

The Article VI Gap and the Space Commerce Certification

Part 1 of 4: The Treaty Obligation and the Domestic Gap

Space Law Society Blog, The Catholic University of America, Columbus School of Law

By Tim Bright

I. The Proposal and the Question

On March 24, 2026, the Department of Commerce’s Office of Space Commerce (OSC) released an updated proposal for a “Space Commerce Certification” (SCC), a voluntary, per-mission certification directed at commercial space activities whose in-space conduct falls outside the licensing jurisdiction of any existing federal regulator.¹ The proposal responds to Section 5 of Executive Order 14,335, which directed the Secretary of Commerce to propose, within 150 days, “a process for individualized mission authorizations for activities that are covered by Article VI of the Outer Space Treaty of 1967, but not clearly or straightforwardly governed by existing regulatory frameworks.”²

The covered category, which the proposal labels “novel space activities,” spans in-space manufacturing, orbital computing, satellite servicing and rendezvous and proximity operations, lunar surface and lunar orbit operations, space resource utilization, and commercial inhabitable stations. The proposal states these across several passages rather than in one consolidated list.³ Section 5 of the Executive Order also states that nothing in it “shall be construed to apply to human spaceflight.” The proposal separately includes commercial inhabitable stations among its covered activities, but neither document defines “human spaceflight” or explains how the carve-out applies to station-related activities.⁴

This series addresses one question across four parts: whether a certification regime that operators may decline can discharge the obligation of the United States under Article VI of the Outer Space Treaty to provide “authorization and continuing supervision” of non-governmental space activities. This first part sets out the treaty obligation and the domestic regulatory landscape against which the proposal operates.

II. What Article VI Requires

Article VI does three things. It assigns international responsibility to States Parties for “national activities in outer space,” whether carried on by governmental agencies or by non-governmental entities. It makes States Parties responsible “for assuring that national activities are carried out in conformity with the provisions set forth in the present Treaty.” And it imposes a procedural requirement: “The activities of non-governmental entities in outer space, including the moon and

other celestial bodies, shall require authorization and continuing supervision by the appropriate State Party to the Treaty.”⁵

Three features of that text bear on the analysis that follows. The obligation runs to the state rather than to the operator: it is a duty of the United States to require authorization, not a duty of a company to seek one. The obligation is framed in mandatory terms, “shall require,” rather than permissive ones. And the treaty specifies no means. It does not prescribe licensing over certification, rulemaking over adjudication, or a single regulator over a patchwork.

This series takes no position on whether the provision is self-executing. The Supreme Court has distinguished treaties that automatically have effect as domestic law from those that constitute international commitments but do not themselves function as binding federal law.⁶

III. Responsibility Is Not Liability

Article VI responsibility and Article VII liability are distinct regimes, and the distinction matters to the argument in later parts. Article VII makes a State Party that launches an object, procures its launching, or from whose territory or facility an object is launched internationally liable for damage caused by that object. The 1972 Liability Convention carries the same three-prong definition of “launching State” and distinguishes absolute liability for damage on the surface of the earth or to aircraft in flight from fault-based liability for damage elsewhere.⁷

Nationality alone does not make the United States a launching State under Article VII. The territorial prong, however, reaches a foreign operator launching from United States soil. And Article VI responsibility for national activities attaches whether or not the operator was authorized or supervised domestically. A gap in domestic authorization is therefore not a gap in international responsibility.

IV. The Domestic Regimes

The United States relies on three sector-specific licensing regimes: launch and reentry licensing under Chapter 509 of Title 51, administered by the Secretary of Transportation through the Federal Aviation Administration;⁸ radio transmission licensing under the Communications Act;⁹ and private remote sensing system licensing under Chapter 601 of Title 51, administered by the Secretary of Commerce.¹⁰ Of the three, only the remote sensing statute conditions a license on the applicant’s compliance with applicable international obligations.¹¹

Each regime authorizes a portion of a mission. None authorizes the in-space conduct of a servicing vehicle, a lunar lander, an orbital data center, or an inhabitable station as such. The proposal describes the same condition in its own terms: the three licensing regimes leave “gaps that make it unclear whether or how the United States government could best authorize and

supervise all aspects of novel space activities such as in-space manufacturing, commercial inhabitable space stations, and satellite servicing.”¹²

V. The Gap Is Not New

The executive branch reached the same conclusion a decade ago. Section 108 of the U.S. Commercial Space Launch Competitiveness Act directed the Director of the Office of Science and Technology Policy to assess commercial non-governmental activities in space, identify appropriate authorization and supervision authorities, and recommend an approach to Congress.¹³ The report delivered on April 4, 2016 stated that the existing frameworks, “although these frameworks have served the United States well by addressing the commercial space activities to date, they do not, by themselves, provide clear avenues through which the United States Government can fulfill its Article VI obligations in relation to the newly contemplated commercial space activities” described in the report.¹⁴ Appended to that report was a legislative proposal for a “Mission Authorization” framework, modeled on the FAA payload review process, that would have required authorization for missions conducted by persons subject to United States jurisdiction or control, subject to three enumerated exemptions.¹⁵

