

**The UN General Assembly Resolution  
“Application of the concept of the ‘launching State’”  
UNGA Res. 59/115 of 10 December 2004  
- Background and Main Features -**

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“Review of the concept of the ‘launching State’” 2000-2002*

### Abstract

On 10 December 2004 - for the first time since 1996 - the UN General Assembly adopted a Resolution dedicated to space law. This Resolution deals with the application of the concept of the “launching State”. This paper describes the background and the main features of this Resolution, which reflects the conclusions of a working group on this topic, which had been active from 2000 to 2002 as subordinate body of the UNCOPUOS Legal Subcommittee.

### 1. The context of the Resolution

Space Law was a visible topic at the Third UN Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III), which took place in Vienna from 19 to 30 July 1999. An impressive workshop as part of the UNISPACE Technical Forum highlighted the status of space law at that time<sup>1</sup> and a section in the Conference Report was devoted to the status, issues and objectives for the further development of space law through the UN Committee on the Peaceful Uses of Outer Space

<sup>1</sup> Proceedings of the Workshop on Space Law in the Twenty-first Century, UN Doc. ST/SPACE/2.

(UNCOPUOS).<sup>2</sup> The boost, which space law received through this event was, however, rather modest. There were neither immediate breakthroughs nor a radical change in atmosphere to be felt in the UNCOPUOS Legal Subcommittee. This was somewhat disappointing since the thematic deliberations at UNSPACE III had been flanked by an initiative for a more flexible agenda-structure in the two Subcommittees, which had been adopted by UNCOPUOS right before UNISPACE III.<sup>3</sup> But while the Scientific and Technical Subcommittee was instantly ready to use the new means (single issue items and workplans), the Legal Subcommittee remained conservative and cautious and consequently did not fill up its agenda with new items.

The balance for the review of UNISPACE III – which had already at its convening been set for a five year period in accordance with other such reviews of UN sponsored conferences – would have been rather bleak, if it would not have been for one specific item, which found its way to

<sup>2</sup> Report of UNISPACE III, UN Doc. A/CONF.184/6, paras. 361-376.

<sup>3</sup> See Kai-Uwe Schrogl, A new impetus for space law making: The 1999 reform of UNCOPUOS and how it works, IISL-2000-IISL.1.14.

the Legal Subcommittee's agenda after UNISPACE III and which reached a very positive conclusion in 2004, the year of the review: the adoption of the UN General Assembly Resolution "Application of the concept of the 'Launching State'" - the first space law Resolution since 1996!

## 2. The work of the working group 2000-2002

The problem with the application of the concept of the „launching state“ as contained in Art. I(c) of the Liability Convention and Art. I(a) of the Registration Convention<sup>4</sup> arose from the establishment and operation of the SeaLaunch space transportation venture (territory, private actors, number of partners).<sup>5</sup> In a comparatively short period of time it was put on the agenda of the Legal Subcommittee – supported by the new agenda structure and the need to find at least one visible output for UNISPACE III. A working group was established to deal with the issue of the application of the concept of the “launching state” under a workplan from 2000 to 2002.<sup>6</sup>

The working group did not have the mandate to propose any revision of existing law or provide interpretations to the treaties but was limited to analyse the shortcoming and problems with the application of the concept. It did so in looking into questions related to territories

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<sup>4</sup> „The Term ‚Launching State‘ means (i) A State which launches or procures the launching of a space object; (ii) A State from whose territory or facility a space object is launched; (...).“

<sup>5</sup> www.sea-launch.com. First analysis by Armel Kerrest, Launching spacecraft from the sea and the Outer Space Treaty: The SeaLaunch project, IISL-97-IISL.3.15.

<sup>6</sup> For a detailed description of the conduct and results of this working group see Kai-Uwe Schrogl/Charles Davies, A New Look at the Concept of the “Launching State” – The results of the UNCOPUOS Legal Subcommittee Working Group 2000-2002, in: ZLW German Journal of Air and Space Law (51,3) 2002, 359-381 (before IAC-02-IISL-4.04).

and facilities, the notion of “procuring the launch”, the introduction of reusable launch vehicles, the question of jurisdiction and control and the application of the concept by international organizations. The output of the working group were a compilation of delegation's presentations on this issue, a compilation of relevant national regulations and international agreements, two analyses by the Secretariat (on national space legislation and on the concept as such) and – as the most important part – a set of “Conclusions”.

