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National Space Authorisation and the Operationalisation Deficit of Article VI of the Outer Space Treaty

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Abstract

Article VI of the Outer Space Treaty requires states to authorise and continuously supervise national activities in outer space. Through the duty to prevent genocide and the standard of due diligence, the exercise of these licensing powers becomes relevant conduct under the law of state responsibility, yet national authorisation regimes lack the procedure needed to show how the powers were used. A comparison of two statutory strands locates the gap. New Zealand and the United Kingdom make consistency with international obligations a condition of grant, Luxembourg addresses the obligations to the operator, and the proposed EU Space Act omits the condition. None of these regimes specifies an object of inquiry, requires reasons, grants standing to affected third parties or defines a trigger for reconsideration. Germany, the United States and France regulate the dissemination of satellite data through a specified object of inquiry, defined occasions of review and documentation duties, but as security and export law. The foreign-policy risk of commercial space activity falls between the two strands. Drawing on arms transfer control and on English and Dutch case law on export licensing, the article proposes six design elements that national legislation can enact without treaty amendment, and argues that legislation rather than judicial review must close the gap.

Keywords: outer space treaty, licensing, state responsibility, due diligence, administrative accountability

Introduction

On 12 August 2026, three residents of New Zealand filed a statement of claim for judicial review in the High Court at Wellington (*Abdulaal, Nazzal & Te Moke v Minister for Space*, 2026). The claim challenges two ministerial payload permits. In December 2023 the Minister for Space permitted the launch from the Mahia Peninsula of four satellites operated by BlackSky Global LLC, a United States geospatial intelligence company (New Zealand Space Agency, 2023). In April 2026 her successor approved a further twenty-six (New Zealand Space Agency, 2026).

The applicants contend that neither Minister considered whether the resulting capability was likely to be used inconsistently with New Zealand's obligations in respect of genocide (Genocide Convention, 1948). The proceedings are pending, and nothing below depends on the outcome. The filing exposes a structural feature of the statutory scheme. A decision with foreign-policy consequences is taken through a process that supplies no benchmark against which the adequacy of the international-law assessment can be reviewed.

The pattern is not peculiar to New Zealand. Article VI of the Outer Space Treaty requires states to authorise and continuously supervise national activities in outer space (Outer Space Treaty, 1967, art. VI). Every state that has legislated for that purpose relies on an administrative permission granted by a minister or regulator responsible for economic development, innovation or civil aviation. The criteria are launch safety, insurance cover, corporate solvency and debris mitigation, and most statutes add a clause about international obligations.

That clause sits at the intersection of three literatures. Space law scholarship has mapped the authorisation requirement as a question of treaty interpretation (Gerhard, 2009; Lyall & Larsen, 2018; Masson-Zwaan & Hofmann, 2019; von der Dunk, 2011) and has noted the growing role of commercial operators in military and intelligence functions (Ferreira-Snyman, 2015; Moltz, 2019; Tronchetti, 2015) and the human-rights responsibility Article VI generates for private activity (Ferreira-Snyman, 2026). International law scholarship has reconstructed due diligence as a standard of conduct but left the institutional realisation of that standard to the state (Besson, 2020; Krieger et al., 2020; Kulesza, 2016; Ollino, 2022; Peters et al., 2020). Administrative law scholarship has shown how procedure generates accountability (Kingsbury et al., 2005) but has not examined a regime in which the procedure is missing. This article brings the three together.

This article asks how national administrative systems must be designed if authorisation and continuing supervision are to be reviewable in practice. The international-law condition in the authorisation statutes, however drafted, lacks the procedural specification that would make the condition operative. Authorisation regimes contain a substantive condition but no procedure for applying the condition, whereas data-control regimes contain such procedure but serve security and export policy rather than Article VI. The foreign-policy risk of commercial space activity falls between the two. The law of state responsibility measures how a state used the regulatory means the state assumed, and that measurement requires a documented record.

