Legal Aspects of Commercial Utilisation of the International Space Station – a German Perspective

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1. Introduction

This contribution outlines the legal considerations involved in the commercial exploitation and utilisation of the International Space Station (ISS) from a German legal perspective. It serves to demonstrate the sources and content of those rules as they apply to ISS commercial operations in situations where German law is the governing law. The multi-party nature of the ISS leaves scope for the applicability of various national rules of law in specific situations where the Intergovernmental Agreement (IGA) so provides, whether or not the ISS operations are commercial. As a result, potential conflicts between applicable national rules are inevitable and possibly even anticipated.

Article VI of the Outer Space Treaty (OST) imposes a duty upon states to guarantee authorisation and supervision of space operations and activities at...
national level, in accordance with treaty law. Increased private participation in space activities has drawn attention to the fact that this duty applies not only to public activities in space but also to those of the private sector. Article VI, second sentence, OST thus requires space activities, irrespective of whether they are public or private, to be subjected to state authorisation and control. The interface between ultimate state responsibility for space operations and the growth of commercialisation of space activities remains an ongoing debate. Whether or not required by international law, convincing arguments exist in support of national space legislation as a means of imposing liability and ensuring compulsory insurance coverage for the private sector.

At the time of writing, there is no immediate national German space legislation prescribing specific rules applicable to outer space. Nor does legislation exist regulating the subject of ISS utilisation within its purely commercial context. Nevertheless, work and consultations towards national space legislation are still underway and Germany is no exception to this general trend in focusing on the needs and remit of national space legislation.

The contribution’s approach is twofold: firstly, it highlights the general industrial climate and support for ISS activities in Germany, whilst drawing attention to those areas of space activity where public interest and space policy (may well) emphasise the need for alteration to the current limited regulation; secondly an overview is given of national legal provisions, as they would apply to ISS space activity and commercialisation within Germany. Certain areas of law directly related to commercial rights and their exploitation have a particular European internal market character and, as a result of EU harmonisation, have been aligned between the EU Member States. This applies in particular to the sphere of intellectual property rights and data protection.

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3 The question of how the state ensures compliance with treaty imposed obligations is thereafter a matter for the individual state to decide, be it by law or administrative regulation, see Reifarth, supra note 2, 823.

4 Reifarth, supra note 2, 825.

5 Various international conferences have been held on the topic of national space legislation. The latest review can be found in M. Gerhard & K.U. Schrogl, Report of the Working Group on National Space Legislation (2001), 529, with reference to the situation in Germany.

6 Whether or not states are concerned about passing national space legislation is a question of the extent to which state responsibility and liability is to be passed down to the private commercial sector.


8 For a general coverage of the moves in harmonisation of intellectual property, see