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LAW & POLICY COLLIDE IN SPACE

Abstract

Globalization continues to accelerate, and with it, the value of seeing the whole world at once. The parallel growth of commercial and international investment in space, particularly in large constellations of satellites in low earth orbit (LEO), seeks to achieve global, continuous coverage. The rate of investment in novel space ventures has far outstripped the ability of lawmakers and policymakers to establish practice, let alone a legal framework. The issues associated with large LEO constellations span from debris to ecological risks, threatening infrastructure and assets belonging to 43 countries and worth billions of dollars in what is already the most crowded orbital range.

This is the backdrop for a sphere whose international conventions were never designed to meet the legal challenges of heavy traffic or financial investment in space. Most States seem uninterested in pulling apart existing, binding international agreements, for fear they may never again reach such broad consensus. It falls then to international custom to help guide us towards international law. Are States and international bodies already engaging in practice they consider legally binding? Have they expressed a necessity to do so? At what point does ample practice establish *opinio juris sive necessitatis*? Can international custom be defined in the negative? Examples of potential customary law vary widely; some reinforce international conventions, some challenge them, while others create new rules. In the vacuum of space, law and policy are colliding, but to find the most beneficial framework for the province of all mankind, the two must coordinate their efforts.

The aim of this paper is to show how law and policy supplement each other, rather than to propose a new legal system. The paper shall recommend actions to better coordinate law and policy, both in their formulation and execution. Further, the paper shall examine whether some States avoid *opinio juris* in their practice, and how lawyers can interpret and use this in the formulation of international law.