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UNDERCUTTING INTERNATIONAL COOPERATION IN SPACE EXPLORATION THROUGH
DOMESTIC LEGISLATION

Abstract

50 years ago, the drafters of the Outer Space Treaty pronounced outer space to be the province of all mankind. Cooperation between States has been a cornerstone in the evolution and development of space law right from its inception post the launch of Sputnik 1. States took it upon themselves to cooperate in ensuring that outer space and its resources are used in an equitable manner. To that end, they resolved to regulate the activities of their nationals and ensure their compliance with international norms. With the significant advancement in technology, the use and exploration of celestial resources has become a reality, not just for States, but for private actors in the space sector as well. It is in this contextual framework that the United States of America enacted the U.S. Commercial Space Launch Competitiveness Act, 2015 which enables private players to exercise rights over celestial resources. While this Act has faced criticism from various fronts for contravening core tenets of Space Law, it has also served as the inspiration for other States to enact similar domestic legislation. However, enacting such domestic legislation is antithesis to the aim of cooperation in the use and exploration of outer space, particularly in an environment where there is uncertainty as to the nature of rights that can be exercised. This paper endeavors, in the first instance, to assess the effect that the United States' Act has had on the domestic legislations of other States, specifically in terms of governing utilization and ownership of celestial resources. This paper then strives to examine the effect that such legislations have on undercutting the principle of cooperation in space exploration and the detriments that flow out of acting under such legislations. With regard to the first objective, the authors conduct an empirical and critical analysis of the domestic space legislations that have been enacted subsequent to the United States Act. The paper analyses how the legislations deal with the issue of ownership and use of celestial resources, specifically by private players. With regard to the second objective, the authors seek to determine whether such legislation has served as a serious detriment to international cooperation regarding this issue. The paper concludes with an analysis of how States cannot use their obligation to 'authorize and supervise private actors' as a garb to enact domestic legislation, thereby undercutting international cooperation.