International Space Law and Private Space Activities

Frans G. von der Dunk
Harvey & Susan Perlman Alumni / Othmer Professor of Space Law
University of Nebraska-Lincoln
Director, Black Holes B.V. space law & policy consultancy

Licensing Executive Society 2021 Annual Meeting
Lincoln, Nebraska, 28 September 2021

The peculiarity of space activities

- Three main characteristics of space activities

Why even spend money on space?

- Traditionally three rationales

A domain of States

- Only States were interested in investing in military security, prestige & science
- & Few States had technology, could provide funds & could afford risks involved in space activities
  - Originally, almost uniquely Soviet Union & United States

→ International space law

- State-oriented: rights & duties of States
  - IGOs only included at secondary level
  - Private entities only referenced once – as "non-governmental entities"
- Applies to Outer Space treaties & follow-up

& Applies to ITU-regime on orbits & frequencies

The paradigm change

←→ More States involved, incl. developing ones

& Increasing ‘practicalization’ space activities

→

→ Private sector becomes interested

Nebraska Law
University of Nebraska

So the main question now is…

- How would / should / could private commercial operators fit into this regime?
  - How to make sure also they would comply with the rules as well?
  - How to make sure also their legitimate interests would be taken into account?

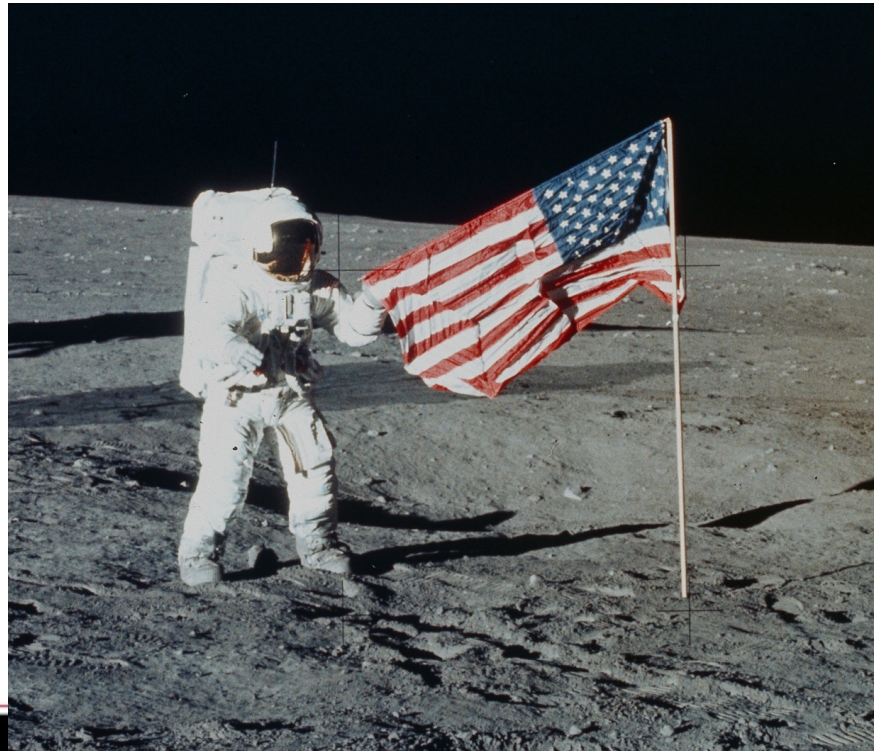
…and the main answer:

- The Outer Space Treaty provides legal structure guiding the handling of the paradigm change
  - Outer space = 'global commons', free for States to explore & use as long as compliant with obligations under the treaties

& Private operators only allowed within that context

Four main concepts (1)

- Article II:
  - Outer space is a ***global commons***, where no single State can determine the law



Four main concepts (2)

- Article VI:
  - States are ***internationally responsibility*** for the conformity with international space law of ***national activities in outer space***, also if carried on by ***private entities***

Four main concepts (3)

- Article VII :
  - States ***internationally liable*** for damage caused by space object operations, also if carried on by ***private entities***

