

Exploring the Boundaries of Free Exploration and Use of Outer Space—Article IX and the Principle of Due Regard, Some Contemporary Considerations

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Abstract

Article I of the Outer Space Treaty embodies the principle of freedom of exploration and use of outer space. This freedom, however, is not of an absolute nature. Article IX of the same Treaty contains several notions which may limit such freedom. According to one of these notions, the exploration and use of outer space shall be guided by the principle of “due regard” referring to the corresponding interests of “all other States Parties to the Treaty”.

The aim of the paper is to explore the boundaries of freedom of exploration and use of outer space in the context of the principle of due regard and to suggest new roles for this guiding principle, while providing contemporary considerations which are relevant to space faring nations and their nationals.

1. Introduction

The ever increasing accessibility to outer space creates new realities in the realm of space activities. Space activities are getting more diverse, and they are being carried-out by diverse players.¹ These fascinating developments

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¹ See discussion in: N. Palkovitz, *Space Entrepreneurship and Space Law- Future Challenges and Potential Solutions*, IISL Proceedings of the 56th Colloquium on the Law of Outer Space (Forthcoming, 2014).

continuously challenge the classic provisions of the Outer Space Treaty², which remains the *magna carta* of the international law of outer space.

During the author's work with entrepreneurs in the private space industry, the following question was raised: "Can I launch anything I want to outer space?"³ This paper will examine possible answers to this question, exploring the boundaries of the freedom of exploration and use of outer space, focusing on the guiding principle of "due regard" in Article IX of the Outer Space Treaty.

On the one hand, the freedom of exploration and use of outer space for peaceful purposes is one of the key principles embodied in the first Article of the Outer Space Treaty. This freedom is given almost without reservations as stated in Article I(2).

On the other, reading through the Treaty, one can reasonably conclude that this freedom is not of an absolute nature. The nature of the freedom granted in Article I and key provisions of the Outer Space Treaty which may restrict this freedom will be presented in sections 2 and 3 respectively.

Particularly, Article IX of the Treaty presents some restrictions to the freedom of exploration and use, in the form of guiding principles. The principle of due regard calls upon states to perform their space activities "with due regard to the corresponding interests of all other States Parties to the Treaty". A historical examination of the principle of due regard raises more than one possible contextual interpretation relating to the nature and intended purpose of this principle, yet, scholars agree that the language of Article IX and specifically the principle of due regard remains vague.⁴ The origins and context of this provision shall be briefly presented in section 4 hereinafter.

Section 5 of this paper will suggest considering a new role to the principle of due regard. This role is twofold: Firstly, considering state practice and *opinio juris*, it is suggested to include a subjective component, when interpreting the principle of due regard. In brief, it will be submitted that the same core activity in space may be carried-out with compliance with the guiding

² Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, 1967 610 *U.N.T.S.* 205 (hereinafter: "Outer Space Treaty").

³ For examples of unusual items launched into outer space and potential environmental concerns, see: N. Palkovitz, *Gaining Freedom, Losing Space*, Leiden Law Blog (26, August 2014). <http://leidenlawblog.nl/articles/gaining-freedom-losing-space>

⁴ J. Gabrynowicz, *Article IX of the Outer Space Treaty: Context and Considerations*, 5th E. Galloway Symposium on Critical Issues in Space Law, (2 December 2010, Washington) <http://www.olemiss.edu/programs/spacelaw/events/pdfs/2010/galloway-gabrynowicz-presentation-2010.pdf>; S. Marchisio, *Article IX of the Outer Space Treaty: An Overview*, 5th E. Galloway Symposium on Critical Issues in Space Law, (2 December 2010, Washington).

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principle of due regard, and in a different way of execution, may breach the same principle, depending on the intent or interests behind the same activity. This argument will be supported by specific examples. In this respect the principle of due regard may enrich the already existing restrictions to the general freedom of exploration and use of outer space with a moral element, aiming to promote and sustain key interests common to all state parties to the Outer Space Treaty. Secondly, an additional role that the principle of due regard may take, is to serve as an interface between new interests common to all other states parties to the Outer Space Treaty and the Treaty itself, as the reality of space activities continues to develop and changed since the Treaty was drafted. In this respect, the vagueness of Article IX may serve the Treaty as it allows it to constantly be updated, making it relevant and future-proof. The connection between space debris mitigation guidelines and the due regard principle will be examined in this context.

Finally, concluding remarks and suggestions for future research will be presented.

