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SETI AND INTERNATIONAL SPACE LAW

Abstract

From the launch of Sputnik over 60 years ago to the present day, the international community has developed a legal regime for outer space to govern human conduct. This regime includes five treaties from the United Nations Committee on the Peaceful Uses of Outer Space (four of which have been widely ratified), the Radio Regulations from the International Telecommunication Union, and the Limited Test Ban Treaty. This legal regime has developed in a context where the only known intelligent actors in space are from Earth. The legal rules and restrictions that we have chosen to impose on ourselves are likely to change upon the discovery of intelligent life in the universe beyond our planet.

While there has been significant discussion of the psychological and cultural impact of the potential discovery of intelligent life, there has been less legal discussion. This paper will outline the fundamental principles of international space law and how our perception of these principles might change with an understanding that humanity may not be the only species using (or competing for use of) outer space. Principles that will be of particular importance to this discussion include: the prohibition on the exercise of territorial sovereignty in space, the limitation of the use of celestial bodies for “exclusively peaceful purposes,” outer space as “the province of all mankind,” the prohibition on harmful contamination of celestial bodies, and the limitation of nuclear explosions in space.

The paper will then subsequently argue that the international legal principle known as “Fundamental Change of Circumstances” (as articulated and codified in Article 62 of the Vienna Convention on the Law of Treaties) may apply to allow withdrawal from, termination of, or suspension of legal obligations under the existing international space law regime. I will analyze the existing international law and explore what would be required upon discovery of intelligent extraterrestrial life in order to rise to a level of “fundamental change of circumstances.” The type of contact, distance away of the new life form, abundance of life, and importantly nature of the life form may have substantial bearing on whether a legal determination will be made that such a fundamental change has indeed occurred. It must also be considered whether or not such a change could have been reasonably foreseen by the parties at the time of the conclusion of the treaty.