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IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Climate Change of the Earth Reflected in Space Law (7)

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THE ABSENCE OF SPACE LAW IN THE 2024 ITLOS ADVISORY OPINION ON "CLIMATE CHANGE AND INTERNATIONAL LAW" AND LESSONS FOR FUTURE CASES

Abstract

Space applications including remote sensing satellites play a significant role in climate change cycle. Generally, the issue of climate change is becoming a main discourse in international courts. The advisory opinion of the International Tribunal for the Law of the Sea (the "ITLOS") on Climate Change and International Law is a landmark reaction by an international court to the legal dimensions of climate change. The ITLOS, in response to inter alia the specific obligations of member States of the 1982 United Nations Convention on the Law of the Sea (the "UNCLOS") to prevent, reduce and control pollution of the marine environment and to protect and preserve the marine environment, concluded that States Parties to UNCLOS must "take all necessary measures to prevent, reduce, and control marine pollution [....]". What is remarkable in this advisory opinion is that in addressing the applicable law, ITLOS concluded that alongside the UNCLOS, "the external rules" including UNFCCC, the Kyoto Protocol, the Paris Agreement, Annex VI to MARPOL, Annex 16 to the Chicago Convention, and the Montreal Protocol, including the Kigali Amendment are relevant. This view is based on the principle of systemic integration enshrined in the Vienna Convention on the Law of Treaties (VCLT). Based on this approach and according to the reasoning structure of the ITLOS in this case, overlooking the other related branches of international law, including space law, by the tribunal can be criticized. The role of space law in this case is nothing. While some provisions of space law, including Article IX of the Outer Space Treaty, and the efforts of the Committee on the Peaceful Uses of Outer Space in particular in relation to the long-term sustainability of space activities contribute to climate change law, this branch of international law has been completely neglected by the ITLOS. Based on the systemic approach to International law followed by ITLOS, this article tries to examine the space law rules related to climate change, which have been neglected by the ITLOS and could have strengthened the advisory opinion. Considering that the issue of climate change is pending in the other international courts, including the International Court of Justice, this article can push both international courts and international space actors to find the right place for space law in climate change cases. This is of crucial importance due to the direct link between space-based data and climate change management.