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THE INCREASING LEGAL EFFECT INTERNATIONAL ORGANISATIONS HAVE ON THE
DEVELOPMENT AND IMPLEMENTATION OF SPACE LAW AND POLICY WITH A SPECIAL
FOCUS ON NATO, EU AND ESA

Abstract

The beginning of the space age was driven by States in their pursuit of negotiating, drafting, and setting the scene for the infamous and overarching space treaties. They appointed the UN as the designated forum for filling the lacuna regarding activities in outer space, and whilst it remains the relevant venue for this, the NewSpace era evidently shows a shift to alternative actors in the space law and policy domain. This paper reviews the increasing influence international organisations, as regional and cross-regional actors, have on the development of new international space law and policy mechanisms and trends. This is based on two growing tendencies; firstly, consensus has become nearly impossible to achieve at a forum such as the UN and when considering the current geopolitical uncertainties, unanimity will surely remain evasive.

Secondly, there is a clear trend that operators in outer space have a growing need to fill the gaps left behind by the Magna Charta of space law, the Outer Space Treaty. Consequently, operators have taken it upon themselves to implement both legally and non-legally binding instruments, as well as evolve these instruments, going beyond current standards and guidelines. This paper questions whether by doing so, international organisations, acting also as operators, not only actively promote implementation, but thereby have a legal effect by evolving space law and policy both internally and externally. Regional organisations, many of them working hand-in-hand with regulators, have in many aspects no other choice than re-interpreting and furthering space law and policy.

This paper will analyse the establishment of the internal laws and policies of three different international organisations. The EU has recently announced that it will implement an EU approach to space traffic management (STM) by delving into the regulatory aspects of STM, which will comprise of non-binding measures (standards and guidelines) and binding obligations (legislation) at the Union level. NATO has also reaffirmed its apparent interest in outer space and has in that context implemented an overarching space policy, which includes the development of regulations and policies for the Alliance's space operations. Lastly, ESA has a long history of implementing internally legally binding instructions that go far beyond legally binding obligations, which have an increasing legal effect also on its cooperating partners and contractors. Deriving from these examples, this paper will attempt to show that organisations have become the driving force for the further development of space law and policy.