

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
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FRAGMENTATION OF INTERNATIONAL SPACE LAW: IS THIS A WORRISOME TREND?

Abstract

The governance of activities in outer space is an intrinsically multilateral system with the primary forum for this multilateral governance being the UN Committee on the Peaceful Uses of Outer Space (UNCOPUOS). UNCOPUOS has produced five main treaties governing activities in outer space and several non-binding General Assembly resolutions addressing various space-related issues. Besides this, UNCOPUOS has provided the international forum for discussions among space players. Importantly, since 1979, UNCOPUOS has failed to reach agreement on new binding space law instruments; several reasons could be indicated to explain this trend, including the consensus-based voting procedures, the influence of geo-political considerations and the increased number of space players. In light of the difficulties of law-making at UN level, recent years have witnessed the emergence of the unilateralism in the field of space law. Unilateralism is a concept used to address situations where, in the impossibility to achieve a multilateral agreement, a limited group of States move forward and develops new rules to govern their own activities. While unilateralism have positive facets to it, notably creating the conditions in which a broader multilateral approach is possible, there are also negative sides of it, specifically the problem of fragmentation of international law, the presence of different rules applicable to States in relation to a shared environment and the potential delegitimization of the traditional law-making forum. From this perspective, the Artemis Accords are an emblematic example of this trend; indeed, while promoting the regulation of future lunar activities, it create questions as to their consistency with the Outer Space Treaty and their potential role in reducing the role of UNCOPUOS as international space law forum. The present paper will analyze the process of fragmentation of space law and it will evaluate its implications for the future of governance of space activities.