

Article VI of the Outer Space Treaty 'in the European Context'

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Article VI, OST, in the European Context

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Art. VI, OST

“**States** Parties to the Treaty shall bear **international responsibility** for **national** activities in outer space, including the Moon and other celestial bodies, whether such activities are carried on by **governmental agencies or by non-governmental entities**, and for assuring that **national** activities are carried out in conformity with the provisions set forth in the present Treaty. The **activities of non-governmental entities** in outer space, including the Moon and other celestial bodies, shall require **authorization and continuing supervision** by the appropriate **State** Party to the Treaty. When activities are carried on in outer space, including the Moon and other celestial bodies, by an **international organization**, **responsibility** for compliance with this Treaty shall be borne both by the **international organization** and by the **States** Parties to the Treaty **participating in such organization.**”

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'European context' ...?

■ Which 'Europe'?

- European Space Agency
 - ◆ EUTELSAT? EUMETSAT?
- European Community / Union
- *Geographical Europe*

➔ Individual states

- Those **with** systems for “authorization and continuing supervision”
- And those **without** ... (?)

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ESA

Note: ESA 'party' to other space treaties

- Declarations Rescue Agreement, Liability Convention & Registration Convention

■ Instrument for joint space programmes

- Mandatory *versus* optional activities
 - ◆ Private industry only as builders & integrators
 - ➔ No 'national activities in space by non-govt. entities'
 - ➔ No "authorization" / "continuing supervision" thereof

➔ No authority to license (either)

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EC / EU

- EC (in particular) regulatory power
 - ➔ Possibility to license ('authorise' / 'supervise') - but largely theoretical even outside outer space
 - ◆ Focus EC (law) on economy ➔ commercial activities
 - ◆ Cf. European satellite communications sector
 - Half-way effort to *harmonise* national licensing
 - Applicability & application competition law
 - Interest in space: largely political
 - ◆ Driving Galileo; Kopernikus

Note: EC / EU not 'party' to any space treaty

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➔ Individual states

- ***Yardsticks*** - with reference to Art. VI
 - Scope in terms of (space) activities
 - ◆ Ref. “(national) **activities in outer space**”
 - Scope in terms of license obligation
 - ◆ Ref. “**national activities** (in outer space)”
 - Liability (& insurance)
 - ◆ Most tangible need for authorisation & supervision
 - Licensing (& registration)
 - ◆ Ref. “**authorisation**” & “**supervision**” - & ‘toolkit’
 - Implementation

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Norway, 1969

- ESA member state (only)
- Act on launching objects from Norwegian territory into outer space
 - Limited to launching activities
 - License obligation: territory; vessels & aircraft; nationals if operating from global commons
 - Liability...?
 - ... Prior to Liability Convention!
 - License for Norsk Romsentr from Andøya

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Sweden, 1982

- 1st now-EU member state / also ESA
- Act & Decree on Space Activities
 - Excl. launch sounding rockets
 - License obligation: territory & nationals
 - Liability: full reimbursement
 - ◆ No obligatory insurance
 - National Board for Space Activities licenses
 - ◆ Also runs national register

Note: Virgin Galactic's future Kiruna operations!

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United Kingdom, 1986

- ESA & EU

- Outer Space Act

- Incl. “procuring”
 - ◆ Widely defined - “causes it to occur or is responsible for its continuing”
- License obligation: nationals - no territory (!)
- Liability: full indemnification
 - ◆ Obligatory insurance - up to limit
- British National Space Centre licenses
 - ◆ Also keeps national register

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UK practice

- Licensing fee £ 1,000 → £ 6,500
 - Since 1989; > 20 licenses BNSC; some 10 licenses by Governors UK Overseas Territories
- Insurance
 - Insurance *vis-à-vis* unlimited reimbursement: UK government to be insured for £ 100 M
 - ↔ 3rd party liability coverage available at reasonable rates up to ± US\$ 250 M (launch phase) / ± US\$ 400 M (in-orbit operations)

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Russia, 1993

- Only geographic Europe
- Law of the Russian Federation on Space Activities
 - Broad definition “space activities”
 - License obligation: “under the jurisdiction” ...
 - Liability: indemnification in principle unlimited
 - ◆ Compulsory insurance coverage (level t/b decided)
 - Russian Space Agency - Roscosmos
 - ◆ Licenses (‘supervised’ by MoD) & runs registry

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Russia, 1996

■ Statute on Licensing Operations

“Space operations subject to licensing are those of legal entities regardless of their organizational and legal form, and of individual entrepreneurs *of the Russian Federation*, and also space operations of foreign citizens and organizations when carried out *under the jurisdiction of the Russian Federation*.

Space operations subject to licensing include the making (encompassing production and testing) of space-rocket complexes and their component parts, storage, readying for launch, launching and utilizing space vehicles, and also the control of space missions.”

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Russian practice

- Megaruss insurance co.: involved in > 60 contracts since 1992
- Limits reimbursement liability (USD)

Proton	300 M	Tsyklon	100 M
Soyuz	100-300 M	Rockot	100 M
Molniya	150 M	Cosmos	100-150 M
Zenith	150-500 M	Strela	100 M
Dnepr	100-150 M	Start	80 M

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Ukraine, 1996

- Like Russia (...)
- Law of the Ukraine on Space Activity
 - Definition “space activity” very broad
 - License obligation:
 - ◆ ‘In Ukraine’ & ‘under jurisdiction Ukraine’
 - Liability - as Russia: unlimited (in principle)
 - ◆ Insurance - as Russia: compulsory
 - National Space Agency of the Ukraine licenses
 - ◆ Registers - unless someone else takes care

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Belgium, 2005

- ESA & EU
- Law on (...) launching, flight ops or guidance of space objects
 - License obligation: territory; nationals only if under special agreement
 - Liability: in principle unlimited
 - ◆ No obligation insurance
 - Minister space research & applications licenses
 - ◆ ... & registers

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Netherlands, 2007

- ESA & EU
- Space Activities Act
 - Incl. “organization” of space activities
 - ◆ Ref.: space tourism from the ‘Dutch’ Caribbean
 - License obligation: territory (incl. ships & aircraft); nationals if not from OST parties
 - Liability: redress up to value of sum insured
 - Radiocommunications Agency licenses
 - ◆ Also registers

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Towards the future ...

■ France

- *Not seen an English version yet...*
- Before: authorisation & supervision 'by control'
 - ◆ Arianespace & SPOTImage: majority-owned French; CNES largest single shareholder
 - ◆ Eutelsat: special arrangements post-privatisation
 - ◆ France Telecom: French govt. crucially involved

■ Germany - further then EO data-law

■ Italy (?)

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Concluding remarks

- Neither ESA nor EU yet to ‘implement’ Art. VI, OST, in practice
 - Nationally, considerable divergence
 - Esp. scope of licensing obligation & handling of insurance (obligation or not)
 - Usually liability reimbursement unlimited - in principle ...
 - Usually dedicated entity licensing & registering
- ➔ Need / possibility for harmonisation?

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