



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

IISL / ECSL Symposium
Vienna, 22 March 2010

Professor Steven Freeland
University of Western Sydney, Australia
University of Copenhagen, Denmark

Essential Elements of (most) National Space Legislation regimes

- Incorporation / implementation of international Space Treaties into National law
 - Coordination / consistency with existing laws (eg 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
- €€€€€ involved 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 (continued)

- 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