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THE LEGALITY OF UNILATERAL EXPLOITATION OF NON-RENEWABLE RESOURCES IN OUTER SPACE AND THE NEED FOR AN INTERNATIONAL COORDINATING AND BENEFIT-SHARING MECHANISM

Abstract

The Outer Space Treaty does not address explicitly the (il)legality of unilateral exploitation of non-renewable resources in outer space, by State or private entities. Whereas some argue that it constitutes "national appropriation" of outer space prohibited by its Article II, others defend that it falls within the realm of "freedom of use" protected by Article I. The U.S. Space Resource Act of 2015 stands as a subsequent practice in the application of the Treaty. Whether this practice could establish the agreement of the parties regarding the interpretation depends on the reaction and action of other parties.

This article argues that whether the recognition of property rights by U.S. according to the Act is consistent with international obligations that it undertakes under the Treaty would depend on the definition of "asteroid resource or space resource **obtained**". The exclusion of other States or their private entities from the exploitation may amount to appropriation of outer space by use. The question is also related to the definition of celestial bodies, especially whether small-size asteroids fall within the definition of celestial bodies, hence the unilateral recovery of a whole asteroid is to be regarded as illegal appropriation of outer space.

Whereas outer space is free for exploration and use, it is free to all States and activities in outer space shall be conducted with due regard to the corresponding interests of all other States. As the exploitation of non-renewable resources in outer space may become competitive, an international coordinating mechanism is called for. States without the technology of exploitation may ask for a share of benefits yielded from the exploitation, rendering an international benefit-sharing mechanism another possible need.