

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Space Law in a Networked World (7)

Author: Mr. Yu Takeuchi
Japan Aerospace Exploration Agency (JAXA), Japan

IMPLICATIONS OF STATE AUTHORIZATION AND CONTINUING SUPERVISION TO
CONTEMPORARY SPACE ACTIVITIES

Abstract

Outer Space is an international common area where its exploration and use are recognized as the rights of all countries (Art.1, Outer Space Treaty (OST)). In its reflection, States bear international responsibility for their national activities, including those carried out by non-governmental entities with the requirement of “authorization and continuing supervision by the appropriate State” (Art.6, OST). Due to the operational nature of space activities, it is physically and legally unrealistic to separate them by some territorial criteria. Therefore for the sake of safety operation, it is natural, likewise the other common domain of traffic such as aviation or maritime, to pursue a certain level of unification of national control, although concrete measures for realizing the OST requirements are entrusted to each State. Thus establishing an international regime for space traffic management is becoming a critical issue for contemporary space governance. At this point, the implementation of the Art. 6 of the OST have to be revisited as the legal foundation, since it is the sole explicit requirement of international law to the States to control their space activities. Practically, national legislation for implementing this requirement is lumbering even in major space powers thus it is only in this decade that national regulations rapidly emerged. License system, a typical national regulation, is effective on controlling the activities within particular jurisdiction, however its effects will not be varied to the activities in other jurisdictions. (except some extraterritorial legislation possible by very limited super powers.) This limitation becomes an issue in modern practice of on-orbit transactions or contracted operations of spacecraft, because of the lack of control by the State that spacecraft is actually operating. Furthermore, space activities are possible to be conducted in a State without license system or even without OST ratification. International law is certainly a tool to regulate the activities beyond national jurisdiction, however it is also limited as inter-State regulation. The challenge of State control required by Art.6 of OST is how to make effective control to the operators in practice. Based on the analysis of several practical cases, especially with a focus on non-governmental space activities, this paper aims to present the possibility and boundary of the effectivity of “authorization and continuing supervision by the appropriate State” in order to retain effective control of the State for safety and sustainability of space activities.