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THE UPSURGE IN POLITICAL COMMITMENTS RELATING TO OUTER SPACE: FROM
INTERNATIONAL LAW TO A “RULE-BASED INTERNATIONAL SPACE ORDER”?

Abstract

Recent years have been marked by an increase in States’ political commitments relating to outer space, which have taken the form either of unilateral declarations (such as those not to conduct direct-ascent anti-satellite (DA-ASAT) missile testing) or of non-legally binding agreements (such as the Artemis Accords). These commitments raise questions about their legal effects – either per se or indirectly, by means of their interplay with the main sources of international law. It is thus not surprising that, to date, academic studies have mainly been focused on these issues.

By contrast, one aspect that has not yet been investigated is whether these commitments may be seen as part of the development of a “rules-based international order”, which would act as an alternative regime outside the discipline of international law, and which could overcome its universalistic and consent-based nature.

Several States’ have in fact made statements accompanying their political commitments concerning outer space that included an express reference to the need to uphold and strengthen a rules-based international order. The United States, for instance, in their 2023 Strategic Framework for Space Diplomacy, defines the Artemis Accords as a centerpiece of their civil space diplomacy, which aims, inter alia, to promote a rules-based international order. Similarly, on 6 April 2023, the Italian Ministry of Foreign Affairs, in expressing Italy’s commitment not to conduct DA-ASAT, stressed the country’s stance “side by side with our main Atlantic and Western partners to support and strengthen a rules-based and conflict-free international order for space activities”.

The Authors will situate the recent developments relating to outer space governance within the broader debate concerning the rules-based international order and its interplay with international law. Through these lenses, they will assess their potential and risks.