

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
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ECONOMIC AND TECHNOLOGICAL DISPARITY AMONG STATES AND THE OBLIGATION TO
SUPERVISE NATIONAL SPACE ACTIVITIES

Abstract

Outer Space Treaty Article VI subjects a State to international responsibility for the space conduct of its nationals. This responsibility includes a State assuring that the space activities of its nationals are conducted in conformity with the treaty provisions. Article VI then vests the obligation and duty to authorize and supervise the space activities of non-governmental actors on the appropriate State. Although the Article does not define the term “appropriate State,” reason suggests that a space actors’ State of nationality is an appropriate State to authorize and supervise a national’s space activities. However, given the economic and technological disparity that exists among States, it may not be prudent to anticipate a harmonized standard will exist with respect to the ability of a State to supervise national space activities. While Guideline A.3 of COPUOS’ Guidelines for Long Term Sustainability of Outer Space Activities seeks to establish standards for a State’s compliance with Article VI’s supervisory obligation, it appears that Guideline A.3 does not consider the disparity in technological expertise among States.

The disparate economic and technological ability among States suggests that the supervision obligation may be akin to the “due diligence” requirement under international law, which among other factors, takes into consideration a State’s capability. Accordingly, the supervisory obligation may be viewed as a sliding scale based on a State’s capability, but that can conflict with the fundamental principles of safety and the avoidance of harmful interference with the space activities of other actors. The sliding scale concept also seems to be inconsistent with Guideline A.3.

This paper will explore and examine how the supervision obligation articulated in Guideline A.3 should apply to States with economic and technical standards lower than that possessed by the major space faring nations. This will also include a focus on Outer Space Treaty Article 1 which mandates that outer space “shall be free for exploration and use by all States without discrimination of any kind, on a basis of equality.” The focus will entail examining whether Article 1 imposes a legal or policy obligation for the international community to render the necessary assistance to enable States with lesser economic and/or technological ability to comply with Article VI and Guideline A.3.