

SPACE POLICY AND LAW COURSE 2018**CONJUNCTION CASE STUDY**

The facts:

1. A debris removal system *ADR-1* is owned, launched and operated by an International Organisation *ClearOrb*.
2. *ADR-1* captures non-functional satellite *D-Sat* without consent or knowledge of its launching and registration state *Lorina*.
3. *D-Sat*, by reason of being tethered by *ADR-1*, hits a functioning satellite *FunSat-2* (Launched and Registered by *Kistania*).
4. Part of *FunSat-2* crashes into another satellite in the same constellation *FunSat-5* (Launched and Registered by *Harovia*).
5. The conjunction of *FunSat-2* and *FunSat-5* create debris that damages one transponder of *VicSat*, owned by *Vic Limited*.
6. Part of *FunSat-5* crashes into a building, *West House*, in country Vilcana, owned by Evon Corporation that is incorporated and based in Vilcana.

ClearOrb and all the countries are parties to the OST and the Liability Convention.

Question:

1. What recourses are available to Evon for damage to *West House*? What law applies?
2. What recourses are available to *Vic Limited* for damage to *VicSat*?

Note: The relevant Treaties are on the ISPL website:

http://www.space-institute.org/app/uploads/1364914157_Outer_Space_Treaties_and_Principles_st_space_61E.pdf

DISCUSSION

1. The question to be answered is: “Who is liable for the damage to West House?”

LIABILITY CONVENTION

The immediate cause of damage is FunSat-5 crashing into the building. The Liability Convention 1972 provides:

Article II: A launching State shall be *absolutely* liable ... for damage caused by its space object on the surface of the Earth ...

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 ... 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 the person for whom it is responsible.

DEFINITION OF LAUNCHING STATE

A *launching State* is defined in the Liability Convention 1972 Article I(c) as:

- (i) A State which launches or procures the launching of a space object; or
- (ii) A State from whose territory or facility a space object is launched.

FURTHER CONSIDERATIONS

For a single launch there may be several launching States. For instance, there may be one State that procures the launch, another that carries out the launch, and another in whose territory the launch takes place, and another that provides the facility from which launch takes place. All these are *launching States* and liable under the Convention.

Specific provisions of the Liability Convention apply if one of the parties involved is an international organisation, not a State, Liability Convention 1972 Article XXII.

WHETHER REGISTRATION STATE IS LIABLE

In most cases there will be a number of States that qualify as *launching States*, but which are not Registration States. The Registration Convention 1974, Article I(c) defines the Registration State as "a launching State on whose registry a space object is carried".

The significance of this is that a Registration State is not liable by virtue of being the Registration State, but can be liable under the Liability Convention in its capacity as a launching State.

POSSIBLE COURSES OF ACTION FOR OWNER OF DAMAGED BUILDING

Two courses may be open to Evon. First, it can ask Vilcana to bring a claim against Harovia under the Liability Convention (Article VIII). Harovia is likely to pursue claims against ClearOrb and its member governments, Lorina and Kistania by joining them in the claim.

Under the Liability Convention, damage having been caused by FunSat-5 *on the surface of the Earth*, State Harovia is liable for the damage. ClearOrb, Kistania, Lorina are liable only if they are found to be at fault. The same applies in relation to debris damage to VicSat.

Alternatively, Evon may bring a civil law suit against ClearOrb, the owner and operator of ADR-1. The law of the applicable jurisdiction (a matter of private international law) will govern the claim. Evon would be advised to join all intervening parties.

The Liability Convention's provisions, Article V, deal with the joint and several liability of the parties involved.

POSSIBLE COURSES OF ACTION FOR OWNER OF DAMAGED PROPERTY

The same two courses of action are available to Vic Limited as to Evon, save that in both cases *fault* has to be established. However, the criteria by which fault is established differ in the two alternatives. Under public international law fault is considered an act contrary to or omission to discharge an obligation under the law.

Take note of the responsibility of the State for the fault of persons for whom it is responsible.