

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

Author: Mr. George Anthony Long
United States

LEGAL BASIS FOR A STATE'S USE OF POLICE POWER AGAINST NON-NATIONALS TO
ENFORCE ITS NATIONAL SPACE LEGISLATION AND RESPONSIBILITIES IMPOSED BY THE
OUTER SPACE TREATY

Abstract

This paper will examine the legal basis for a State's use of police power against non-nationals to enforce is national space legislation as well as enforce compliance with the responsibilities imposed by Outer Space Treaty when the non-national activity or conduct in outer space does not occur on a space object registered to the enforcing State.

Generally, international law recognizes five tentacles for State jurisdiction which are territorial, protective, national, passive personality, and universal jurisdiction. Of these five jurisdictional basis, protective, passive and universal jurisdiction each present an avenue for a State to wield its police power against a non-national based on conduct in outer space. In addition, Outer Space Treaty Article VI can also potentially serve as a source of authority for such an exercise of police power.

Outer Space Treaty Article VI expressly provides that the activities of non-governmental entities "shall require authorization and continuing supervision by the appropriate State Party to the Treaty." This provision does not limit authorization and oversight to a "launching State" or the home State of a non-governmental entity. Thus, if a State deems itself the appropriate State to authorize and supervise the space activity of a non-national private entity, then a legal basis may exist for the State to exercise its police power over a non-national based on outer space conduct even if the non-national is not on board a space object registered to the enforcing State.

For context, the paper's analysis will focus on certain provisions of United States national legislation which can potentially serve as justification for exercising its police power against non-nationals for space activities or conduct when the non-national is not onboard a space object registered to the United States. The paper will further examine whether U.S. Space Policy Directive-4, which creates a military space force, is also the precursor for a form of "space police" to enforce national space legislation. This issue surfaces given the broad priorities given to the space force and the national space resource extraction law which expressly provides that the United States will promote the right of its "citizens to engage in commercial exploration for and commercial recovery of space resources free from harmful interference," in accordance with its international obligations.