Article VI as a Regulatory Interface

Authorisation and Continuing Supervision as Legal Control

Article VI performs two operations. The provision attaches international responsibility to the state for national activities in outer space, whether carried on by governmental or non-governmental entities, and requires that non-governmental activities receive authorisation and continuing supervision by the appropriate state party (Outer Space Treaty, 1967, art. VI). Most of the literature concerns the first operation and the relation of this special responsibility to the general rules of attribution (Gerhard, 2009; von der Dunk, 2011). The second operation matters here and does not depend on resolving that debate.

Authorisation and continuing supervision are the legally mandated interface through which the state exercises control before and after launch. Before launch the state may impose conditions, demand information and refuse. After launch most statutes allow the authority to vary, suspend or revoke (Lyall & Larsen, 2018, pp. 217–233). Where another primary obligation requires the state to employ reasonably available means of prevention, the design and exercise of these regulatory powers become relevant conduct in assessing compliance. Article VI thus supplies an interface at which conduct can be measured against whatever primary obligations the activity engages.

Commercial remote sensing and communications now perform functions once reserved to states, and the same spacecraft routinely serves civilian and military customers without any change in technical configuration (Moltz, 2019; Tronchetti, 2015). A routine licensing decision can therefore carry the weight of a foreign-policy commitment while retaining the form of an economic permission.

Article IX shows that the treaty is not indifferent to procedure. The provision requires consultation where a planned activity may cause potentially harmful interference with the activities of other states (Outer Space Treaty, 1967, art. IX), which yields a procedural duty even on the narrow reading confined to physical interference. Article VI prescribes no procedure, criteria or threshold, and that silence has usually been read as a grant of latitude (Gerhard, 2009). Latitude in design, however, does not extend to the question whether the resulting scheme can perform the function the treaty assigns.

Legal Control as a Basis of Responsibility

Article VI does not prescribe a standard of conduct. The standard derives from general international law, and two doctrines are candidates.

The first is complicity. Under Article 16 of the ILC Articles a state is responsible for aiding or assisting another state in an internationally wrongful act where the assisting state acts with knowledge of the circumstances and with a view to facilitating the act (International Law Commission, 2001, art. 16). The ICJ declined on that basis to find Serbia complicit in genocide despite material support, for want of proof that Serbia knew of the specific intent of the principal perpetrators (*Bosnia and Herzegovina v. Serbia and Montenegro*, 2007). The difficulty of applying the purpose requirement to indirect and commercial contributions is well documented (Aust, 2011; Jackson, 2015; Lanovoy, 2016). Because that requirement cannot be met in the licensing of commercial space activity, complicity does not supply the applicable standard.

The duty to prevent does. The duty derives from the undertaking to prevent genocide (Genocide Convention, 1948, art. I) and obliges the state to employ the means reasonably available once the state learns, or should have learned, of a serious risk that genocide will be committed. The ICJ has characterised the duty as an obligation of conduct rather than of result, binding each party according to the capacity of that party to influence the perpetrators (*Bosnia and Herzegovina v. Serbia and Montenegro*, 2007, paras. 430–431; Schabas, 2009, pp. 520–522). The duty arises with knowledge of the serious risk, whereas a breach occurs only if genocide is in fact committed (*Bosnia and Herzegovina v. Serbia and Montenegro*, 2007, para. 431; International Law Commission, 2001, art. 14(3); Schabas, 2009, p. 521). A licensing decision taken against a documented risk therefore engages the duty whether or not the risk materialises. The Court followed this logic in *South Africa v. Israel* and indicated preventive measures on the basis of plausible rights and a real and

imminent risk, without any finding of breach (2024, paras. 54, 62, 74). The advisory opinion of 19 July 2024 addressed the duty of third states not to render aid or assistance in maintaining an unlawful situation (*Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory*, 2024, paras. 273–279).

Capacity to influence is not confined to diplomatic or military means. The Court measures that capacity also by legal criteria, according to the legal position of the state in relation to the persons and situations concerned (*Bosnia and Herzegovina v. Serbia and Montenegro*, 2007, para. 430; Schabas, 2009, p. 522). A licensing power is regulatory capacity in that sense. The authorising state can impose conditions, require end-user undertakings, suspend a licence pending inquiry, or refuse.

