INTERNATIONAL LAW LIABILITY & RESPONSIBILITY ISSUES IN PLANETARY DEFENSE

International Academy of Astronautics
Sixth Planetary Defense Conference (May 2, 2019)

Henry Hertzfeld, David Koplow, Sergio Marchisio, Alexander Soucek & Peter Strube
- Liability & Responsibility
- National Activity
Liability & Responsibility:

Related But Distinct Legal Concepts

- **Liability** is focused on providing compensation to another state that is injured by state’s action.
  - A treaty may create a liability regime that arises even when the state’s action is not legally wrongful.
- **Responsibility** arises when a state commits a wrongful act, such as a breach of a treaty or other international legal obligation.
  - The act may or may not inflict damage on another state.
  - Responsibility may be negated by certain “circumstances precluding the wrongfulness” of the act.
Under the **1967 Outer Space Treaty**, a state is responsible for “national activities” conducted in space, whether undertaken by governmental agencies or non-governmental entities.

Space activities of non-governmental entities “shall require authorization and continuing supervision.”

Under the **1972 Liability Convention** and the **1974 Registration Convention**, a “launching state” is defined as a state:

- which launches or procures the launching of a space object, or
- from whose territory or facility a space object is launched.

Action might be attributable to multiple states simultaneously.
LIABILITY
Recognizing the unique dangers of space activities, the **1972 Liability Convention** creates a novel two-part liability regime:

- **Liability CV, Art. II**: A launching State is “absolutely” liable to pay compensation for damage caused by its space object on the surface of the Earth (i.e., the state is liable even if it was not negligent or at fault).
- **Liability CV, Art. III**: A launching state is liable for damage caused elsewhere than on the surface of the Earth (e.g., to another state’s satellite) only if the damage is due to its fault. (The concept of “fault” is not well worked out in international law.)

A planetary defense mission could create “indirect” causation -- would need to establish that the state’s activity had diverted the asteroid sufficiently to alter its trajectory, causing it to strike a location different from where it would have impacted otherwise. Potentially immense liability; could deter states attempting planetary defense.
RESPONSIBILITY
International law requires a state to refrain from planetary defense activity that would violate a treaty or other international legal obligation, unless there were circumstances that preclude the wrongfulness of the action, such as,

- **Consent**: Each state can waive its right to complain about a wrongful act, by requesting, endorsing, or participating in the planetary defense mission.
- **Distress**: Applies if there is “no other reasonable way” to save lives, and if the act will not create a greater peril for others.
- **Necessity**: Applies to an action that is “the only way” to safeguard “an essential interest” against a grave and imminent peril, and does not seriously impair the essential interests of others.

These exceptions are rare, and are construed narrowly.
Team

Henry Hertzfeld
- Professor
- Space Policy Institute & School of Law
- George Washington University

David R Koplow
- Professor
- Georgetown University Law Center

Sergio Marchiscio
- Professor
- School of Law
- University Sapienza of Rome
Alexander Soucek
Senior Attorney
Office of the Legal Adviser
European Space Agency (ESA)

Peter Strube
Senior Attorney
Office of the General Counsel
German Space Agency (DLR) seconded to
Federal Ministry for Economic Affairs and Energy

Director,
Planetary Defense Office
Science Mission Directorate
National Aeronautics & Space Administration
Questions?

Thank you!
Thank you!

- hhertzfeld@law.gwu.edu
- Koplow@Georgetown.edu
- Sergio.Marchisio@uniroma1.it
- alexander.SOUCEK@ESA.INT
- Peter.strube.EXTERN@bmwi.bund.de
- Also:
- 2rjfrankesq@gmail.com
- cjohnson@swfound.org