

Transcending Societal Issues for Space Exploration (12)
Transcending Societal Issues for Space Exploration (3) (3)

Author: Ms. Katja Grünfeld
Slovenia

BATTLE OF THE GODS: THE OUTER SPACE TREATY'S ARTICLE I VS. ARTICLE VIII

Abstract

The 1967 Outer Space Treaty (OST) embodies the fundamental principles of space exploration. However, the very characteristic that on the one hand allows it to remain modern after more than 50 years, is on the other hand its weakness - the Articles are formulated wide and vague, and do not encompass an explicit hierarchical order. In particular, a clash of two titan Articles, Article I and Article VIII, creates a dilemma as to the status of and jurisdiction over disused space objects.

Pursuant to Article I, States are free to explore outer space and have free access to all areas of celestial bodies without any discrimination. In exercising this freedom States and their private actors send out space objects, the status of which is then governed by Article VIII. It decrees that the State of Registry shall retain jurisdiction and control over launched space objects that it registered in its registry. According to majority opinion States retain jurisdiction even over abandoned objects as the principal belief is that the imperative word shall, employed by Article VIII, signifies that abandonment of objects in outer space is not possible. Consequently, a large body of space debris may not be interfered with due to the enduring jurisdiction of the respective State of Registry. This is where the clash between Articles I and VIII bobs up. Do abandoned space objects, especially space stations and in the future any permanent space stations on celestial bodies, by occupying a permanent part of our universe violate Article I by obstructing other States' access and consequently exploration thereof? If yes, may they be removed, reused or moved, or would such an action violate Article VIII? Can the two Articles coexist or must one necessarily have priority over the other?

With the International Space Station already in orbit, and with the proposed Gateway program, seeking to enable landings and possible permanent space stations on celestial bodies in the future, as well as Russia's and SpaceX's plans to establish settlements on the Moon and Mars gaining momentum, establishment of clear hierarchical rules will be needed sooner rather than later. In my paper I assemble the legal possibilities and pitfalls in international space law for reusing or removing abandoned space stations, including the worrisome prospect of left behind onboard intellectual property. Ultimately I attempt answering whether the two mentioned Articles can present a common legal solution regarding the Space Station regulatory framework.