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LEGAL LOOPHOLE OR JUST A MATTER OF INTERPRETATION? ON THE OUTER SPACE
TREATY'S METHODOLOGY TEST WITH THE DIVERSIFICATION OF SPACE ACTIVITIES

Abstract

The catching up effort of space law with space technology has always been the issue since the very beginning of space activities. Even after the wind of regulative actions on space have subsided, the development of space technology has let the space activities to diversify more. Within the diversification of space activities, applicable rules on them have also come to the question.

Due to this study, searching for the applicable rules in space law to the new activities is related to methodology of law and this searching creates a certain dilemma: If there is a legal loophole in space law or there is no legal loophole and to find an applicable rule on new activities of space is just a matter of interpretation of the UN Space Treaties. Our first answer is that there is no legal loophole in space law with respect to new activities, and with interpretation of the treaties, there could always be a material solution to the problem in the hand. Then the OST and its applicability on space mining activities will be examined as an example to this dilemma. In conjunction with space mining, taking benefits of lunar and other celestial bodies for the betterment of humankind and reducing contamination of earth from space etc. emerge the settlement of an appropriate international cooperation. However, the OST with its res communis and non-appropriation regime, remains in silence regarding managing space mining activities via international cooperation. Since the OST could not give us a concrete material solution on the need of international cooperation, how to use the interpretation as a method to come over this dilemma comes as a second question.

What if we go further on the ordinary meaning of res communis regime, and re-interpret its rights and obligations via using dynamic interpretation? In this study, dynamic interpretation is brought forward as a methodological solution to the above mentioned dilemma, because dynamic interpretation could allow expansive reading of the text, beyond its ordinary meaning. Therefore, with the dynamic interpretation of the text of the OST, freedoms and obligations would respond to the changing conditions of the space activities and needs of recent space community. Interpreting res communis principle with this progressive approach not just requires the inclusion of the international cooperation to the text but also would help to balance the interests of the space actors and international community as a whole.