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REALITY AND CLARITY IN UNDERSTANDING THE PROHIBITION ON NATIONAL APPROPRIATION IN ARTICLE II OF THE OUTER SPACE TREATY

Abstract

Article II of the 1967 Outer Space Treaty states that *"Outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means."*

The geopolitical reality is that the Outer Space Treaty will not be replaced or repealed by the international community, which is currently adverse to new treatymaking. Additionally, discussions of the 1979 Moon Agreement are merely academic, given the low number of ratifying states. Consequently, any pragmatic discussion on the laws applicable to asteroid mining must begin with an understanding of the Outer Space Treaty as it is. Asteroid mining and related uses of celestial resources hinges upon a clear understanding of the legal rights and obligations created by the foundational legal instrument.

However, a mere reading of the words without a nuanced understanding of their context, and the object and purpose of the treaty as a whole, can only result in a misunderstanding of this prohibition. International lawyers have often failed to communicate to others in the space industry how this important clause should be read, interpreted, and applied.

This paper will give a simple and clear discussion of Article II, detailing what it explicitly prohibits, what it omits to address, and what it implicitly permits. The accepted methods of treaty interpretation in international law will be discussed, and then applied to Article II.