Balancing International Stagnance and National Divergence: An Analytical Study of Contemporary Liability Issues for NewSpace Tourism Companies

Ankit Kumar Padhy and Amit Kumar Padhy[*]

Abstract

With rapid growth of private NewSpace tourism companies and the stagnancy of legislative development of space treaties, with the last one coming into force in 1979, the international legal framework regulating liability aspects of commercial space tourism endeavours has become obsolete. Outer Space Treaty and Liability Convention impose the liability of any damage by space activities conducted by non-governmental entities on the launching State. Article II of the Liability Convention imposes unlimited and absolute liability for any damage on the earth's surface or aircraft flight. States can thereafter claim indemnification from the private entities. It remains contentious whether small nations allowing private space launches would be in a position to compensate huge potential losses in case of any mishap. Further, considering the high risk associated with human spaceflights and naïve condition of private space tourism industry, mandating unlimited liability for space tourism activities by NewSpace companies, can prove to be a deterrent for the growth of the commercial space tourism industry. In order to fill up such gaps left by the international space law, major space faring nations have come up with their own domestic laws to regulate commercial space tourism activities conducted by NewSpace companies.

* Research Scholar (Ph.D. Candidate), School of Law, Gujarat National Law University, Attalika Avenue Knowledge Corridor, PDPU Rd, Koba, Gujarat, India 382426 and Assistant Professor, School of Law, Vellore Institute of Technology, Kelambakkam - Vandalur Rd, Rajan Nagar, Chennai, Tamil Nadu 600127 Email (corresponding author): ankitkumarpadhy45@gmail.com.
Assistant Professor, School of Law, SVKMs Narsee Monjee Institute of Management Studies, Bannerghatta Campus, Kalkere Post, Anekal Taluk, Bannerghatta Main Road, Bangalore, Karnataka, India 560083 and Research Scholar, Maharashtra National Law University, Nagpur, India Email: amitkumarpadhy24@gmail.com.

The article critically analyses the efficacy of the Outer Space Treaty and Liability Convention in dealing with the contemporary liability issues posed by the commercial space tourism endeavours. The article thereafter analyses the national laws of major space-faring nations vis-à-vis contemporary liability issues fundamental to private space tourism activities like limited liability, informed consent, space insurance. It also attempts to highlight the similarities and differences between the national approaches towards the liability issues. At the end, the article argues that national space legislations are the only way forward to effectively deal with the liability aspects of space tourism, attempts to provide few suggestions to balance the aforesaid international stagnance and national divergence, and ensure sustainable development of commercial space tourism.

Keywords: NewSpace companies, commercial space tourism, liability issues, national space legislations

1. Introduction

In 1957, the launch of Sputnik-I, the first artificial satellite, by USSR resulted in the advent of the space race between United States and USSR. After the fall of USSR and end of cold war era, there has been a gradual transition from State-centric space explorations to private space activities in multiple domains including space tourism.[1]

Space Tourism may be defined as "providing services for humans to access and experience space for adventure and recreation". Commercial space tourism means any private space activity which provides the experience of space travel to the customers for a valuable consideration. A person who undertakes such commercial space travel for his own enjoyment and adventure can be called a space tourist or space passenger. Space tourism can be further divided into various types like suborbital space tourism, orbital space tourism and orbital space tourism with accommodation in space station or space hotel.[2]

Space X, Virgin Galactic, Blue Origin, Bigelow Aerospace are the key players of this naïve market. Currently, more than a dozen NewSpace companies have the technological capability to operate commercial space tourism flights. Many of these NewSpace companies have even opened booking of tickets for the upcoming space tourism flights. Thousands of people have already shown their interest towards this new dimension of adventure and reserved their seats for these flights by paying advance consideration.[3]

In the foreseeable future, with the development of fully reusable launch vehicles and increase in the number of sub-orbital tourism flights, space

1 S. Hobe, Legal Aspects of Space Tourism, Neb. Law Rev. 86 (2007) 21.

2 Hobe, The legal regime for private space tourism activities-An overview, Acta Astronaut. 66 (2010) 1593-1596. https://doi.org/10.1016/j.actaastro.2009.08.019.

3 T. Brannen, Private Commercial Space Transportation's Dependence on Space Tourism and NASA's Responsibility to Both, J. Air L. Com. 75 (2010) 639-668.

tourism would no longer remain restricted to few superrich. Several reports have highlighted that the prices of the sub-orbital tourism flight tickets might come down from the current $200,000 to $35000-50000 or lower.[4] Thus, commercial space tourism is at the verge of becoming economically feasible as well.

