

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Alternative Space Rules Setting (5)

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SPACE SECURITY GOVERNANCE ON THE MOON AND IN CISLUNAR: CHALLENGES FOR THE
EXISTING LEGAL FRAMEWORK AND THE PATHWAY FORWARD

Abstract

More than 50 years after the last moon landing of Apollo 17, humans are planning to return to the moon. Several decades since the negotiation of the first international space treaty, we are witnessing a ‘new’ race to the moon. Given the difficulties in negotiating new formal international space agreements, this paper will consider whether a “soft law” approach is an appropriate pathway forward to address evolving security issues on the moon and in cislunar space.

Geopolitical tensions are intensifying as States compete to be the first to exploit the lunar rare-earth metals, minerals and water and to establish lunar bases to support future deep-space missions. It is anticipated that more than 100 lunar missions will take place by 2030, according to the European Space Agency. As infrastructure is established on the moon and in cislunar to support scientific and economic activities, there will be a need for States to ‘secure’ these space assets from potential threats. The next decade could witness claims of sovereignty over sites on the moon, ‘keep-out’ zones, advanced military orbital capabilities in cislunar, development and deployment of space and counter-space weapons and grey zone operations.

This paper will consider the gaps in the current binding international space law agreements in relation to security on the moon and in cislunar. This paper will discuss the provisions in the Outer Space Treaty relating to military operations, weapons and peaceful purposes. The article will also explore the negotiations in the Conference on Disarmament for a draft binding treaty on the prevention of an arms race in outer space. This paper will then analyse the progress of security governance through alternate rule-setting forums, including the two, potentially competing, UN Open-Ended Working Group relating to the prevention of an arms race in outer space, the United States Artemis Accords, China’s framework under its International Lunar Research Station program and voluntary multilateral instruments such as the moratorium on direct-ascent ASAT testing.

This paper places a spotlight on the pressing need for an effective international governance regime to ensure peace and security on the moon and in cislunar space. The perceived difference between soft law resolutions and legally binding international agreements will be analysed. The paper will conclude with a discussion of the role that both of these rule setting frameworks, individually or as a layered framework, will have in achieving consensus and consistency for space security governance moving forward.