

61st IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
10th Nandasiri Jasentuliyana Keynote Lecture on Space Law and Young Scholars Session (1)

Author: Mr. Andrea Capurso
Leiden University, The Netherlands

THE ‘NON-APPROPRIATION’ PRINCIPLE IN OUTER SPACE: A ROMAN INTERPRETATION

Abstract

The aim of this paper is to analyze the concept of ‘non-appropriation’ in outer space from a legal point of view. The Outer Space Treaty in its Article II provides that outer space, including the Moon and other celestial bodies, is not subject to national appropriation by any means. In the absence of an official interpretation, the precise meaning of this provision has been discussed for decades. This paper will approach the problem by going back to the origin of the concept ‘appropriation’: more than 1500 years ago Roman lawyers had already developed different categories to indicate the relationship between a person and a thing. Among them, the concept of *res communes omnium* was emblematic of how these ancient notions could find new life in the regulation of the cosmic dimension. These categories evolved during the following centuries and eventually led to the development of a specific regime called ‘property law’. Over time, different types of relationship between a person and a thing were elaborated and then categorized, depending on the degree of disposition that the person has on it. This resulted in a large number of legal instruments that, if applied to outer space, could allow forms of disposition - other than appropriation - of space and its resources. The legal status of outer space derives from Roman law. Many of the legal problems faced by the international community today with regard to the cosmic environment are not different from the ones already faced by Roman lawyers when trying to regulate the reality around them. This paper will demonstrate how the ‘non-appropriation’ principle could be interpreted as being limited to just a very specific type of property right, leaving the door open to other forms of disposition of things beyond the atmosphere. In other words, Roman law theories on property rights can offer legal arguments for the use of space resources without breaching the Outer Space Treaty. Underlining the legal feasibility of commercial use of space resources as well as of settlements on other celestial bodies can hopefully represent an incentive for the international community to establish a regime regarding these activities. If that it’s not achieved, uncertainty will prevail and conflicts are certain to arise.

Andrea Capurso