

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
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“PRE-CONTROL” AND “POST-CONTROL” FUNCTION OF STATE RESPONSIBILITY FOR
SUPERVISING COMMERCIAL SPACE ACTIVITIES**Abstract**

In accordance with the first sentence of the Article 6 of the Outer Space Treaty (OST), 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”. Article 7, together with the Liability Convention, stipulates that the launching state will be liable for damage occurred by its space object. International responsibility of the state stipulated in those Articles can be characterize as “post control” function over space activities. Namely, the Article 6 stipulates international responsibility based on breach of international law obligations, and the Article 7 stipulates liability for compensation in the event of damage even if the breach of international obligations do not exist. On the other hand, the second sentence of the Article 6 subjecting non-governmental space activities under the prior control of state authorization and continuous supervision. This can be seen as the function of “pre-control” over space activities. Although the content of authorization and continuous supervision, the national licensing systems, is left to the discretion of each state, inappropriate implementation of these functions may lead to a violation of the obligations of the Article 6, which trigger international responsibility of state under the general international law. This situation can be seen as the result of the pressure of “post control” function motivating states to be prepared by developing “pre-control” functions domestically. In other words, OST requires to the states to supervise their non-governmental space activities through the effect of state responsibility both dimensions of “post-control” and “pre control” functions. The aim of this paper is to describe the role of state responsibility embodied in the Article 6 of OST in order to leverage its function for supervising emerging commercial space activities. By doing so, it will become possible to enlighten the incentives of the states of legislating national space law as “pre-control” function.