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SPACE LAW IN THE LIGHT OF BOBBIO'S THEORY OF LEGAL ORDERING

Abstract

Norberto Bobbio (1909–2004) was an eminent Italian philosopher of law – who developed in depth the theory of Hans Kelsen (1881-1973) on legal ordering – and a thinker of political sciences, as well as a historian of political thought. Hardly one comes to Italy to participate in an important meeting on legal issues without paying due reverence to this remarkable jurist, a brilliant reference for all the world. The author of the present paper pursues this goal. This work aims at examining the existing international space law in the light of the Bobbio's Theory of Legal Order (Teoria dell'ordinamento giuridico), first published in 1960. Bobbio considers that "a satisfactory definition of the law is only possible if we assume the standpoint of the legal ordering". He also asserts that "if a legal ordering is composed of various norms, this means that the main problems linked to the existence of a legal ordering are problems born of the relationship between various norms among themselves". According to Bobbio, these main problems are: 1) the unity among the various norms of a legal ordering – "We cannot talk about legal ordering, if we do not consider it as an unitary ordering."; 2) the performance of a legal ordering as a system, which must solve the question of juridical antinomies – "When we ask if a legal ordering is a system, we wonder whether the norms that compound the ordering are compatible between them and under what conditions is this relationship possible."; 3) the completeness of a legal ordering, which faces in first place the question of lacunae – "... a legal ordering has a norm to regulate each case."; and 4) the relationship among various legal orderings, particularly, how one can influence the others as well as receive support from each of the others. Bobbio also argues that "a legal ordering, taken as a whole, is only valid if it is effective." In the chapter entitled "Law and force", he affirms: "The law, as it is, is an expression of the strongest, not of the most righteous. It would be better if the strongest were also the most righteous". The central aim of the present paper is to apply these considerations to the existing legal ordering intended to regulate outer space activities.