Due diligence measures the exercise of that capacity. The ICJ has defined due diligence as a standard of conduct requiring the state to employ all means reasonably available to prevent a threatened harm (*Pulp Mills on the River Uruguay*, 2010, para. 197; *Bosnia and Herzegovina v. Serbia and Montenegro*, 2007, para. 430; *Obligations of States in respect of Climate Change*, 2025, paras. 281–299). Where the threatened harm is grave the standard is stringent, and whether the standard has been met is determined objectively (*Obligations of States in respect of Climate Change*, 2025, paras. 281, 300). The standard entails not only appropriate rules but also vigilance in enforcement and the exercise of administrative control (*Pulp Mills on the River Uruguay*, 2010, para. 197). Licensing practice fails at this point. The state holds the licensing power but lacks a procedure to guide the exercise of that power, so the deficit lies in procedural design. Responsibility follows only if genocide occurs and then turns on whether the state had means available and manifestly refrained from using those means (*Bosnia and Herzegovina v. Serbia and Montenegro*, 2007, para. 438). A state that asked none of the relevant questions when granting the licence has no record with which to meet that charge.

The Addressee of the Obligation

Article VI leaves the identification of the appropriate state party to the circumstances. The launching state is the state that launches or procures the launching of a space object and the state from whose territory or facility the object is launched, and the state of registry is the launching state on whose registry the object is carried (Registration Convention, 1975, art. I(a), (c)). Each criterion may qualify (Gerhard, 2009; von der Dunk, 2011). This article focuses on the authorising state, which exercises the licensing power and whose conduct the diligence standard therefore measures. Where several states qualify, the argument applies to each.

Where the licensing state is also the state of registry, two sources of legal power coincide, since the state of registry retains jurisdiction and control over the space object (Outer Space Treaty, 1967, art. VIII). Most licensing states, New Zealand included, also register permitted objects, and no procedure guides the exercise of either power.

Two Statutory Strands

Case Selection

The sample maximises variation in drafting technique and institutional design rather than representativeness. The authorisation strand comprises five statutes in four jurisdictions. New Zealand and the United Kingdom use an explicit international-obligations clause, the United Kingdom in two statutes, because the Outer Space Act 1986 governs satellite operation and the Space Industry Act 2018 governs launch from British territory. Luxembourg has the most recent and most comprehensive legislation for commercial operators, and the proposed EU Space Act supplies the first supranational framework. The data-control strand comprises Germany, the United States and France, which regulate the dissemination of satellite data. Table 1 sets out six dimensions of comparison.

Table 1. The International-Law Condition in Five Authorisation Regimes

Dimension	NZ OSHAA 2017	UK OSA 1986	UK SIA 2018	LUX Law of 2020	EU Space Act (proposal)
1. Form of the international-law condition	Satisfaction formula, s 17, paired with national-interest test, s 17(2). Precondition of grant.	Satisfaction formula, s 4(2)(b), paired with national security, s 4(2)(c). Precondition of grant.	Satisfaction formula, s 8(2)(b), paired with national security, s 8(2)(a), and national interest, s 8(2)(c). Precondition of grant.	Conduct duty of the operator, art 3, not a criterion of grant. Criteria of grant, art 5, are supervisory.	Absent. Legal basis art 114 TFEU. Conditions of authorisation, arts 6–8, concern safety, resilience and environmental performance.

