

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Application of space law to cyber activities (4)

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TERRESTRIAL CYBER ACTIVITY OF NON-GOVERNMENTAL ACTORS AND STATE
RESPONSIBILITY UNDER OUTER SPACE TREATY ARTICLE VI

Abstract

Outer Space Treaty Article VI imposes State responsibility for the outer space activities of non-governmental entities subject to its jurisdiction. The intersection of outer space and cyberspace presents the issue of when a cyberspace activity constitutes a space activity for purposes of Article VI. The answer is fairly direct when a cyber activity is performed or engaged in by a satellite or other space object situated in space. The answer is not as clear when terrestrial cyber activity is deployed that has an effect in outer space.

This paper will explore when and under what circumstances terrestrial cyber activity of non-governmental actors can be deemed to be a space activity which evokes State responsibility under Article VI. This necessitates examining what constitutes a “space activity” for purposes of Article VI. Since the Outer Space Treaty does not define the term “space activity,” the issue exists as to whether the term “space activity” is subject to definition by domestic legislation or whether it is subject to international definition. Additionally, although Article VI uses the mandatory term “shall,” it is unclear if State responsibility is strictly applied without any exception or if factors such as the actor’s intent or lack of intent, and/or the State’s exercise or lack of exercise of supervision or due diligence are relevant in determining whether a State has complied with its Article VI’s supervisory responsibility for terrestrial cyber activity of natural or juridical persons subject to its jurisdiction. Lastly, the paper will explore whether a State can sufficiently supervise the terrestrial cyber activities of its non-governmental actors which may constitute a space activity.