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The relationship between space law and cyberlaw, and other recent developments in space law (5)

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WHAT ARE SPACE RESOURCES? WHAT ARE CELESTIAL BODIES? – THE NEED FOR REFINED
LEGAL DEFINITIONS IN VIEW OF RECENT REGULATORY EFFORTS CONCERNING SPACE
RESOURCES

Abstract

Recent efforts in the regulation of the use of space resources have raised controversial discussions about the compatibility of respective national legislation with international law. The situation is relatively unclear, also because key terms in this context have so far remained undefined under international law, including most importantly the terms ‘space resource’ and ‘celestial body’. The purpose of the present paper is to examine how these terms, as they are used in the UN space treaties, should and could be defined in order to provide better guidance to national legislators and international fora concerned with space resources governance at the international level. In addition to Articles 31 and 32 of the Vienna Convention on the Law of Treaties, approaches and definitions used in practice by scientists, such as astronomers, astrophysicist, and engineers, will be taken into account. As regards the term ‘space resource’ it will be addressed to what extent the difference between ‘renewable’ and ‘non-renewable’ resources may be relevant for the legal qualification of outer space resources and the regulation of their use. As regards the term ‘celestial body’ it will be asked whether it could be meaningful to differentiate the Moon – and other planets and stars – from ‘asteroids’ in the development of legal regimes governing their use and exploitation. In this respect, recent scientific findings will be presented in more detail. Technological progress and its legal implications shall be discussed in view of the historical development of the legal regime of outer space, including the concepts of ‘freedom of use’, ‘benefit of mankind’, ‘province of mankind’, and ‘common heritage of mankind’. The paper will also address comparable concepts and their development in the international law of the sea.