While technological and economic feasibility has almost been achieved, and the space exploration has moved from the State-centric scientific space endeavours in the Yuri Gagarin's era (the first man in space, 1961) to Private Commercial Space Tourism activities in the times of Dennis Tito (the first tourist in space, 2001) and Inspiration4 (first space flight with all civilian space passengers launched by SpaceX, 2021), the international legal framework regulating the potentially billion dollar commercial space tourism industry, has remained stagnant in the cold war era with the last treaty i.e. Moon Agreement being adopted around four decades ago. While the five major space treaties, that is, Outer Space Treaty, Liability Convention, Registration Convention, Rescue Agreement and Moon Agreement, were adopted in short span of 12 years (1967-1979), the gap between the technological growth in commercial space sector and the development of international space law regulating the commercial space industry has substantially widened since 1979, which has resulted into several legal conundrums with respect to liability for the damage caused by the commercial space tourism activities under international law.

2. Law Governing Responsibility and Liability of NewSpace Tourism Companies

The law regulating responsibility and liability of NewSpace Tourism companies may be classified into four categories: (i) General international law (ii) Outer Space Treaty (iii) Liability Convention (iv) in certain circumstances, national law.

International Law has had a long history with respect to State liability for damage caused to other States by its activities. Under general international law, when a State does any act not proscribed by international law which causes any grave injury to other State, the former State would be liable to compensate the victim State(s). State liability aims to maintain a delicate balance between the interests of a State carrying out legal activities and rights of victims injured by such activities. Cosmos-954 incident is a good example of the State liability where the injury to the environment of Canada resulted from unintentional falling of the lawfully operated Russian satellite.

4 Z.N. O'Brien, To Boldly Go? Private Contracts for the Carriage of Persons in Space, Exclusion Clauses and Inter-Party Waivers of Tortious Liability, Dubl. Univ. Law J. 29 (2007) 341-373.

International space treaties have absorbed and adopted the concept of State responsibility and liability with some modifications. Article III read with Article I para. 2 of OST reiterates that space activities must be carried in accordance with international law. Article VII of the OST states that State parties that launch, or procure launch, or from the facility or territory where launch takes place, shall bear the international liability for any injury caused to other State parties or its persons on Earth, in air or outer space. Article VI of the OST clarifies that State would incur international responsibility for national activities, whether by governmental or non-governmental entities, in outer space and imposes a duty on the appropriate State to ensure the space endeavours within its territory are in compliance with the international law by 'authorization and continuous supervision'.[5]

Commercial space tourism activities by NewSpace companies can effectively fall under activities by non-governmental entities. States are held responsible to the same extent for private space tourism activities by NewSpace companies as the State would be responsible for acts performed by the government or its instrumentalities. State is responsible for activities of private NewSpace companies so long as such activities fall within the meaning of national activities. There is no settled definition of 'national activities' under international space treaties. Thus, individual space-faring nations may decide for themselves as to how 'national activities' should be interpreted. Further, Article VIII of the OST provides that the State of registry would retain jurisdiction and control over the space object and personnel thereof.

Liability Convention primarily attaches liability to Launching State. According to Article I(c) of the OST, Launching State refers to the State launching space object, or which procures launch of space object, or from whose facility or territory launch has been made. A pertinent issue with respect to the definition is that which State would be held responsible if the launch takes place by a private operator from a Stateless territory like high seas. Article II and III of the Liability Convention further elucidate the concept of liability. Liability Convention deviates a little from the Article VII of the OST while explaining the State liability and divides State liability into two kinds- Absolute liability and Fault based liability. No such distinction existed in OST. Article II of the Liability Convention states that if the damage is caused by a space object on Earth surface or to an in-flight aircraft, the liability of its launching state would be absolute. Article III of the OST provides that the launching state's liability is fault based when the injury is caused elsewhere than on the Earth's surface.

5 A. Ferreira-Snyman, Legal challenges relating to the commercial use of outer space, with specific reference to space tourism, Potchefstroom Electron. Law Journal/Potchefstroomse Elektron. Regsbl. 17 (2014) 2. https://doi.org/10.4314/pelj.v17i1.01.