Nebraska Law
University of Nebraska

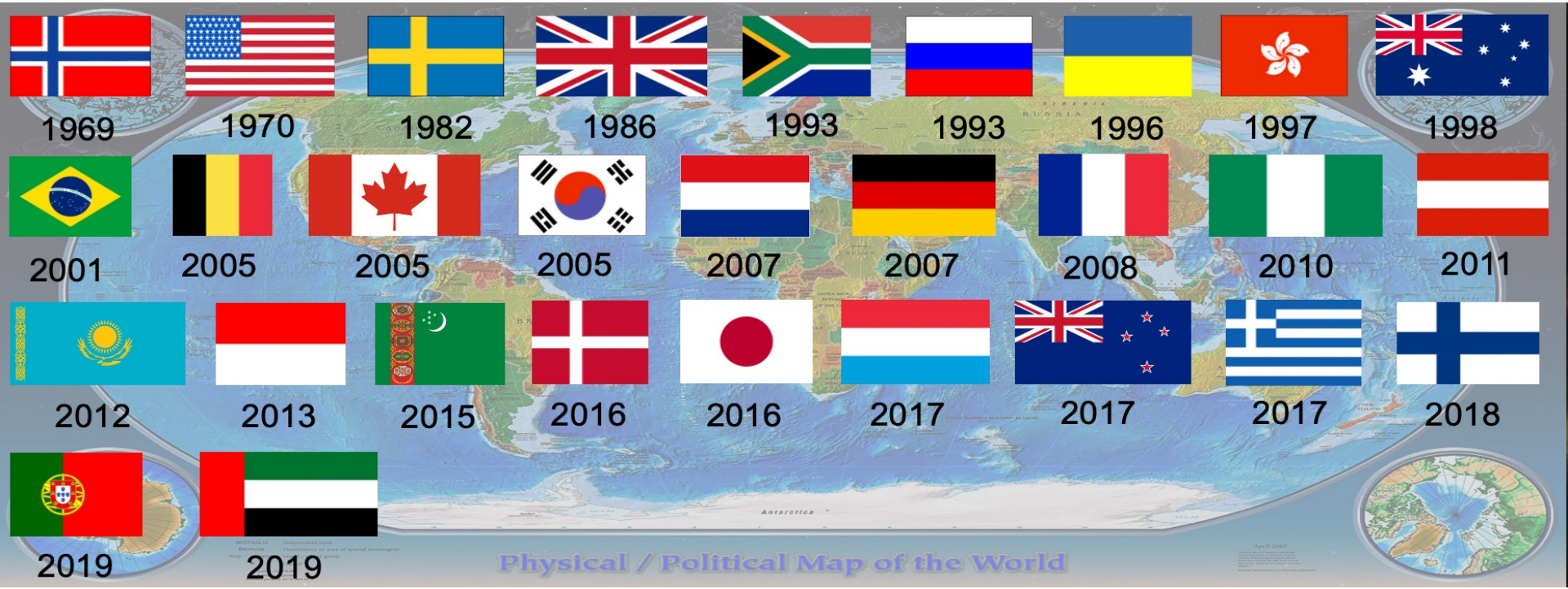
Four main concepts (4)

- Article VIII :
  - States can ***register their spacecraft***, also if operated by ***private entities***, and ensure ***application of national laws*** to such spacecraft & their personnel

→ Need to implement the treaties!

- Authorization requirement (license, permit, approval, …)
  - Ensuring compliance with international law by licensee – since State is responsible
  - Including obligation to compensate State for international liability claims it has to pay
  - Ensuring registration

National space law: the status quo



Nebraska Law
University of Nebraska

US national space law

- Number of disparate Acts (1)
  - 1958 General Act (a.o.) creating NASA
    - Includes *de facto* competence to 'regulate' private sector activities on the International Space Station & the Moon (the 'Artemis Accords')
  - Telecommunications → satellite communications
    - 1970: 1934 Communications Act declared to apply
  - Satellite remote sensing / earth observation
    - 1984: first Land-Remote Sensing Act

US national space law

- Number of disparate Acts (2)
  - Launching & private space transportation
    - 1984: Commercial Space Launch Act
    - 2004: made to apply to re-entry / human spaceflight as well
  - General commercialization → Recent efforts to streamline … & add space mining
    - 2015: broader Act provisionally addresses space mining


thank you
danke
謝謝
ngiyabonga
рахмат
teşekkür ederim
Баярлалаа
спасибо
faafetai lava
vinaka
спасибі
blagodaram
mersi
kia ora
barka
welalin
tack
spas
dank je
misaotra
matondo
paldies
grazzi
mahalo
tapadh leat
gracias
хвала
asante
manana
obrigada
tenki
kiitos
dankie
nanni
nandri
dhanyavad
mauruuru
köszönöm
bedankt
bayarlalaa
gràçie
hvala
enkosi
dankon
aciu
akun
djiere dieuf
tau
mochchakkeram
дякую
mamnun
murakoze
chokrane
dziękuję
chnorakaloutioun
gratias ago
gràcies
sulpáy
go raibh maith agat
sobodi
dėkuji
sagolun
taiku
obrigado
sukriya
kop khun krap
arigatô
takk
dakujem
trugarez
mèsi
didi madloba
najis tuke
ありがとう
tanemirt
grazie
kam sah hamnida
terima kasih
rahmet
rahmat
diolch
dhanyavadagalu
shukriya
mercé
мерси
ευχαριστώ
তোমাকে ধন্যবাদ
감사합니다
xièxie
merci