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A SUSTAINABLE ELABORATION OF THE 1967 OUTER SPACE TREATY

Abstract

If the Outer Space Treaty were drafted today, its terminology might be elaborated in order to guarantee the sustainable development of space activities. Particularly, nowadays the outer space magna charta should not be conceived in an anthropocentric perspective, but the environment might be preserved per se, adopting an eco-centric approach. Article I par.2, Article II and Article IX of the Treaty should not merely ground the status of outer space as a common pool source. More specifically, Article IX should not be formulated as a mere recall of the common interest and benefit clause of Article I of the Treaty. Rather, it might be elaborated in order to explicitly create a legal duty to respect the interests of future generations, an obligation for States Parties to avoid and prevent hazards that may affect the safe exploration and use of outer space by newcomer actors. The notion of "harmful contamination" should be clarified in the light of the level of tolerance beyond which pollution becomes forbidden and a feasible solution might be to explicitly identify this limit in the corresponding right of equitable utilisation held by other States Parties. Finally, always concerning Article IX terminology, the meaning of "appropriate", measures or consultations, should be clarified and its determination should not be left to the discretion of the State which is leading such a potentially harmful contamination. In this view, a solution might be the reading of the notion as a counterweight of the notion of "harmful" where the degree of appropriateness should be calibrated on the degree of hazard. In this direction, in a new drafting of the Treaty, from Articles I and IX a due diligence standard on which evaluate the legality of States activity might arise,where Article VI may work as a means for the effectiveness of this preventive system. Finally,the meaning of Article VI "responsibility" should be kept well separated by the notion of liability and the two options recalled by the Treaty might be better specified. A solution might be that if the State acted diligently, taking all the appropriate measures to avoid harm, or to mitigate its consequences when the risk materialised, but the damage occurred nonetheless only liability will be applied. On the other side, if the due diligence obligations were totally breached, the regime of international responsibility for wrongful acts will be activated, providing an obligation for polluters to remove the debris they produced.