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THE RELATIONSHIP BETWEEN THE OUTER SPACE TREATY AND CUSTOMARY INTERNATIONAL LAW

Abstract

The progress in space-related science and technology has facilitated an exponential expansion of space activities, many of which were not known at the time of adoption of currently applicable international space treaties. Yet, since the adoption of the 1979 Moon Agreement, the further development of international conventional space law has all but ceased. International geopolitics, rapid technological advancement, and the increasingly commercially competitive nature of space activities have all contributed to a move away from the establishment of treaty-based rules towards 'soft-law' guidelines that are expressed to reflect practice. It has been argued that some principles included in the UN space law treaties have gained the status of customary international law. A new rule of customary international law emerges only after sufficient state practice and opinio juris and is said by some to be capable of amending and/or invalidating certain provision(s) of a treaty, or contributing towards a revised interpretation of the legal obligations under a treaty. When a treaty provision either crystallizes into, or becomes a customary rule of international law, it may give rise to binding obligations (and corresponding rights) upon a third (non-treaty party) state. This paper will examine this issue in the context of Articles I, II, VI and VII of the Outer Space Treaty, focusing in particular upon their (in)applicability to those states that have never been, or are no longer parties to the Outer Space Treaty, with respect to off-Earth mining activities for space natural resources.