2. The Freedom of Exploration and Use of Outer Space

Article I of the Outer Space Treaty states the following:

“The exploration and use of outer space, including the moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all mankind.

Outer space, including the moon and other celestial bodies, shall be free for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law, and there shall be free access to all areas of celestial bodies.

There shall be freedom of scientific investigation in outer space, including the moon and other celestial bodies, and States shall facilitate and encourage international co-operation in such investigation.”

The first paragraph of Article I states that the exploration and use of outer space “shall be carried out for the benefit and in the interests of all countries”. This emphasizes the need of space faring nations to take into account the interests of developing countries when carrying-out their activities in outer space.⁵

⁵ N. Jasentuliyana, Article I of the Outer Space Treaty Revisited, *Journal of Space Law* Vol. 17(2), 129 (1989); UNGA Res. 51/122 Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of all States, Taking into Particular Account the Needs of Developing Countries (13 December 1996).

The second paragraph stipulates that the exploration and use of outer space shall be non-discriminatory, equal and according with general international law. The third paragraph adds the element of cooperation in scientific investigation of outer space.

In other words, a state is free to explore and use outer space as long as it does not cause discrimination of others, injures interests of developing countries, and is guided by international cooperation while doing so. Article I therefore does not set clear and “hard” restrictions on the freedom of exploration and use. It also lacks an indication that such restrictions will be introduced by the remaining provisions of the Outer space Treaty. Yet such restrictions are present in subsequent articles, as discussed in the next section.

3. Restrictions

Which restrictions are therefore included in the Outer Space Treaty as far as the freedom of exploration and use of outer space is concerned?

Article II clarifies that regardless of the activities a certain entity pursues in outer space, this activity will not allow for legitimate appropriation or render the explorer or user with sovereign rights over outer space, the moon and other celestial bodies. This restriction is currently being challenged by private entities which are looking to capture or extract natural resources from the moon and asteroids, since such activities may imply appropriation and sovereign rights.⁶ Similarly, the renewed interest in the moon generated attempts to promote US national and commercial interests by way of national legislation.⁷

Article III repeats Article I in regards to the duty to carry on activities in space in accordance with international law. The former Article adds the Charter of the United Nations explicitly as part of general international law, as well as introduces the context of international interests of peace and security while promoting cooperation and understanding in this respect.

Article IV includes specific restrictions which are related to military uses in space. The emphasis is on banning nuclear weapons and other weapons of mass destruction. This explicit mention of such weapons was an important diplomatic achievement since this provision originated in the cold war era.

⁶ See: Leonard David, Is NASA's Plan to Lasso an Asteroid Really Legal? Space.Com (August 30, 2013) <http://www.space.com/22605-nasa-asteroid-capture-mission-legal-issues.html>; W. N. White, Interpreting Article II of the Outer Space Treaty, IISL proceedings of the 46th colloquium on the Law of Outer Space (2003).

⁷ See regarding the proposal for a national park on the moon: N. Palkovitz, A National Park on the Moon: When Moot Court Cases Come to Life, Leiden Law Blog (16, July, 2013) <http://leidenlawblog.nl/articles/a-national-park-on-the-moon-when-moot-court-cases-come-to-life>; J. Foust, Hearing Raises Questions About Asteroid Mining Bill, Space News (10, September 2014) <http://www.spacenews.com/article/civil-space/41825hearing-raises-questions-about-asteroid-mining-bill>.

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Article IV continues with the following statement: “The moon and other celestial bodies shall be used by all States Parties to the Treaty exclusively for peaceful purposes.” This statement does not include a restriction on non-peaceful use as far as outer space is concerned. As this paper focuses on peaceful uses of outer space Article IV will not be fully analysed, in summary, non-peaceful uses are restricted to some extent, however not hermetically.

Articles VI, VII and VIII do not restrict the freedom to explore and use outer space. However, they make clear that states are responsible, liable and are expected to exercise their jurisdiction and control over the objects which they, or their nationals, launch to outer space.

Article IX contains guiding principles which may restrict states from pursuing certain activities in space as follows:

Firstly, states shall be guided by the principles of “co-operation and mutual assistance and shall conduct all their activities in outer space, including the moon and other celestial bodies, with due regard to the corresponding interests of all other States Parties to the Treaty.”

Secondly, there is a need to restrict space activities because of environmental concerns avoiding harmful contamination or adverse change to Earth’s environment.

