IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
National Space Legislation – Harmonisation and Enforcement (3)

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TO ASSURE OR NOT TO ASSURE: THE CONTENT OF THE INTERNATIONAL RESPONSIBILITY OF STATES FOR NATIONAL SPACE ACTIVITIES

Abstract

Much scholarly works and discussions have focused on the seminal provision of Article VI of the Outer Space Treaty, which makes States Parties bear international responsibility for national activities in outer space. This is a norm that, already codified under the Declaration of Legal Principles, is also customary in nature.

There is, however, less attention on the latter half of the same provision, which provides that States also bear international responsibility "for assuring that national activities are carried out in conformity" with the Treaty. Indeed, fast-forward seven decades in time, the first Guidelines for the Long-Term Sustainability of Outer Space Activities being considered and adopted urge States to "adopt, revise and amend, as necessary, national regulatory frameworks for outer space activities, taking into account their obligations under the United Nations treaties on outer space as States responsible for national activities in outer space [...]". Now, and then, there appear to be obligations binding on States that cannot be easily disregarded.

A purely textual reading of Article VI suggests that there are positive actions that must be undertaken by a State "to assure". What is unclear, and what has somewhat escaped more research and proper understanding, is what positive steps a State must undertake to fulfil the responsibility to "assure". A closer look at existing jurisprudence and interpretations surrounding the meaning of "assure" by international courts and tribunals may shed some light on the content and scope of this responsibility. Further, if there are indeed positive acts that must be undertaken to fulfil the responsibility to "assure", what are the consequences, if any, for failing to undertake these positive acts?

In light of the consensus on the need for States to consider the adoption of national space legislation, and under the overarching objective to harmonise the regulation and enforcement of space activities at the national level, it is useful to revisit and better understand the wording of "assuring" national activities are in conformity with the Outer Space Treaty. This is more than an academic exercise, and may in fact remind States of the existence of positive acts and obligations that should be undertaken in order to fulfil the object and purpose of the Outer Space Treaty, and international space law in general. Such a clarification will be useful to strengthen the governance of space activities, and enhance the peaceful, safe and sustainable exploration and use of outer space by all States.