

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

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MULTILATERAL AGREEMENTS FOR REAL PROPERTY RIGHTS IN THE SOLAR SYSTEM

**Abstract**

A set of principles are proposed for multilateral agreements to allow real property rights on celestial bodies within the confines of the Outer Space Treaty. They are:

- Clear affirmation that the “province of all mankind” language of the OST is fundamentally incompatible with the “common heritage of all mankind” language of the Moon Agreement. Though many parties to the latter are also parties to the OST, it should be affirmed as logically impossible for states to be parties to both treaties.
- Formal recognition of the utter impracticality of the view that whoever mines resources in space must “share any benefit with all states,” a prevailing false interpretation of the “province of all mankind” language in Article II. The notion that the sale of liquid oxygen from the Moon to Elon Musk for a trip to Mars should somehow benefit Botswana is absurd. But for imports of space resources to Earth, one way of dealing with the issue could be a tariff that would fund a development bank, from which nations could borrow to fund their own space projects.
- A requirement that all parties to the agreements will recognize property claims on celestial bodies of individuals from any nation, including non-party nations, subject to certain conditions. The U.S. Homestead Act of 1862 could be used as a model, requiring an individual to inhabit a prospective piece of real estate for some designated period of time, and improve it in some sense, in order to gain title. The General Mining Act of 1872 might also be used as a model, regulating mining claims and requiring their purchase for a fee from a governing body, if they are considered to be found on publicly owned land.
- A distinction between resources extracted in space for personal use, such as harvesting lunar water for life support; resources extracted in space for space commerce, such as harvesting lunar water to create propellant to sell; and resources brought back to Earth from space and for sale in the terrestrial economy.
- A permissive interpretation of Article IX of the OST, which requires avoiding “harmful contamination” of celestial bodies. There is need for a clear interpretation of this clause that would not preclude, say, humans landing on Mars, yet would also ensure the preservation of heritage sites, such as the Apollo landing sites on the Moon or Viking landing sites on Mars.