

56th IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Nandasiri Jasentuliyana Keynote Lecture on Space Law & 5th Young Scholars Session (1)

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THE MOON AND OTHER CELESTIAL BODIES: FROM THE “PROVINCE ALL MANKIND”
TOWARDS THE “COMMON HERITAGE OF MANKIND”?

Abstract

Following the idea expressed in the preamble of the Outer Space Treaty, which recognizes the common interest of all mankind in the exploration and use of the outer space, Article I thereof states that the exploration and use of the Moon and other celestial bodies shall be carried out for the benefit and in the interests of all countries, and shall be the province of all mankind. Out of the five outer space treaties only the least popular one – the Moon Agreement – contains a direct reference to the common heritage of mankind principle (Article 11, hereinafter – “the CHOM principle”), but ties it to the exploration and use of the lunar resources. The Outer Space Treaty contains none of this wording. Certain scholars use terms “province of all mankind” and “common heritage of mankind” interchangeably; others dispute their equivalent meaning. Quite recently there have emerged new initiatives, which promote the necessity to safeguard not only the outer space environment, but also the celestial scientific heritage by way, inter alia, applying the principle of common heritage of mankind as elaborated within the environmental and cultural heritage law respectively to the outer space. In the Conclusions of the work of the Study Group of the International Law Commission on the Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law article 1 of the Outer Space Treaty is given as an example of obligations erga omnes, “relating to the global commons” and at the same time outer space law is described as a self-contained regime. Thus the question arises: to what extent can we apply the existing principles of international cultural heritage protection, including CHOM principle, developed in this field, to the outer space for protection of the Apollo Landing Sites and sooner or later to the Mars Curiosity rover?