Thirdly, states are guided to consult other states in case their space activities may cause harmful interference with the activities of the latter. There is no definition in the Treaty that would clarify what is a consultation, when it is recommended to perform one (in terms of agreed timing), and what can be regarded as harmful interference. The prohibition to cause harmful interference in the context of space activities finds a broader expression in the ITU Radio Regulations.⁸

Scholars agree that the implied restrictions or obligations under Article IX are “weak” or “soft”:

“[In fact] it can be argued that much of space law is built on soft law ideas. This is because a great deal of the Outer Space Treaty uses ambiguous language and creates obligations that lack in precision or obligation and are open to interpretation by states. For instance, Article IX of the Outer Space Treaty states that:

[...]

The obligations contained in this section are generally "soft" in nature. The "hardest" obligation is the requirement that states seek consultations if they think they may cause "harmful interference,"

⁸ See in the context of Article IX: M. C. Mineiro, FY-1C and USA-193 ASAT Intercepts: An Assessment of Legal Obligations Under Article IX of the Outer Space Treaty, *Journal of Space Law* Vol. 34(2) 321, 337-338 (2008).

which does not actually include harmful interference. The other obligations are extremely soft in nature and place few limits on the actions of states. States have rarely (if ever) sought such consultations, and indeed the idea of a consultation in no way precludes a state from taking a specific action. Instead it only gives other states the ability to weigh in to the activity.”⁹

In summary, while the freedom to explore and use of outer space as elaborated in Article I seems broad, it is not of an absolute nature. The Outer Space Treaty clarifies that there are some interests which should be balanced against this freedom which is given to states on an equal basis.

While these restrictions may indicate what should not be done in outer space, they do so in a very vague manner, apart from the certain prohibitions in Article IV with regard to nuclear and weapons of mass destruction.

An additional question regarding the link between a certain space activity and its location in outer space and on celestial bodies may arise, for instance as regards to GEO satellite slots, some of the duties under Article IV, creation of “keep-out zones” such like in the case of NASA’s guidelines¹⁰, and more. This question however exceeds the scope of this paper and will not be addressed.

The next sections will focus on the guiding principles of Article IX(I) and specifically the notion of “due regard” referring to the corresponding interests of all other states parties to the Outer Space Treaty.

4. The Guiding Principle of “Due Regard”

4.1 Historic Context

The notion of conducting activities with “due regard” is not unique to outer space under public international law, as it exists in the airspace as included in the Chicago Convention¹¹, specifically relating to safety, in the high seas as embodied in UNCLOS¹², and in the context of environmental law in the Stockholm Declaration on Human Environment¹³.

In the specific geo-political context of the Outer Space Treaty, Article IX was a product of the Cold War, and specifically the nearing Lunar landing.¹⁴

⁹ P.J. Blount, *Renovating Space: The Future of International Space Law*, Denver Journal of International Law and Policy, Vol. 40(1), 515, 525 (2012).

¹⁰ NASA’s Recommendations to Space-Faring Entities: How to Protect and Preserve the Historic and Scientific Value of U.S. Government Lunar Artifacts (20, July 2011) http://www.nasa.gov/pdf/617743main_NASA-USG_LUNAR_HISTORIC_SITES_RevA-508.pdf

¹¹ Convention on International Civil Aviation, 1944 15 *U.N.T.S.* 295.

¹² United Nations Convention on the Law of the Sea, 1982 1833 *U.N.T.S.* 3.

¹³ Declaration of the United Nations Conference on the Human Environment U.N. Doc. A/Conf.48/14/Rev. 1(1973); 11 *ILM* 1416 (1972).

¹⁴ J. Gabrynowicz, *Article IX of the Outer Space Treaty: Context and Considerations*, 5th E. Galloway Symposium on Critical Issues in Space Law, (2 December 2010,

Further, the wording aiming to emphasize the need to take into account interests of all other states parties to the Treaty protects states which are yet to be space active.¹⁵ Additionally, the principle of due regard was linked to the concept of *res communis omnium*.¹⁶

4.2 Contemporary Context

The principle of due regard was mentioned in recent years in the following contexts:

SPACE DEBRIS

When analysing the possible legal implications of the Iridium-Cosmos collision of 2009, *Jakhu* made the link between Russia's lack of adherence to space debris mitigation standards and a breach of the principle of due regard.¹⁷

Jakhu proposes that the norm under Article IX should be observed subject to state practice, which stands for abandonment of dead satellites for the past 50 years. This, to his opinion, does not reflect customary law since state practice may change (i.e. some states do de-orbit their dead satellites) and there is no clear evidence of *opinio juris* expressly stating that states have the right to abandon dead satellites in outer space. The link between the principle of due regard and space debris mitigation as a common interest of states parties to the Outer Space Treaty will be further examined in section 5 of this paper.

