

Legal Issues Related to Space Exploration (13)
Present and future regulation of space exploration and exploitation: general issues (1)

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ENSURING A SUITABLE LEGAL ENVIRONMENT FOR SPACE EXPLORATION: THE ISSUE OF BIFURCATION

Abstract

Eminent experts in space law have argued that space law, as it is coming of age, is bifurcating. The legal framework of the *Corpus Iuris Spatialis*, determined as it may have been by the context in which it came into being is presently being supplemented and sometimes even supplanted by national space laws and international agreements that are better adapted to the uses of outer space that have become prevalent today. Those uses are more intense, more diverse, more commercial and more crucial for the current global society than they were at the time of drafting of the space treaties. This paper attempts to examine the tensions that have arisen and those that are likely to arise between the existing space law framework and current uses of space; an area which has been described in the US National Security Space Strategy as ‘Congested, Contested and Competitive’. It pinpoints possible areas of friction between current interpretations of international space law and public international law, international space law and national space laws. It looks for signs of bifurcation - understood here as the development of two or more co-existing sub-regimes in space law - whether they bifurcate along public-private, military-civil or commercial-non-commercial divides, and examines whether such bifurcation is necessary and desirable. The final aim of this analysis is to determine whether or not these tendencies present a risk in terms of creating a space legal framework that is ill suited for space exploration – one of the original space activities. If this proves to be so, attention turns to what measures can be taken to safeguard it.