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Author: Mr. Philip De Man  
Catholic University of Louvain, Belgium, philip.deman@law.kuleuven.be

THE COMMERCIAL EXPLOITATION OF OUTER SPACE AND CELESTIAL BODIES - A  
FUNCTIONAL SOLUTION TO THE NATURAL RESOURCE CHALLENGE

**Abstract**

The proposed paper aims to provide the basis for a comprehensive, flexible regime for the exploitation of the wide variety of natural resources in space, while fully respecting the fundamental goals and principles of the international space law framework and furthering the development of space activities.

To this end, the paper will, first, show that current proposals on the exploitation of space resources are typically based on the incorrect assumption that these resources correspond to physical phenomena that should be regulated by a different legal regime depending on the environment in which they are found. Indeed, while the applicability of the non-appropriation principle to immaterial resources in outer void space has been strongly reaffirmed since the Bogotá Declaration, a consensus is emerging that international space law does not preclude the appropriation of natural resources on celestial bodies. However, such rigid distinction is not supported by the current legal framework and moreover oversimplifies the reality of a wide variety of space resources. This section of the paper contrasts a logical and contextual analysis of the terms 'outer space', 'celestial bodies' and 'natural resources' in the relevant provisions of the Outer Space Treaty and the Moon Agreement with the proposed regimes for the exploitation of space resources in current literature.

Second, the paper will suggest an alternative approach to regulating space resources that avoids the pitfalls of the current, scattered proposals, while furthering the basic aim of the free use of outer space by all States. The proposed solution is grounded in the idea that the exploitation of space resources represents a particular use of outer space and celestial bodies that should be governed by a uniform legal regime. The basic tenet of this regime is a functional application of the non-appropriation principle to the exploitation of space resources, depending on their economic value as determined by their scarcity. The suggested solution is rooted in an assessment of the goals of the free use and non-appropriation principles of the OST and their mutual aim of stimulating the development of space activities. The paper will then analyze the International Telecommunication Union regime as the most detailed application of these principles to space resources used for a wide variety of services with a strongly differing economic value. Finally, this regime will be assessed for its relevance as a model for other types of space resources, in particular for those covered by the MA.