Matching Detail with Practice: The Essential Elements of National Space Legislation

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Essential Elements of (most) National Space Legislation regimes

- Incorporation / implementation of international Space Treaties into National law
  - Coordination / consistency with existing laws (e.g., broadcasting / telecommunications etc) / specific State requirements, values, activities

- What are ‘national activities’? To whom does legislation apply?
  - 2 grounds of jurisdiction:
    - nationality jurisdiction and/or
    - territorial jurisdiction
      - extraterritorial effect of legislation
      - clarification of ‘procuring’ of launch

- Imposition of a ban on
  - any use of nuclear weapons
  - other weapons of mass destruction
Essential Elements (continued)

- Establishment of a license regime (authorization)
  - comprehensive license or different types of license?

- Creation of an offence to conduct space activities without a license
  - criminal / civil sanctions?

- Establishment of relevant Government body to oversee activities

- Establishment of National Space Register
  - information to be provided?

- Procedure for passing of relevant information to United Nations Secretary-General
  - for the United Nations Register (Registration Convention)
Essential Elements (continued)

- Requirement of ‘direct financial responsibility’ for third party claims
  - transfer of financial ‘risk’ stemming from international liability
    - limit to liability?
      - maximum probable loss or specified limit
      - ‘liability period’

- Additional restrictions on export of Space-related technology

- Safety considerations / investigations

- Facilitation / implementation of specific inter-Governmental cooperation agreements

- National Security considerations
The Need for Detail

- Clarity / Certainty
- Increasingly broad range of private space activities
- Increasingly more complex spectrum of private space activities
- Different forms of ‘benefits’ to be derived
- Involvement in activity
- Application of specific national laws
  - eg. intellectual property / confidentiality etc
- Encourage entrepreneurs / innovation / industry
The Need for Discretion

- Encourage entrepreneurs / innovation / industry
  - balance required
    - proper / accountable regulatory regime viz-a-viz
    - flexibility / opportunism / innovation / attracting capital and investment
    - avoid excessive costs of compliance

- Commercial realism / pragmatism

- Avoid unreasonable barriers to entry

- Changing national interests / security concerns / foreign policy / international partnerships

- Changing Space-related priorities / policies
The Need for Discretion

• Emergency situations (eg exemption certificates)

• Increasingly broad range of private space activities

• Increasingly more complex spectrum of private space activities

• Different forms of ´benefits´ to be derived

• €€€€€ involved in activity
An example - The Australian Experience

- A ‘model’ comprehensive legal and licensing regime
  - different licenses
  - dedicated Government licensing body

- High degree of technical / administrative detail
  - Space Activities Act / Regulations
    - definitions (100 kilometres)
    - flight safety code / minimum safety standards / powers of investigation

- Alignment with National Space Policy? Relevance?
  - just having all the building blocks alone may not be sufficient
  - need for Government support / incentives / investment capital
    - to minimise major barriers to entry
An Example – The Australian Experience

- Discretion regarding direct financial responsibility
  - how to demonstrate?
    - insurance
    - balance sheet / assets
    - corporate indemnity
    - State indemnity
  - how to prove?
    - (certified) translations etc