Dimension	NZ OSHAA 2017	UK OSA 1986	UK SIA 2018	LUX Law of 2020	EU Space Act (proposal)
2. Duty to inquire into end use	Description of payload capability and intended uses, sch 2. No duty to identify recipients or tasking arrangements.	None into end use.	None into end use. Detailed risk assessment for casualty risk, s 9.	None. Risk assessment is technical and financial.	None.
3. Reasons and publication	No duty to give reasons. Basis of decision surfaces only through freedom of information.	No duty to give reasons. Register of objects, s 7, not of grounds.	No duty to give reasons.	Register of authorisations published. Transparency as to whether, not why.	Union Register of Space Objects, arts 24–27. Technical parameters only.
4. Review and third-party standing	General administrative law only.	General administrative law.	Bespoke appeal, s 60 and sch 10, SI 2021/816, open to applicants and licensees only. Others may intervene with permission.	No third-party standing provided.	Open. Depends on national implementation.
5. Triggers of continuing supervision	s 21 power to vary, suspend or revoke. No defined trigger.	s 6 power to vary, suspend, revoke or transfer. s 8 directions. No defined trigger.	s 15(3)(c) revocation. s 26 monitoring without specified subject matter. s 29 directions. No defined trigger.	Continuing supervision with notification duties on change of control. Transfer requires authorisation. Triggers calibrated to corporate events.	Commission and Agency may suspend or withdraw for Union-owned assets, art 13. National authorities hold equivalent powers, art 30. No defined trigger.

Dimension	NZ OSHAA 2017	UK OSA 1986	UK SIA 2018	LUX Law of 2020	EU Space Act (proposal)
6. Institutional location	Minister for Space, economic development portfolio. Mandatory consultation of security Ministers, s 55. Foreign ministry consulted in practice. No report to Parliament.	Secretary of State through the space agency. Spectrum expressly outside the licence.	Civil aviation regulator as licensing authority. Secretary of State holds direction powers, s 29.	Ministry of the Economy with the national space agency.	Commission and EUSPA alongside national authorities. Defence and national security excluded, art 2(3).

Note. Compiled by the author from the statutes and instruments listed in the references. OSHAA = Outer Space and High-altitude Activities Act, OSA = Outer Space Act, SIA = Space Industry Act, SI = Statutory Instrument.

What the Authorisation Strand Shows

In New Zealand, the Minister may grant a payload permit only if satisfied that the proposed activity is consistent with New Zealand's international obligations (Outer Space and High-altitude Activities Act 2017 [OSHAA], s 17). In the United Kingdom, the Secretary of State shall not grant a licence unless satisfied that the activity will be consistent with the international obligations of the United Kingdom (Outer Space Act 1986 [OSA], s 4(2)(b)), and the regulator must be satisfied that the grant is consistent with those obligations (Space Industry Act 2018 [SIA], s 8(2)(b)). In Luxembourg, the authorised operator must carry out space activities in accordance with the authorisation and the international obligations of the Grand Duchy (Loi du 15 décembre 2020, art. 3). The proposed EU Space Act contains no corresponding condition, which follows from the choice of Article 114 TFEU as the legal basis (European Commission, 2025).

The New Zealand and United Kingdom statutes use a subjective satisfaction formula that makes consistency with international obligations a precondition of grant, paired in each case with a national-interest or national-security test (OSHAA, s 17(2); SIA, s 8(2)(c); OSA, s 4(2)(c)). Luxembourg addresses the international

obligations to the operator and not to the authority as a criterion of grant. The European proposal omits the condition altogether.

The three techniques lead to the same result, and dimensions two to five of Table 1 are almost uniform. Whatever the formula, the licensing authority receives no instruction about what to inquire into, owes no duty to give reasons, offers affected third parties no avenue of challenge and holds supervisory powers that no defined event brings into play.

Statutory strength and administrative density do not coincide. New Zealand has the most demanding condition in the sample and produced the litigation described in the introduction, while Luxembourg and the European Union operate the densest administrative machinery without any international-law criterion of grant. Neither arrangement produces a reviewable record.

The Space Industry Act 2018 comes closest to a supervisory mandate. Section 26 requires the regulator to monitor licensed activity, among other purposes to secure compliance with the international obligations of the United Kingdom, but gives the monitoring no substantive scope. The Act also creates a bespoke appeal restricted to applicants and licensees (SIA, s 60 and sch 10; Space Industry (Appeals) Regulations 2021, SI 2021/816). New Zealand requires consultation of the security Ministers before a payload permit is granted, varied or revoked (OSHAA, s 55), and consults the foreign ministry in practice under Cabinet-approved payload principles (Ministry of Business, Innovation and Employment, 2022). This consultation concerns national security rather than the international-law condition, and the outcome is neither documented nor reviewable.

