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RETHINKING PROPERTY RIGHTS OVER THE NATURAL RESOURCES IN OUTER SPACE,
INCLUDING THE MOON AND OTHER CELESTIAL BODIES.

Abstract

The foundation international treaty for the exploration and use of outer space, the Outer Space Treaty, is fifty years old! There is no gainsaying the fact that many waters have traveled under the bridge since the treaty was adopted in 1967. From time immemorial, the question of property rights is always protracted whenever issues concerning the regulation of natural resources on Earth are being discussed. This is especially of the abundant natural resources in outer space, including the Moon and other celestial bodies. The international legal regime for the peaceful uses of outer space does not sufficiently cater for all the issues that could arise as a result of the growing commercial uses of outer space. Property rights over the natural resources in outer space are one of such issues. Property rights over these natural resources are fundamental in order to incentivise the participation of the States and the private sector in the exploitation of the natural (mineral) resources in space. Apart from the Moon Agreement, which provides for partial and limited rights over the natural resources on the Moon and other celestial bodies, international space law appears hostile towards property rights. Some arguments against property rights over these resources are anchored on the assertions that the concept of property rights is incompatible with the status of outer space as a commons. Using John Locke's theory of property rights, this paper offers a repudiation of that argument. This paper argues in favor of the compatibility of the concept of property rights with the doctrine of global commons. In further envisioning a legal framework for property rights, the paper contends that while property rights over natural resources in space is desirable, a regime should not emerge at the expense of cohesion of the law making process in international space law and to the detriment of the well-entrenched principle of international cooperation. In this wise, the paper further applies the theories of unilateralism and multilateralism in the light of several proposals for the creation of property right. The paper argues that multilateralism, and not unilateralism, is the appropriate standard for the creation of a regime of property rights because "what concerns all must be approved by all." The paper concludes with an attempt to structure a new multilateral regime that would govern, among other issues, property rights over the natural resources in outer space.