

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Legal Issues Relating to Emerging Space Activities on Celestial Bodies (3)

Author: Mr. Hugo Lopez
Centre National d'Etudes Spatiales (CNES), France

IS THERE A PRINCIPLE OF SCIENTIFIC PRIMACY IN OUTER SPACE LAW?

Abstract

Science has always occupied a particular place within the international legal order. Vattel specified in 1758 that it is necessary for the “true happiness of the Nation”. Today, scientific research, when not formulated as a freedom, appears as an exception to convention regimes and benefits from very permissive mechanisms. Space law is not an exception to this principle. In addition to proclaim the freedom of scientific research, it sets up exceptions to the general regime it establishes with, for instance the impossibility of taking resources or using military personnel and equipment except for scientific purposes. On the side of the International Telecommunication Union (ITU) regime, there are also frequency bands specifically dedicated to research and certain areas of space are declared as “radio-quiet zones” in order to protect radio-astronomical research.

However, the place of scientific research in international law sometimes seems to go beyond a permissive regime, towards an exceptional one, taking the precedence over all other activities. According to this conception, other activities, such as civil or commercial ones, should give in when they could jeopardize a scientific mission. Some then speak about a principle of “non-unreasonable interference with scientific research”. This principle has already been formulated in international conventions (such as the 1991 Madrid Protocol to the Antarctic Treaty or the 1958 Convention on the continental shelf) and can also be found in the travaux préparatoires of other conventions. Moreover, from a non-legal perspective, the reference to the primacy of science is also strongly present in the opinions of the civil society, of some States, and of legal scholars.

In the view of the emergence of many different projects on celestial bodies, some might have strong effect on the current and future scientific missions on the moon. This contribution aims to study the existence or not, in space law, of such primacy of scientific activities over other space activities, such as civil, commercial, or military ones.