

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Space Mining: National Authority? International Authority? Both? (5)

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PRESCRIBING THE BEST MEDICINE FOR THE STRUGGLING SPACE MINING INDUSTRY: AN
INTERNATIONAL REGULATORY AGENCY OR TECHNOLOGY DEVELOPMENT CENTERS?

Abstract

The space mining industry is literally having trouble getting off the ground. Although there is an abundance of valuable mineral resources on the Moon and near-Earth asteroids and supportive legal instruments, no commercial space mining missions have launched as of this writing. Moreover, the two most prominent space mining companies were bought by other companies at the end of 2018, and their space mining plans seem to be on hold. No matter the cause of this stalemate, this paper argues that the near-term establishment of an international space mining authority with regulatory powers would be detrimental to the already fragile industry. The Outer Space Treaty does not mandate the establishment of such an authority, nor do any of its articles state or imply that non-governmental activities conducted in outer space require international regulation. While over-extraction and ownership of space resources are serious concerns, provisions of the Outer Space Treaty, national legislation, and non-binding international guidelines will sufficiently mitigate their impact on the industry in the near-term. This paper also supports the incorporation of select principles from the failed Moon Agreement into national legislation and non-binding international guidelines for space mining. The International Telecommunications Union (ITU) and the International Seabed Authority (ISA) are two examples of United Nations agencies that have international authority over primarily private sectors, namely telecommunications and deep-sea mining. This paper compares and contrasts how these two United Nations agencies regulate these sectors and argues that neither model is appropriate for the regulation of the space mining industry in the near-term. Instead of an international regulatory authority, space resource technology research and development centers should be established in interested States. An international agency that mandates how space resource extractions are conducted or decides the owner of disputed mining sites is precisely opposite of what the industry currently requires and would further prevent the development of space mining missions. Global space resource technology research and development centers would offer the support the industry requires, instead of a regulatory agency that would unduly burden fledgling companies who want to reap the benefits of space resources as efficiently as possible.