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SCOPING NATIONAL SPACE LAW: THE TRUE MEANING OF 'NATIONAL ACTIVITIES IN OUTER SPACE' OF ARTICLE VI OF THE OUTER SPACE TREATY

Abstract

Article VI of the Outer Space Treaty, requiring "authorization and continuing supervision" of "national activities in outer space" including those of "non-governmental entities", has always been viewed as the primary international obligation driving the establishment of national space legislation for the purpose of addressing private sector space activities. As the Article itself did not provide any further guidance on precisely what categories of 'national activities by non-governmental entities' should thus be subjected to national space law and in particular to a national licensing regime, in academia generally three different interpretations soon came to be put forward on how to interpret the key notion of 'national' in this context as scoping such national regimes. Looking back at 50 years of national space legislation addressing private sector space activities, however, we now have the possibility to look not only at the writings of learned experts, at best a subsidiary source of public international law, but at actual State practice-cum-opinio iuris on the matter. The present paper, on the basis of a survey of more than two dozen existing national space laws, will therefore be able to considerably narrow the appropriate interpretation of 'national activities in outer space', so as to diminish the uncertainty as regards what categories of private space activities States may be held responsible for, thus both narrowing the permissible discretion of individual States in scoping their national space law regimes and increasing the coherence and transparency of space law at the international level.