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DEVELOPING THE NEW LEGAL FRAMEWORK FOR SPACE MINING: LESSONS FROM THE
PRACTICAL IMPLEMENTATION OF THE COMMON HERITAGE OF MANKIND DOCTRINE

Abstract

Space activity businesses are growing rapidly; it is currently hundreds billion industry with an accelerating increase. This growth is likely to be driven by demand for life support materials, minerals, and propellants. Space mining is the commercial space application that may redefine the future of space activities. Any resource-driven economic expansion started with a discovery and followed with the development of technologies to access these discoveries. According to the newly adopted domestic legislations, the space natural resources can be appropriated by private companies, but such activities shall be undertaken only in accordance with the international obligations of the States. Nowadays, there are at least four “space mining” U.S. based entities which goal is implementation of space mining explorations and developing the space technology needed. These companies recognize possible legal, regulatory and safety issues and support the further development of the U.S. Space Act as well as understand that their operations have to be conducted according to international space instruments. According to Article II of the Outer Space Treaty, neither State nor private entity can validly claim sovereignty over or ownership of any celestial body. However, the extraction and use of the mineral resources in outer space is not forbidden as long as it complies with the general principles of space law. Meanwhile, there is a need for setting forth a new set of rules that specifically address the issue of extraterrestrial mining emerges. In addition, the legality of all aspects of a commercial space mining venture must be assessed such as the effects of the “freedom of exploration and use” and the “principle of non-appropriation” on the exploration and extraction segments of the operation, as well as the “province of all mankind” and “common heritage of mankind” doctrines on the exploitation segment. The paper targets the issues of the legal status of space natural resources, property rights, liability and examines of existing domestic legislation. Moreover, the paper endeavors to demonstrate the possible outcomes for developing the new legal regime and governing the space mining according to the lessons learned from common heritage of mankind doctrine and its unacceptance by one the main space actors.