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NATIONAL MINING REGIMES: AN ANALYSIS OF THEIR NEED AND EFFECTIVENESS FOR SUCCESSFUL AND COMPLIANT SPACE MINING

Abstract

With the rapid development of technology, space mining is becoming a palpable reality. Coupled with the privatization of space exploration, some States have approved national regimes on space mining whilst arguing for their compatibility with the OST. Nevertheless, the risks that may arise from an activity more easily accessible to space faring nations and that may lead to ownership of space resources begs the question of whether an international approach should be a preferred course of action. The provisions of the Space Treaties seem to be able to be interpreted in a manner that does not prevent space mining. However, if such a view is taken, then it is worth analysing to what extent a national regime for space mining is needed, at least when it comes to the launching of the space object to space. Indeed, it so happens that national space laws could be interpreted already as at least not forbidding space activities consisting in space mining, an interpretation that might grow in light of international developments in this area. On the other hand, the clarification that private ownership of space resources is recognised does create more legal certainty for private stakeholders, even if this does not bind foreign markets for space resources. This paper aims to analyse the above issues at two main levels. First, at the upstream level of launching and extracting resources (i.e., space activities): in this scope, we will analyse to what extent national space mining laws are needed in addition to general space law and how they can be construed in compliance with international law. In this respect, we will assess possible approaches to authorising space mining, noting that the non-renewable nature of asteroids coupled with a future increasing in space mining might require an international approach with impact on national laws and which might even recommend different access regimes (e.g., public tender, auction, in certain circumstances). Secondly, we will analyse the downstream level of commercialisation of space resources: in this scope, we will look the extent to which national regimes are needed to recognise ownership and/or the right to commercialisation. Analysis will take into consideration other aspects, including to what extent trade in space resources fits in the general conditions for access to market, certification, tax, environment and liability, among others. We will conclude with suggestions on how to effectively tackle space mining from an international and national regulatory point of view.