These “Conclusions” of 2002<sup>7</sup> contained the following recommendations:

First Recommendation (para. 10): „The Working Group recommended that States conducting space activities consider steps to implement national laws to authorize and provide continuing supervision to activities of their nationals in outer space and implement their international obligations under the Liability Convention, the Registration Convention and other international agreements.(...)“

Second Recommendation (para. 14): „The Working Group recommended, following common practice, that States consider the conclusion of agreements according to Article V, paragraph 2, of the Liability Convention for each stage of a mission with respect to joint launches or cooperation programmes.“

Third Recommendation (para. 18): „The Working Group recommended the consideration of

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<sup>7</sup> Contained in the Report of the Legal Subcommittee on its Forty-first session, held in Vienna from 2 to 12 April 2002, UN Doc. A/AC.105/787 of 19 April 2002, Annex IV, Appendix.

harmonizing voluntary practices that would provide useful guidance in a practical context to national bodies implementing the United Nations treaties on outer space.”

These recommendations clearly show the specific merit and impact of the working group’s results: it opened the door for the Legal Subcommittee to deal with the most prominent development in space activities at the turn of the century, i.e. the privatization of space activities. In doing so it also highlighted for the first time in intergovernmental discussions the question of national space legislation.<sup>8</sup> The potentially extensive impact of these recommendations led to the move to further rise the status of these recommendations in transforming them into a separate Resolution to be adopted by the UN General Assembly. Negotiations on this started already in 2002 by reach a conclusion only in 2004.

### 3. The General Assembly Resolution

The UN General Assembly Resolution “Application of the concept of the ‘launching state’” 59/115 as it was adopted on 10 December 2004 (reprinted in the Annex to this article) basically presents the recommendations of the Legal Subcommittee’s working group but also adds some new features.

The chapeau of the Resolution recalls the work of the working group, points to the technical background and explains the main objective of the Resolution, i.e. to facilitate the adherence to and the application of the provisions of the relevant UN treaties.

<sup>8</sup> For this topic see Michael Gerhard/Kai-Uwe Schrogl, Report of the „Project 2001“ Working Group on National Space Legislation, in: Karl-Heinz Böckstiegel (ed.), „Project 2001“ – Legal Framework for the Commercial Use of Outer Space, Cologne 2002, 529-564

In the operative part the first recommendation

1. “*Recommends* that States conducting space activities, in fulfilling their international obligations under the United Nations treaties on outer space, in particular the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, the Convention on International Liability for Damage Caused by Space Objects and the Convention on Registration of Objects Launched into Outer Space, as well as other relevant international agreements, consider enacting and implementing national laws authorizing and providing for continuing supervision of the activities in outer space of non-governmental entities under their jurisdiction;”

repeats more or less the first recommendation of the working group’s conclusions, animating States to enact national legislation.

The second recommendation

2. “*Also recommends* that States consider the conclusion of agreements in accordance with the Liability Convention with respect to joint launches or cooperation programmes;”

also repeats the corresponding recommendation of the working group’s conclusions, just without detailing the respective provisions of the Liability Convention.

The third recommendation

3. *“Further recommends* that the Committee on the Peaceful Uses of Outer Space should invite Member States to submit information on a voluntary basis on their current practices regarding on-orbit transfer of ownership of space objects;”

is adds a request to Member States of UNCOPUOS to report on their practices regarding on-orbit transfer of ownership of space objects. This problem had been discussed thoroughly in the working group, but at that time, no specific recommendation had been formulated for the conclusions. The said question will certainly be dealt with under the new agenda item on the “Practice of States and international organizations in registering space objects”.

The fourth recommendation

4. *“Recommends* that States consider, on the basis of that information, the possibility of harmonizing such practices as appropriate with the view to increasing the consistency of national space legislation with international law;”

again corresponds with a recommendation of the working group’s conclusions with regard to the harmonization of legal developments. It, however, is less outspoken (in inserting “as appropriate”) but adds a specific new feature in pointing out that national space legislation shall be consistent with international law, thus pointing to the danger of potential inconsistencies.