MINING ACTIVITIES IN OUTER SPACE

As mentioned in section 3 of this paper, upcoming commercial activities aiming to extract natural resources from celestial bodies create a legal challenge vis-à-vis the provisions of Article II of the Outer Space Treaty. Contemplating asteroid mining, *Schaefer* notes a situation which may result in invoking the principle of due regard:

“if one nation is seeking to move or mine the very same asteroid another country is already moving or mining, then the latecomer

Washington). <http://www.olemiss.edu/programs/spacelaw/events/pdfs/2010/galloway-gabrynowicz-presentation-2010.pdf>

¹⁵ L. Tennen and P. M. Sterns, Consideration of ‘Heavenly Matters’ and the Evolution of Article IX, 5th E. Galloway Symposium on Critical Issues in Space Law, (2 December 2010, Washington). <http://www.olemiss.edu/programs/spacelaw/events/pdfs/2010/galloway-sterns-tennen-presentation-2010.pdf> slide 26.

¹⁶ S. Marchisio, Article IX of the Outer Space Treaty: An Overview, The Fifth Eileen M. Galloway Symposium on Critical Issues in Space Law: Panel – Art. IX Background, 5th E. Galloway Symposium on Critical Issues in Space Law, (2 December 2010, Washington).

¹⁷ R.S. Jakhu, *Iridium-Cosmos Collision and its Implications for Space Operations*, in K. Schrogl (Ed.) Yearbook on Space Policy: 2008/2009, 256 (2010).

must show "due regard" for the interests of the party conducting the initial asteroid retrieval and mining mission."¹⁸

MILITARY ACTIVITIES

Article IX was invoked previously by Japan as a reaction to China's 2007 ASAT test involving the FY-1C satellite¹⁹, however:

"[...] legal scholars, though mostly in agreement that the act was not within the spirit of the law, were hard pressed to find a specific clause that outlawed such behavior. Most argued that China violated Article IX by not seeking consultations, States on the other hand, made diplomatic protests, but did not direct legal claims at China."²⁰

"[...] China did not seek a consultation, and more importantly, no state, save Japan, invoked Article IX, despite the fact that there was evidence that the United States knew about the test beforehand. Additionally, the United States decided that it fell outside Article IX when it conducted an ASAT intercept the following year."²¹

Therefore, it is difficult to conclude that such an activity is considered as a breach of the principle of due regard under Article IX, as states did not protest in a way which reflects clear practice and *opinio juris*.

CODE OF CONDUCT

The latest version of the Code of Conduct implements some principles under Article IX mainly in sections 5 and 6, this may have implications on the future implementation of the principle of due regard as well, under the Code and as an evidence of customary law, provided that state practice and *opinio juris* will become evident.²²

Sub-Section 6.3 points out guiding norms which may capture the principle of due regard:

¹⁸ Leonard David, Is NASA's Plan to Lasso an Asteroid Really Legal? Space.Com (August 30, 2013) <http://www.space.com/22605-nasa-asteroid-capture-mission-legal-issues.html>

¹⁹ M. Listner, A brief look at the Legal and Political Implications of Japan's Space Debris Removal Plans, *The Space Review* (27, January, 2014) <http://www.thespacereview.com/article/2441/1> ; P.J. Blount, Renovating Space: The Future of International Space Law, *Denver Journal of International Law and Policy*, Vol. 40(1), 515, 523 (2012).

²⁰ P.J. Blount, Renovating Space: The Future of International Space Law, *Denver Journal of International Law and Policy*, Vol. 40(1), 515, 523 (2012).

²¹ *Ibid*, 525.

