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OUTER SPACE TREATY 1967 VS. 2017 A LEX SPECIALIS OR DEROGATION FROM HUMAN RIGHTS?

Abstract

Cold war brought us a fact that Outer Space Treaty was colored by the geopolitical situation and influences of the respective era. As it was without any doubt clear in 1967 that mentioned legislation was necessary to be drafted as it was, in 2017 it is even more evident that, if drafted today, Outer Space Treaty would look drastically different.

By addressing the situation surrounding 1967 first, the Author shall provide for reasons which led to the drafting of the Outer Space Treaty, whereas a paramount of the Treaty were security reasons, including peaceful uses of outer space. It will capture the post-war feelings as well as Cold war influence which led to certain consequences such as arms race and fear of mutual destruction between two super powers, resulting in making Outer Space Treaty a unique safe guard for states' activities in outer space. In the second part, the Paper shall provide for present situation, and address the current global challenges such as: terrorism, refugee crisis, border control, as well as new developments regarding commercialization and resource exploitation in outer space. In the end, paper shall present a comparative analysis of various socio-economic and political aspects of 1967 and 2017.

With emphasis on property rights aspect, this paper shall examine the outcome of drafting Outer Space Treaty in 2017. In this light, the Author shall take into consideration current developments in space sector, national and international legislation, commercial aspects of space mining, but above all the paper shall question appropriation in outer space. A right to property or the right to own property is one of the fundamental human rights, envisaged by almost all national and international documents, yet being excluded in outer space. It is attributable to all physical entities, who can conduct their activities through legal entities. Today's economy and development cannot be imagined without private property or any other form of ownership rights. A question shall be raised: were non-appropriation provisions and principles justified in 1967 and are mentioned human rights, from today's point of view, limited only to Earth, therefore making Outer Space Treaty and other Corpus Iuris Spatialis documents a Lex specialis to human rights or is it a derogation from certain human rights.