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LEGAL PLURALISM IN OUTER SPACE.

Abstract

(Space Law –Future Challenges and Potential Solutions)

Legal Pluralism in Outer Space

What should the future legal regulation of private actors that move into outer space look like?

This paper will contain a critical assessment of the existing legal framework in outer space in light of future participation of private actors in outer space activities. As a practical example the International Space Station (ISS) will be used to analyse the current legal framework and the measures the participating states in the ISS have taken to regulate the conduct of private actors aboard this space object. With the aid of the legal situation concerning the ISS, five complications have been identified regarding the regulation of private actors in outer space: (1) absence of sovereignty; (2) the (in)efficiency of jurisdiction; (3) enforcement problems, theoretical and practical; (4) a variety of national laws applying to one space object or in outer space; (5) the applicability of substantive national laws and the recognition of private interests in outer space.

In order to solve these complications, this paper for the first time tries to apply a systems theory perspective in such a way that: *As a starting point for developing answers to the question how to regulate private parties that move into outer space, legal pluralism could provide a suitable alternative theoretical framework and analytical tools for the normative development required for the regulation of conduct of private persons in outer space, in comparison to state created law.*

For this paper use has been made of the theory of legal pluralism from a systems theory perspective, a perspective on legal pluralism elaborated and conducted by German legal sociologist Gunther Teubner. The most important implications of this theory are (1) the recognition of alternative sources of law production away from state created law; (2) the recognition of the possibility of several legal systems existing next to each other; (3) the recognition of legal practice as the main source of law rather than legal theory; (4) the autonomy of such law producing entities, either being specialised “legal discourses” or “social subsystems”; (5) the self-validating techniques which are used to qualify the normative formulations created by such alternative law-producing entities.

The results of the analysis in this paper might provide for some tools for reconsideration and contemplation about alternative ways of law creation in outer space.