²² M. Listner, Customary international law: A troublesome question for the Code of Conduct? *The Space Review* (28, April 2014) <http://www.thespacereview.com/article/2500/1>

“Subscribing States, particularly those with relevant space capabilities and with programmes for the exploration and use of outer space, should contribute to promoting and fostering international cooperation in outer space activities, giving particular attention to the benefit for and the interests of developing countries. Each Subscribing State is free to determine the nature of its participation in international space cooperation on an equitable and mutually acceptable basis with regard to the legitimate rights and interests of parties concerned, for example, appropriate technology safeguard arrangements, multilateral commitments and relevant standards and practices.”²³

4.3 Intermediate Conclusions

To conclude the findings in section 4, the principle of due regard may be relevant to various space activities, and be relevant in different contexts, as its vague language allows states and international legal scholars to interpret this principle and its possible implementation in practice, in more than one way.

5. Considering a New Role for the Principle of Due Regard

5.1. Suggestion of a Subjective Component Aiming for a Moral Examination

The language of the principle of due regard is vague in the sense that it is not clear if it aims to guide states to avoid doing *a certain thing*, or merely, avoid doing a certain thing *in a certain way*. It seems that the purpose was to indeed guide states to take key interests which are internationally recognized by all other parties, when pursuing a particular space activity, regardless of which activity is in question.

This may mean that the same space activity might result in a different outcome as far as the adherence to the principle of due regard is concerned. A practical example can be found in the different reactions by states to other states shooting down their own satellites. This refers to the 2007 Chinese ASAT test and the American interception of USA-193 satellite, in the following year. In short, while both activities were aimed to intercept a national space object, the different circumstances and displayed intents behind the activities, generated different reactions by other states. *Blount* notes the element of transparency in this context:

“Both states engaged in similar activity, however, the United States did so with a great deal of transparency and explicitly acknowledged its Article IX obligations. China on the other hand acted without transparency. China's test was condemned diplomatically by the international community and the United States' was not. From these

²³ Draft International Code of Conduct for Outer Space Activities (version 31, March, 2014) http://www.eas.europa.eu/non-proliferation-and-disarmament/pdf/space_code_conduct_draft_vers_31-march-2014_en.pdf

incidents the contours of the content of Article IX can begin to be derived.”²⁴

This may demonstrate how similar activities and their manner of execution are relevant to the principle of due regard. Not only the *activity* but the *intention behind it*, as presented towards other states, may influence how those states perceive the activity in relation to the principle of due regard.

While the historical context of the principle of due regard may suggest concerns related to international peace or protection of interests of developing countries, it is suggested that in our age it can be regarded in an additional context, namely the international interests of sustainability of the outer space environment.

Illustrating the mentioned idea, this may mean that the same activity may be carried-out in a manner which is in line with the principle of due regard when considering the international interest of sustainability of the outer space environment.

Launching a CubeSat as part of the QB50²⁵ project involves many states which are parties to the Treaty; it promotes cooperation which is in line with Article IX; it supports scientific and peaceful interests of the parties involved and possibly other parties as well; and finally, since it is planned to launch the satellites to a very low orbit within the LEO range (around 300 km) those 50 satellites will re-enter Earth shortly, minimizing the creation of potential space debris.

On the other hand, the same CubeSat can be used to host human remains (ashes) that will be deployed in order to officiate a “space burial”. If done recklessly, the debris created by such a service can cause damage to certain optical payloads that may come near it after it is scattered. This activity is identical - launching a CubeSat - however unlike in the example of the QB50 project, this activity is probably not carried-out with due regard to the corresponding interests of all other states parties to the Outer Space Treaty, and instead corresponds to a narrow commercial interests of the service provider, and the emotional fulfilment that the family members of the deceased may experience.

Albeit being a theoretical example, similar considerations may be applicable to other space activities, such as asteroid mining, human spaceflight and more. These examples illustrate that the principle of due regard may be relevant to a certain space activity, but even more relevant to the intent

²⁴ P.J. Blount, *Renovating Space: The Future of International Space Law*, Denver Journal of International Law and Policy, Vol. 40(1), 515, 528 (2012).

²⁵ The QB50 Project: <https://www.qb50.eu/index.php/project-description-obj>

behind it, and to its potential outcomes²⁶ as they collectively can be seen as the interest the activity serves.

Thus, the case may be that certain activities or services involving the launch of objects into outer space are not in line with the guiding principle of due regard. Of course, arguing that every commercial activity may breach Article IX seems to be contrary to the way states have interpreted Article IX through state practice and *opinio juris*.²⁷

When space activities are performed by commercial or private entities, the appropriate national state is under the duty to authorize, supervise, and ensure that the activity conforms to the provisions of the Outer Space Treaty according to Article VI of the Treaty. In that sense, the national state is the responsible entity which can exercise its judgment and restrict its nationals from performing space activities which do not consider the interests of other states. When the state exercises said judgment it can examine the moral element which is reflected in the licensing applications.²⁸

5.2. Due Regard as an Interface Between New Interests Common to All Other States Parties to the Outer Space Treaty and the Treaty Itself

The due regard principle can serve as a “blank” slot in the Outer Space Treaty which can be filled with contemporary pivotal international interests in a way which will export them to the framework of the Treaty.