3. Critical Analysis of International Legal Regime Governing Commercial Space Tourism

The present norms of State liability for commercial space tourism activities are plagued with several loopholes While there are multiple provisions in the international space treaties which deal with the issue of liability of non-governmental entities, they have many ambiguities. Important lacunas in the current international space treaties are as follows:

Firstly, the current legal framework regulating liability for private space tourism endeavours is against the elementary principles of justice and equity. While the benefits of the commercial space tourism are derived by the private space launch operators, launching states are obligated to bear the burden in case of any injurious acts. The argument that launching state can claim compensation against the launch operator should not be a valid reason to impose primary liability on the States, instead of launch operators. Further, in a case where indemnification clause is not explicitly provided in the license, the State's right to claim reimbursement from the private launch operator after discharging its duty under international law to provide reparation for the injury incurred remains contentious.

Secondly, with exponential improvement in the space technology and decrease in costs of space travel would result in substantial increase in number of private space tourism flights. In such a situation, launching state might not be able to effectively exercise its power to supervise and control all the commercial space tourism activities.

Thirdly, OST obligates the 'appropriate State' to ensure licensing and supervision of the commercial space travel endeavours. However, the treaty does not elucidate the meaning of appropriate state in precise terms. It may be liberally interpreted to include more than one nations like launching state, State of registry, State of nationality, State having proprietary rights over the space object etc. In case of any mishap, it might become complicate to ascertain the State from which compensation can be sought.

Fourthly, under the current fault based liability provided in Article III of the Liability Convention, the exact defect which caused the mishap, and additionally that the mishap happened because of the launching State's or its licensee's negligence has to be clearly shown. The operator is bound to take reasonable due diligence to prevent any such mishap. However, in novice technical arena of commercial space tourism industry, which lacks precedent events and experiences from which reasonableness may be derived, it would be really difficult to ascertain whether the care taken by the private space company was reasonable enough.

Fifthly, the contemporary international law fails to clearly demarcate airspace and outer space. Thus, the applicable law (air law or space law) which would govern the liability for any mishap or accident in the zone of 80-110 km

above the Earth's surface remains debatable.[6,7]It has further led to individual States deciding the limit of airspace as per their own convenience. The Australian national space legislation has unilaterally delineated 100 km above the Earth's surface as the starting point of outer space.[8]

Sixthly, the present international law fails to define hybrid aerospace vehicles, like SpaceShipTwo which is an air launched suborbital spaceplane, which is carried to an altitude and launched by aircraft White Knight Two. The lack of definition for aerospace vehicles also causes ambiguity in determining the liability regime which would govern the compensation in case of any damage.[9] While the air law has a comprehensive conventions which provide for limited liability of the operator, the space law imposes unlimited liability for any injury to third parties. The uncertainty regarding legal position of aerospace vehicles is not good for the space tourism industry.

Lastly, the current international space treaties do not provide any uniform minimum liability insurance which must be subscribed by the commercial launch service provider.

4. Need of National Space Legislation to Regulate Responsibility and Liability of NewSpace Tourism Companies

While the fundamental principles regulating liability of non-governmental entities have been provided by the international space treaties, the national space legislation allows the State to reflect upon the domestic policies in the space sector. The national space legislation may also help to fill the gaps left by international space treaties. The national space law primarily focusses on private space endeavours, supplementing international space treaties, and its need to regulate responsibility and liability of New Space tourism companies may be summarised as follows:

1. The duty of authorization and continuous supervision of private space activities emanates from Article VI of the OST itself. However, the article leaves it to the concerned States to draw an elaborate, consolidated and transparent mechanism of licensing commercial space tourism companies.
2. Article VII of the OST and Liability Convention incentivizes the State to enter into some kind of indemnification arrangements with the

6 H. Qizhi, The Problem of Definition and Delimitation of Outer Space, J. Sp. L. 10 (1982) 157-163.

7 J.C. McDowell, The edge of space: Revisiting the Karman Line, Acta Astronaut. 151 (2018) 668-677. https://doi.org/10.1016/j.actaastro.2018.07.003.

8 P.S. Dempsey, M. Manoli, Suborbital flights and the delimitation of air space vis-à-vis outer space: functionalism, spatialism and state sovereignty, Comm. Peac. Uses Outer Sp. (2018) 1-47.

9 Ibid.

private operators, in order to ensure reimbursements of compensation paid by the State, for any loss or damage caused by the space tourism activities of the commercial launch service provider, in accordance with the liability norms under these treaties. It is better to have such mechanism through a legally binding domestic space legislation.

