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THE IMPACT OF NATIONAL SPACE LEGISLATION ON THE INTERPRETATION OF
INTERNATIONAL PRINCIPLES OF GLOBAL COOPERATION

Abstract

Though international space law is frequently characterised as lacunal, the general nature of the provisions of the existing UN space treaties is such as to cover all physical phenomena in space as well as all activities by public and private entities that can be characterised as exploration or use. The lack of detailed rules regulating every conceivable activity in space should thus not be taken as an indication that there are forms of exploration or use of outer space that escape the application of the fundamental principles of international space law.

This realisation is fundamental in trying to understand the current deadlock in international space law-making. The UN space law regime is characterised by principles of global cooperation and inclusion that nonetheless only grant enforceable rights of protected use to individual States that are factually capable of implementing the legally equal freedom of all States to engage in spacefaring activities (Arts. I, II and IX OST). In this context, it is understandable that technologically advanced States are turning their space law-making efforts to a national interpretation of the existing principles that furthers their own interests instead of engaging in protracted multilateral negotiation processes that risk upsetting the basic balance of the existing space law regime that favours them in the first place.

We are hence witnessing a clear regulatory shift in space law-making, from the international level to the national level, by the increased imposition, by a limited number of States, of a unilateral interpretation of the existing space law principles that, according to the principal goals of the UN space treaties, were nonetheless adopted to promote international cooperation in a global environment. The proposed paper aims to assess the impact of this observed shift, in particular by (1) laying out the general rules on the interpretation of international law through national legislation; (2) assessing the possible impact of the regulatory competition between States vying for the attention of the booming industry of asteroid mining on the application of the existing international principles on the use of outer space; and (3) comparing this to the reverse dynamics at play in the reinforcement through national legislation of non-binding international rules on space debris mitigation.