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THE FREEDOM TO USE OUTER SPACE, OR: THE ABSENCE OF CLAIMS OVER AREAS IN
SPACE AND THE OBLIGATION TO ACTUALLY USE ITS RESOURCES

Abstract

The aim of the proposed paper is to clarify the interplay between the fundamental principles of international law on the free use of outer space by all states and the corresponding proscription of the appropriation of said space as establishing a regime that proscribes any type of claims to use said space and hence can be reinterpreted as being based on the obligation to actually use space.

In support of this contention, the paper will adopt a comprehensive approach to all provisions of current binding international space law regulating the use of natural resources in space, covering not only the fundamental principles of the Outer Space Treaty, but also giving due credit to the Moon Agreement and the instruments of the International Telecommunication Union (ITU).

The paper will start with a general account of the fundamental rules underlying the regulation of the use of orbits in the Constitution, Convention and Radio Regulations of the ITU, as the most detailed set of widely ratified rules of binding international space law, to demonstrate the nature of the rights of states with respect to orbits and positions as existing only in function of their actual use, as opposed to abstract claims thereto. This will be illustrated by reference to the problem of non-functional satellites as contributing to the space debris problem.

The paper will subsequently assess whether and to what extent these findings can be applied to the exploitation of the natural resources on celestial bodies. This analysis will reveal that the language of Article 11 of the Moon Agreement is not only logical and sensible, but is the only possible way to interpret the general principles of free use and non-appropriation in the Outer Space Treaty for the exploitation of natural resources on celestial bodies. This will be illustrated by reference to the legal regime of stations on celestial bodies and a thorough analysis of the 'in place' criterion in Article 11 (3) Moon Agreement.