3. The national space laws also allow flexibility to the State to prescribe insurance requirements to the licensees.
4. Article VIII of the OST and Registration Convention require States parties to maintain a national registry of relevant space objects launched from its territory. The domestic space legislation can incorporate and elaborate on establishment and maintenance of the national registry.

5. National Divergences

5.1. National Divergence With Respect to Passenger Liability

Space endeavours are technically complex, highly sophisticated and challenging activities which involve huge risks. While the commercial launch service providers may take all the necessary and reasonable precautions, the possibility of any accident or mishap remains. Taking the high risk involved in space activities, Article VI of the Liability Convention states that the treaty would not be applicable to any injury caused by a launching state to its own nationals, or to foreign nationals while they are taking part in the operation of the space object from the stage of launch till descending back to Earth's surface. If the provision is strictly interpreted, then in case of any accident or mishap resulting into damage to the space tourists on-board the space vehicle, the nationals of the launching state, or the respective State(s) of the foreign space passengers, would not be able to claim compensation for any damage suffered during space tourism under international law. The exclusion of any claim for compensation in the provision in case of any injury to the space passengers seems to be based on the principle of *volenti non fit injuria*. Thus, we can safely conclude that under present international space law, space tourist cannot claim compensation for any damage suffered during space tourism activity. However, compensation may claimed by space tourists under the national law of the launching state (under contract law or tort law).

Rules and regulations relating "Human Space Flight Requirements for Crew and Space Flights Participants", issued by the Federal Aviation Authority through the office of Commercial Space Transportation (United States) under the broader umbrella of Commercial Space Launch Amendment Act, 2004, make it mandatory for the launch operators to obtain "informed consent" from the space flight participants. Several US states including Virginia, Florida and New Mexico have enacted legislations in furtherance of these

regulations and reiterate the obligation of the launch operator to give explicit and sufficient information and warning about the inherent risks associated with the commercial space tourism activities and obtain informed consent from the space passengers whereby the space tourists waive any claims against the launch service provider and launching state i.e. United States. Through the introduction of the requirement of the informed consent, United States has attempted to shift the burden of any loss during space tourism activities from the launch operator to the space tourists. Thus, it becomes clear from the federal and state laws of the United States that the space tourists would not be able to claim any compensation from the launch operator.[10,11]

Space Industry Act, 2018 of the United Kingdom imposes a similar requirement of informed consent on the operators. However, there is no uniform state practice with respect to Informed consent. Further, with exponential development of human rights jurisprudence, the suitability of the concept of informed consent for adoption by other states remains contentious.

5.2. National Divergence With Respect to Third Part Liability Caps and Insurance

International space treaties do not obligate the launch operator with any obligation to insure the space vehicles. However, the absence of such a duty on State under the space treaties does not prevent the space faring nations from prescribing its own requirements with respect to liability insurance. States can also require its nationals to get a minimum space insurance before getting involved in space tourism activities. Various spacefaring nations have specified insurance requirements and risk allocation and management mechanisms in their domestic space laws.

In United States, Commercial Space Launch Amendments Act, 2004 is the fundamental source of licensing, risk allocation and liability assignment. The Act is a modified version of the 1988 Amendments to the Commercial Space Launches Act, 1984.[12] The launch services provider must obtain liability insurance or show financial responsibility to compensate for any injury incurred during commercial space launches.[13] As per the said Act, third party liability risks are distributed between the private NewSpace tourism company

10 T. Knutson, What is "Informed Consent" for Space-Flight Participants in the Soon-To-Launch Space Tourism Industry?, J. Sp. Law. 1 (2007) 105-122.

11 Z.N. O'Brien, To Boldly Go? Private Contracts for the Carriage of Persons in Space, Exclusion Clauses and Inter-Party Waivers of Tortious Liability, Dubl. Univ. Law J. 29 (2007) 341-373.

12 R.T. Rankin, Space tourism: Fanny packs, ugly T-shirts, and the law in outer space, Suffolk Univ. Law Rev. 36 (2003) 695-716.

