

59th IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Legal Perspectives on Space Resources and Off-Earth Mining (2)

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OFF-EARTH MINING: LESSONS TO BE LEARNED FROM DEEP SEABED AND ANTARCTICA

Abstract

Off-Earth mining bears obvious similarities to resource activities in two terrestrial environments, namely the deep seabed and the Antarctica. All these environs are remote and hostile to humans yet contain valuable mineral resources. Another similarity is that the international community must be able to accommodate changes in scientific knowledge concerning these areas. Accordingly, also the relevant legal system(s) must be able to flex without breaking.

Human interests concerning celestial bodies, deep seabed and Antarctica largely stem from similar motivations, including scientific interest, political power, economic gain, and pleasure (where tourism is at stake). It seems reasonable to expect that experiences from the regulation of mining (and other) activities in the two terrestrial environments are likely to provide relevant pointers as to how to avoid less successful regulatory approaches to the future mining of celestial minerals.

Interestingly, the international state community has taken very different stances to mining in the deep seabed and in the Antarctica. The former regime allows (if not even encourages) private mineral activities whereas within the latter all plans for mining the Antarctic minerals have been frozen until 2048. Both regimes have been operating for quite some time now. The aim of this paper is to examine what the future international legal regime for the mining of celestial mineral resources could learn from the experiences of the two more established regimes.

In addition to the rules pertaining to mining, also regulation of other types of human activities in these domains are worth consideration. Here the focus of examination is on the Antarctica because in the deep seabed little else takes place than mineral activities and (other) scientific research.

The contemporary challenges to the Antarctic Treaty System (ATS) include IUU (illegal, unreported and unregulated) fishing as well as differences in implementation of the somewhat ambiguous normative framework. Illegal resource activities (or activities conducted outside the international legal regime) are a potential threat also in outer space. So are vague provisions and the ensuing disparities in interpretation of the law of outer space (which is quite evident already today). Moreover, some suggestions made for addressing the current problems in the ATS even involve revision of the traditional consensus decision making procedure – an interesting scenario also vis-à-vis the space sector.