The legislative process and soft law show the same gap. The European Economic and Social Committee has recommended interpreting the proposed Space Act in light of the international obligations of the member states in relation to space activities (European Economic and Social Committee, 2025). The file awaits decision in the Parliament's Committee on Industry, Research and Energy (European Parliament, 2026), and the Commission has declined the clause as outside the scope of the regulation (European Commission, 2026). Even such a clause would restore the condition without supplying a procedure. The COPUOS Long-Term Sustainability Guidelines likewise ask states to supervise national space activities but regulate neither the object nor the procedure of supervision (United Nations Committee on the Peaceful Uses of Outer Space, 2019).

The Data-Control Strand

Germany's Satellite Data Security Act of 2007 subjects every request for the dissemination of data from high-grade earth remote sensing systems to a standardised sensitivity check by the data provider, judged against the essential security interests and foreign relations of the Federal Republic and the peaceful coexistence of nations (SatDSiG, 2007, ss 17–19). The Act imposes documentation duties and a permit requirement for sensitive requests.

United States law obliges the licensee to observe the international obligations of the United States and to notify the government of any significant agreement with a foreign nation or entity (National and Commercial Space Programs Act, 2010, § 60122(b)(1), (6)). Conditions required by international obligations and foreign policy are settled with the Department of State, although the 2020 revision of the licensing rules relaxed collection conditions and abandoned shutter controls (Licensing of Private Remote Sensing Space Systems, 2020). France devotes a title of the 2008 Space Operations Act to space-based data and subjects dissemination to control in the interest of defence and foreign policy (Loi n° 2008-518 du 3 juin 2008, title VII).

In substance, this strand supplies the procedure that section 4 shows to be missing from the authorisation strand, namely a specified object of inquiry, defined occasions of review and documentation duties. The strand operates as security law, however, measured by the security and foreign policy of the regulating state. The operator in the New Zealand proceedings is licensed under the data-control strand in the United States and permitted under the authorisation strand in New Zealand, and the foreign-policy risk of the activity sits between the two.

Three Deficits of the Authorisation Strand

The three deficits arise at successive stages of the regulatory process. Before the decision, the authority has no object of inquiry. At the decision and on review, the authority owes no reasons, third parties have no access and a court has no standard. After the decision, no event triggers a legal duty to reconsider. Each deficit removes a precondition on which the due diligence standard depends.

No Specified Object of Inquiry

The subjective satisfaction formula requires the decision-maker to be satisfied that the activity is consistent with international obligations but does not specify the

object of that satisfaction. The duty of inquiry therefore lacks a point of attachment. An authority that must be satisfied of a matter has to investigate the matter, and English and New Zealand administrative law both require a decision-maker to take reasonable steps to acquire the information necessary for the decision (*Secretary of State for Education and Science v Tameside Metropolitan Borough Council*, 1977; Craig, 2021, pp. 534–541; Joseph, 2021, pp. 806–812).

The application requirements do not fill the gap. The New Zealand regulations require a description of the payload, payload capability and intended uses (Outer Space and High-altitude Activities (Licences and Permits) Regulations 2017, sch 2), which discloses what the payload does but not who receives the data, under what tasking arrangements or with what end-user undertakings. Reasonableness of inquiry is judged against the purpose for which the power was conferred (Knight, 2018, pp. 105–144), and where the instrument says only that the activity must be consistent with international obligations, the duty has nothing to fasten on.

