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A VITAL ARTERY OR A STENT NEEDING REPLACEMENT? A GLOBAL SPACE GOVERNANCE SYSTEM WITHOUT THE OUTER SPACE TREATY?

Abstract

Last year marked the fiftieth anniversary of the 1967 Outer Space Treaty. This foundational framework instrument has just about succeeded in maintaining law and order in outer space. However, it is becoming increasingly likely that a major space power, or a group of States, may consider withdrawing from the Outer Space Treaty under its Article XVI, particularly in view of the current trend towards nationalistic political populism as we are witnessing in the U.K., the U.S. and other countries. One foreign policy strategy of isolationistic governments is to selectively withdraw from certain key international institutions and treaties. To the extent that it might be perceived as compromising national interests in space, the Outer Space Treaty could be one such treaty, especially in relation to the exclusive national exploitation of space natural resources by private entities, and threats to national security. Yet, the current international legal regime governing space activities is based on this Treaty and such withdrawal would therefore have serious implications for global space governance. In this paper, we will critically analyse some of the most serious legal issues related to the void that such withdrawal might create in the prevailing international space law governing: (1) the (non-)appropriation of outer space; (2) the weaponization and military uses of outer space including celestial bodies; (3) State responsibility and liability; (4) respect for the interests of other States (due regard) and the equitable sharing of space benefits; and (5) the impact on the functioning of the other four UN space treaties that are linked to, and aligned with the Outer Space Treaty.