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LEGAL CONSIDERATIONS ON THE EXPLOITATION OF SPACE RESOURCES

Abstract

An international legal regime that specifically regulates the exploitation of space resources is currently missing. However, this does not mean absence of international regulations on states' activities (and of their private companies) in the exploration and use of outer space. On the contrary, the Outer Space Treaty (OST) fixes fundamental - although very broad - principles of space law which extend to space resources exploitation, many of which are claimed to constitute international customary law binding erga omnes. Further, where international space law (*lex specialis*) is silent concerning certain activities or a novel situation, answers must be researched in general international law principles (*lex generalis*). However, the extent to which principles developed for terrestrial activities could be applied to outer space requires further investigation. Despite the absence of a specific international regime disciplining space resources exploitation, nations such as the United States and Luxembourg have enacted legislations directly addressing the issue. The question that immediately arises when considering international vs. national legislation is whether the unilateral decision of any country to extract space resources and commercialize them for their own (or their private citizens' or entities') benefit fits with the principles of the international *corpus juris spatialis*. This paper does not have the ambition to resolve the persisting academic debate surrounding the application of international space law to the appropriation and utilization of space resources. It, rather, attempts to provide legal considerations and recommendations on how best to leverage space resources. In doing so, key principles such as those of common interest and freedom of exploration and use of art. I OST and of non-appropriation of art. II OST are subjected to critical analysis, the outcome of which is further assessed against other OST articles. Particular attention is given to the significance of "national activities" for which art. VI OST makes states internationally responsible, and of the principle of "paying due regard to the corresponding interest of the other States Parties" embodied in art. IX OST. Further, the latest national initiatives specifically addressing space mining are comparatively analyzed to draw a roadmap of their common elements so to assess them against the treaty principles. In its conclusion, the paper explores which legal steps states could focus on to ensure a smooth and prosperous development of the space mining industry.