13 T. Brannen, Private Commercial Space Transportation's Dependence on Space Tourism and NASA's Responsibility to Both, J. Air L. Com. 75 (2010) 639-668.

providing launch services and the United States government into three levels. In the first strata, all risks with respect to third party claims for any damage (as per Article I of the LC) to the maximum probable loss of $500 million shall be borne by the launch service providing NewSpace tourism company.[14] The utmost insurable sum for claims by the United Stated for injury to the United States' governmental property from space activities by the licensee is pegged at $100 million. Under the second strata, all claims exceeding $500 million to $1500 million would fall and the United States government would indemnify the third parties for any liability claims in this layer.[15] Any claims of damages beyond $1500 million would come under the third strata and the launch provider would liable.[16]

Russian Federation on Space Activities Act, 1993 makes appropriate liability insurance is mandatory for the non-governmental entities including NewSpace companies providing space launch services from the Russian territory or facility. Exact insured sum required for a space activity may vary depending on the space vehicles, and is for the Russian Parliament to decide. However, it has been clearly laid in Article 30 of the Act that the Russian government guarantees full compensation for direct damage resulting from any mishap in the course of commercial space endeavours by non-State entities of Russia. Russian Federation normally requires around $80 million for small space vehicles and $300 million insurance for Soyuz launch vehicles.[17]

Australian Space Activities Act, 1998 provides an elaborate legal framework to deal with and compensate third party liability claims for injury caused by the space vehicles regulated under the Act. It segregates the risk allocation and liability assignment into two levels. In the first strata, the private launcher operator must show financial responsibility or obtain liability insurance, to the extent of 'maximum probable loss' ascertained in accordance with the regulations, to protect third parties and the Australian State and its properties, from any injury caused by its commercial space activities. Under the second strata, any compensation payable in excess of the aforesaid amount in the first strata shall be borne by the Australian government.[18] In contrast to the US legislation, the Australian Act does not

14 P. Ordyna, Insuring Human Space Flight: An Underwriter's Dilemma, J. Sp. L. 36 (2010) 231.

15 T. Brannen, Private Commercial Space Transportation's Dependence on Space Tourism and NASA's Responsibility to Both, J. Air L. Com. 75 (2010) 639-668.

16 R. Sadowski, Insuring Commercial Space Travel, Zeitschrift Fur Luft- Und Weltraumr. Ger. J. Air Sp. Law. 61 (2012) 7994.

17 A. Kerrest de Rozavel, F.G. Von Der Dunk, Liability and Insurance in the Context of National Authorisation, Stud. Sp. Law. 6 (2011) 125–161. https://doi.org/10.1163/ej.9789004204867.iii-381.12.

18 P.S. Dempsey, Liability for Damage Caused by Space Objects under International and National Law, Ann. Air Sp. L. 37 (2012) 333.

prescribe any upper limit to the liability of the government for third party claims. However, if the damage has been caused by the intentional misconduct of the launch provider in violation of the terms and conditions stipulated in the license, government might be exonerated from the liability.

France has a two layered system of liability assignment similar to that of Australia, with minor modifications. French national space legislation provides an upper cap for the liability of the launch operator i.e. 60 million euros. Any third party damages incurred beyond this limit shall be indemnified by the French government. According to the Swedish law, the Swedish government can provide any requirements subject to which license may be issued to the launch operator. The Argentinian national space legislation does not make liability insurance mandatory for the private space companies. Singapore, Hongkong and Japan mandate an insurance requirement of $100 million.[19]

From the analysis of insurance norms under the aforesaid countries, it becomes clear that there is no uniformity with respect to state practice on minimum third party liability insurance which States have obligated the launch operators to subscribe. Lack of any minimum insurance requirement by the States for the operators may give rise to the issue of flag of convenience, similar to that in maritime law.[20] Since the definition of launching state includes country that launches the space object or the country from space object is launched, space launch operators may choose an outer space flag of convenience by launching from the preferred State or registering their business in the State with lax regulations and minimum or no insurance requirement.[21] If each State would have distinct indemnification scheme, it may result in creation of uneven playing field among the nations, and may unduly incentivize forum shopping.[22] NewSpace tourism companies might get lured to locate their business in countries providing the best deal with minimum insurance requirement and maximum coverage of liability by State above the required insurance plan needed by the operator, instead of doing business in countries with strict liability norms and where they can be held financially responsible or be subject to higher insurance and safety regulations.[23] The nations providing these best deals may not be in a situation

19 S. Bhat B., Space Liability Insurance: Concerns and Way Forward, Athens J. Law. 6 (2019) 37–50. https://doi.org/10.30958/ajl.6-1-2.

