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LAW AND GEOPOLITICS OF THE MOON: STATE OF THE ART AND FUTURE CHALLENGES

Abstract

The Moon is once again among the interests of the space community for scientific and economic purposes. This is creating opportunities at different levels but it is also posing challenges. Among them, the need to regulate lunar activities seems increasingly pressing. Much has changed since the Moon became the centre of last century's Space Race. The past 20 years have witnessed the opening of the space sector to new players, industrial and business opportunities and know-how exchanges, among others. On the one hand, this enabled new scientific and technological developments in outer space. Today, many actors of the space community, both public and private, are looking to our natural satellite to stay, research, exploit its resources and use it as an outpost to bring humans to Mars. On the other, it has shortened the distance between space and geopolitics. Space has become an integral part of countries' strategic, industrial and economic choices. This makes space vulnerable to geopolitical tensions and conflicts on Earth, but also allows it to influence geopolitical balances itself. These dynamics risk being reflected on the Moon as well, complicating cooperation and collaboration activities that are essential in outer space. Having a legal framework for lunar activities that is certain, shared and widely applicable to all actors in the sector seems crucial to prevent the Moon from becoming the object of political, territorial and economic claims. Unfortunately, the current regulatory regime applicable to the Moon is for the most part fragmented, with general and non-moon-specific rules and full of regulatory gaps. At the international level, the primary source of law is the Outer Space Treaty, whereas the Moon Agreement has only been ratified by a few countries and has no customary value. This paper will firstly clarify the legal framework applicable to the Moon, comprising the norms of International Space Treaties regarding celestial bodies, international multilateral and bilateral agreements, customary norms and national laws. Secondly, it will use a bottom-up approach to investigate legal issues, challenges and gaps. In doing so, it will focus on planned and future lunar activities, taking into consideration the strategic and economic ambitions of the actors involved. Thirdly, it will reflect on the potential of non-binding legal instruments to regulate the activities of a rich and diverse community of space actors, with often different needs and interests, and suggest possible legal solutions to the issues identified.