A licensing authority cannot assess consistency with international obligations without knowing who will receive the data, under what arrangements and for what purposes, and no authorisation regime in the sample requires the applicant to disclose this information. General and operator-specific knowledge must be distinguished. A serious risk of genocide can be a matter of public record. The ICJ's finding in January 2024 that the right of Palestinians in Gaza to protection from acts of genocide was plausible and exposed to a real and imminent risk of irreparable prejudice was available to every licensing authority (*South Africa v. Israel*, 2024, paras. 54, 74). Whether the state's own operator feeds data into that situation turns on facts only the operator holds. Disclosure duties are therefore the central element of any workable regime.

The Unreviewable Decision

None of the five authorisation regimes obliges the licensing authority to give reasons for a grant. The record becomes visible, if at all, through freedom of information requests by someone who already suspects what to look for. In the New Zealand case, the ministerial briefing of 20 December 2023 was released under the Official Information Act in October 2025 (Ministry of Business, Innovation and Employment, 2023), before the second grant of April 2026, which was made without any documented reassessment of the international-law condition. Reasons serve an evidentiary function, since the diligence standard requires the state to show that the means reasonably available were employed, and that showing requires a documented record (Kingsbury et al., 2005, pp. 37–42).

Third parties affected by a licensing decision have no specific route of challenge in any of the five regimes. The United Kingdom's bespoke space appeal is confined to applicants and licensees, and intervention by anyone else depends on the permission of the panel. Elsewhere, affected persons must rely on general judicial review, which offers broad standing in New Zealand and the United Kingdom but no standard of scrutiny specific to the decision.

A court can ask whether the Minister erred in law, failed to take mandatory relevant considerations into account or conducted an inadequate inquiry (*CREEDNZ Inc v Governor-General*, 1981). Each question presupposes a statutory standard, and the international-law condition specifies neither the object of inquiry nor the relevant considerations nor the scope of review. A reviewing court must therefore either defer to the executive on the assessment of foreign obligations or construct from general principle the content the legislature declined to supply. The absence of a statutory standard is a principal reason why courts defer, as section 6.3 shows for English law, and without such a standard a court cannot review whether the state has observed due diligence.

Supervision Without Triggers

Every regime confers continuing powers, and none identifies an event that requires the authority to consider exercising those powers. Section 21 of OSHAA allows the Minister to vary, suspend or revoke a permit where necessary for compliance with international obligations, and the United Kingdom statutes permit directions and revocation for the same purpose (OSA, s 8; SIA, ss 15, 29).

Without a defined trigger, no legal duty to reconsider arises. The powers are discretionary, the object is unspecified, and nobody must consider exercising the powers at a particular time or in response to a particular event. A failure to reconsider therefore cannot be challenged as a breach of duty in administrative law or under international law, and the supervision requirement in Article VI becomes non-justiciable. In practice, reconsideration follows only external attention through litigation, a parliamentary question or an investigative report, which presupposes that the case has already attracted such attention.

The Available Templates

Transfer Control as a Structural Analogy

The control of conventional arms transfers offers a reference framework. The relevance is structural rather than political, and no equivalence between satellite data and weapons is asserted. Both regimes govern a private transaction, authorised by one state, whose consequences materialise abroad in the hands of downstream users the authorising state does not control, against the background of the international obligations of that state and under conditions of information asymmetry and dual use.

Transfer control has answered that problem with procedure. The Arms Trade Treaty prohibits authorisation where the exporting state knows that the items would be used in the commission of genocide, crimes against humanity or war crimes, and otherwise requires an assessment of the risk that the items could be used to commit or facilitate a serious violation of international humanitarian law or human rights law (Arms Trade Treaty, 2013, arts. 6(3), 7; Clapham et al., 2016, pp. 203–291). European Union practice adds common criteria, denial notifications and consultation between member states (Council Common Position 2008/944/CFSP, 2008). End-use documentation, annual reports to parliament and a defined role for the foreign ministry are standard, and dual-use goods are covered through arrangements modelled on the Wassenaar Arrangement (1996). The application of these rules has been criticised as permissive (Clapham et al., 2016, pp. 285–291; da Silva & Wood, 2021), but the architecture makes each decision legible after the event, which the authorisation strand does not.

