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## Keynote speaker - Laura Montgomery

Laura Montgomery

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# Article VI of the Outer Space Treaty: Authorization and Continuing Supervision



# Overview

- Treaty obligation to authorize and supervise the acts of nationals in outer space
- The treaty is not self-executing
- The treaty is ambiguous, leaving particulars to the States Parties
- Therefore, this is not an obligation on private parties unless Congress acts

# Digression

- Psych test
  - most activities in the movie
  - fewest activities in the movie
- Activities in space
  - From the hazardous to the benign

# Space Activities



# Space Activities



# Space Activities



# Space Activities





# Space Activities



# Article VI

States Parties to the Treaty shall bear international responsibility for national activities in outer space, including the Moon and other celestial bodies, whether such activities are carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried out in conformity with the provisions set forth in the present Treaty. 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. When activities are carried on in outer space, including the Moon and other celestial bodies, by an international organization, responsibility for compliance with this Treaty shall be borne both by the international organization and by the States Parties to the Treaty participating in such organization.

# Regulatory Structure

- Congress
- Executive Branch
  - Federal Aviation Administration – space transportation
  - Federal Communications Commissions – space communications
  - National Oceanic and Atmospheric Administration – remote sensing
- Judiciary

# Constitution

- Article VI, clause 2 states that treaties “shall be the supreme Law of the Land;....”
- This is so, when a treaty is self-executing
  - Foster v Neilson (1829)
  - Medellin v Texas (2008)

# Self-executing treaties

- **Foster:** a treaty is equivalent to an act of the legislature “whenever it operates of itself without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department; and the legislature must execute the contract before it can become a rule for the Court.”

# Self-executing treaties

- **Medellin:** “What we mean by ‘self-executing’ is that the treaty has automatic domestic effect as federal law upon ratification. Conversely, a ‘non-self-executing’ treaty does not by itself give rise to domestically enforceable federal law. Whether such a treaty has domestic effect depends upon implementing legislation passed by Congress.”

# Is Article VI self-executing?

- Medellín tells us to look at the text, the history, and post-ratification understanding
  - Text of the treaty looks to future actions
    - “shall require authorization and continuing supervision”
  - History of the treaty
    - Ambassador Goldberg’s testimony to the Senate
  - Post-ratification understanding
- So, no.

# Article VI requires decisions

- What activities require authorization? The treaty is silent.
  - It doesn't require authorization of either all or any particular activity
  - USSR v Hong Kong on price controls
  - Comply with the Constitutional requirement for notice and identify the activity instead of saying "all." Requiring authorization of all activities is tantamount to federalizing Connecticut.
- Who should do the authorizing? Each country decides which agency oversees activities.
  - HUD for habitats?
  - SSA for the elderly?
- .



# ...decisions, decisions

- What issues need to be addressed (aka what are we regulating for)?
  - Treaty consistency?
  - Safety, national security, pricing of platinum group minerals?
- How much supervision qualifies as continuous?

# What is the effect of not regulating a space activity?

- The US Government may or may not be complying with Article VI
- AND
- Private sector may operate
- OR
- The FAA may attempt not to provide a positive payload determination

# Read More

- [GroundBasedSpaceMatters.com](http://GroundBasedSpaceMatters.com)