Mortgagor or mortgagee? Liability for damage caused to space assets where a right of forfeiture goes wrong in outer space?

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Introduction

Parties are involved in contractual relations on a daily basis. Whatever the nature of such contracts, or whatever form it takes, the fact is that it is not strange for parties, be it private individuals, corporations, government agencies, NGOs and international organisations, to enter into obligations in return for certain benefits. The obligation is extended with a series of covenants and conditions with respect to the fulfilment of the terms of the agreement, the breach of which entitles the injured party to seek a variety of remedies depending on the terms of the agreement and any *lex situs*. This concept is not strange in space-related activities in spite of its unique nature. As long as parties conform to the provisions of the regimes, outer space is free for exploration and exploitation, and therefore open to human quest. Because of the huge financial commitment and obligations involved in space exploration, it would not be far-fetched to see space actors seeking financial assistance from financial institutions of other states and entering into a mortgage agreement to borrow huge capital to finance a particular space activity. This can take the form of a finance lease or agreement to finance the launch, manufacture, maintenance or purchase of a satellite in orbit and, almost always, the space asset/object as the security/collateral.

In such cases a breach of the terms of the contract on the payment after several demands may entitle the mortgagee/creditor to exercise its right of forfeiture, in this case removal of the satellite from orbit. Because of the increase in satellite launch and the finite nature of the Geo- Stationary causing satellites to cluster and collide, there is the possibility that the removal of a satellite may cause damage to another space object. The question is what happens when another space object or satellite belonging to another state or entity is damaged in the process of removing a satellite, the subject matter of the forfeiture? Who is liable for such damage, the mortgagor or mortgagee? The intention of this article is not to discuss a contract of mortgage on space asset/object but rather to discuss the liability for damage that may be occasioned where the act of removal of a space asset/object for breach of contract caused damage to another satellite in orbit or even the forfeited satellite. The article examines the position of space regimes on who is liable between the mortgagee, who is only observing his right to forfeiture or the launching party, and who may not necessarily be the mortgagor, but who is legally liable for damage caused to other space object through it space activity.

Enshrined in space regimes is the freedom to explore and exploit the usefulness of outer space to its fullest, particularly for the benefit of mankind.[1] Accordingly, the exploration

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[1] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (the "Outer Space Treaty", adopted by the General Assembly in its resolution 2222 (XXI)), opened for signature on 27 January 1967, entered into force on 10 October 1967, The Convention on International Liability For Damage Caused By Space Objects (the Liability Convention" adopted by the General Assembly In Its Resolution 2777 (XXVI)) opened for signature On 29 March 1972, entered into force On 1 September 1972, The Convention On Registration Of Objects Launched Into Outer Space ('The Registration Convention'' adopted by the General Assembly in its