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THE DUTY UNDER THE SPACE LAW TREATY REGIME TO DISCLOSE OR REPORT AN
ENCOUNTER WITH AN EXTRA TERRESTRIAL INTELLIGENCE

Abstract

The Space law Treaty regime consists of the Outer Space Treaty and its progenies. Outer Space Treaty Article V obligates a State to “immediately inform” other States or the U.N. Secretary General of certain phenomena it discovers in space or on the Moon or any other celestial body. The reporting and disclosure obligation, however, is limited to phenomena “which could constitute a danger to the life or health of astronauts. Outer Space Treaty Article XI, on the other hand, imposes on a State the obligation to inform the public and the international scientific community, to the greatest extent feasible and practicable the nature conduct, locations and results of such activities.” Articles V and XI apply only to States and do not impose any reporting or disclosure duty on non-governmental actors. The growth of non-governmental space actors as well as the anticipated onset of space mining increases the possibility that a private or non-governmental space actor may experience an encounter with extra terrestrial intelligence.

While the Outer Space Treaty does not mandate any reporting or disclosure duty on non-governmental actors, it does vest a State with responsibility for the space activities of non-governmental entities and for “ensuring that national activities are carried out in conformity” with the Treaty. Thus, it appears that the Outer Space Treaty delegates to States the duty to ensure that natural and juridical persons subject to its jurisdiction comply with the reporting and disclosure obligations of Articles V and XI.

This paper will explore whether any encounter with extra terrestrial intelligence necessitates compliance with the reporting and disclosure duty of Articles V and/or XI and how much information should be disclosed or reported to satisfy the Treaty obligation. It will also examine whether Outer Space Treaty Article VI’s supervisory duty imposes an international obligation on a State to promulgate regulations or guidelines compelling its natural and juridical persons to report or disclose any encounter with an extra terrestrial intelligence. Although Article VI’s supervisory obligation is limited to “space activities,” the term “space activity” is not defined by the Space Law Treaty regime. Given this circumstance, the paper will further analyze whether any encounter with an extra terrestrial intelligence by a non-governmental entity constitutes a space activity for purposes of Article VI.