

National Center for Remote Sensing, Air and Space Law  
Informational resources on the legal aspects of human activities using aerospace technologies

# Art. IX of the Outer Space Treaty: Context and Considerations

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***Art. IX of the Outer Space Treaty and Peaceful Purposes:  
Issues and Implementation***

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# Why Consider Negotiating History?

**"Those who cannot remember the past  
are condemned to repeat it."**

**George Santayana  
Reason in Common Sense  
The Life of Reason, Vol.1.**



# Why Consider Negotiating History?

**The *travaux préparatoires*...of a treaty [are] not a primary means of interpretation, but [are] an important supplementary means... In order to try to come to an understanding of what those who negotiated the treaty had intended... [interpreters] may have recourse to supplementary means of interpretation, in particular the *travaux* and the circumstances of the conclusion of the treaty.”**

**Anthony Aust,**

**Modern Treaty Law and Practice (2000), page 197.**





# Art. IX of the Outer Space Treaty: Its Longest, Most Detailed Article

In the exploration and use of outer space, including the moon and other celestial bodies, States Parties to the Treaty shall be guided by the principle of **co-operation** and mutual assistance and shall conduct all their activities in outer space, including the moon and other celestial bodies, with **due regard** to the corresponding interests of all other States Parties to the Treaty. States Parties to the Treaty shall pursue studies of outer space, including the moon and other celestial bodies, and conduct exploration of them so as to avoid their **harmful contamination** and also adverse changes in the environment of the Earth resulting from the introduction of extraterrestrial matter and, where necessary, shall adopt appropriate measures for this purpose. If a State Party to the Treaty has reason to believe that an activity or experiment planned by it or its nationals in outer space, including the moon and other celestial bodies, would cause potentially harmful interference with activities of other States Parties in the peaceful exploration and use of outer space, including the moon and other celestial bodies, it shall undertake appropriate **international consultations** before proceeding with any such activity or experiment. A State Party to the Treaty which has reason to believe that an activity or experiment planned by another State Party in outer space, including the moon and other celestial bodies, would cause potentially harmful interference with activities in the peaceful exploration and use of outer space, including the moon and other celestial bodies, may request consultation concerning the activity or experiment.





# Main Principles

- **Cooperation**
- **Due Regard**
- **Harmful Contamination**
- **International Consultations**





# Discussion Catalysts

- **General geopolitical landscape**
  - Cold War
- **Specific events**
  - US high altitude tests
  - West Ford Experiment
    - copper needles
  - Looming lunar landing



# Geopolitical Relationships

- **Direct consultations vs. openness of activities?**
- **USSR: should have prior discussion and agreement if activities might hinder**
- **US: activities are open and public**
- **France: pre-consultation unacceptable**
- **Reflects two space power world**
  - **Cosmos 954**





Issue:

# Role of Science and Scientists

- **Formal consultative forum?**
- **Expert advisors?**
- **Binding authority?**
- **Conduit for information to public?**







Issue:

Relationship between law and politics

- **Some: discussions are purely political**
- **Some: discussions have legal value**
- **Some: legal implications, at least**





# Issue: Nature of Emerging Principle

- **Developing principle should have scientific input**
- **But principle required legal considerations**
- **“Use” does not include interference**





# Issue: Then and Now

- **Then**

- **Consultations and outcomes were not made clearly obligatory at the time**
  - Would have delayed adoption of the Outer Space Treaty, the passage of which was considered urgent

- **Now**

- **What has developed since then?**
  - Custom?
    - *Opinio juris* and practice
- **Increasing importance of context in interpreting international law**
  - Art. IX language: “all...activities”





# Issue: Then and Now

- **Chair Statement**

- **Only referenced “harmful contamination”**

- important legal principles were agreed upon:
- in carrying out space activities States should avoid harmful contamination of Earth
- interference with activities of other States

- **Silent re:**

- International cooperation
- Due regard
- International consultations

- **All accepted in Article IX of the Outer Space Treaty**

- **OST accepted by 65% of States**

- **In force for 43 years**



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## Questions? Comments?