Nicaragua has sued Germany over arms export licences, contending that continued authorisation in the face of a serious risk of genocide breaches the duty of prevention (*Nicaragua v. Germany*, 2024). In April 2024 the ICJ declined to indicate provisional measures but kept the case on the list and reminded all states of the obligations relating to arms transfers (*Nicaragua v. Germany*, 2024, para. 24). Export licensing decisions are thus pleaded as conduct engaging state responsibility in live proceedings, and space authorisation regimes are likely to face the same argument with even less in the record to answer.

The Template Within Space Law

Existing space legislation already contains the necessary elements. The German sensitivity check models a specified object of inquiry, covering the identity of the

requester and of the persons who will come into contact with the data (SatDSiG, 2007, s 17(2)). The United States notification duty models the disclosure of foreign relationships (National and Commercial Space Programs Act, 2010, § 60122(b)(6)). Section 5.4 connects these elements, together with documentation duties, to the authorisation decision.

Three Limits of the Analogy

The analogy has three limits, each of which shapes the design. Arms transfers generally have a defined recipient, whereas satellite operators sell imagery or bandwidth to a shifting customer base that may include resellers, so disclosure must be framed by category of end user. Export is a single event, whereas space activity continues for the life of the spacecraft, which leaves the licensing state with leverage and calls for periodic supervision. Dual use is the normal condition in space, with the same optical imagery serving civilian and military reconnaissance (Ferreira-Snyman, 2015; Tronchetti, 2015), so the inquiry must attach to the circumstances of supply rather than to the character of the item.

Six Design Elements

Six design elements follow from the analysis. Each can be enacted through ordinary national legislation without amendment of the Outer Space Treaty.

First, the authorisation statute must specify a clearly determinable material scope of inquiry. The application must disclose the categories of intended end users, the states in which tasking or resale arrangements operate, and existing or foreseeable contracts with foreign security or defence institutions. The obligation is framed by category, not by named recipient, so a reseller or analytics platform through which data reach a security institution must be disclosed even where the institution is not a direct customer. The licensing authority must assess that material against the international obligations of the state and document the outcome.

Second, the statute must define the events that trigger reconsideration. These include the opening of proceedings before an international court against a disclosed end-user state, the imposition of restrictive measures, findings by a United Nations commission of inquiry and any material change in the disclosed end-user categories.

Third, reasons must be given on a tiered basis. A public statement records that the international-law condition was assessed and identifies the categories of material

considered. A restricted annex holds the commercially sensitive and classified detail and is available to a reviewing court and to a parliamentary committee.

Fourth, review must be both periodic and event-driven. The cycle must be short enough to matter, and the outcome must be documented.

Fifth, the process must be open beyond the applicant. The United Kingdom's bespoke appeal shows that a specialised procedure is feasible, and the restriction to applicants and licensees is the defect. Standing should extend to persons with a sufficiently direct interest, or the statute should create a public-interest route. An unqualified individual right would founder on the diffuse character of downstream effects.

Sixth, the statute must require the concurrence or formal consultation of a competent authority whenever a trigger is engaged, with a documented outcome and an annual report to the legislature on authorisations granted, conditioned, suspended and refused. New Zealand's mandatory consultation of the security Ministers shows the mechanism. The confinement of that consultation to national security, and the absence of any documented outcome, show why consultation that is not tied to the international-law condition cannot discharge the supervision requirement.

Objections

Three objections remain, concerning regulatory competition, information asymmetry and justiciability.

Commercial Availability and Regulatory Competition

The first objection is that if one state refuses authorisation, another will grant the licence, and the capability reaches the same customer under a different flag, so that national action cannot produce results. The ICJ rejected this argument for the duty to prevent. Whether the means at the disposal of a state would have sufficed to prevent genocide is irrelevant, because the combined efforts of several states, each complying with the obligation, might have achieved the result (*Bosnia and Herzegovina v. Serbia and Montenegro*, 2007, para. 430). Nor does the duty to act depend on any likelihood that the action will succeed (*Bosnia and Herzegovina v. Serbia and Montenegro*, 2007, para. 461; Schabas, 2009, pp. 521, 523). A licensing state cannot excuse a grant by pointing to competitors willing to license the same capability.

