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SOFT LAW AND SPACE SECURITY: A POST-MODERN THEORY PERSPECTIVE

Abstract

International law, as it is thought of after 1945, matches with the paradigm of voluntarism. It is the result of States wills that express themselves through a normative process that gives treaties a binding force. It is in that framework that Space Law, as it is generally conceived of, has been constructed. Following the post-modern theory, international law goes beyond the theoretical framework laid out by positivist theories. Internationalization and the theory of networks are sufficiently significant that they challenge the current configurations of international space law. The ability of post-modern theory to gather the various branches of disarmament law, and to examine new forms of international regulation, leads us to analyze the impact of soft law in the prevention of an arm race in Outer Space in a distinctive way. Some of the examples of soft law, such as the MTCR, the HCoC or the Wassenaar agreement, have shown that soft law could contain a problem of international security. Soft law may also be seen as expression of new form of regulation in a post-modern era. Likewise, new principles of international law related to the protection of the environment and the principle of proportionality as it has been interpreted by the ICJ prevent States from contemplating an offensive use of Space.