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UNPREDICTABLE FUTURE? —THE PRINCIPLE IN OUTER SPACE TREATY ON SPACE
RESOURCES MINING AND NATIONAL COMMERCIAL SPACE LEGISLATION

Abstract

1. The U.S. Commercial Space Launch Competitiveness Act

U.S. Commercial Space Launch Competitiveness Act (“the Act”), in the most controversial §51303, confirmed the non-state actors’ rights over extracted asteroid/space resource.

This extensive interpretation played loose with the principle set forth in Article II of Outer Space Treaty. It gives rise to two main issues:

a. US 2015 Space Act puts its stance opposite to the expansion made to Outer Space Treaty by Moon Agreement. Then which interpretation should be regarded as the follow-on of the principle set in Outer Space Treaty regarding space mining?

b. What influence this Act may have on the future commercialization of space, especially from the perspective of national legislation of other spacefaring countries.

2. “Province of All Mankind” or “Common Heritage of Mankind”

Outer Space Treaty confirmed the right of “free exploration and use” of all States, but it did not make clear whether this right includes the right to take and consume the natural space resource. At the same time, it set forth the principle of non-appropriation over Outer Space, including the Moon and the other celestial bodies, but did not address whether the space resource is covered under this principle.

The distinction has been drawn between the concepts of “province of all mankind” and “common heritage of mankind”. Some scholars tried to use the right to fish in high seas as an economic template to space mining in order to justify the stance US has taken in §51303. But outer space is most commonly compared to the seabed and ocean floor and the subsoil thereof, on which the concept of “common heritage of mankind” is applied. Which analogy should be drawn to the space/asteroid resource is closely related to the interpretation of the principles set in Outer Space Treaty.

3. Space Commercialization and the Legislation

a. Legislation Trend

On the one hand, the Act may trigger the protest in the international community against the unilateral exploit of space resource. On the other hand, it may make it clear that it is recognizing, encouraging and protecting the incentive to develop technology of space mining, and therefore followed by more and more countries.

b. China Space Legislation

It is proposed that China should speed up its national space legislation process. It is necessary, at this crucial point, to explore China’s options of legislation on commercial space activities and its possible effect.