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THE REGULATION AND CONTROL OF DUAL PURPOSE TECHNOLOGY IN THE EVOLVING
OUTER SPACE LEGAL REGIME IN SOUTH AFRICA

Abstract

Peaceful use of outer space is a sacrosanct axis underpinning the outer space law in South Africa. This is the result of the political transition from a militaristic government to a constitutional democracy in the early nineties. The desire to assure the international community that the country has indeed abandoned its war machinery that included a vast nuclear program resulted in the scrapping of a nascent space program that was primarily military-driven. Hence, the legislative instruments enacted to guide the development of any new space program proclaimed adherence not only to international conventions on space use, but also the need to halt the distribution of nuclear capable armaments and technologies.

Both the Space Affairs Act and Non-Proliferation Act of 1993 declare South Africa a responsible adherent to international law in respect to space use and nuclear usages. The Acts require legal mechanisms to be put in place to control and restrict the development, acquisition, use and transfer of dual purpose technologies, especially those that can contribute to the proliferation of weapons of mass destruction. The practical application of these provisions entailed observance of international standards and laws related to dual purpose technologies, i.e technologies with both civilian and military applications. The two Acts established administrative agencies to control these technologies.

Both Acts are presently under review in light of increasing participation in space activities by non-State actors. The efficacy of the regulatory mechanisms in place is challenged by rapidly evolving economic, political and technological trends. These trends in turn require predictable and stable legal regime to encourage further growth. It is therefore imperative that South Africa examine its outer space legal framework in light of these contemporary developments and fashion appropriate legal rules.

Dual purpose technologies feature prominently in this review process given the need to avoid duplicate administrative requirements that place costly burden and hamper further development in the space sector. The positive outcomes on the international diplomatic front in respect to placement of weapons in outer space, the results of the long-term sustainability process, and the near conclusion of the international code of conduct in space use provide an impetus for the creation of a responsive legal environment for the space industry in general. South Africa is poised to be a catalyst in incorporating these progressive developments in its domestic space law and in the process lead the way in advancing the peaceful uses of outer space.