

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

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IS OUTER SPACE PROPER THE “COMMON HERITAGE OF MANKIND”?

Abstract

Whereas the 1979 Moon Agreement is considered by a significant number of scholars a dead treaty – having failed to secure the backing of the major spacefaring nations, its main tenet – the “Common Heritage of Mankind” (CHM) - lingers on in diplomatic statements. Even more than that, while the Moon Agreement limits the object of the CHM to “[t]he moon and its natural resources” (art. 11), including these of “other celestial bodies within the solar system, other than the earth” and “orbits around or other trajectories to or around” them (art.1), these diplomatic statements refer to the outer space proper as the Common Heritage of Mankind. Many of these statements are being delivered by national delegations in the First Committee of the United Nations General Assembly and other UN-related fora. This commentary will ponder whether these statements amount to state practice formative of customary law whereby outer space proper is the object of the common heritage of mankind, or – instead – are the product of a misunderstanding of Article I of the Outer Space Treaty which proclaims the “exploration and use of outer space” – rather than the outer space itself – as the “province of all mankind” – a different concept from the CHM one.