

National Center for Remote Sensing, Air and Space Law
Informational resources on the legal aspects of human activities using aerospace technologies

Legal Implications for Delimitation of Airspace and Outer Space

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“Implications” not “Consequences”

- **Original suggested title**
 - “Legal consequences”
- **Actual title**
 - “Legal implications”
- **“Consequences” infers prediction of results**
 - Impossible because process is inherently political
- **“Implications” suggests possible results**
 - Reasonably achievable





International Implications

- **Could set upper limits to national sovereignty**
 - Favored by some non-spacefarers as clarity
 - Disfavored by some spacefarers as arbitrary, inappropriate and requiring change over time
- **Challenge: definition of “spacefarer”**
 - Indigenous launch capability?
 - Ground station operations?
 - Consortium Member?





International Implications

- **Could favor one approach over another**
 - Spatial: where activity or object is
 - Functional: how activity or object functions
- **Clear distinction between aviation law and space law**
 - As practical matter not important to aviation law because no historical need to establish a border
- **Currently, no internationally accepted definition**





National Implications

- **If change is as formal treaty or amendment to treaty regime**
 - States are required to comply with international obligations
 - May require a national legal framework
 - Bound to include international law in their national law
 - Nations determine how this is done





National Implications

- **States choose legal techniques for implementing treaty obligations in internal law**
- **If a “line” is articulated for delimitation, depending on basis of delimitation, for example, science, technology, State practice, etc. there may be room for national decisions to implement the “line”**





Some Examples of Existing Relevant National Laws

- **Australia**

- **Space Activities Act**

- National law applies activities above 100 km above mean sea level
- No definition of “outer space”; not an attempt to delimit
- Law was amended to replace “outer space” with “an area beyond the distance of 100 km”
- Does not limit other Commonwealth laws



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Some Examples of Existing Relevant National Laws

- **Colombia**

- **Constitution**

- includes geostationary orbit segment
 - electromagnetic spectrum and space in which it operates
 - in accordance with international law or laws of Colombia in absence of international regulations





Some Examples of Existing Relevant National Laws

- **European Union Council Regulation Annex**
 - **EU export controls**
 - Definition of "space-qualified" as "...products...operating at altitudes of 100 km or higher."
 - Possibly applicable to the Member States under European law?





Some Examples of Existing Relevant National Laws

- **United States**

- **2004 Commercial Space Launch Amendment Acts**

- **Commercial human spaceflight (“tourism”)**
- **based on distinctions in physics between “lift” and “thrust”**
- **law classifies commercial space tourism vehicles as rockets, not aircraft**



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Some Examples of Existing Relevant National Laws

- **United States**

- **Code of Federal Regulations (Internal Revenue Service)**

- **Identify income source; assert primary tax jurisdiction**

- **“Space means any area not within the jurisdiction (as recognized by US) of a foreign country, possession of US, or US, and not in international water.”**

- **Space activity defined “as any activity conducted in space”**

- **Examples:**

- **leasing satellite on-orbit**

- **Internet service provider using leased satellite capacity**

- **Value of service attributable to functions performed, resources employed, and risks assumed in space**



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Some Implications of Existing Relevant Laws

- **Contain elements of both spatial and functional approaches**
- **Some have been changed or clarified over time regarding application**
- **Some have multilateral ramifications**
- **Authority ranges from the level of a constitution to national acts to implementing regulations**



International and National Implications: Delimitation and Demarcation

- **Delimitation**
 - process of determining land or maritime boundaries of a State, including continental shelf and EEZ
 - generally done by geographical coordinates of latitude and longitude
- **Demarcation**
 - further and separate procedure for marking a line of delimitation, usually on land, with physical objects
 - often involves some degree of delimitation because a line on a map may look different on the ground requiring reasonable adjustments



International and National Implications: Delimitation and Demarcation

- **Terms are often confused even in treaties**
- **Based on geographical features and processes related to land and maritime territory and activities**
- **Would have to be adapted to features of space and space activities**
- **If a “line is drawn” it could be a beginning rather than an end.....**



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Questions? Comments?

Res Communis Blog:

A blog on the legal aspects of human activities using aerospace activities

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