

58th IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Recent Developments in Space Law (5)

Author: Dr. Guoyu Wang
China

Ms. Yangzi Tao
Beijing Institute of Technology, China

WHO OWNS THE NATURAL RESOURCES ON THE ASTEROIDS

Abstract

The development of space technology and non-traditional commercial space activities have brought challenges to space law, one of which is the uncertainty of ownership over natural resources on asteroids.

This paper focuses on three core questions. The first question is that if and to which extent a national legislation granting ownership to that space actor, or relevant national practices could “contribute to” or stimulate the development of space law. In addition, the political risks that might be triggered by the given national legislation or practices should be taken into consideration as well, both nationally and internationally. The last question is that what kind of international regime is expected and practical as to the exploitation and mining of natural resources on asteroids.

Firstly, this paper points out the legal ambiguity under the Outer Space Treaty, due to the omission of “natural resources” at the beginning of Article II which raises the divergence concerning the scope of non-appropriation principle thereof. The Moon Agreement, as one of the legal resources of international space law, presents arguments against ownership of space actors on natural resources on the Moon and other celestial bodies within solar system (Art.11). However, this position is weakened by the vagueness of the legal meaning of “common heritage of mankind (Art.11)” and the commitment about disposal right on the “Moon samples of its mineral and other substances (Art.6)”.

The paper then analyzes the effects and limits brought by national practices on the interpretation of relevant treaty terms. The United States has explicitly qualified samples from Apollo mission as property, whereas material extracted by Soviet probes has lawfully entered free market under domestic law. Recently, it should be noted that the needs for the legal certainty on mining extraterrestrial resources are increasing, even though the “asteroid act” is not passed by the U.S. congress. The function of national practices as to the interpretation of treaty should be highly valued under The Vienna Convention, but it should be also prudently examined concerning the desired and due balance of interests of private sectors, states, international organizations and all mankind.

The paper holds a world-wide accepted solution that only through bilateral or multilateral agreements could the relevant rights and obligations be well arranged. Although the Moon Agreement is far from being generally accepted, the idea to establish an international regime indicates the way ahead.