX OST; Art 7 MOON:
 - Precautionary measures primarily aimed at nuclear propellants, chemicals, etc.
 - Now: growing influence of standardisation through EU /ESA rules on dangerous substances, mitigation, (REACH/ISO etc)
2. Original approach to outer space liability in *travaux preparatoires* was **absolute liability**
 - State to State liability solutions for ultra-hazardous risks remains backbone
 - Fault liability simply means each system carries its own risks
3. Debate about limits to State responsibility for its private space sector

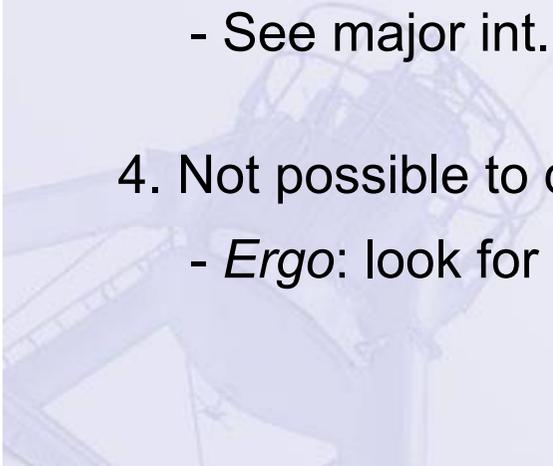
State responsibility as 'fall-back' for wrongful State actions



1. Art VI OST
 - State responsibility for activities of non-governmental sector
 - 'Attributable'
 2. Duties on States to impose compliance by private sector
 - to be monitored by 'appropriate state'
 3. No definition, other than UN Resolutions in 2004, 2007
 - Launching State, 59/115; Registration practice 62/101
 - Control to be exercised at national level
 4. Not an answer to immediate problem of outer space 'fault'
 - Need for 'Trail Smelter' approach to debris contamination -
 - ILC 'Draft Articles on Responsibility of States' 2001
- 

Unlimited liability for space debris

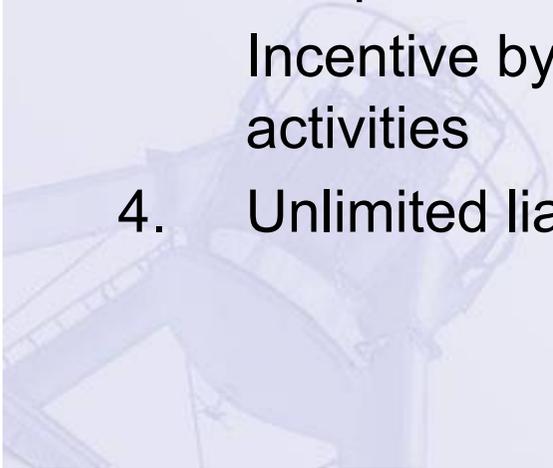


1. Rationale of liability for damage to outer space:
 - Casum sentit dominus/ each party bears its own loss
 - Hence fault liability
 2. Unlimited liability of launching state(s)
 - Devolve as limited liability onto operator (if national space statute)
 - e.g. Art 14, LOS
 3. N.B.: no absolute or strict liability, unless based on rule of law
 - See major int. conventions and national laws on hazardous risks
 4. Not possible to develop totally new prevention or liability regime
 - *Ergo*: look for new line of interpretation
- 

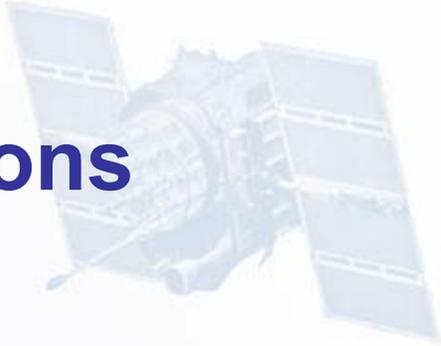
Moving forward from technical to legal standards



Solutions through national law

1. Flowdown of liability onto private sector by statute
 - France, UK, NL etc
 - Some with guarantee (US, France)
 2. Different operative techniques
 - Statutory right of state redress; imposing liability by statute on operator
 3. Coupled with: limitation of liability
Incentive by State for private sector to continue with space activities
 4. Unlimited liability in space always an issue for State
- 

Towards appropriate solutions

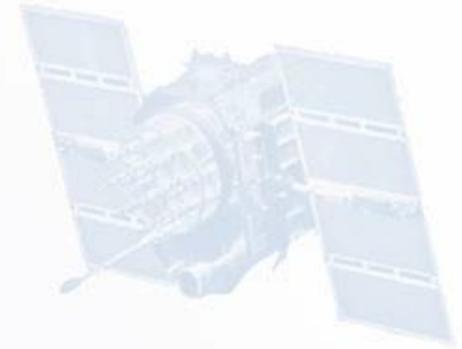


1. Limiting (unlimited) State liability for private sector
 - Current talk of channelling (limited) liability onto operator

2. Recognition of technical guidelines by analogy to precautionary principle
 - Agency guidelines already pre-mission requirements
 - Improve coordination of tracking and registration under REG (re-entry etc)

3. New approach to existing models
 - Revise terminology of soft law to 'state of the art'
 - International community can interpret these as of legal value
 - Not *per se* indicative of fault

4. Adherence to technical standards not *per se* a valid defence in law



Contacts:

Prof. Dr. Lesley Jane Smith

ljsmith@barkhof.uni-bremen.de (space mail)

smith@weber-steinhaus.com (law office)

smith@leuphana.de (University)

