Chapter One

The Origins of Authorisation: Article VI of the Outer Space Treaty and International Space Law

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1. Private Activity but Public Responsibility

The issue of authorisation of private space activities, the key theme of the present book, ultimately goes back to the principled political disagreements in the 50s and 60s between the two (then) superpowers in space, the United States and the Soviet Union, on the proper role of other entities than states in space activities. The Soviet Union, true to its communist ideology, was squarely against any private activities in most economically-relevant areas of society, but certainly so in an area of such strategic concern as outer space.1 By contrast, the United States throughout its existence has usually presented itself as the champion of private enterprise, an approach also transpiring in its space policies.

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When, following the establishment of the Committee on the Peaceful Uses of Outer Space first as an Ad Hoc Committee\(^2\) then as a more permanent one,\(^3\) serious discussion began on drafting a coherent legal framework for activities in outer space, this dichotomy became one of the bones of contention. Whereas the Soviet Union would insist that there should be no room for private entities within that legal framework being developed, the United States principally did not wish to close the door on them legally speaking.

At the same time, the realities at the dawn of the space age were quite clear. The – for the time incredibly advanced – levels of technology required to go into outer space, the costs and risks associated with that adventure, and the two areas originally considered the only possible beneficiaries of space activities and space technology (the military and politico-strategic domain in terms of the Cold War rivalry and the scientific domain) ensured that for some time to come realistically speaking states were the only potential actors in outer space – and to be more precise: only a handful of states were actually able and willing to take the relevant burdens upon themselves.

As a matter of fact, also the United States itself did not envisage private entrepreneurs to actually go into outer space on short notice so readily. Even when developing a national legal framework for the use of satellites in the context of telecommunications, the first sector of space which was to draw private entrepreneurs into the field, the United States would develop a government-driven monopoly system, establishing Comsat Corporation for the purpose.\(^4\)

\(^2\) See Question of the peaceful use of outer space, UNGA Res. 1348 (XIII), of 13 December 1958; Resolutions adopted on the reports of the First Committee, General Assembly – Thirteenth Session, at 5.

\(^3\) See International co-operation in the peaceful uses of outer space, UNGA Res. 1472 (XIV) A, of 12 December 1959; Resolutions adopted on the reports of the First Committee, General Assembly – Fourteenth Session, at 5.