Congress took up the question twice. The House passed the American Space Commerce Free Enterprise Act on April 24, 2018; the Senate received the bill, read it twice, and referred it to the Committee on Commerce, Science, and Transportation, but did not pass it.¹⁶ The House Committee on Science, Space, and Technology ordered the Commercial Space Act of 2023 favorably reported on November 29, 2023; it was not enacted.¹⁷ Both bills would have made certification mandatory. Neither became law. Space Policy Directive-2 pursued streamlining within existing authorities in 2018, and the proposal states that subsequent efforts nonetheless left three agencies conducting overlapping, parallel reviews.¹⁸

Part 2 sets out the mechanics of the March 2026 proposal: what the certification would require, how it would be decided, and what statutory authority the Office of Space Commerce claims for it.

Tim Bright is a USPTO-registered patent agent (Reg. No. 76,894) and a J.D. candidate at The Catholic University of America, Columbus School of Law. He is not an attorney, and nothing in this series is legal advice.

¹OFF. OF SPACE COM., U.S. DEP’T OF COM., SPACE COMMERCE CERTIFICATION—OSC PROPOSAL—MARCH 2026 (Mar. 24, 2026), <https://space.commerce.gov/wp-content/uploads/2026/03/Space-Commerce-Certification-OSC-Proposal-March-2026.pdf> (archived copy on file with author) [hereinafter *SCC Proposal*].

²Exec. Order No. 14,335, § 5, 90 Fed. Reg. 40,219, 40,220 (Aug. 19, 2025).

³*SCC Proposal*, supra note 1, at 1–2, 5 (identifying covered activities across separate passages).

⁴Exec. Order No. 14,335, § 5, 90 Fed. Reg. at 40,220; *SCC Proposal*, supra note 1, at 1–2.

⁵Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies art. VI, opened for signature Jan. 27, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205 [hereinafter *Outer Space Treaty*].

⁶See *Medellín v. Texas*, 552 U.S. 491, 504 (2008).

⁷*Outer Space Treaty*, supra note 5, art. VII; Convention on International Liability for Damage Caused by Space Objects arts. I(c), II–III, Mar. 29, 1972, 24 U.S.T. 2389, 961 U.N.T.S. 187.

⁸51 U.S.C. ch. 509; see Exec. Order No. 14,335, § 7, 90 Fed. Reg. at 40,221 (assigning the Secretary of Transportation’s functions to the FAA Administrator).

⁹47 U.S.C. § 301.

¹⁰51 U.S.C. § 60121(a)(1).

¹¹51 U.S.C. § 60121(b)(1) (conditioning licensure on compliance with “applicable international obligations”).

¹²*SCC Proposal*, supra note 1, at 2.

¹³U.S. Commercial Space Launch Competitiveness Act, Pub. L. No. 114-90, § 108, 129 Stat. 704, 707–08 (2015).

¹⁴Letter from John P. Holdren, Dir., Off. of Sci. & Tech. Pol’y, to John Thune, Chair, S. Comm. on Com., Sci., & Transp., & Lamar Smith, Chair, H. Comm. on Sci., Space, & Tech. 3 (Apr. 4, 2016), https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/csla_report_4-4-16_final.pdf (archived copy on file with author) [hereinafter *Section 108 Report*].

¹⁵*Section 108 Report*, supra note 14, at 4, 6–7 (proposing 51 U.S.C. § 50924(a), which would require mission authorization subject to enumerated exemptions).

¹⁶American Space Commerce Free Enterprise Act, H.R. 2809, 115th Cong. (as passed by House, Apr. 24, 2018); *H.R. 2809—Actions Overview*, CONGRESS.GOV, <https://www.congress.gov/bill/115th-congress/house-bill/2809/actions> (last visited Aug. 23, 2026) (recording Senate receipt, two readings, and committee referral on Apr. 25, 2018) (archived copy on file with author).

¹⁷Commercial Space Act of 2023, H.R. 6131, 118th Cong. (2023); *Full Committee Markup of H.R. 6213 & H.R. 6131*, H. COMM. ON SCI., SPACE, & TECH. (Nov. 29, 2023), <https://science.house.gov/2023/11/markup-h-r-6213-h-r-6131> (recording that H.R. 6131 was favorably reported, 21–17) (archived copy on file with author).

¹⁸Space Policy Directive-2, Streamlining Regulations on Commercial Use of Space, 83 Fed. Reg. 24,901, 24,901–03 (May 30, 2018); *SCC Proposal*, supra note 1, at 2.