

55th IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)

The International Legal Regulation of Outer Space within the Scope of Public International Law (3)

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THE DICHOTOMY BETWEEN THE DUTY TO PROVIDE INFORMATION AND SECURITY
CONCERNS OF THE STATE

Abstract

The Outer Space Treaty establishes the principles of use of outer space for peaceful purposes, cooperation and mutual assistance. Under Article XI of the Outer Space Treaty, States Parties agreed to inform the Secretary General of the United Nations, public and scientific community ‘to the greatest extent feasible and practicable, of the nature, conduct, locations and results’ of activities in outer space. Therefore, the Article is intended to make a link between principle of cooperation and duty of information.

Breach of Article XI of the Outer Space Treaty (consisting in particular in the concealment of information) can serve as a ground for international responsibility of the State. However, military and even economic concerns can preclude States from exchanging this information. Under international law States sometimes can legitimately invoke national security reasons as a ground for limiting their obligations.

The formula ‘to the greatest extent feasible and practicable’ in Article XI of the Outer Space Treaty can be regarded as a self-judging clause, which might be interpreted as permitting to conceal information due to security or economic reasons. Examples of such self-judging clauses exist in the international jurisprudence, including the ICJ, WTO and an investment arbitration practice.

At the first glance, there is no conflict between the duty to provide information and the security or economic concerns, since wording ‘to the greatest extent feasible and practicable’, provides for a leeway not to reveal information. However, in the situation when the concealment of information threatens the wellbeing of other states a new question arises: to what extent States can ‘self-judge’?