Status and Development of U.S. National Space Law and Its Application of International Space Law Elements

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United Nations/Ukraine Workshop on Space Law
"Status, Application and Progressive Development of International and National Space Law"
Kyiv, Ukraine
8 November 2006

Overview

- Infrastructure
  - National Aeronautics and Space Act of 1958
    - "peaceful purposes for the benefit of all mankind"
- Launch transportation
  - Space Launch Act of 1984
  - Space Launch Act Amendments of 1988
  - Space Launch Act Amendments of 2004
    - U.S. international responsibility for national space activities and internationally liable for damage

Overview

- Remote Sensing
  - Land Remote Sensing Commercialization Act of 1984
  - Land Remote Sensing Policy Act of 1992
    - Nondiscriminatory access
- International Space Station Intergovernmental Agreement
  - U.S. regulations implementing ISS IGA provisions per Article 11 of ISS IGA and MOUs
- Codification

Infrastructure

- National Aeronautics and Space Act of 1958
  - "Space Act"
  - Created NASA
  - Established the U.S. Civil Space Program
  - Signed by President Eisenhower
  - 42 U.S.C. 2451

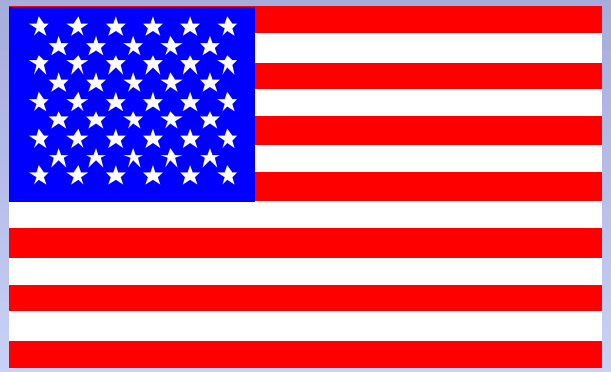
Infrastructure

The NAS Act of 1958

Declaration of Policy and Purpose

"The Congress declares that it is the policy of the United States that activities in space should be devoted to *peaceful purposes for the benefit of all mankind*."*

42 U.S.C. 2451 (a)



***Emphasis added**

Launch Transportation

- Commercial Space Launch Act of 1984
  - Foundation of commercial space transportation licensing law and regulation
    - ELVs
- Amendments
  - 1988
    - Extends to human space flight
  - 1998
    - RLVs and reentry licensing
  - 2004
    - Commercial human space flight

Launch Transportation

- 2000 RLV Mission Licensing Regulations
- Commercial Space Launch Activities
  - —49 USC 70101 *et. seq.*
  - —14 CFR 401 *et. seq.*
  - —New Final Rule expected any day
- All recognize that U.S. is party to Outer Space Treaty and Liability Convention, and therefore,
  - —Bears international responsibility for national space activities
  - —Is internationally liable for damage
- Evolutionary liability risk sharing regime

Launch Transportation

- 1984
  - Licensee required to maintain liability insurance to meet U.S. international obligations
  - Amount determined by Secretary of Transportation
- 1988
  - Liability risk sharing regime replaces insurance requirements
  - Protects U.S. from liability under treaty obligations
    - Licensee provides insurance for all launch participants including U.S.G.
      - Amount determined by FAA based on "maximum probable loss"
      - Capped at either $500 million or maximum available insurance available at a reasonable cost, whichever is less
    - Congress may appropriate additional $2 billion to indemnify for 3rd party liability
    - Liability above insurance and indemnification is responsibility of legally liable party

Launch Transportation

- 1998
  - Authorized FAA authority to license return of vehicles to Earth
  - Extended statutory risk sharing and indemnification regime to RLV operators
- 2004
  - *SpaceShipOne was* required to meet statutory risk sharing and indemnification regime
  - Federal government indemnification for 3rd party liability extended to licensed commercial human space launch
    - No indemnification for experimental permits
  - Different approach for space flight participants
- 2009
  - All indemnification under launch law sunsets unless reauthorized
  - Extended previously

Remote Sensing

Nondiscriminatory Access, the 98th Congress and the 1984 Land Remote Sensing Commercialization Act

"It [nondiscriminatory access] is in conformity with the international obligations of the United States. It thus seems clear that the U.S. should continue its policy of nondiscriminatory data access when space remote-sensing activities are commercialized. The Committee has drafted the legislation to reemphasize this policy forcibly, and to give it for the first time a statutory basis. Further, [it] has been drafted to provide clear guidance to the Secretary of Commerce and any system operator with respect to the commercial implications of a policy of nondiscriminatory access."

H.R. Rep. No. 98-647, 98th Cong., 2d Sess. (1984) at 11.

Remote Sensing

Nondiscriminatory Access, the 102d Congress and the 1992 Land Remote Sensing Policy Act

"[T]he Committee has refrained from making any changes in the nondiscriminatory access provision as it applies to private systems. Specifically, the Committee is reluctant to take any action which: 1) could interfere with U.S. Treaty obligations; 2) might revive debate in the United Nations about the legitimacy of remote-sensing without prior consent by the sensed nation; and 3) sets a precedent which might lead other nations to impose increased restrictions on access to their data from their government-operated remote-sensing systems."

H.R. Rep. No. 102-539, 102d Cong., 2d Sess. (1992) at 51.

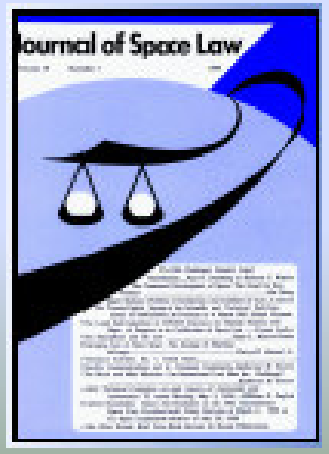
International Space Station (ISS) Code of Conduct

U.S. regulations implementing ISS IGA (Intergovernmental Agreement) provisions

- Established pursuant to Article 11 of IGA and MOUs
- U.S. in exercising its right to provide ISS crew ensures its crewmembers observe Code of Conduct developed and approved by ISS partners
  - —Establishes:
    - On-orbit chain of command; relationship between ground and on-orbit management;management hierarchy; standards for space work and activities, and, as appropriate, on the ground; responsibilities regarding elements and equipment; disciplinary regulations; physical and information security guidelines; ISS Commander's authority.

14 CFR Part 1214

Codification

- Bill pending to codify five decades of space law into a distinct space law title of the U.S. Code
- Will replace former provisions, which will be repealed by the bill when passed
- Merely restates existing law
  - Technical changes only
  - No substantive changes
- Restatement will conform to Congressional policy, intent, and purpose in original enactments
  - Organizational structure of law is improved
    - Obsolete provisions will be eliminated
    - Technical errors will be corrected

Questions?
Comments?