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EXPLORING THE BOUNDARIES OF FREE EXPLORATION AND USE OF OUTER SPACE-
ARTICLE IX AND THE PRINCIPLE OF DUE REGARD, SOME CONTEMPORARY
CONSIDERATIONS

Abstract

Article I(2) of the Outer Space Treaty embodies the principle of freedom of exploration and use of outer space. This freedom, however, is not of an absolute nature. Article IX of the same Treaty contains several notions which may limit such freedom. According to one of these notions, the exploration and use of outer space shall be guided by the principle of “due regard” referring to the corresponding interests of “*all other States Parties to the Treaty*”. The notion of conducting activities with “due regard” is not unique to outer space under public international law, as it exists in the airspace as included in Article 3 of the Chicago Convention, specifically relating to safety, and in the high seas as embodied in Article 87(2) of UNCLOS. Taking a comparative approach may clarify which possible limitations of the freedom to explore and use outer space are included within the notion of “due regard”. Considering some contemporary uses of outer space which fulfill commercial interests, the question of the scope of the due regard notion raises, additionally to whether commercial interests of a certain state or its nationals could be successfully balanced against the interests of other states; and whether the limitation of one State’s freedom might become relevant only when it injures the interests of “all other States Parties”. Further, the connection between Article IX relating to due regard and Article III of the Liability Convention will be examined through the question of fault liability, namely: can the breach of this guiding principle establish the ‘fault’ of the launching State(s) when damage is caused by its space activity? The aim of the paper is to explore the boundaries of freedom of exploration and use of outer space in the context of the principle of due regard and to suggest, while analyzing case studies, a contemporary interpretation to this guiding principle which is relevant to space faring nations and their nationals.