The fifth section of the operative part

5. *“Requests* the Committee on the Peaceful Uses of Outer Space, in making full use of the functions and resources of the Secretariat, to continue to

provide States, at their request, with relevant information and assistance in developing national space laws based on the relevant treaties.”

is a request – not having been explicit part of the working group’s conclusions - addressed to UNCOPUOS and UNOOSA to keep States informed on new developments. The basis for this is the review of existing national space legislation, which had been prepared by the Secretariat during the work of the working group.<sup>9</sup> As another recent activity is this field, the conclusion of a framework agreement between UNOOSA and the Institute of Air and Space Law of the University of Cologne in July 2004 could be mentioned, which i.a. aims at making widely available space law texts that could serve as a resource for the development of laws relating to space activities.

#### 4. Outlook

This General Assembly Resolution should lead to a more thorough engagement of States in considering implementing national space legislation, if their private actors are already or on the verge of conducting space activities. This would lead to safer space activities and make the liability system more reliable and stable. From such an increased engagement in this field, UNCOPUOS might also identify a field for activity, when it comes to support and harmonize such national developments in order to establish a system, where there is no distortion of competition and no “flags of convenience” emerge for space transportation.

On the level of conduct of work in the UNCOPUOS Legal Subcommittee, the successful completion of the work of the working group on the concept of the “launching State” with the GA Resolution

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<sup>9</sup> UN Doc. A/AC.105/C.2/L.224 of 22 January 2001.

did not only produce a long sought-for highlight after the last GA Resolution on space law, the "Space Benefits Declaration", dating from 1996. It also proved that the tool of work-plans is actually working in this Subcommittee as well. It was therefore no surprise that 2003 also saw the establishment of a new agenda item under a workplan. The topic, Practice of States and international organizations in registering space objects, in fact arose from deliberations in the working group on the concept of the "launching State" (see 4.1). It would be good for the Subcommittee, if this spirit of openness to new issues would be applied also on a broader basis in the Subcommittee in the future.

#### **Annex**

#### **UNGA Res. 59/115 of 10 December 2004 "Application of the concept of the 'launching State'"**

*The General Assembly,*

*Recalling* the Convention on International Liability for Damage Caused by Space Objects and the Convention on Registration of Objects Launched into Outer Space,

*Bearing in mind* that the term "launching State" as used in the Liability Convention and the Registration Convention is important in space law, that a launching State shall register a space object in accordance with the Registration Convention and that the Liability Convention identifies those States which may be liable for damage caused by a space object and which would have to pay compensation in such a case,

*Taking note* of the report of the Committee on the Peaceful Uses of Outer

Space on its forty-second session and the report of the Legal Subcommittee on its forty-first session, in particular the conclusions of the Working Group on the agenda item entitled "Review of the concept of the 'launching State'", annexed to the report of the Legal Subcommittee,

*Noting* that nothing in the conclusions of the Working Group or in the present resolution constitutes an authoritative interpretation of or a proposed amendment to the Registration Convention or the Liability Convention,

*Noting also* the changes in space activities since the Liability Convention and the Registration Convention entered into force include the continuous development of new technologies, an increase in the number of States carrying out space activities, an increase in international cooperation in the peaceful uses of outer space and an increase in space activities carried out by non-governmental entities, including activities carried out jointly by government agencies and non-governmental entities, as well as partnerships formed by non-governmental entities from one or more countries,

*Desirous* of facilitating adherence to and the application of the provisions of the United Nations treaties on outer space, in particular the Liability Convention and the Registration Convention,

1. *Recommends* that States conducting space activities, in fulfilling their international obligations under the United Nations treaties on outer space, in particular the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, the Convention on International Liability for Damage Caused by Space Objects and the

Convention on Registration of Objects Launched into Outer Space, as well as other relevant international agreements, consider enacting and implementing national laws authorizing and providing for continuing supervision of the activities in outer space of non-governmental entities under their jurisdiction;

2. *Also recommends* that States consider the conclusion of agreements in accordance with the Liability Convention with respect to joint launches or cooperation programmes;
3. *Further recommends* that the Committee on the Peaceful Uses of Outer Space should invite Member States to submit information on a voluntary

basis on their current practices regarding on-orbit transfer of ownership of space objects;

4. *Recommends* that States consider, on the basis of that information, the possibility of harmonizing such practices as appropriate with the view to increasing the consistency of national space legislation with international law;
5. *Requests* the Committee on the Peaceful Uses of Outer Space, in making full use of the functions and resources of the Secretariat, to continue to provide States, at their request, with relevant information and assistance in developing national space laws based on the relevant treaties.