An example can be found with respect to space debris mitigation guidelines which their adherence serve international interests of all state parties to the Outer Space Treaty. While the guidelines still hold a non-legally binding status, including such guidelines under the notion of due regard allows to make the legal link between them under Article IX of the Outer Space Treaty and Article III of the Liability Convention.²⁹ *Jakhu* is of the opinion that since Russia did not act to remove its dead space object from LEO, it breached its obligation under Article IX of the Outer Space Treaty, referring to the obligation to carry-out space activities with due regard to the interests of

²⁶ And in that respect is coherent with Article IX which speaks of an activity which might cause harmful interference.

²⁷ R.S. Jakhu, *Iridium-Cosmos Collision and its Implications for Space Operations*, in K. Schrogl (Ed.) *Yearbook on Space Policy: 2008/2009*, 256 (2010).

²⁸ M. C. Mineiro, *Principles of Peaceful Purposes and the Obligation to Undertake Appropriate International Consultation in Accordance with Article IX of the Outer Space Treaty*, 5th E. Galloway Symposium on Critical Issues in Space Law, (2 December 2010, Washington), *see* under: “The Principle of Due Regard” in the context of the ordinary definition of the word “due” which aims to a legal or moral right.

²⁹ Convention on International Liability for Damage Caused by Space Objects, 1972 961 *U.N.T.S.* 187 (hereinafter: “Liability Convention”)

other states parties. This breach amounts to fault, making Russia liable for the damage caused to *Iridium 33*.³⁰

This merely illustrates the possible link between acting in a manner which does not correspond to pivotal international interests and liability, and it is notable that it is yet to be clarified whether such a breach of Article IX can be successfully considered as a basis for establishing fault liability under Article III of the Liability Convention.³¹

To conclude, the principle of due regard in Article IX of the Outer Space Treaty and space debris mitigation guidelines legally complement each other since the Treaty has a binding legal status while the guiding principle of due regard is vague, and contrary, space debris mitigation guidelines are specific yet do not enjoy internationally legal binding status.

6. Concluding Remarks/Suggestion of a New Role to the Principle of Due Regard

As to the question: “Can I launch anything I want to outer space?” the answer would be *negative*³², however, it seems that the principle of due regard would not, or almost not affect the answer.

Granting more considerable weight to the guiding principle of due regard will ensure that space activities which are executed by states and their nationals would comply with a certain moral element, at least as far as the subjective judgment of states over their national activities in concerned.

Article IX and the principle of due regard can serve as a legal tool opening a portal between the Outer Space Treaty and the changing reality of space activities, including the international pivotal interests common to all other states parties to the same Treaty.

The vagueness of the principle may be regarded as an advantage allowing it to be a flexible interface between the Treaty and non-binding norms such as space debris mitigation guidelines which reflect common international interests such as the sustainability of the outer space environment. Such an interest was absent at the time the Treaty was drafted, however, it is of great importance in our space age.

Therefore, it is suggested that the focus with respect to the principle of due regard should shift from understanding its historical context to the new ways it can serve the global interests of state parties to the Outer Space Treaty. One of these main interests is without a doubt the sustainability of the outer space environment. As time progresses and outer space becomes increasingly

³⁰ R.S. Jakhu, *Iridium-Cosmos Collision and its Implications for Space Operations*, in K. Schrogl (Ed.) *Yearbook on Space Policy: 2008/2009*, 256 (2010).

³¹ L.J. Smith, A. Kerrest and F. Tronchetti, *The Convention on International Liability for Damage Caused by Space Objects*, in S. Hobe, B. Schmit-Tedd and K. Schrogl (Eds.), *Cologne Commentary on Space Law Vol. II* 222 (2013).

³² Because of *inter alia* the restrictions which derive from the Outer Space Treaty, provided in section 3 of this paper.

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exposed to different activities, it is up to the states parties to decide to preserve the spirit of the Treaty, using new ways to interpret its existing provisions, or make way for a new regime, which will put other interests in the spotlight.

