

HUMAN SPACE ENDEAVOURS SYMPOSIUM (B3)

Joint IAF-IISL session on Legal Framework for Collaborative Human Space Missions (8.-E7.7)

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COMMERCIALIZATION OF OUTER SPACE: MOVING TOWARDS LEGAL CERTAINTY

Abstract

Space offers the potential for practically limitless wealth - some already being exploited, some we may only harness in the distant future, and undoubtedly some we cannot begin to guess. Realizing the potential to *shape the course of human destiny*, it's pertinent to incentivise entrepreneurial investment in space, by creating significant monetary prizes for the accomplishment of space missions and/or technology developments and by *assuring property rights for those who seek to develop space resources and infrastructure*.

The current legal regime restrains the commercialization and development of outer space, and subsequently, its infinite economic and humanitarian rewards. Uncertainty in the legal consequences of space ventures make the vast potential rewards somewhat unattainable. The Outer Space Treaty (OST) of 1967 and its progeny established a basis for the allocation of property rights in outer space, subsumed under the concept of the 'common heritage of mankind', which is antithetical to the economic development of space resources; and is in contradiction to article I. Critics argue that the 'non-appropriation' clause in article II of OST is a result of the socialist ideals that were prevalent at the time but is outdated and at odds with today's free market economy. It's also debatable whether article II of OST and article 11(2) of the Moon Treaty (MT), does include 'individual non-appropriation'. A regulatory system must be enacted that provides private enterprise with long-term predictability and minimizes regulatory interference.

The purpose of this paper is to address: what is necessary to create a stable, yet equitable, legal regime that would incentivise private investment in space. The challenge is to build a regime that encourages the beneficial aspects of property rights, while formulating rules that discourage conflict and predation. How about the efficacy of market instruments - such as licensing, quotas and congestion tax? Accordingly, Part II provides a brief introduction to space resources and their emerging commercial relevance. Part III discusses relevant space treaties currently in place, the need for a property regime and how they're dealt with. It will explore the notion of "tragedy of the commons" and its potential impact on outer space if the "res communis" principle is retained. Finally, Part IV analyses ideas and proposals for an international legal regime to govern the use of outer space resources, providing some suggested changes in international space law - such as providing for a centralized development authority.