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LACUNAE AND SILENCE IN INTERNATIONAL SPACE LAW - A HYPOTHETICAL ADVISORY OPINION FROM THE INTERNATIONAL COURT OF JUSTICE

Abstract

In any legal system, and in particular the international legal system, there are silences - things the system does not appear to regulate and matters on which it does not speak. In international space law, this seems particularly possible, especially when considering the advanced, cutting-edge technologies and capabilities which are now on the verge of happening. These next generation activities include satellite servicing, space debris remediation, space traffic management, and the use of lunar and asteroid resources, none of which seemed to be contemplated and addressed by the primary legal instruments of space law. The brief provisions of the Outer Space Treaty, a treaty on principles, does not give a clear answer on many of these proposed activities, neither clearly stating that the activity is 1) positively permitted, authorized, and regulated; nor, more modestly, not explicitly illegal; nor 3) clearly and explicitly prohibited and proscribed.

This paper will explore the various emerging space activities on which international law is simply silent, either as unintentional gaps in the law(*lacunae*), or intentional silences where creators refrained from creating new law (*non-liquet*). It will then explore how International Court of Justice could hypothetically, using its advisory powers, consider requests for an opinion on the legality of these emerging activities.