The arms trade faced the same constellation and answered with legal coordination through denial notifications and prior consultation under the EU Common Position, the Wassenaar lists and the Arms Trade Treaty. The interpretive clause recommended for the Space Act would have been the space equivalent, and the Commission declined the clause (European Commission, 2026). The competitive objection is therefore an argument for harmonisation and not against national action.

Information Asymmetry

The second objection is that licensing authorities know less than operators about downstream use and cannot verify international-law conditions. Export control and the data-control regimes face the same asymmetry and manage the problem through disclosure duties, undertakings and verification. The content of the obligation scales with the capacity of the state, and what a state can reasonably be expected to know depends on what the statutes of that state require applicants to disclose (Kulesza, 2016; Peters et al., 2020). The asymmetry is therefore an argument for placing the burden of disclosure on the applicant, which is the premise of the first design element.

Justiciability

The third objection is that courts will not and should not adjudicate the foreign relations of the executive, so that judicial review of licensing decisions with foreign-policy consequences is unavailable. A court reviewing whether a statutory inquiry was conducted and whether disclosed material was considered does not pronounce on the international legality of the conduct of another state. The court examines the completeness of a domestic administrative process, which may touch foreign-policy interests without becoming foreign policy (Knight, 2018, pp. 1–20).

The Dutch litigation over parts for F-35 fighter aircraft illustrates the point. The Hague Court of Appeal ordered a halt to deliveries of components to Israel, applying the clear-risk standard of the EU Common Position. The Supreme Court set the judgment aside in October 2025 because the assessment belonged to the Minister, but ordered a reassessment within six weeks against the clear-risk criterion, and the government maintained the halt in November 2025 (*State of the Netherlands v. Oxfam Novib*, 2024, 2025; Castellanos-Jankiewicz, 2024; Pijnenburg & Tjepkema, 2025; Ministerie van Buitenlandse Zaken, 2025). The Supreme Court thus confined review to the assessment and the standard applied, and left the decision to the executive.

English courts draw the same line. The Court of Appeal held the grant of arms export licences to Saudi Arabia irrational because the Secretary of State had not assessed whether past incidents disclosed a pattern of violations of international humanitarian law, a question of process under the clear-risk criterion (*R (Campaign Against Arms Trade) v Secretary of State for International Trade*, 2019). Once that assessment had been made, a renewed challenge failed (*R (Campaign Against Arms Trade) v Secretary of State for International Trade*, 2023). Where the decision is taken outside any applicable criterion, review falls away. The exemption of F-35 components from the suspension of export licences to Israel was made without applying the Strategic Export Licensing Criteria, and the courts held that the balance between national security and compliance with international humanitarian law was for the government (*R (Al-Haq) v Secretary of State for Business and Trade*, 2025). Review therefore depends on a domestic standard, and an international-law condition without specified content does not supply one.

Specified objects of inquiry, defined triggers and recorded reasons give a reviewing court a standard drawn from the statute. Such a standard reduces the occasions on which a judge must reason from general principle about foreign affairs, and deference is easier to justify where the legislature has determined the object of review.

Conclusion

The international-law condition in national authorisation regimes remains inoperative because the statutes lack the procedure required to apply the condition. The data-control regimes of Germany, the United States and France show that the necessary procedural elements already exist in national law but are not connected to the authorisation decision. The three deficits are cumulative. Without a specified object of inquiry the authority cannot conduct the required examination, without reasons, standing and a standard of review the decision cannot be reviewed, and without defined triggers no duty of continuing supervision arises.

Legislation is the decisive route. Courts defer where no statutory standard exists, so judicial review of section 17 OSHAA in Wellington is unlikely to supply the missing procedure without legislative guidance. The EU Space Act offers the nearest legislative opportunity, and national legislators can enact the six design elements in the authorisation statutes already in force.

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