

Legal Issues Related to Space Exploration (13)
Specific legal issues of space exploration and exploitation (2)

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WHO WOULD EXPLOIT THE RESOURCES OF OUTER SPACE WITHOUT A GLOBALLY
RECOGNIZED LEGAL RIGHT TO DO SO?

Abstract

The involvement of private sector in space activities grows together with the development of space technology as it makes a lot of new types of space activities feasible and lucrative. Today a number of governments actively encourage and support participation of private companies in development and utilisation of launching systems, production and operation of various types of satellites, etc. The recent efforts and plans to return to the Moon open up possibilities for private use of lunar resources, in particular their extraction and further utilisation. Despite the technological progress, adequate legal progress that is essential to attract and secure private investment, is not taking place. The only relevant international legal source – 1979 Moon Agreement – envisages the necessity of but failed to establish the relevant regime of utilisation of the natural resources of the Moon. In addition, it has not been ratified by any of the major space faring nations and is therefore irrelevant for the conduct of the activities on the Moon of states not parties to it. This unsatisfactory absence of the appropriate and adequate legal regime cannot be reconciled with the revived plans of the international community and of nation states to pursue activities on the Moon. The inherent characteristic of any commercial activity is that it is conditioned by the achievement of economic benefits as its result. Absence of the appropriate legal mechanism of enabling extraction of lunar resources (carried out by private entities) and securing the possibility to derive economic benefits from it will hamper investment in and development of this area of activity. The primary reason for such an outcome is that the risk stemming from the uncertainty as to the fate of extracted resources is too high to allow private investment in such costly space activity as utilisation of lunar resources. This paper introduces a recent initiative undertaken in Canada – the project “Secure Utilisation of Resources of Outer Space” (SUROS) – to promote establishment of a legal regime that will secure interests in lunar resources for the purposes of their commercial exploitation. It maps out the challenges posed by the inactivity of COPUOS and the length of the decision making process it uses, and explores possible alternatives that can lead to the determination of the conditions and outcomes of the lunar mining activities so that the private entities know the status of the extracted resources and can plan their activities accordingly.