20 A. Taghdiri, Flags of Convenience and the Commercial Space Flight Industry: The Inadequacy of Current International Law to Address the Opportune Registration of Space Vehicles in Flag States, B.U. J. Sci. Tech. L. 19 (2013) 405.

21 Ibid.

22 C. Albert, Liability in International Law and the Ramifications on Commercial Space Launches and Space Tourism., Loyola Los Angeles Int. Comp. Law Rev. 36 (2014) 233-261. http://ezproxy.lib.ucalgary.ca/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=afh&AN=101563348&site=ehost-live.

23 Ibid.

to pay compensation in case of any mishap, which would ultimately compromise the rights of the victims States to recover damages.

5.3. National Divergence With Respect to Legal Status of Sub-Orbital Tourism Flights

Sub-orbital tourism flights refers to spaceflights in which aerospace vehicle reaches outer space, but returns back to Earth without completing one orbital revolution or reaching escape velocity.[24] It is not clear whether the norms of the air law regulate the sub-orbital carrying tourists, or these vehicles fall under the ambit of laws governing outer space, or else are governed by a mixture of both air law and space law.[25] The legal framework under air law and space law are very different and mutually exclusive of each other. The air law is based on the principle of sovereignty of airspace, while freedom of outer space is the fundamental principle of space law. The current international or national air or space law does not provide a definite answer with respect to legal status of sub-orbital flights and the liability norms applicable to sub-orbital tourism.[26] While liability under the air law is governed by Warsaw Convention, Montreal Convention (passenger liability for injury or death of airline passenger during the course of air flight, and liability for loss or damage to cargo) and Rome Convention (third party liability) and the air carrier is primarily responsible for any damage to the passengers, liability under space law is governed by the Outer Space Treaty and the Liability Convention, and the launching State is primarily responsible for any loss or damage.[27] While under the aviation law, there are well defined limited liability norms for the airline operator, the space law prescribes unlimited liability on the launching state of the spacecraft. There is no uniform state practice with respect to sub-orbital flights.[28] While the United States treats the sub-orbital human space flight as falling under the space law, several European Union space faring nations consider such vehicles as aircraft regulated by aviation law.[29]

24 S. Hobe, Legal Aspects of Space Tourism, Neb. Law Rev. 86 (2007) 21.

25 F.G. von der Dunk, Passing the Buck to Rogers: International Liability Issues in Private Spaceflight, Neb. Law Rev. 86 (2007) 400. http://digitalcommons.unl.edu/nlr/vol86/iss2/5.

26 S. Freeland, Fly Me to the Moon: How Will International Law Cope with Commercial Space Tourism?, Melb. J. Int. Law. 11 (2010) 1-29. http://www.law.unimelb.edu.au/files/dmfile/download2f6a1.pdf.

27 S. Hobe, Legal Aspects of Space Tourism, Neb. Law Rev. 86 (2007) 21.

28 F.G. von der Dunk, M.G. Gerardine, J. Neumann, Space Tourism Activities - Emerging Challenges To Air And Space Law?, J. Sp. La. 33 (2007). http://www.heinonline.org.com.

29 S. Hobe, Aerospace Vehicles : Questions of Registration , Liability and Institutions - by The Current System The European Proposals for Reform The Application Current Liability Regimes, (2004).

6. Conclusion

Although international space treaties have very wide base, the time of these formal agreements may have come to an end. It can be safely concluded that the norms of liability provided by OST and Liability Convention have become obsolete and redundant to deal with the modern developments. These treaties were adopted in an era where private commercial space tourism had not even commenced or anticipated. These treaties must be revisited and reviewed to bring them in consonance with the contemporary times. The passing of more than forty years since the last treaty (Moon Agreement) was adopted and the low ratification of the Moon Agreement itself which acknowledged the inadequacy of the OST and Liability Convention shows a clear stalemate condition with respect to treaty law development in the sphere of space law. National space legislations can prove to be an effective tool to resolve several new and debatable issues regarding liability of the commercial space tourism companies and can fill the legal gaps and vacuum left by international space treaties. However, currently there is lack of uniformity with respect to liability and insurance requirements provided under national space legislations of different countries. These deviations in domestic space laws may be a result of lack of any guiding minimum standards at the international level. Adoption of a non-binding soft law instrument to resolve the existing ambiguities regarding liability of commercial space tourism activities can be viable solution and might prove to be an icebreaker. It would also allow flexibility to States to design their national space legislations keeping in consideration their space policies, priorities and circumstances of the country.