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Russian FederationMINING IN OUTER SPACE: SOVEREIGNTY, JURISDICTION AND PROPERTY RIGHTS
(UN-)RECONCILED**Abstract**

The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (the “OST”) – the Magna Carta of outer space – came into force in 1967. However, 10 years of successful state outer space activities preceded its adoption: in 1957 the USSR has launched the world’s first artificial satellite “Sputnik I”. Thus, the OST was based on and is fleshed out by the state practice. Though article II of the OST provides a general framework for legal regime in the outer space, prohibiting national appropriation by claim of sovereignty, by means of use or occupation, or by any other means, it does not set forth precise rules for mining in outer space. While some claim that the existing regulation is insufficient, states are unlikely to adopt more detailed one in the nearest future. The state practice however moves forward: the US Commercial Space Launch Competitiveness Act (the Space Act) became the law last year. It entitles any US citizen engaged in the commercial mining in outer space to any asteroid resource or space resource obtained. In fact, it recognizes private property rights to these resources. This initiative has already raised a supportive feedback as well as many concerns. On the one hand, the Space Act can be read in line with the permissive rule of article I of the OST establishing the right of every state to free exploration of outer space. On the other hand, it specifically makes a disclaimer that the United States “[do] not thereby assert sovereignty or sovereign or exclusive rights or jurisdiction over, or the ownership of, any celestial body.” However, entitlement of a private entity to explore and utilize outer space resources by a state is in fact manifestation of jurisdiction being integral aspect of sovereignty that is according to traditional understanding is linked to the territory. A link with the territory is also intrinsic to the main theoretical concepts of mineral rights as well as the link to the jurisdiction - for the creation and validity of the property rights. This paper explores traditional theoretical concepts of sovereignty, jurisdiction and property rights in order to answer the question: whether the construing of the Outer Space Treaty suggested by the Space Law can be reconciled with them or it puts them under pressure?