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A CALL FOR AN INTERNATIONALLY BINDING LEGAL DEFINITION OF “SUSTAINABILITY” IN
OUTER SPACE LEGISLATION.

Abstract

On partnering with the United Nations to promote space sustainability in 2021, the UK’s Science Minister advocated how important it is that “outer space remains open for our next generation”. However, while the national and international legislative efforts made so far to mitigate man-made space debris in the outer space environment must be celebrated, this paper recognises how these measures fall short of being truly effective due to the lack of an international legal definition of “sustainability”. The general nature of the Outer Space Treaty (OST) provisions give insufficient attention to environmental issues. Furthermore, the Long-Term Guidelines on Space Sustainability (LTS Guidelines) are voluntary, and do not prescribe how they are to be implemented nationally. This voluntariness and lack of harmonisation has meant that space mitigation provisions in national space laws differ and are inconsistent. To move effectively towards a sustainable future, this paper argues this inconsistency must be overcome by an internationally binding definition of “sustainability”. However, as the decade-long efforts of the Inter-Agency Space Debris Coordination Committee (IADC) have shown, a definition of “sustainability” that achieves a consensus of the international community remains problematic. The IADC continue to struggle to harmonise the values of varying governments, industries, and cultures. While the LTS Guidelines have built State trust and confidence in implementing effective outer space sustainability provisions, they leave much discretion to States and regulators as to how sustainable practices are implemented and achieved. This allows for the unharmonised implementation of sustainability standards in both national space law and licencing procedures. Therefore, international law must define “sustainability” to deliver the predictability the global space economy needs in moving towards a sustainable future. Drawing on the steps the UK is taking to lead the implementation of outer space sustainability provisions and the work of the IADC, this paper demonstrates, that there must be an anticipatory, legally, and technically sound definition, that holds all states and private actors to a certain standard. Where international confidence has been built-up through the pointillistic approaches already taken, the international community must now begin considering the translation of this confidence into a legally binding international definition of “sustainability”.